

1 **Q. Is notice to or approval of the Board required before Bell Aliant can exercise its**
2 **option under Section 14.5 of the Joint Use Support Structure Purchase Agreement,**
3 **to assign its rights, or sell the Support Structures pursuant to clause 5.02 and 13.01**
4 **and 13.02 of the Joint Use Agreement?**

5
6 **A. *Section 14.5 of the Joint Use Support Structures Purchase Agreement***
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8 Section 14.5 of the Joint Use Support Structures Purchase Agreement (“Purchase
9 Agreement”) permits a party to assign its rights, either in whole or in part, under the
10 Purchase Agreement to an affiliate. In the event that Bell Aliant was to assign its rights
11 under the Purchase Agreement to an affiliate, Section 14.5 provides that Bell Aliant
12 would continue to be bound by its obligations under the Purchase Agreement.
13

14 No notice to or approval of the Board is required before Bell Aliant can exercise its
15 assignment right under Section 14.5 of the Purchase Agreement.
16

17 A like provision to Section 14.5 was included in the terms of purchase by which
18 Newfoundland Power acquired the Joint Use Support Structures of Bell Aliant in 2001
19 and is a common contractual term in Agreements of this nature.
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21 ***Clause 5.02 of the Joint Use Agreement***
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23 The purpose of clause 5.02 of the Joint Use Agreement (“JUA”) is to protect the tenant’s
24 continued right to access and use Support Structures in the event the owner determines it
25 will not continue to own the Support Structures.¹ To that end, clause 5.03 of the JUA
26 requires the owner to notify the tenant in writing when it intends to dispose of Support
27 Structures, and provides the tenant with the first right to purchase such Support
28 Structures.
29

30 Should Bell Aliant notify Newfoundland Power that it intends to dispose of Support
31 Structures to which Newfoundland Power requires continued access, Newfoundland
32 Power will exercise its right to purchase such Support Structures.
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34 Notice to or approval of the Board would be required only if the cost of such a purchase
35 is in excess of \$50,000, as indicated under Section 41 (3) of the *Public Utilities Act*.
36

37 ***Clauses 13.01 and 13.02 of the Joint Use Agreement***
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39 Clauses 13.01 and 13.02 of the JUA are standard provisions that establish the parties’
40 rights to assign their interests in the contract. Except as provided in clause 13.02, neither
41 party to the JUA may assign its interests in the JUA without the written consent of the
42 other party, which consent is not to be unreasonably withheld.
43

44 Assignment of a contract does not affect the rights of the non-assigning party to full
45 performance under the contract. It would be reasonable for Newfoundland Power to

¹ This might occur, for example, if a section of a pole line was relocated or abandoned.

1 withhold its consent to an assignment of the JUA by Bell Aliant where it is not satisfied
2 that the intended assignee is able to perform Bell Aliant's obligations under the JUA.
3 Newfoundland Power would not consent to an assignment of the JUA by Bell Aliant if it
4 were not so satisfied.

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6 Clause 13.02 of the JUA effectively permits a party to assign its interests in the JUA to an
7 affiliate without the consent of the other party. In that instance, the assigning party
8 would continue to be bound by its obligations under the JUA.

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10 No notice to or approval of the Board is required before Bell Aliant can exercise its
11 assignment rights under Clauses 13.01 or 13.02 of the JUA.

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13 Provisions such as Clauses 5.02, 13.01 and 13.02 of the JUA have existed in Joint Use
14 Agreements since at least the late 1980s.