

IN THE MATTER OF the *Public Utilities Act*,
R.S.N.L. 1990, Chapter P-47 (the "Act")

AND IN THE MATTER OF an Application by
Newfoundland and Labrador Hydro for an
Order approving: (1) its 2009 capital budget
pursuant to s.41(1) of the Act; (2) its 2009 capital
purchases, and constructions of projects in excess
of \$50,000 pursuant to s.41 (3) (b) of the Act; and
(4) its estimated contributions in aid of
construction for 2009 pursuant to s.41 (5) of the
Act and for an Order pursuant to s. 78 of the Act
fixing and determining its average rate base for
2007.

To: Board of Commissioners of Public Utilities (The "Board")
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Attention: Ms. G. Cheryl Blundon,
Director of Corporate Services and Board Secretary

SUBMISSIONS OF THE CONSUMER ADVOCATE

November 10, 2007

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Introduction

1. In the Board's Capital Budget Application Guidelines as revised in October of 2007, the following Policy Statement is made:

"III. Policy Statement

In fulfilling its mandate with respect to the supervision of the capital expenditures of a utility the Board balances the interests of consumers and utility in the context of the applicable legislative provisions. In balancing these interests the Board is committed to the efficient and effective review of expenditures in keeping with the provision of least cost reliable service."

2. It is submitted that the need for an efficient and effective review of capital expenditures in keeping with the provision of least cost reliable service and the need to balance the interests of consumers and utility, while ever present, takes on even more importance in the context of the present and coming years.
3. As the Board is aware, Newfoundland Power Inc. has given notice of the fact that it plans to file larger capital budgets than it has in the recent past. In 2008, the Budget approved by Order No. P.U. 27 (2007) and P.U. 3 (2008) was \$51,640,000. In 2009, the proposed Budget is \$61,571,000. In its 2009 Capital Plan, the Company

states at p. 7:

“The Company plans to invest \$344 million in plant and equipment during the 2009 through 2013 period. On an annual basis, capital expenditures are expected to average approximately \$68.7 million and range from a low of \$61.6 million in 2009 to a high of \$72.2 million in 2011 ... Overall planned capital expenditures over the 5-year period in 2009 to 2013 are expected to be greater than those in the 5-year period from 2004 to 2008. This is principally the result of inflation in utility infrastructure construction costs; the inclusion of power transformers for load growth; and forecast requirement for mobile generation and a portable substation included in the 5-year plan.”

4. At the same time it is expected that Newfoundland and Labrador Hydro (NLH) shall also be filing increasingly large capital budgets over the corresponding 5-year period. In its 2009 Capital Plan filed with its August 11, 2008 Capital Budget Application for 2009, NLH states at page 5:

“Hydro anticipates that its capital expenditures to maintain the existing system will rise to an average of \$54 million over the next five years and to an average of \$58 million, expressed in 2008 dollars, over the next 20 years. Expenditures for new generation and transmission assets are not included in these estimates”. (Emphasis added)

5. These present and anticipated capital spending projections coupled with the already high cost of fuel burned at Holyrood and in other smaller communities served by diesel generation, will pose ever more serious challenges to consumers who ultimately bear the entire cost of service. This speaks to the heightened need to ensure that capital expenditures of the utilities are supervised in order to balance the interests of consumers and the utilities in keeping with the provision of least cost

reliable service. Central to this supervisory function of the Board, is the need to insist that the utility adequately make the case to support its capital spending proposals. It is in this light that the Consumer Advocate wishes to make the submissions which follow in relation to certain of NLH's proposals.

Project Title: Refurbish Fuel Storage Facility
Location: Holyrood
Category: Generation - Thermal
Definition: Other
Classification: Normal

6. This project is described at page B-2 of Volume I of the Application. This is a \$2.87 million project.

7. The Consumer Advocate observes that the March 2006 Study by SGE Acres filed (Appendix B, Tab 1 of Vol. II) in support of this project was completed before the milestone dates were set for the Lower Churchill Project: (IC6 - NLH). The SGE Acres report states in its Introduction that the objective of the assessment,

“is to determine the extent of upgrades required for the tanks, pipelines and drainage, as well as the power and lighting system, to extend the useful life of the facility by at least 20 years.”

8. It will not be known until 2009 whether the Lower Churchill and in-feed project will receive sanction or not. If sanctioned, NLH has indicated that the earliest that the fuel oil storage facility will not be required is 2015. Hence, there is a substantial possibility that the storage facility will not be required in another 7 or so years.

9. Obviously, NLH, the Board and Intervenors, at this juncture do not have a clear sense as to the future in relation to Holyrood. In that circumstance, caution is

clearly required before committing significant funding to the proposed project.

10. NLH has confirmed in CA-NLH-6 that there is no federal or provincial government legislation directing the project work to be done at this time. Also in CA-NLH-6, NLH has confirmed that upon removal of vegetation from the dykes containing the fuel tanks that Hydro will be in compliance with the National Fire Code of Canada. It is noted that at p. 12 of Hydro's report at (Tab 1, Volume II) NLH has confirmed that the capacity of the tank farm dyke is adequate but that retained water reduces the available capacity for fuel to levels below the Gasoline and Associated Projects Regulators (GAP). For that reason, NLH has proposed drainage enhancements for the elimination of storm water accumulation inside the dyke.
11. However, it is noted that NLH's response to IC5-NLH confirms that up to the present time it has achieved drainage of the dyked areas through the reallocation of operator time from other duties with added overtime in some instances.
12. The Consumer Advocate is concerned about the prospect of now embarking upon a project based upon recommendations of a consultant whose assessment's express objective "was to determine the extent of upgrades for the tanks, pipelines and drainage, as well as the power and lighting system, to extend the useful life of the facility by at least 20 years." NLH has confirmed in reply to IC6-NLH that the consultant has not been asked if its recommendations are valid to extend the useful life of the facility for less than 10 years. This is problematic when it is at least probable that it will be known in 2009 whether the decommissioning of the fuel oil storage facility would occur within that timeframe.

13. In relation to expenditures in excess of \$500,000, the Capital Budget Application Guidelines provide that, where appropriate a utility is expected to provide a report/analysis by a qualified engineer or other appropriate expert in support of the expenditure. In this instance, an expert report has been provided, however given its stated objective and given the real potential that the facility will not be required beyond 2015, just seven years from now, it is respectfully submitted that the report provides limited assistance to the Board in determining whether to approve this project as proposed at this time. Obviously, the facility must be adequately maintained until at the earliest 2015, but we do not have a record before us which proposes how we can reasonably get there and at what cost if, in 2009, it is decided to proceed with the Lower Churchill and in-feed.
14. In making this submission, the Consumer Advocate notes the Board's statement in P.U. 30 (2007) at p. 7 that notwithstanding the acknowledged uncertainty around the future of Holyrood, that "each proposed capital project at the Holyrood plant should be appropriately justified in terms of the current known circumstances." Indeed, NLH as quoted by the Board in its decision on NLH's 2008 Capital Budget Application (at p. 6-7) stated:
- "In the meantime, the Holyrood plant is encountering a number of issues caused by age and deterioration that require capital works to extend the life of the plant beyond the present. In most case where a system is failing, or is incapable of functioning as required it is not meaningful to inquire whether an upgrade is required to bring the life of the plant beyond 2015 or to some other date; the replacement of the asset will be required in either case, in a 500 MW thermal plant, there will be very few instances where a half-measure will be possible to ensure the reliable operation of a critical system." (emphasis added)

15. In the case of this proposed \$2,87 million project, the Consumer Advocate submits that this is indeed an instance where it is meaningful to ask whether all of the proposed work is required to bring the life of the plant beyond 2015 or to some other date. However, NLH's Application provides little assistance to the Board whose task it is to consider the question in reaching its determination.

16. As stated, in the present "window of uncertainty" caution is required. The Board, it is submitted, will be much better positioned to determine whether to approve this project once the future of Holyrood has been resolved in late 2009.

Project Title: Replace Accommodations, Septic System and Upgrade Plant Communications
Location: Cat Arm
Category: Generation - Hydraulic
Type: Clustered
Classification: Normal

17. This project is described at page B-19 of Volume I of the Application. This is a \$1.25 million project.
18. NLH has filed a report in support of this project at Tab 7 of Volume II of the Application.
19. The Consumer Advocate has several problems with this proposed project. NLH has not followed the remediation recommendations of its Environmental Consultants, Pinchin LaBlanc Environmental Limited (Pinchin). In the June 11, 2007 Pinchin Report (Bunkhouse), recommendations were made at page 4 to NLH in keeping with the Canadian Construction Association's "Mould Guidelines for the Canadian Construction Industry." These recommendations were not followed. In the June 11, 2007 Report (Cookhouse), similar recommendations were made at page 4. These recommendations were not followed.
20. Moreover, NLH has sought to justify this project, in large part, on economic grounds by which it has compared the costs of employees staying in Deer Lake (or

in Pollard's Point - see IC-17-NLH) versus the costs associated with constructing the On-Site accommodations. This approach fails to provide a complete picture to the Board, it is submitted. What is missing from the analysis is how the costs associated with constructing the On-Site accommodations compares to the costs of NLH carrying out the recommendations of its own expert consultants.

21. Beyond NLH's statement in IC-18-NLH that "it believes that it is not cost effective to clean up and modify/renovate" the existing facility, there is a complete lack of evidence on the record in this proceeding to support this contention.
22. The Capital Budget Application Guidelines state in relation to Normal Capital that the utility must show inter alia that the expenditure as proposed is the least cost option. Furthermore, as this is a proposed \$1.25 million project, the utility is expected to provide a report/analysis by a qualified engineer or other appropriate expert in support of the expenditure. In this latter regard, the only expert report provided by NLH is that of Pinchin, whose advice NLH has not followed.
23. In the case of this \$1.25 million project there is no credible evidence on the record as to why, as NLH asserts, it is not cost-effective to clean up and modify the existing facility. This deprives the Board of the ability to make a reasoned determination on the reasonableness of this costly project.
24. The Consumer Advocate notes that both the bunkhouse and cookhouse are constructed with metal siding and asphalt roofing and appear on the outside to have stood up rather well according to the external photos at pages A2 and A15. Table 2 at page 5 of NLH's report (at Tab 7 of Vol. II) in fact shows that in recent years

NLH has made upgrades to these buildings including:

- a new bunkhouse patio in 2006
- window replacement in 2005
- three additional bedrooms to the cookhouse in 1999.

25. It would also appear from Table 3 at page 5 that NLH has not had to spend a large amount on preventative and corrective maintenance over the past 5 or so years, particularly having regard to the fact that these structures are not occupied that often (see Table 4 of p. 9 of Tab 1, Vol. II).
26. Further, even if a proper foundation and analysis existed to support the construction of the On-Site accommodations as proposed, it is not at all clear as to the need for NLH to expend monies for paving of the parking lot. The Consumer Advocate, despite NLH's response concerning this issue in CA-NLH 11, submits that it is not necessary to have a paved parking lot at this remote location, found several kilometers up a gravel road.
27. The Capital Budget Application Guidelines, in relation to expenditures in excess of \$500,000, in essence speak to the notion that 'where much is sought, much is required.' The materiality of the expenditure dictates that the proposed project must be supported "with more comprehensive and detailed documentation than other expenditures" according to the Budget Application Guidelines.
28. Electrical customers of NLH and NP must run their households and businesses with a keen eye to the bottom line. Accordingly, customers have a reasonable

expectation that NLH will be as careful with its money (which comes from ratepayers) as customers are with their own. A homeowner or business owner would aggressively exhaust all cheaper options before deciding to make a large expenditure.

29. Finally, NLH's decision to not follow the recommendations of Pinchin which were made nearly a year and a half ago has materially increased the cost of carrying out other work at Cat Arm. At page H-15, NLH reports that increased costs will be incurred in relation to the upgrading of Spherical Valve Maintenance Seals. At H-15 NLH states:

"The closure of the cookhouse and bunkhouse at Cat Arm will result in additional costs associated with housing workers at the nearest available lodging in the Community of Pollard's Point, as well as the additional labour to be incurred for workers travelling between Pollard's Point and Cat Arm. This will result in increased costs of \$95,000. Furthermore, the scope of the project has been expanded to include the construction of a temporary cookhouse on-site to feed workers during the construction at a cost of 159,000."

30. At H-15, NLH also reports that the project cost in connection with the replacement of the governor controls on Unit 2 in Cat Arm has been significantly increased. NLH states:

"The on-site accommodations at Cat Arm have been closed. Personnel for Hydro and General Electric, the control system supplier, will have to stay at a motel during the installation and commissioning of the governor controls and its associated equipment. This will add additional labour costs due to travel time plus the cost of accommodations. These changes have resulted in increased costs of \$263,000, plus the cost of accommodations. The

scheduled time to complete the work will be extended as more time has to be used for travel.”

31. It is respectfully submitted that the prudence of these additional costs have been put in issue. Customers of NLH should not have to bear the burden of these additional costs.

Project Title: Pave Parking Lots and Roadways
Location: Bishop's Falls
Category: General Properties - Transportation
Definition: Other
Classification: Normal

32. This project is described at page D-30 of Volume I of the Application. This is a \$150,000.00 project.

33. This project involves the paving of areas at the Bishop's Falls site which have been unpaved for approximately 40 years: CA-NLH-24. The reasons put forward for this project by NLH in reply to CA-NLH-24 and in its justification at page D-30, while perhaps speaking to the desirability of paving, do not really address the necessity of doing so after four decades. In the result, the Consumer Advocate opposes this expenditure as not being reasonably necessary.

Project Title: Replace Diesel Units
Location: Norman Bay, Postville and Paradise River
Category: Transmission and Rural Operations - Generation
Definition: Pooled
Classification: Normal

34. This project is described at page B-17 of Volume I of the Application.
35. NLH has filed a report in support of this project at Tab 6 of Volume II of the Application.
36. Part of this project involves the replacement (in Paradise River) of Unit 2020, a 90 kW Caterpillar 3304, with a smaller unit rated at 27 to 35 kW. The Paradise River diesel plant has three gensets: two rated at 50 kW and the other at 90 kW for an installed capacity of 190 kW. It generates approximately 90 MWh of electricity annually, supplying electricity to 30 customers in the community. NLH has stated that Unit 2020 is oversized for the Paradise River system which is currently experiencing extremely low loads. NLH has stated (p. 6 of report at Tab 6, Volume II) that the unit operates well below its best efficiency point. At page 19 of the report, NLH has stated that "Maintaining the status quo will mean continuing to operate the Paradise River system less efficiently than it should be." However, NLH, in response to CA-NLH-10, has stated that it has not performed a comparison of the capital costs of replacing Unit 2020 versus any quantifiable operational efficiency losses should Unit 2020 be retained on the system. And unlike with the

cases of Norman Bay and Postville, NLH has not put forward reliability as a justification for the Paradise River replacement.

37. NLH has emphasized the efficiency gains associated with replacing Unit 2020, however, there is no evidence as to how the capital costs associated with replacing this unit compare to the costs of keeping the unit on the system. In light of this lack of justification for this \$396,000.00 project (Table 12, p. 21, Tab 6 of Volume II), the Consumer Advocate would recommend against its approval at this time.

Project Title: Install Transformer Storage Ramps
Location: Labrador
Category: Transmission and Rural Operations - Properties
Definition: Other
Classification: Normal

38. This project is described at page D-41 of Volume I of the Application. This is a \$120,600.00 project.
39. This project involves the construction of 8' x 32' pressure treated ramps in Nain and Cartwright upon which transformers will be stored.
40. Though NLH, in CA-NLH-26, confirms that there has never been an instance in which a transformer or waste oil drum has been damaged in the course of snow clearing operations, the threat of this occurring is cited as a reason to build these ramps. With respect this is not a credible argument to justify an expenditure of this magnitude.
41. NLH has also confirmed that it is not under any legislative or regulatory requirement to modify its storage structures.
42. Through NLH points out that having drums and transformers stored directly on the ground would be contrary to NLH's Environmental Standard Operating Procedures, the evidence is that this does not occur. In fact, in both Nain and

Cartwright, photos at page D-42 show that transformers are stored on ramps already, with some units (see Figure 2) stored on their lumber pallets.

43. While the existing ramps in Nain and Cartwright do not appear to be constructed of pressure treated lumber as proposed in the Application, they certainly appear to be adequate for the purpose of storing transformers. The Consumer Advocate urges the Board to reject this unnecessary expenditure.

Project Title: Install Pole Storage Ramps
Location: Various Sites
Category: Transmission and Rural Operations - Distribution
Definition: Other
Classification: Normal

44. This project is described at page D-62 of Volume I of the Application. This is a \$76,900.00 project.
45. In essence, the project involves the construction of a ramp at Nain and another at Postville to avoid NLH's having to store poles directly on the ground as it presently does in these locations.
46. The Consumer Advocate comments on this project because of the fact that these projects appear to use a very elaborate solution for a fairly simple problem. Secondly, NLH states at page D-64 that it plans to propose more such installations in the future. Thirdly, the project engages policy issues as to the extent to which consumers must pay for projects which are made more costly by reasons of their proffered "environmental" benefits.
47. This project as described at page D-62 will involve the application of a 150 millimeter layer of impervious backfill, followed by a layer of filter fabric and then grass. Then the poles will be covered with 18 ounce PVC tarpaulin which will be held in place with tie down straps. All of this is apparently being done to meet the

Federal Government's "Guidelines for Treated Wood Storage Facilities" which is neither a legislative nor regulatory requirement. Hydro states that "This enables Hydro to be more environmentally friendly."

48. The question that arises is whether there are any limits as to what customers can be expected to pay for in the name of environmental friendliness, in the absence of environmental regulations which compels a utility to make a certain expenditure. This is not an issue of minor importance. In reply to PUB-NLH-26, Hydro has indicated that it plans to install these pole storage ramps at 14 diesel plant sites over the next five years at a current budget estimate of \$503,000.
49. The Consumer Advocate notes that in P.U. 16 (2006) (the 1% sulphur fuel application) the Board observed that it is an economic regulator constituted by statute which derives its jurisdiction primarily from the *Public Utilities Act* and the *EPCA*. The Board stated at p. 4-5:

"The Board's mandate requires that the Board ensure least cost reliable reasonably safe power is provided in accordance with the laws of the Province. Environmental issues, are to some extent, inherent in this mandate. As set out above s.16 and 17 of the *Act* require the Board to ensure that the utility observe the laws of the Province, including environmental laws. The Board is also required to ensure that Hydro is managing the provision of power in a manner consistent with sound financial administration. Therefore environmental issues must be considered in relation to how they impact the financial administration of the utility. Finally the Board must consider environmental issues to the extent that they are part of reasonably safe and adequate and just and reasonable service as set out in s.37 of the *Act* and as required by generally accepted sound public utility practice.

It is noted that there is a comprehensive regulatory scheme overseen by the

Department of Environment and Conservation (the “Department”), separate and apart from this Board, which specifically regulates Hydro with regard to environmental issues. In this context the Board must be careful to avoid potential duplicative and inconsistent regulation with regard to these issues. Given that the Board is an economic regulator and there is a separate comprehensive environmental regulatory scheme, the authority of the Board with respect to the oversight of environmental issues is limited to that necessary to carry out its mandate with respect to utility regulation. Issues outside of the jurisdiction of the Board may be addressed by an exemption or direction from Government pursuant to the *Act* or the *EPCA*.”

50. As the Consumer Advocate similarly argued in the sulphur fuel case, there may be many customers who would not object to paying a small amount more on their electricity bills if it meant a cleaner environment or even a more-environmentally-friendly utility. But at the same time there may indeed be many others who will object to any further increases regardless of the justification. Ultimately, consumers have a statutory right to insist that all facilities for the production of power are managed and operated in a manner that results in the most efficient production of power and at the lowest possible cost consistent with reliable service. It is not for the Consumer Advocate to sacrifice the legal right that has been granted to consumers by the Legislature.

51. In this light, the Consumer Advocate does not challenge NLH’s assertion (see p. D-64) that storing poles on elevated ramps will make it safer and easier to sort, select, and handle different types and lengths of poles. Nor does the Consumer Advocate question the assertion that storage ramps will also prevent poles from deteriorating early due to ground contact. However, additional expenditures made necessary to achieve compliance with Guidelines which lack the force of law and are not binding upon NLH are problematic for the reasons already stated. This project provides an

opportunity to the Board to provide guidance on this issue.

Project Title: Construct Transmission Storage Ramps
Location: Bay d'Espoir
Category: Transmission and Rural Operations - Transmission
Definition: Other
Classification: Normal

52. This project is described at page D-67 of Volume I of the Application. This is a \$75,000 project to construct two 8' by 32' transmission storage ramps at the Camp Boggy pole yard. The ramps, are in essence, wooden decks with a simple design.

53. NLH has stated (p. D-67) that the existing storage ramp is rotting and in disrepair. The Consumer Advocate does not take issue with this project in principle but does note that the labour cost for this project is \$39,000.00. Even if one were to assume an all-inclusive labour cost of \$39.00 per hour, this would represent 1,000 person-hours which appears high in order to construct these two 8' by 32' ramps. This would imply that it would take, to illustrate, 4 skilled persons working 40 hours/week (at \$39.00/hour) a total of more than 6 weeks to attend to this work. If the all-inclusive labour cost of \$30.00 per hour was assumed, it would imply that 4 persons working 40 hours/week would require approximately 8 weeks to complete this work.

54. The Board would note that in the case of the 2 transformer storage ramps proposed for Nain and Cartwright (at p. D-41) the labour costs were \$52,700.00.

55. Meanwhile, according to NLH (p. D-41) a transformer storage ramp is being installed in Port Saunders in 2008 for \$15,000.00 - presumably, in total. Assuming, the Port Saunders installation itself is a 8' x 32' pressure treated structure, it is odd that the total cost for NLH to construct two such structures at Camp Boggy runs to a total of \$75,000.00, when it appears that materials for the two ramps are budgeted at \$11,000.00
56. If, as it appears, the Port Saunders ramp can be installed for \$15,000.00, it is difficult to accept the proposition that it will cost \$75,000.00 to build two ramps at the Camp Boggy pole yard which is located at the main Hydro site in Bay d'Espoir, across from Hydro's main warehouse.
57. In these circumstances, the Consumer Advocate would recommend that the Board not approve this expenditure pending a satisfactory explanation from NLH as to the requirement of a \$75,000.00 outlay for these two ramps.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 10th day of November, 2008.



THE CONSUMER ADVOCATE

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