

1 **Q. Assume the Board approved Hydro's Second Interim Rates Application, with**
2 **respect to the proposed revenue recognition, and in 2015 determined that additional**
3 **2014 revenue requirement above that approved on an interim basis should also be**
4 **provided to Hydro. Does Newfoundland Power believe the Board has the authority**
5 **to approve recovery of the additional 2014 revenue requirement not yet recognized**
6 **as revenue in 2014? Please explain the reasons for your response.**

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8 A. Newfoundland Power is uncertain of the Board's authority to approve recovery of costs
9 in 2015 that were incurred in 2014 in the circumstances presented in this question.

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11 In the Newfoundland and Labrador Court of Appeal's decision in a stated case presented
12 by the Public Utilities Board in 1996, it was indicated in the majority opinion that:

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14 "Although some of the activities of the utility are regulated within the framework
15 of the statutory objectives, the utility nevertheless remains subject to business
16 risks and the effects of management decisions. To that extent, the financial risks
17 associated with the operation of the utility, just as in the case of any private
18 business, are to be born by the investors in the enterprise, not the consumer of the
19 service.

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21 The corollary of this position is that the utility must be accorded a degree of
22 managerial flexibility in decision-making in order to be able to minimize the risks
23 to which it must respond. Thus, it is often said that the powers of the Board must
24 be regulative and corrective, but not managerial, and they do not therefore
25 contemplate a retroactive adjustment of the actions of management.

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27 This leads to the general principle of non-retroactivity which prevents a utility
28 from recovering expenses incurred in the past out of current rates. The utility
29 must live with the decisions it makes and the economic vicissitudes that occur."
30 (Stated Case, paras. 31-33)

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32 In Newfoundland and Labrador Hydro's ("Hydro") letter of June 6, 2014, giving the
33 Board notice of an amended filing of its 2013 general rate application, it was indicated, in
34 effect, that Hydro intended to substitute the current 2013 test year with a 2015 test year.
35 The impact of this proposed change on recovery of 2014 costs by Hydro is not currently
36 clear to Newfoundland Power.

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38 Newfoundland Power expects that greater clarity may be available once Hydro files its
39 amended general rate application.