

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.