

- 1 **Q.** (Reference CA-NP-110) It is stated *"Mr. Coyne agrees that regulation is intended to*
2 *serve as a substitute or surrogate for competition in markets that are not competitive,*
3 *such as regulated public utilities, which are generally considered to be natural*
4 *monopolies."*
- 5 a) Does Newfoundland Power agree? Is this statement universally accepted
6 both in this jurisdiction and elsewhere in Canada and the United States?
- 7 b) Does Newfoundland Power agree that it is a monopoly electric distribution
8 service provider in its designated franchise area?
- 9 c) Does Newfoundland Power agree that regulation has two primary functions:
10 1) to serve as a surrogate or substitute for competition in markets that are
11 not competitive, and 2) to ensure customers are not subjected to market
12 power abuse and predatory pricing practices by monopoly service providers?
- 13 d) Is it the Board's responsibility to regulate Hydro and Newfoundland Power
14 and ensure that: 1) the regulatory regime serves as a surrogate or substitute
15 for competition in the Province's electricity sector, and 2) customers are not
16 subjected to market power abuse and predatory pricing practices, or do the
17 utilities also bear some of this responsibility?
- 18 e) What actions are available to the Board if it finds that a utility is practicing
19 predatory pricing? For example, can the Board rescind a utility's license to
20 provide service, or are there no licensing requirements for electric utilities in
21 the Province? Does the Board have the authority to break up a utility, for
22 example, to split Newfoundland Power's franchise service area among three
23 separate entities with separate management control and financing?
- 24
- 25 **A.** a) Yes, Newfoundland Power agrees with the statement. Newfoundland Power
26 cannot speak to the universal acceptance of the statement.
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- 28 b) Newfoundland Power agrees that it is the only utility providing electrical service
29 to customers in its service territory.
- 30
- 31 c) As previously recognized by the Board:
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33 *"Regulation is designed to ensure consumers receive safe and reliable*
34 *electricity at rates that are reasonable while allowing the utility to earn a*
35 *fair return on its investment in supplying the electrical service.*
36 *Regulation strives to strike an equitable balance between the interests of*
37 *consumers and the utility."*¹
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- 39 d) The Board's authority is derived from the powers and duties set out in the *Public*
40 *Utilities Act* (the "Act") and the *Electrical Power Control Act, 1994* (the
41 "EPCA").

¹ See Order No. P.U. 8 (2007), Appendix A, page 1 of 11.

1 The Act sets out the structure and powers of the Board. Section 16 of the Act
2 establishes that the Board has responsibility for the general supervision of public
3 utilities in the province.
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5 The EPCA contains the provincial power policy. The provincial power policy
6 requires, among other provisions, that rates to be charged for service should be
7 reasonable and not unjustly discriminatory.² Section 4 of the EPCA states:
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9 *“In carrying out its duties and exercising its powers under this Act or*
10 *under the Public Utilities Act, the public utilities board shall implement*
11 *the power policy declared in section 3, and in doing so shall apply tests*
12 *which are consistent with generally accepted sound public utility*
13 *practice.”*
14

15 Newfoundland Power is subject to the requirements of the provincial power
16 policy and other requirements of provincial legislation. These requirements apply
17 during all economic conditions, including the requirements to provide customers
18 with just and reasonable rates and reliable service at the lowest possible cost.³
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- 20 e) The powers of the Board are outlined in the Act. Newfoundland Power is not in a
21 position to offer a legal opinion with respect to the Board’s authority in the
22 hypothetical example cited in this Request for Information.

² See Section 3(a)(i) of the EPCA.

³ See Section 3 of the EPCA.