

1 **Q. Does Newfoundland Power believe the board has the authority to approve Hydro's**
2 **Second Interim Rates Application?**

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4 A. While there is provision in the *Public Utilities Act* for interim orders governing rates (see
5 Section 75), Newfoundland Power observes there is no provision which governs *interim*
6 orders approving transfers from deferral accounts. So, on first blush, the question of the
7 Board's legal jurisdiction to provide the relief requested in the Second Interim Rates
8 Application is not entirely clear.

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10 In considering this, Newfoundland Power believes the following two general principles
11 of interpretation of the provincial regulatory framework identified in the majority opinion
12 in the Newfoundland and Labrador Court of Appeal in a stated case presented by the
13 Public Utilities Board in 1996 are relevant:

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15 "3. The failure to identify a specific statutory power in the Board to undertake a
16 particular impugned action does not mean that the jurisdiction of the Board is
17 thereby circumscribed; so long as the contemplated action can be said to be
18 "appropriate or necessary" to carry out an identified statutory power and can
19 be broadly said to advance the purposes and policies of the legislation, the
20 Board will generally be regarded as having such an implied or incidental
21 power;

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23 4. In carrying out its functions under the Act, the Board is circumscribed by the
24 requirement to balance the interests, as identified in the legislation, of the
25 utility against those of the consuming public." (Stated Case, para. 36)

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27 Based upon these principles, the Board may well have the authority, in the sense of legal
28 jurisdiction, to provide regulatory relief.

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30 Whether or not the Board *should* grant the regulatory relief sought in the Second Interim
31 Rates Application is not, in Newfoundland Power's view, simply an issue of whether or
32 not the Board has the authority to do so. As observed by the Newfoundland and
33 Labrador Court of Appeal:

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35 "The question of whether the Board should in fact exercise powers within its
36 sphere of jurisdiction and the question of the manner in which those powers
37 should be exercised raise very different considerations. It must always be
38 remembered that, as has been emphasized throughout this opinion, the Board is
39 charged with balancing the competing interests of the utility and the consumers of
40 the service it provides. Neither set of interests can be emphasized in complete
41 disregard of the interests of the other. Thus, in choosing to exercise a particular
42 power within the Board's jurisdiction, the Board must always be mindful of
43 whether, in so acting, it will be furthering the objectives and policies of the

1 legislation and doing so in a manner that amounts to a reasonable balance
2 between the competing interests involved.” (Stated Case, para. 144)

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4 In Newfoundland Power’s view, whether or not the Board should grant the regulatory
5 relief sought in the Second Interim Rates Application requires consideration of the
6 evidence before the Board and the Board’s regulatory practice.