

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

**IN THE MATTER OF** capital expenditures and  
rate base of Newfoundland Power Inc.; 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 its 2011 Capital Budget of  
\$72,969,000; and
- (b) fixing and determining its 2009 rate base  
at \$848,493,000.

**To Board of Commissioners of Public Utilities**

Suite E210, Prince Charles Building  
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Attention: Ms. G. Cheryl Blundon  
Direct of Corporate Services & Board Secretary

## **SUBMISSION OF THE CONSUMER ADVOCATE**

### **INTRODUCTION**

1. Section 41 of the *Public Utilities Act*, RSNL, c. P-47 (the “Act”) requires a public utility to submit an annual capital budget of proposed improvements or additions to its property for approval of the Board.

2. Section 78 of the Act vests authority in the Board to fix and determine the rate base for the service provided or supplied to the public by the utility and also gives the Board the power to revise the rate base.
3. On July 15, 2010, Newfoundland Power Inc. filed its Capital Budget Application (the "Application") with the Board. In the Application, Newfoundland Power Inc. requests that the Board make an Order:
  - (a) approving its purchase and construction in 2011 of the improvements and additions to its property in the amount of \$72,969,000 as set out in Schedules A and B to the Application; and
  - (b) fixing and determining its average rate base for 2009 in the amount of \$848,493,000 as set out in Schedule D to the Application.
4. The Consumer Advocate intervened in the Application and issued Requests for Information to Newfoundland Power Inc. numbered CA-NP-01 to CA-NP-40.

#### General Recommendations

5. The *Electrical Power Control Act, 1994* in section 3(b) requires that utilities manage and operate its facilities in a manner that results in power being delivered to consumers in the province at the "lowest possible cost consistent with reliable service".

6. The amounts spent on capital projects by each of the utilities will need to be financed as either debt or equity and consumers will pay the interest on the debt and the return on equity as well as the costs of depreciation on the acquired assets.
7. The onus rests upon the utility to establish before the Board that the expenditures proposed are necessary in the year in which they are proposed and represent the lowest cost alternative for the provision of electricity service in the province.
8. Newfoundland Power Inc.'s Application is seeking the Board's approval of the purchase and construction in 2011 of improvements and additions to its property in the amount of \$72,969,000. Last year's 2010 capital budget application sought approval in the amount of \$64,679,000. 2009's capital budget approved by the Board in Order No. P.U. 27 (2008) was \$61,600,000.
9. Appendix A-1 to the 2011 Capital Plan points to significantly increase capital expenditure projections in the coming years as follows:

<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
\$74,281,000	\$81,655,000	\$84,771,000	\$81,802,000

10. Meanwhile, Newfoundland Power's capital expenditures, of course, are only part of the picture. Actual and Budget Capital Expenditures by Hydro demonstrate the same trend:

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
41.2 M	35.7M	46.2M	54.1M	62.3M	65M	70.2M	67.7M	60.5M	64.4M

*Reference: NLH's 2011 Capital Budget Application, Vol. I, p. G-1*

11. Given this context, one must be concerned with the overall level of capital expenditures put forward not only in this Application but in future such applications. Of particular importance is the onus that rests upon the utility to establish that the expenditures proposed are necessary in the year in which they are proposed and represent the lowest cost alternative for the provision of electricity service in this province.
12. The reality is that neither the Board nor an Intervenor is possessed of the time or the resources to retain sufficient independent technical expertise to inspect the assets and facilities of the utility for the purposes of providing a review of (and evidence in relation to) the myriad projects selected by the utility for inclusion in its annual capital budget applications. This constraint compels the Board, in our respectful judgment, to be appropriately critical of claims by utilities that a certain project cannot be reasonably deferred to a future date in the absence of an objective method ranking the importance and time-sensitiveness of the projects advanced for approval.
13. The determination of whether a project or expenditure may be deferred depends, in large measure, upon whether the utility is prepared to admit that it can be deferred - a rare occurrence. The company's reply to CA-NP-16 is the norm:

*A: From the Company's perspective, all projects in Newfoundland Power's 2011 Capital Budget Application, including the Substation Refurbishment and Modernization project as presented, are required to be completed in 2011 and cannot be prudently deferred. . .*

14. Notwithstanding the usual perspective of the utility that nothing it has proposed can be prudently deferred - one routinely sees evidence that the utility has decided to delay or put off a project that it previously had intended to bring forward. For instance, in this Application the evidence of the Company indicates that Newfoundland Power deferred the replacement of the Rattling Lake spillway (necessary work identified in the Hatch report of 23 April, 2007) until 2011 due to uncertainty around requirements for fish passage<sup>1</sup>. In CA-NP-13, the company was asked and replied as follows:

Q: . . . On which basis did NP decide that the work on the spillway could reasonably be deferred pending the outcome of discussions with DFO?

A: . . . Newfoundland Power has been able to defer the work at Rattling Lake Spillway by limiting the reservoir operating elevations to avoid the worst-case structural loading on the Spillway.

15. Another example is the 106 year old Victoria Hydro Plant, a facility whose \$2,498,000 refurbishment was expected to be undertaken in 2011, according to the 2010 Capital Plan filed with last year's application.<sup>2</sup> According to the company's reply to CA-NP-30, the plant's penstock is deteriorated and has exceeded its anticipated service life. The company states:

*" . . . The condition of the plant assets justifies refurbishment in the near term. However, the decision to delay the project was based upon economic consideration."*  
(footnotes omitted) (emphasis added)

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<sup>1</sup>See Rattling Brook Dam Refurbishment at Tab 1.2, p. 1

<sup>2</sup>See CA-NP-30

16. The company states that it must carry out further engineering work to scope the decommissioning alternative and estimate the associated cost. The company continued,

*“Until this engineering work is completed Newfoundland Power chose not to include the Victoria refurbishment project in its capital plan.”<sup>3</sup>*

17. The point here is not to question whether the company acted appropriately in deferring the Rattling Lake Spillway and the refurbishment of the Victoria Hydro Plant. Rather, the point is that there is undoubtedly an element of subjectivity involved as regards deciding whether a project can be deferred. Where the company sees fit, it can decide to defer a project with a 97 year old deteriorated penstock and state that the plant assets’ condition merely ‘justifies refurbishment in the near term’. In the case of the Spillway, this project was delayed while talks with DFO went on for several years. Such examples also serve to illustrate the implausibility of the company’s claim that not a single project that it has put forward can be prudently deferred beyond 2011.
18. The Board has rejected the suggestion that it should constrain annual capital spending based on a utility’s anticipated revenues as would be the case for non-regulated enterprises. In P.U. 1 (2010) the Board stated such an approach “is not one that should be contemplated in the context of the obligation by Hydro to provide service as set out in the legislation”. The Board went on to state:

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<sup>3</sup>See CA-NP-30 at lines 36-37

*"In a competitive market companies can make choices about factors such as the type and level of service provided, the products they produce, and the price charged. In reviewing Hydro's proposed capital budget the Board must satisfy itself that the proposed projects are, as required by the Act, consistent with the requirement for least cost and safe and reliable service."*

19. The fact that there are known factors<sup>4</sup> which are exerting upward pressure upon the capital expenditures requirements of each of the province's utilities, increases the need for the Board to have the ability to scrutinize proposed projects in order to satisfy itself that each project is as 'required by the Act, consistent with the requirement for least cost and safe and reliable service'.

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<sup>4</sup>For example, at p. 1 of its 2011 Capital Plan, Newfoundland Power states:

"Over the next five years, the Company plans to invest approximately \$396 million in plant and equipment. The need for greater system capacity over the next 5 years in addition to federal regulatory changes and a directive from the Government of Canada will increase forecast capital expenditures through 2015."

In P.U. 1 (2010), the Board stated (p. 4, lines 19-29):

"In the 2010 Capital Plan Hydro acknowledges the increasing levels of capital expenditures and notes at pg. 4:

'...many of Hydro's major assets have reached, or are about to reach, maturity, at which time steps must be taken to ensure that reliable service is maintained. These steps can include refurbishment and partial or total replacement. Over recent years many projects were implemented to replace mature assets or asset components, and the number of these projects will increase significantly if Hydro is to continue to provide a reliable supply of electricity to customers. Hydro manages assets to provide least cost electricity to its customers. The methodology for managing assets is currently being updated, and will be submitted to the Board in the near future.'"

20. In the Consumer Advocate's respectful submission, a utility in a capital budget application should:
- (a) provide guidance to the Board and interested parties as regards the ranking of the importance of the projects being proposed in the Application; and
  - (b) where applicable to the type of project in question, explain specifically what deferral alternatives have been considered and why deferral for any period of time was found not to be a prudent option in the circumstances.
21. As regards the ranking of the importance of projects, it is patently obvious that not all projects can be of equal importance. The Board, in carrying out an effective review and approval of expenditures in keeping with the provision of least cost reliable service, has to balance the interests of consumers and the utility with respect to the supervision of the capital expenditures of a utility.<sup>5</sup> If the Board was provided with the utility's assessment of the relative importance of the proposed projects, the Board (and Intervenors) would be better placed to ensure that the interests of consumers and the utility were appropriately balanced.
22. In reply to CA-NL-05, Hydro provided a ranking of the importance of the projects put forward in its 2011 Capital Budget Application. The Consumer Advocate believes that this is useful information which adds transparency to the capital budget process.

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<sup>5</sup>See Part III - Policy Statement of Capital Budget Application Guidelines



23. The ranking of projects also complements the purpose of the Capital Budget Application Guidelines.<sup>6</sup>
24. As regards the requirement to explain what deferral options were considered and why deferral was considered not to be a prudent option, this requirement is practically required as a result of the tendency for the utility to consider that each and every one of its projects of every nature and kind are required to be completed in the coming year and cannot be prudently deferred. Clearly, given this stance, the Board has to be in a position to adjudge whether such positions are justified on a project-by-project basis. In order to adjudge these positions in an appropriately critical manner, the Board must be provided with the utility's specific explanation as to what deferral alternatives were considered and why deferral for any period of time was found not to be a prudent option.

#### Individual 2011 Capital Budget Projects

25. In addition to the foregoing more general recommendations, the Consumer Advocate comments below on certain of the individual projects proposed by Newfoundland Power's Application. The Consumer Advocate would note that the fact that he has not made comment on a particular project does not necessarily indicate endorsement of the project.

#### Vehicle Mobile Computing Infrastructure

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<sup>6</sup>Part IV - Purpose

The purpose of this policy is to provide clarity and consistency in the submission of capital expenditures by a utility, while ensuring transparent and fair oversight by the Board. The policy sets out the format, process, schedule and obligations of the utility and participating parties.

26. In the Decision and Order of the Board No. P.U. 41 (2009), the Board approved the expenditure of \$272,000 for the installation of mobile computing infrastructure in company vehicles on the basis of the opportunity for improvement in safety and efficiency, which the Board expected to be documented as part of Newfoundland Power's proposals in relation to expenditures for 2011.
27. In this year's Application, Newfoundland Power seeks approval to spend a further \$178,000 to purchase and install 20 ruggedized laptop computers in vehicles used by field staff.
28. In addition, a further \$195,000 is proposed in 2011 to purchase applications<sup>7</sup>. In the period from 2009 to 2011, the Company expects to spend \$1,142,000 on vehicle mobile computing, a new head of expenditure.
29. Despite the Company's filing of this year's Vehicle Mobile Computing report, the Consumer Advocate's concerns are no less in relation to this initiative. At the date the report was written, the Company reports that it had 25 computers installed in electrical line and maintenance vehicles. In the third quarter of 2010, the Company will install an additional 35 units across the Company's service territory. The Company terms its proceeding to equip a further 20 units in 2011 reflective of "*a measured approach to the deployment of mobile computing infrastructure*".

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<sup>7</sup>See Tab 5.1, Table 1

30. The Consumer Advocate is concerned with the notion of going further with these installations at this point. While there may be opportunities for reduced cost - these opportunities are still only potential at present. It must be remembered that this project is not a so-called "one off". These ruggedized laptops are estimated to have a useful life of 5 years<sup>8</sup>. Already, the Company is stating that it expects to deploy further mobile applications after 2011<sup>9</sup>.
31. The Consumer Advocate submits that at this stage the prudent course is to learn from the existing deployments of the technology and to quantify what benefits, if any, will enure to the advantage of customers through this technology's deployment. The Consumer Advocate is not convinced on the state of this record that the installation of more units in 2011 is justified. The Company's outlook is as follows:

*"It is expected that efficiencies achieved through introduction of electronic processes in electrical line and maintenance options will ultimately exceed the Company's investment in vehicle mobile computing infrastructure."<sup>10</sup>*

While this is no doubt the Company's expectation, it is only an expectation. With \$1,142,000 proposed to be spent by the end of 2011, consumers deserve more than an expectation that efficiencies received will 'ultimately' exceed the investment.

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<sup>8</sup>2010 C.B.A. - CA-NP-33

<sup>9</sup>Report at Tab 5.4 - Outlook section at p. 5

<sup>10</sup>Report at Tab 5.4 - Outlook section at p. 5

2011 Application Enhancements (Pooled)<sup>11</sup>

32. In the preamble to CA-NP-08, the essential fact referenced was that Application Enhancements have involved in recent years annual expenditures in the area of a million dollars or more (\$1.5 million in the 2009 CBA).
33. The Consumer Advocate also inquired in CA-NP-08 whether Newfoundland Power had an overall plan which sets out the goals it is intending to reach in relation to these various capabilities and a timeline and budget for their attainment. The Company's reply was that it did not have an overall plan. The Company states that it assesses the merits of possible application enhancement in developing its annual capital budget in response to changing business requirements, customer expectations and information technology advancements.
34. In the absence of an overall plan or approach to these application enhancements it is frankly quite difficult to get a sense of how the annual capital expenditure proposals fit into an overall picture.
35. From 2011 to 2015, the Company estimates that it will spend \$5.6 million on Application Enhancements<sup>12</sup>. It would be helpful to have a sense of what the Company sees as its priorities and its objectives over this horizon. For example, the Company states in its Vehicle Mobile Computing report (p. 5) that it expects to

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<sup>11</sup>P. 84-85 of 100 and Tab 5.1

<sup>12</sup>2011-2015 Capital Plan, p. A-9

deploy further mobile applications after 2011. What is the goal? What cost savings is the Company striving to achieve?

36. The Application Enhancement project has been labeled as justifiable. At page 84 of 100, the Company states,

*"Justification*

*Some of the proposed enhancements included in this project are justified on the basis of improving customer service. Some will result in increased operational efficiencies. Some projects will have a positive impact on both customer service and operational efficiency.*

*Cost benefit analysis, where appropriate, are provided in 5.1 2011 Application Enhancements."*

37. The Capital Budget Guidelines define Justifiable Expenditures as *"Expenditures which are justified based on the positive impact the project will have on the utility's operations"*. The Guideline stipulates:

*"In relation to justifiable expenditures a utility must show:*

- 1. All reasonable alternatives, including deferral, have been considered; and*
- 2. The expenditure will provide tangible benefits to ratepayers, such as information showing a positive NPV or the proposed resolution to an identified deficiency."*

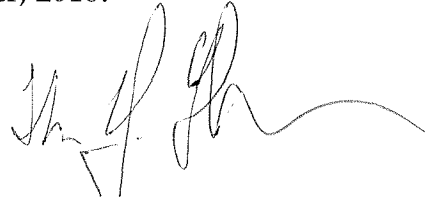
38. It will be noted that in respect of the 2011 Application Enhancements described in Tab 5.1, the Company has not established that it has assessed and considered all reasonable alternatives, including deferral of these projects as per the requirement

of the Guidelines. Accordingly, the record does not justify the approval of these projects.

#### Replacement of Rattling Lake Spillway

39. This is an \$1,800,000 project which involves replacement of the Rattling Lake Spillway with a gravity overflow labyrinth spillway. The project is described in the June, 2010 report at Tab 1.3.
40. Newfoundland Power states in response to CA-NP-13 that it has been able to defer work on the spillway for several years by limiting the reservoir operating elevations to avoid worse-case structural loading on the spillway. Structural analysis of the spillway was completed for the worse-case loading scenario. Worse-case structural loading would occur when the reservoir is at or near the full supply level during winter conditions when ice is present in the structure. To ensure that this worse case loading does not occur, the plant operating procedure requires that the reservoir elevation be kept at 112.2 meters or lower to keep ice from rafting up to the flashboards.
41. There is no indication in the evidence provided by the Company why it is not possible to defer this costly project in the manner it has been doing for a year, or two or more years. While the DFO studies' completion, "*now make it possible to proceed with the project*" (Tab 13, p. 1) the question is whether it is possible to reasonably defer the project. The recent experience indicates that deferred is indeed reasonably possible.

**RESPECTFULLY SUBMITTED AND DATED** at St. John's, in the Province of Newfoundland and Labrador, this 7<sup>th</sup> day of October, 2010.



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**THE CONSUMER ADVOCATE**

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