

Office of the Consumer Advocate

PO Box 23135
Terrace on the Square
St. John's, NL Canada
A1B 4J9

Tel: 709-724-3800
Fax: 709-754-3800

January 11, 2021

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 Inc. - 2021 Capital Budget Application –
Customer Service System Replacement Project
- Consumer Advocate Request for Public Hearing**

This is to acknowledge the Board's correspondence dated 2021-01-06 in response to the Consumer Advocate's request for a public hearing referenced in the Consumer Advocate's correspondence dated 2020-12-16.

By the Board's correspondence, it appears that the Board has declined the Consumer Advocate's request but has extended Newfoundland Power's Capital Budget Application by presenting a schedule for the parties to file further RFIs.

The Consumer Advocate notes that in fact the Board itself has filed new RFIs as of 2021-01-07 (PUB-NP-019 to PUB-NP-024).

The Consumer Advocate has two concerns arising from the Board's decision in this regard.

Firstly, it does not appear evident to the Consumer Advocate that this new round of RFIs is contemplated by the 2007 Capital Budget Application Guidelines and thus the implementation of this further procedural step seems to be in the nature of creating *ad hoc* procedural guidelines. This makes it difficult, if not impossible, for intervenors to know the parameters of this particular Capital Budget Application process.

The procedural unfairness this creates leads to the second concern that the Consumer Advocate has regarding the Board's new direction.

Newfoundland Power has admitted at CA-NP-128 that "... It is Newfoundland Power's position that the onus is on the utility to fully support, with evidence, the expenditures proposed in its Capital Budget Application."

As the Board has now requested that Newfoundland Power present further evidence to discharge its onus of proof in relation to the CSS, *ipso facto* Newfoundland Power has not discharged its burden of proof required for the Board to approve the CSS component of its Capital Budget Application. Yet in the face of Newfoundland Power's shortfall in presenting its case, the Board has now unilaterally changed the guidelines governing the procedure, which change was not anticipated by the Consumer Advocate. In the vernacular, it appears that the Board is now "moving the goalpost".

The Consumer Advocate submits that this alteration of the procedural guidelines by the Board creates a situation where there are really no guidelines at all, and, thus, an intervenor like the Consumer Advocate cannot know what case it is that they are to meet. In the result, *inter alia*, natural justice issues emerge, including a duty of fairness, which would have jurisdictional consequences for the Board.

The Consumer Advocate therefore would ask the Board to reconsider its recent decision to request further RFIs from the Intervenors and render its decision regarding Newfoundland Power's CSS Application based on the record as it currently stands.

Yours truly,



Stephen Fitzgerald
Counsel for Consumer Advocate

/bb

cc **Newfoundland Power Inc.**
NP Regulatory (regulatory@newfoundlandpower.com)
Kelly C. Hopkins (khopkins@newfoundlandpower.com)
Liam O'Brien (lobrien@curtisdawe.com)

Newfoundland and Labrador Hydro
NLH Regulatory (NLHRegulatory@nlh.nl.ca)
Shirley Walsh (shirleywalsh@nlh.nl.ca)

Board of Commissioners of Public Utilities
Jacqui Glynn (jglynn@pub.nl.ca)
Maureen Greene (mgreene@pub.nl.ca)
PUB Official Email (ito@pub.nl.ca)