

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

And

**IN THE MATTER OF** an Application by  
Newfoundland and Labrador Hydro for an  
Order approving: (1) its 2012 capital budget  
pursuant to s. 41(1) of the Act; (2) its 2012 capital  
purchases, and construction projects in excess of  
\$50,000 pursuant to s. 41(3) (a) of the Act; (3) its  
leases in excess of \$5,000 pursuant to s. 41(3) (b)  
of the Act; and (4) its estimated contributions in  
aid of construction for 2012 pursuant to s. 41(5)  
of the Act and for an Order pursuant to s. 78 of  
the Act fixing and determining its average rate  
base for 2010.;

**To     Board of Commissioners of Public Utilities**

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Attention:   Ms. G. Cheryl Blundon  
                    Direct of Corporate Services & Board Secretary

**SUBMISSIONS OF THE CONSUMER ADVOCATE  
NEWFOUNDLAND AND LABRADOR HYDRO’S  
CAPITAL BUDGET APPLICATION**

**PHASE I**

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## General Comment and Recommendation for Criticality Ranking

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 August 3, 2011, Hydro filed its Capital Budget Application (the “Application”) with the Board. In the Application, Hydro requested that the Board make an Order inter alia:
  - (a) approving its purchase and construction in 2012 of the improvements and additions to its property in the amount of approximately \$87.9 million; and
  - (b) fixing and determining its average rate base for 2010 in the amount of \$1,484,659,000.
4. 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”.
5. 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.

6. 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.
7. Hydro's Application is seeking the Board's approval of the purchase and construction in 2012 of improvements and additions to its property in the amount of approximately \$87.9 million. Last year's 2011 Capital Budget Application sought approval in the amount of \$65,068,000 whereas the Board in Order No. P.U. 38 (2010) approved the amount of \$55,046,000.
8. Appendix A (p. A-3) to the 2012 Capital Plan points to significantly increased capital expenditure projections in the coming years as follows:

<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
\$121,369,000	\$151,686,000	\$155,237,000	\$146,973,000

9. These vastly increased capital spending forecasts literally came out of the blue. In Hydro's 2011 Capital Plan filed August 2010, capital spending for the period 2012 to 2015 was forecast to be as follows:

<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
\$70,159,000	\$65,667,000	\$60,496,000	\$64,384,000

10. Meanwhile, Newfoundland Power's 2012 Capital Plan forecasts steeply increased

capital expenditure projections in the coming years:

<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
\$79,611,000	\$86,068,000	\$86,397,000	\$85,176,000

11. Customers ultimately pay for all expenditures made by the utilities in the province, therefore one cannot view the capital expenditures of one utility in isolation of the other's.
12. Hydro's planned capital expenditures alone over the next 5 years from 2012 to 2016 of \$663,127,000, will have a significant impact upon ratepayers. Hydro was asked to calculate the impact on revenue requirement for each of the upcoming years that can be attributed directly to the forecast capital expenditures over this period. Taking into consideration the effect of OC 2009-063, by 2016, the annual revenue requirement relative to the 2007 test year will be increased by \$65,517,000 or 15.2% [PUB-NLH-38, 149].
13. Between Hydro and Newfoundland Power, the utilities are forecasting to spend a total of \$1,079,690,000 between 2012 and 2016.

*Reference: NP 416,536,000 (NP 2012 Capital Plan, p. A-1) and Hydro 663,127,000 (NLH 2012 Capital Plan, p. A-3)*

14. In the face of these large capital spending forecasts, the Consumer Advocate is very concerned about the impact on customers of electricity in the province.
15. Hydro in PUB-NLH-11 refers to driving "improved prioritization, ensuring the right work is done for the right reasons at the right time." Hydro also refers in PUB-

NLH-10 to continuing its work on the project prioritization review that it initiated in 2010. In Order No. P.U. 38 (2010) the Board noted that both the Industrial Customers and the Consumer Advocate found the project ranking to be useful. The Board commended Hydro for adding to the transparency of the capital budgeting process, whilst noting that there may be some issues which need to be clarified in relation to how the ranking is completed, presented and considered. The Board stated that refinements to the Board's Capital Budget Guidelines are best developed in a collaborative process where there is full and open exchange of ideas. The Board concluded,

“As such the Board will not make changes to the guidelines in this Order but will instead invite the parties to hold discussions with a view to working towards specific and detailed changes to the guidelines that can be recommended to the Board.”

16. The Board's Order in No. P.U. 28 (2010) arising out of last year's Newfoundland Power Capital Budget Application made a similar invitation.
17. As the Consumer Advocate recently explained in his brief on the 2012 Newfoundland Power Capital Budget Application, Newfoundland Power's submissions to the Board in last year's application left no doubt as to where Newfoundland Power stood on this matter - they oppose it and say that the existing process is sufficient. Accordingly, as stated to the Board in the Consumer Advocate's submissions of September, 2011, “The Consumer Advocate sees no useful purpose to be served in carrying out further consultations on the issue with Newfoundland Power.” In fact, that conclusion is all the more fortified by Newfoundland Power's submissions of September 27, 2011, in its Capital Budget

Application process in relation to this initiative.

18. In this circumstance, it is apparent to the Consumer Advocate that if there is going to be progress towards the development of project criticality ranking for regulatory oversight purposes, that process needs to be directed or at least initiated by the Board. The Consumer Advocate would therefore respectfully renew the call for the Board to provide direction to the utilities as regards the importance/criticality ranking of proposed capital projects.
19. The Capital Budget forecast of both utilities are at unprecedented levels. Undertaking a project-by-project review of the proposals while useful does not provide insight into the utilities' assessment of the criticality of its proposals - an insight which would assist the intervenors and, we submit, the Board in determining whether as Hydro has put it, "the right work is done for the right reasons at the right time," consistent with power being delivered to consumers at the lowest possible cost consistent with reliable service.
20. With capital budgets exceeding historical norms and the revenue requirement impacts exceeding historical norms, it is no longer enough for utilities to present the Board with numerous projects, each with their individual justifications under the fiction that each and every project is as important as the next. While many projects may be deserving of favourable consideration, blindfolding the Board and the parties as to the utilities' assessment of the relative criticality of the proffered projects, is in no one's interest.
21. The Consumer Advocate will not reproduce here the submissions made in the

Newfoundland Power Capital Budget Application regarding the absence of financial incentives for rate base regulated utilities to strive for capital efficiency. The Consumer advocate would however incorporate these submissions by reference and commend the reasoning and materials cited therein in support of the recommendations made herein.

#### Individual 2012 Capital Budget Projects

22. The Consumer Advocate comments below on some of the individual projects proposed by Hydro's Application. The Consumer Advocate would note that the fact that he has not passed comment on a particular project does not necessarily indicate endorsement of the project. The individual projects commented upon below represent those which, from the perspective of the Consumer Advocate, appeared most problematic.
  - A. Burnt Spillway Refurbishment (Volume I, p. B-14; Volume II, Tab 6)
23. This is a \$1,702,800 project proposed for 2012 which involves the refurbishment, replacement and inspection of components of Burnt Spillway.
24. Notably, of all of Hydro's Phase I and Phase II capital projects, Hydro ranks the priority of this project as second from the last (CA-NLH-01).
25. While Hydro does not recommend deferring any of its proposed projects, Hydro's relatively low ranking of this project as well as the material filed in support of this project does not lead one to conclude that deferring this project would, in fact, be



unreasonable or imprudent. The Hatch Report certainly does not provide a basis to say that deferring this project would be unreasonable in any way. The Hatch Report was a “high level assessment” and “gave the system a Health Index of 66 indicating it to be in good condition.” (CA-NLH-11, p. 1 of 2, lines 23-27). The Weir Report of July 21, 2011 does not support the notion that this is a project that could not be reasonably deferred.

26. Indeed, the one incident in 2006 whereby the gates at Burnt Spillway failed to operate (see p. B-16) is reported by Hydro to have been caused by hardening of the grease on the stem screws. In fact, Hydro states in CA-NLH-13 that in fact the type of grease used in service “may have been inappropriate for low temperature application and it had been exposed to severe environmental conditions that had caused particulate contamination and icing at the time of the incident.” Certainly, the work orders issued in connection with the gate (see CA-NLH-16) are minor, eg. adding oil to the dash pot, greasing the screws of the gate hoisting system, etc. Obviously, mechanical structures such as the gates at the spillway need to have the proper lubrication in order to work properly. This would be expected as part of normal maintenance.
27. Hydro’s evidence (Tab 6, p. 10-11) speaks of the significant consequences that could result if a fuse plug failure occurred. This is true and this potential risk was highlighted in the 2006 incident. But the 2006 incident had an explanation - hardening of the grease on the stem screws - a problem which is fixable. Hydro has not shown that this project as defined is necessarily required at this time which no doubt helps explain why Hydro gives this project a relatively low priority.

B. Upgrade Transmission Line Access Trails

28. Hydro is submitting \$313,000.00 as the first year cost for this program starting in 2012. The goal is to improve the condition of Hydro's transmission line access trail system on the Island interconnected system.
29. In 2012, Hydro plans to carry out such work on TL-222 from Stony Brook to Springdale.
30. At a projected cost of \$313,000.00 for 2012, one can rest assured that by the time this initiative is in full flight, this initiative will cost in the millions of dollars. If the Stony Brook to Springdale project is approved for 2012, there will be little basis to stop there. Indeed, already Hydro anticipates work of this variety up to 2016. Further, Hydro is unable to anticipate what the potential costs will be given that the length of the upgrade is dependent on a condition assessment to be conducted prior to the work commencing.
31. What is known is that while the proposed work on Line TL-222 involves 440 structures, TL-241, currently forecasted for 2014, involves 530 structures, and TL-212, currently forecasted for 2016 involves 609 structures. The Table 1: Work Plan on page C-136 outlines these and other areas to be upgraded.
32. One has to question why regular maintenance of the trails previously completed by Hydro was phased out in 2001 and not implemented again until 2008. While the maintenance program does not, according to Hydro, address issues of trail

upgrades, it does address some concerns which have been identified as ongoing issues contained in the Safe Workplace Observation Program supplied in response to IC-NLH-18. For example, reporting of a rock on the trail (page 363, 344, 335); snowmobile striking a stump with no injuries wherein it is noted that “There is always hidden hazards while operating on the Line Right-of-ways” (page 358-359), or a hole hidden by brush (page 291). These referenced incidents occurred after 2008.

33. It appears that inspections, along with detailed employee training as set out in the Safe Workplace Observation Program sheets (e.g., working in pairs, not proceeding into unknown areas) would go a long way towards alleviating some of the incidents set out by Hydro. While some accidents are unavoidable, consistent trail monitoring and maintenance appear to be a reasonable alternative to the proposal set forth by Hydro of widening trails.
34. If anything, the proposal put forth by Hydro will require an even more vigorous maintenance program on a go forward basis, given that additional trail area will have to be inspected and maintained. Hydro states that the operating budget in 2011 for trail maintenance is \$160,000.00. No information has been supplied by Hydro as to its estimate for additional maintenance costs on a go forward basis.
35. While there is no question that worker safety is a concern for all involved, the proposal as put forth does not adequately address why the current maintenance efforts, or a revamped effort could not address the issues raised by employees when accessing transmission lines. Of the ATV incidents provided by Hydro in response to PUB-NLH-122, one accident resulted in time lost from work. It appears from the

findings that this accident occurred on a “..short section that was nearly level...” and the cause of the accident was a boulder which was covered in moss and a small stump (page 209). In addition, the Conclusions section (page 209) stated the following:

“The main point seems to be the cause of this accident is that the terrain that the equipment is used on is inherently rough with hidden stumps, holes, rocks and sticks. Clearing the rocks and stumps and making a clear ‘road’ for the ATV’s, and marking off ‘no drive’ areas would greatly reduce the tip over incidents, but could also result in more serious accidents as the driving speed would likely increase with better conditions. “  
(emphasis added)

36. Of note, the operators of ATVs had voiced concern over not having any input into the type of vehicle they are provided or the tires that are on same (page 208, “Other Observations”). For snowmobiles, speed may be a factor, particularly when snow has covered up rocks and stumps (page 188). There is also a question of whether some trails are in the correct places. If not, widening them may exacerbate this issue (page 178).
37. It appears from the materials filed that another option to the proposal put forth by Hydro does exist; increase the maintenance schedule and allow more input from those employees who actually utilize the equipment on a daily basis. What is proposed at this stage by Hydro has no foreseeable limit as to cost. Reducing the grade of a hill is not a simple task, and neither is widening a large area. Without a firm grasp on the costs of this project, and with a viable option of maintenance which Hydro has not diligently pursued, it is submitted that this expense is not one

which should be allowed in this Budget.

C. Legal Survey of Primary Distribution Line Right of Way (p. D-98)

38. Hydro is seeking \$197,900 in 2012 to continue the program to acquire legal surveys and prepare documentation to acquire Crown Land easements for approximately 150 km of primary distribution line in operation throughout the Province. The Budget History for this initiative over 2006 to 2011 F shown at Table 3 at p. D-100 shows that over the period the expenditures were much lower than that requested.
39. The Consumer Advocate as referenced in CA-NLH-09 would recommend against increasing annual expenditures on this initiative as compared to previous years. From 2006 to 2010, expenditures were in the range of \$50,000 to \$60,000.
40. Hydro states that possessing crown land without holding a grant of title or easement to do so is contrary to section 31 of the *Lands Act*. Assuming this is the case, there is no evidence that Crown Lands has expressed concern as to the pace of Hydro's application process. Nor is there evidence of the Crown challenging Hydro's access to Crown land (p. D-101). As regards Hydro's suggestion that it has had to move poles and lines off private land in instances where Hydro has not acquired easements, such instances can be dealt with on a case by case basis as the problem arises through the easement application process. Should there be specific areas of the province which Hydro would feel the need to be proactive about, Hydro may wish to focus its attention on these localities in its easement application

process.

41. No reason has been shown why this project cannot be kept in line with previous years' expenditures.

**RESPECTFULLY SUBMITTED AND DATED** at St. John's, in the Province of Newfoundland and Labrador, this 7<sup>th</sup> day of October, 2011.



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**THE CONSUMER ADVOCATE**

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