IN THE MATTER OF the *Public Utilities Act,* R.S.N.L. 1990, Chapter P-47, as amended, (the "Act"); and

IN THE MATTER OF a general rate application by Newfoundland Power Inc. ("Newfoundland Power") to establish customer electricity rates for 2008.

To: The Board of Commissioners of Public Utilities (the "Board")

Written Submissions of the Consumer Advocate

Thomas Johnson, Consumer Advocate
O'Dea, Earle Law Offices
323 Duckworth Street
St. John's, NL A1C 5X4
Telephone: 726-3524
Facsimile: 726-9600

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1. Introduction

1. The following issues arise in this proceeding:

- The Settlement Agreement of 12 October, 2007

- Matters Unresolved

2. The Settlement Agreement will be dealt with immediately below. The Matters Unresolved are addressed thereafter in this brief in accordance with the Table of Contents.

2. The Settlement Agreement

3. The Consumer Advocate addressed the Settlement Agreement in his opening statement to the Board on 22 October, 2007. In addition the Settlement Agreement has been addressed and endorsed by NP and its witnesses who testified before the Board at the hearing. There is no need to repeat those comments in this brief.

4. The Settlement Agreement was reached through a Board-facilitated negotiation process and represents a reasoned consensus on the issues stated therein. The Settlement Agreement, in accordance with its terms, is expressed to be non-severable in relation to the individual agreements of the parties therein contained. The Consumer Advocate submits that the Board should determine the various matters agreed upon in the Settlement Agreement in accordance with the terms of the same.

5. The Consumer Advocate wishes to acknowledge the efforts of all parties in the negotiation process, including Newfoundland Power, Mr. Mark Kennedy, the Board's appointed facilitator, and the Board for facilitating and supporting the process.

3. Multi-year Regulatory Regime - Newfoundland and Labrador

6. As stated by Newfoundland Power on page 5, lines 11 to 19 of the May 10, 2007 Application:

> **"Newfoundland Power is regulated under the provisions of the *Public Utilities Act* (the "Act") and the *Electrical Power Control Act, 1994* (the "EPCA"). The Board's statutory power and responsibilities under the Act and the EPCA are required to be discharged in a transparent manner consistent with generally accepted sound public utility practice.**
>
> **Prior to this Application, Newfoundland Power last filed general rate applications with the Board in 1998 and 2002. The filing intervals have been reflective of both the stability in Newfoundland Power's overall cost structure and the Board's use of regulatory mechanisms such as the automatic adjustment formula to set Newfoundland Power's annual return on rate base."**

7. Clearly, Newfoundland Power (NP) is regulated under what is referred to as a multi-year regulatory regime, and the expectation is that a multi-year regulatory

regime will continue into the future. NP does not expect to file its next General Rate Application until 2010.

8. As stated by Mr. John Todd in his direct evidence (October 26, 2007 Transcript, page 20, lines 2 to 24) a multi-year regulatory regime creates an opportunity and an incentive to achieve productivity gains. One of the broadly recognized concerns with any sort of multi-year regime is that the incentive to crystallize productivity gains is very strong early in the period, but very weak later in the period. The point is that every regulatory regime has its own incentives and the Board must consider those incentives whether or not the regime is explicitly incentive regulation. Companies respond to incentives. In fact, managers and executives have a duty and responsibility, as well as an incentive, to generate higher ROE for shareholders. That's their job. The primary incentive in any regulatory regime is to focus the efforts of management on the opportunities that increase shareholders' return.

9. As stated on its website, the Board is responsible for the regulation of the electric utilities in the province to ensure that the rates charged are just and reasonable, and that the service provided is safe and reliable. The Board's mission (also stated on its website) is:

> **"Through our skilled staff and an investigative and monitoring process that invites full public participation, we ensure that the public of Newfoundland and Labrador are well served in a changing environment by achieving an equitable balance between the interests of consumers and service providers in the electric utility, automobile insurance and motor carrier industries."**

10. It is submitted that in multi-year regulatory jurisdictions such as this one, the Board

must carry out its mandate and its mission not only at general rate applications, but also between general rate applications. The Board must ensure that consumers share in any productivity gains promoted by the incentives in a multi-year regulatory regime, and also that measures taken to crystallize these gains are consistent with the priorities consumers place on the different customer services provided by the power company. It is submitted that customer service performance targets must go beyond simple reporting relative to company priorities which are established with the shareholder's interest in mind. They must be established with Board and consumer input, and Board approval. Otherwise, consumer interests are not being represented, and the Board cannot fully ensure that the public are well served in a changing environment by achieving an equitable balance between the interests of consumers and service providers.

(a) ***Productivity***

11. NP's application states that over the period from 2002 to 2006, NP reduced its FTEs from 666 to 623 (page 19), increased its customer base from 219,072 to 229,500 (page 19), improved its service to its customers (page 20) and improved its SAIFI and SAIDI by 39% and 34% respectively (page 24). NP's evidence from Mr. Delaney is that NP's productivity improvement of $531,000 was derived by management's reduction of test year operating labour to reflect cost efficiency that management believes that it will be able to achieve in 2008. [Transcript, October 24, 2007, p. 50] Mr. Delaney added,

> **"We believe that such a level of efficiency improvement is achievable without compromising service levels. . .**

The 2008 operating labour forecast of 28.7 million is <u>consistent with reasonable and sustainable continued efficiency</u> in the management of Newfoundland Power." (emphasis added)

12. Mr. John Todd observed in his evidence that over the period from 2004 to 2007 [Transcript of October 26, 2007, p. 16] NP was able to keep its operating costs [see Exhibit 2, 1st Revision, line 28] flat or virtually flat - in 2004 total operating costs were $49,102,000 and in 2007 49,099,000, a difference of only 3 thousand dollars. Mr. Todd observes that this implies that Newfoundland Power's productivity gains during this period were sufficient to fully offset the upward cost pressures during those years. In 2008, we observe the operating costs increasing not by a huge amount but increasing nevertheless from $49,099,000 to $49,383,000, an increase of $284,000.00 after taking into consideration a decrease in forecast insurance costs that is reflected in the amended application.

13. We know that:

a) NP has stated that it has not eased off on its efforts to achieve productivity gains relative to previous years.

[Reference: October 25, 2007, p. 55]

b) Wage pressure in 2008 (whereby union labour is forecast to receive 4% and non-union 3% increases) is not significantly different from previous years since 2004.

[Reference:

CA NP 48 - which shows union increases (including additional upward adjustments for skilled trades) from 1998 to 2008 (f);

CA NP 48, p. 2 of 3 - which shows that base increases for engineering, professional and managerial employees were higher in each of the years 2004 to 2007 than is forecast for 2008 (f).

CA NP 49 - which shows that the relative proportions of NP's labour costs attributable to Management and Union proportionally has remained fairly consistent]

c) The annual rate of inflation as measured by the Consumer Price Index over the period 2004 to 2007 has been equal or higher than the 2008 forecast for inflation.

[Reference: CA NP 27 (1st Revision) and Information Item No. 14]

14. We also know that NP's approach to pursuing productivity initiatives as it described it in CA NP 61 does not generally involve studies or reviews aimed at determining appropriate staff levels or staff productivity. NP advises that there have been no studies, reports or reviews carried out by it or others from 2004 to present in these areas. The same approach applies to matters such as vehicle requirements which are assessed on a continual basis (CA NP 379). Mr. Delaney acknowledged (October 25, 2007 at p. 56-57) that cost control of non-labour expenses is a subset of productivity. So the question arises whether it is reasonable to conclude that the only

productivity that is reasonable to expect in 2008 is that which NP has already identified in its $531,000 productivity allowance.

15. John Todd observes that it cannot be stated that customers of NP will enjoy a benefit in the range of 531,000 - 727,000 (the latter figure being Mr. Todd's alternate estimate of the productivity improvement embedded in NP's 2008 forecast costs). Mr. Todd points out (October 26, p. 10) that the sources of productivity gains which include capital investments, organizational changes, process improvements and technology all involve costs to consumers. He points out that productivity improvement estimates on the record are estimates of the gross benefits, not the net benefits. Mr. Todd stated:

> **"Hence, the issue raised in my evidence goes beyond a simple question of whether or not there are productivity gains. We also have to consider the costs that are being incurred to achieve those productivity gains. The relevant question is whether the benefits outweigh the costs, whether the gains being crystallized, being recognized in 2008 are sufficient to outweigh costs that are being incurred to generate productivity through time for the Company."**

16. During cross-examination of Mr. Delaney this issue was addressed (October 25, 2007, p. 53):

> **"Q. So, the productivity, this business of productivity comes with costs. Now, don't customer[s] need to receive a productivity benefit that's, at least, equal to the cost of the productivity initiatives?**
>
> **A. The point of implementing productivity initiatives would be to bring down the overall costs to the customer.**

Q. But if the customer doesn't receive the productivity benefit that's, at least equal to the cost that they bear for productivity initiatives, for instance, wouldn't they be facing higher rates due to these improvements in productivity?

A. Yes, I think that's true."

17. Mr. Todd elaborated at p. 14:

"The point is that conceptually there's something we would call a productivity benefit to cost ratio that needs to be greater than 1.0 in order for the Company's productivity initiatives to be generating a net benefit to customers. We know what the numerator is, or we have an idea. The benefits are something in the range of 531 to 747 for 2008. Unfortunately, we do not have a figure for the denominator, ie. the costs."

18. Mr. Todd observed (p. 18)that the benefit to cost ratio or productivity benefit to cost ratio, has declined in 2008 relative to the rest of the period since the last NP GRA. Mr. Todd cannot state whether or not the ratio has fallen from above 1.0 to below 1.0 but it has certainly declined in relative terms.

19. As we know, NP reduced its workforce significantly particularly with its 2005 ERP when the 2005 early retirement program crystalized the efficiency gains resulting from capital investment, organizational change, process improvement and technology implementation. Mr. Delaney stated at p. 11 of the October 24, 2007 transcript:

"Because of the productivity improvement implemented in prior years, the Company was able to reduce our work force without compromising service to customers. 76 employees retired through the 2005 early retirement program and 21 employees were hired to replace them. The 2005 early

retirement program effectively reduces the Test Year 2008 operating salary costs by approximately two million dollars from which it would otherwise be"

20. John Todd agrees (p. 31 of October 26, 2007 Transcript) that you cannot have a continuous flow of early retirement programs. In fact, he states that (p. 32) as your workforce becomes more efficient you normally reduce it by attrition. There is no evidence to suggest that in fact NP is not going to be continuing to look for ways to reduce its work force by attrition. In fact, Mr. Delaney acknowledges that at p. 14 of the October 26, 2007 transcript:

"The Company fully intends to use the opportunity that attrition through retirement presents to ensure that the maximum benefits of our capital investments, our process changes and technology deployment are captured by reducing the work force where it is prudent to do so".

21. Mr. Delaney confirms that (see p. 13 of the October 26, 2007 transcript) NP like many other Canadian utilities has a demographic bubble with many employees now approaching retirement with many retirements expected in the coming years. Mr. Delaney stated, "This represents both a challenge and a great opportunity for Newfoundland Power."

22. In requesting a greater productivity allowance than that proposed by NP, the Consumer Advocate is mindful of Mr. Delaney's evidence (p. 14 of October 24, 2007 transcript) that the new apprentice linesmen, the six new engineers in training and six new technologists who have been on board since 2005 (p. 13) are not as productive as a seasoned employee. However it must be observed that some of these new hires should be expected to be more productive in 2008 than they were

in 2005 and the years since, in the case of the technologists. And in the case of the linesmen apprentices, Mr. Delaney's evidence confirms (see October 25, 2007 at p. 67) that apprentice linesmen as part of their training are doing line construction work that would have otherwise been contracted out. As Mr. Delaney put it:

"So what we are actually - what's actually happening is the dynamic, as a company right now, is work that we would otherwise have contracted out is being done by these internal apprentices, and certainly they're on our staff as FTEs. So there's a balancing going on where we're using less contract labour and making it up with the internal apprentices".

23. NP has a much greater economic incentive to find productivity in the non-test years than in the test year for the reasons which John Todd identified owing to the nature of our multi-year regime. NP has put forward its own assessment of a productivity allowance. Frankly, it would have been unreasonable for it not to have done so. Mr. Delaney, as stated, referred to NP's operating labour forecast as being "consistent with reasonable and sustainable continued efficiency in the management of Newfoundland Power." Certainly, customers expect that NP will put forward a forecast that is consistent with reasonable and sustainable continued efficiency.

24. It may be punitive to set a productivity target above the level of past performance. But it is not punitive to implement a productivity adjustment which simply reflects an expectation of consistency between the test year (when there is no incentive) and the non-test years in which NP does have a greater incentive to achieve solid productivity improvements. In this instance, we simply request NP's operating expense to hold the line with its 2007 operating expense forecast, subject to the Consumer Advocate's request regarding the need for more resources to be devoted by NP on energy conservation/efficiency messaging and outreach.

25. Accordingly, having regard to the incentive-effect, to NP's productivity since the last GRA and the lack of demonstrated cost drivers on the operating expense side in 2008 relative to previous years - if the Board believes that NP cannot prudently achieve any further gains, then it should not order a reduction in the forecast 2008 costs for NP. If the Board believes that NP is able to prudently hold operating costs level with 2007 forecast costs - then it should be so ordered.

(b) ***Distribution Reliability and Service Standards***

26. The evidence in this hearing once again demonstrates that the number one priority of NP's customers is reliability followed closely by price. Hence, the priorities of consumers mirrors quite closely the Board's responsibility under the power policy of the province to ensure that all sources and facilities for the production, transmission and distribution of power are managed and operated in a manner that would result in consumers having equitable access to an adequate supply of power that is delivered to consumers at the lowest possible cost consistent with reliable service.

27. A Distribution and Reliability Service Standard establishes performance standards, and performance monitoring and reporting for electric distribution and supply services provided by a distribution company. Currently, Newfoundland Power files quarterly and annual reports with the Board (see CA-NP 8). The report submitted annually to the Board is the Company Annual Report which reports customer service related information at only a very high level. The quarterly reports cover a

number of customer service related areas, including: customer satisfaction, customer minutes of outage, SAIDI, SAIFI, first call resolution, customer calls answered within 40 seconds, trouble call response and injury frequency rate. The Quarterly Reports also include details relating to service continuity on a regional basis. Customer service performance is compared to "plan" targets which Newfoundland Power witnesses indicate are internal management metrics.

28. The basic difference between a Board sanctioned Standard and the performance indicators that Newfoundland Power currently reports primarily consists of a) development and justification of the "targets" and b) accountability in the event that the targets are not met. A Board sanctioned Standard would replace NP's internal targets with regulatory targets developed with input from the Consumer Advocate and the Board. In addition, depending upon the design or requirements of the standard, if performance were to fall below the regulatory targets in the Standard, there may be a regulatory requirement that Newfoundland Power file with the Board an action plan to address the problem. For example, the Fortis Alberta Service Quality and Reliability Performance, Monitoring and Reporting Plan (see Information No. 10) has an action plan and comments section.

29. Specifically, what is missing in the current reporting regime are targets that have been developed with input from the Consumer Advocate whose first priority is to represent the interests of consumers, versus targets that have been developed wholly by the Company whose first priority is to represent the interests of its shareholder. There would be no change in the current regulatory reporting requirement except that performance would be reported relative to targets that have

been reviewed and approved by the Board, rather than Newfoundland Power internal targets which have no consumer or Board input.

30. According to an Edison Electric Institute survey (Information No. 9), it is no longer considered adequate in the United States to simply file reports with the regulator. Notably, Mr. Delaney stated that he was not in a position to say whether the trend is happening or not (October 24, 2007, p. 137). The industry is moving toward reliability and quality of service targets set by the regulator. There may or may not be penalties or rewards associated with the targets, and rate of return may be set by traditional cost of service regulation as it is in this Province, or it may be tied to performance. The regulatory regime, whether traditional cost of service or performance based, is of no consequence. As noted in the response to NP-CA 2, a distribution reliability and service standard was developed for Green Mountain Power while it was still subject to cost of service regulation similar to Newfoundland and Labrador. Green Mountain Power is now subject to performance-based regulation and the distribution reliability and service plan remains in place without change under the new regulatory mechanism. Further, as stated in the Alberta Energy and Utilities Board News Release (Information No. 16) filed with the Board by NP titled *EUB to Implement Service Quality Plans for Regulated Utility Providers*, **"The EUB has a mandate to ensure that customers receiving gas or electricity under a regulated rate tariff receive safe, adequate, and proper service at just and reasonable rates. These Service Quality and Reliability Plans are one way the EUB is fulfilling this mandate."** This mandate is practically identical to the Board's mandate in Newfoundland and Labrador.

31. A Distribution Reliability and Service Standard may have multiple objectives, including:

- Enhance transparency relating to distribution and supply service performance;

- Provide an audit trail for monitoring and analyzing performance during and between general rate applications. Depending on the design of the Standard, it may help determine if Newfoundland Power is meeting the requirements of the *Electrical Power Control Act, 1994*, and more specifically, if Newfoundland Power is delivering power to its customers:
    - Equitably (i.e., customers are receiving fair and reasonably consistent treatment); and
    - At the lowest possible cost consistent with reliable service;

- Provide a basis for determining the need and prudence of reliability- and service-related expenditures; and
- Promote regulatory efficiency by enabling monitoring of performance relative to Board-approved standards between general rate applications, thus increasing the time between general rate applications, and by identifying and resolving service problems earlier and without the need for a public hearing.

32. A Distribution Reliability and Service Standard may address such matters as:

- General Provisions: the purpose and framework of the Standard, measurement and reporting protocol (i.e., effective date, reporting period, reporting requirements and waivers) and definitions.

- Performance Reporting and Standards: call center performance (i.e., percentage of calls answered within 40 seconds), billing performance (i.e., percentage of bills found inaccurate), meter reading performance (i.e., percentage of actual meter readings), work completion performance (i.e., percentage of customer requested work not completed on or before promised date), customer satisfaction (i.e., overall customer satisfaction, rate of complaints), worker safety (i.e., lost time incident rate), and reliability performance (i.e., SAIDI, SAIFI, worst performing areas);

- Service Guarantees: customer service related, service quality related and administration of guarantees.

33. Performance targets are established much the same as Newfoundland Power establishes its internal targets today except they are subject to review and approval by the Board. Benchmarks are based on the specific needs of Newfoundland Power customers. Ideally, they take into account the experience of a relevant peer group (i.e., other distribution/supply businesses with similar size and supply characteristics to that of Newfoundland Power), but also current levels of satisfaction of Newfoundland Power's customers (determined through customer surveys, tracking of customer complaints, etc.), and Newfoundland Power's specific tracking and monitoring capabilities. While it is important that service to Newfoundland Power's customers be comparable to that in other jurisdictions, it is more important, to the extent possible, that expenditures reflect the value Newfoundland Power's customers place on a particular aspect of service. For example, if current levels of SAIDI averaged across the system are 4 hours, and this happens to be double the peer group average (i.e., average of 2 hours), but

customers are already highly satisfied with Newfoundland Power's reliability performance, there may be little justification for Newfoundland Power to commit expenditures to improve system SAIDI performance even though its performance lags the industry average.

34. Mr. Delaney states that there are three reasons why Newfoundland Power is opposed to development and reporting under a Standard: 1) How to deal with the difference between urban/rural reliability when setting standards; 2) Costs - a Standard could require additional data and reporting, and capital for new information systems, and there would be cost and effort associated with developing standards, and 3) reduced management flexibility to run the business (October 24, 2007 Transcript, pages 38, 39, 41).

35. These are not sufficient reasons for opposing implementation of a Board-approved Standard. First, the urban/rural issue can be addressed by setting targets for the overall system average SAIDI/SAIFI as they do in Vermont and Delaware and, in fact, as NP already does. In Alberta and Ontario, only reporting and monitoring of reliability performance at the system level is required. In most jurisdictions, reporting of worst performing feeders is a requirement in addition to reporting system-wide SAIDI and SAIFI. As a result, the urban/rural difference in reliability is not explicitly addressed, so is not an issue.

36. Second, whether or not a Standard requires additional costs depends on its design. If the Parties, in this case the Consumer Advocate, the Board and Newfoundland Power, believe additional costs associated with the Standard are justified, then costs are likely to increase. This is the same process undertaken today except it will

incorporate input directly from the Consumer Advocate and the Board. Costs will only increase if the Board decides that the cost increases, whether they be related to additional reporting requirements or improved technology that enables improved performance, is justified on the basis of customer service. The only relevant cost associated with the Standard is in its development. In order to address any concerns the Board may have in this regard, Mr. Bowman has agreed to develop a draft of the Standard at no additional cost. He has likewise agreed to deliver a draft of the Standard within two weeks of Newfoundland Power's response to the questions included in Attachment A. In fact, he already has about two-thirds of the data he requires from NP to deliver a draft of the Standard.

37. Third, a Standard does not reduce management flexibility to run the business – Newfoundland Power can keep its internal metrics and operate the Company consistent with those metrics if it so desires. A Board-approved Standard simply helps to align Newfoundland Power management with regulatory priorities approved by the Board. Customers are entitled to receive safe, adequate, and proper service at just and reasonable rates. A Distribution Reliability and Service Standard enables the Board to fulfill its mandate.

38. Mr. Delaney states that he believes that the current service and reliability performance reporting meets the reasonable needs of the Board and other stakeholders in the regulatory process (page 30, lines 9 – 13, Oct 24, 2007 Transcript). This simply is not true – the Consumer Advocate has not had input to the selection of the targets, so there is no countering input to standards developed solely by the Company with primary responsibility to its shareholder. Without such input from the consumer perspective, the Board is not well situated to achieve an equitable

balance between the interests of consumers and service providers in the electric utility industry.

39. Though NP did not call any expert evidence in relation to the areas canvassed by Mr. Bowman, NP's counsel raised a number of issues with regard to implementation of a Distribution Reliability and Service Standard during his cross-examination of Mr. Bowman (see October 26, 2007 Transcript). These issues are addressed below:

- (page 83, October 26, 2007 Transcript) NP's counsel asks if there is inconsistency between Mr. Todd's recommendation that there be further cost reductions to reflect productivity improvements versus Mr. Bowman's assertion that a Standard is needed to avoid cost reductions to the extent that it might negatively impact service in areas that are of high priority to consumers. There is no inconsistency whatsoever.

- NP's counsel (page 90, October 26, 2007 Transcript) asks if customer satisfaction levels have fallen in recent years. The answer is no, but neither is this particularly compelling. Surely, we do not want to wait until performance deteriorates which appears to have been the case in Alberta according to Mr. Ludlow's testimony. A Standard helps guard against deterioration of performance in areas that are high priority to consumers. Interestingly, when deterioration occurred in Alberta, the response was the adoption of service quality plans [October 22, 2007, p. 77].

- NP's counsel asks what drives implementation of Standards elsewhere, and are these forces in place in this Province. In fact, any number of things may drive implementation of a Standard such as poor performance as in Alberta or concern about performance deterioration in Delaware. It is not a matter of competition – the distribution business is regulated in every jurisdiction in the World to Mr. Bowman's knowledge. Neither is it a matter of whether regulation is cost of service or incentive based; i.e., PBR. Numerous jurisdictions in the United States have Standards without PBR. In fact, Alberta does. In addition, as noted in the response to NP-CA 2, a distribution reliability and service standard was developed for Green Mountain Power while it was subject to cost of service regulation similar to Newfoundland and Labrador. Green Mountain Power is now subject to performance-based regulation and the distribution reliability and service plan remains in place without change under the new regulatory regime.

- NP's counsel notes that in Alberta, the EUB was given the authority to create service quality standards under the new Electric Utilities Act and the Gas Utilities Act, so they actually had statutory changes brought in place in order to move to that type of quality service plan. First, the Alberta Board has stated in its press release that it has a mandate to ensure that customers under a regulated rate tariff receive safe, adequate and proper service at just and reasonable rates and that it views its Service Quality and Reliability Plans as a way to fulfill its mandate. Its mandate, we all should agree, is no different than this Board's mandate in fundamental principle. If NP is suggesting by its counsel that this Board does not have the legal competence to set and approve standards, then it is well to recall **<u>Reference Re Section 101 of the Public Utilities Act (Nfld.)</u> (1998), 164 Nfld. & P.E.I.R. 60 (NFCA)**

("The Stated Case") in which The Court of Appeal distilled the following principles from the legislation:

"**[4]** **It is important to remember, however, that <u>in addition to its periodic adjudicative role</u> which itself involves a large measure of policy implementation in arriving at its decisions, the Board has, because of its duty of "general supervision of all public utilities", <u>an ongoing supervisory role of the activities of the utility</u> between hearings as well, which is facilitated by statutory requirements for periodic reporting of financial information to the Board...**

[18] **It follows from these provisions that a literal and technocratic interpretation and application of the provisions of the Act is to be avoided, in favour of an interpretation which will advance the underlying purpose of the legislation [see footnote 11], as well as the power policy of the province and be consistent with generally accepted sound public utility practice...**

[36] **Having conducted this brief survey, I will now attempt to state some general principles to be used in the interpretation and application of the local legislation:**

1. **<u>The Act should be given a broad and liberal interpretation to achieve its purposes as well as the implementation of the power policy of the province</u>;**

2. **<u>The Board has a broad discretion, and hence a large jurisdiction, in its choice of the methodologies and approaches to be adopted to achieve the purposes of the legislation and to implement provincial power policy</u>;**

3. **<u>The failure to identify a specific statutory power in the Board to undertake a particular impugned action does not mean that the jurisdiction of the Board is thereby circumscribed; so long as the contemplated action can be said to be "appropriate or necessary" to carry out an identified statutory power and can be broadly said to advance the purposes and</u>**

<u>policies of the legislation, the Board will generally be regarded as having such an implied or incidental power</u>;

4. **In carrying out its functions under the Act, the Board is circumscribed by the requirement to balance the interests, as identified in the legislation, of the utility against those of the consuming public;**

5. **The setting of a "just and reasonable" rate of return is of fundamental importance to the utility and must always be an important focus of the Board's deliberations; however, the "entitlement" of the utility to a just and reasonable rate of return does not guarantee it that level of return. The "entitlement" is to have the Board address that issue and to make its best prospective estimate, based on its full consideration of all available evidence, for the purpose of setting rates, tolls and charges.**

6. **The Board has jurisdiction, which will not generally be interfered with on judicial review, to make a determination of what is a just and reasonable rate of return within a "zone of reasonableness" <u>and in so doing is not constrained in its choice of applicable methodologies</u>, so long as they can be rationally justified in accordance with sound utility practice <u>and are not inconsistent with the achievement of the purposes and policies of the legislation</u>..." (emphasis added)**

- At pages 99 and 105 of the October 26, 2007 transcript, NP's counsel discusses regulatory reporting requirements in different jurisdictions. He mentions that Delaware and Vermont are not required to make capital budget submissions like Newfoundland Power. He states that Newfoundland and Labrador already has an open, transparent process for approval and review of the capital budget process. First, while it may be true that Delaware and

Vermont are not required to make capital budget submissions, it is not at all relevant. Newfoundland Power's regulatory reporting requirements will be unchanged with the implementation of a Distribution Reliability and Service Standard because they are already reporting such information. The only difference is that reporting will be relative to targets that instead of representing Company targets based on shareholder needs, will represent regulatory targets with input from the consumer perspective and the Board. Second, while the Province has a transparent process for review and approval of the capital budget, the standards against which Newfoundland Power reports performance are not derived in a transparent manner given that the targets have no input from either consumers or the Board.

- (page 129) NP's counsel asks if we should spend a lot of money on information systems to track something for a problem which we currently do not have. First, past performance is not a guarantee of future performance. Second, the Consumer Advocate is not proposing that Newfoundland Power spend a lot of money on information systems. Money would only be spent if the Board decides that it provides value to consumers. And third, implementation of a Standard simply improves the usefulness of current regulatory reporting. Reporting performance relative to internal metrics without input from either the Consumer Advocate or the Board is not as useful as reporting to a Board-approved Standard.

40. The Consumer Advocate has proposed to take the lead on development of the Standard with data, information and review undertaken by Newfoundland Power.

Frankly, the Consumer Advocate would also very much welcome the Board taking the lead as to the development of the Standard.

4. Energy Efficiency Issues

(a) *Energy Conservation/Efficiency Messaging to Consumers*

41. The fact is that any paid energy advertising that NP has undertaken from at least 2002 to the present has been for print media only. CA NP 76 bears this out. In 2008, NP does not plan to alter course. NP says that it forecasts to spend $90,000.00 on print media in 2008. Radio and television outreach is once again not on the agenda.

42. Mr. Delaney acknowledged that he was not aware of any professional marketing advice that NP received in relation to its conscious decision not to pursue paid radio and television advertising as regards conservation/energy efficiency messaging. [Transcript - October 24/07 at p. 68].

43. At CA NP 75, NP provides copies of its June 2005 and April 2006 Customer Attitude Surveys on Energy Efficiency. 67% of participants in the survey stated their utility should be providing information on energy efficiency and 65% felt that the utility should be delivering energy efficiency programs. NP states in the June 2005 findings section, "Thus it is clearly our customers' expectations that we be a strong participant in this market." In June of 2005, NP notes that "However, awareness of Newfoundland Power's efforts in this area is to date quite low." It is noteworthy that NP's own survey shows that television was the second most preferred method

of receiving information about energy efficiency from NP, ranking only behind NP bill inserts.

44. Energy Advertising costs (print only) have declined slightly from 2005 to 2008 (f).

45. The Consumer Advocate does not suggest that out reach to consumers by newspaper, bill inserts, trade shows and the like are not worthwhile. But avoiding paid radio and television outreach opportunities to spread the conservation and energy efficiency message and direct customers to NP's programs and services or merely to provide tips on the wise use of energy is not a sensible course of action when we know the immense pressure that ever increasing oil costs are placing upon customers, to speak nothing of the environmental issues associated with Holyrood.

46. Customers are ever more interested in receiving information about energy conservation. Between 2002 and 2006, the number of customers who took the initiative to contact NP about energy efficiency information and initiatives increased by 94% [CA NP 367]. Considering that in 2002 NP was only spending $18,000.00 on energy efficiency advertising, this does represent progress. However, more progress is needed. Given that NP does not plan to change course on advertizing, the Board must step in and order NP to direct monies towards radio and television outreach to its customers. In short, NP must treat energy conservation , consistent with their customer' desires, as being a priority. NP has identified safety as a priority and forecasts to spend $108,000.00 on television and $74,000.00 on radio for its paid safety messaging [CA NP 367] in 2008.

47. The Consumer Advocate would recommend an equal amount for energy conservation messaging on radio and television.

(b) ***Basic Customer Charge for Domestic Customers***

48. The Consumer Advocate recommends that the Basic Customer Charge for Domestic customers be reduced by $1.00 per month. Reducing the Basic Customer Charge improves the efficiency of the price signal by increasing the energy charge to a value closer to marginal costs. The Basic Customer Charge can be reduced while maintaining consistency with regulatory practice elsewhere in Canada. Even with a $1.00/month reduction, the Basic Customer Charge continues to recover the basic costs of supplying a customer including metering, billing, customer information and service wire costs, which might be regarded as a floor price, as well as part of the cost of the distribution system between the service wire and the distribution sub-station. As Mr. Brockman's report pointed out during the last GRA in 2003, this is consistent with practice elsewhere in Canada, and as shown in Table 1 on page 15 of Mr. Bowman's Pre-filed Evidence, a Basic Customer Charge of $14.60 lies within the Canadian mainstream.

49. It is important to improve the efficiency of the price signal. The biggest challenge facing the power sector in this Province relates to the Holyrood generating station as witnessed by the attention given it in the Government's recently released Energy Plan, and by Mr. Ludlow during cross-examination (page 132, Oct 23, 2007) when he stated that the major consideration with regard to rates is the price of oil and Holyrood production. Holyrood is a central, simple cycle, oil-fired generating

station that is expensive to operate. Compounding the problem is that it is on the margin basically every one of the 8760 hours of the year. This means that energy consumed at the margin is very expensive, about 10 cents/kWh at the Domestic customer level. Further, Holyrood is a significant source of pollution. Besides the sulphur and particulate emissions landing in the immediate area surrounding the plant and the hardship this causes local residents, Holyrood is a major source of CO_2, a greenhouse gas contributing to global warming.

50. The proposed Domestic energy charge is less than the marginal cost of energy. Owing to elasticity effects, increasing the Domestic energy charge to levels closer to marginal energy costs leads to reduced energy consumption, and as a result, less production from Holyrood, thus reducing the average cost of power supply on the island interconnected system, and the attendant pollution associated with Holyrood production. In addition, increasing the energy charge to a level closer to marginal costs is consistent with energy efficiency. As Mr. Delaney stated, "It is very important right now to be engaged in energy conservation in this Province, given where we are right now" (page 63, Oct. 24, 2007 transcript). Mr. Henderson verified that increasing the energy charge to levels closer to marginal costs improves the efficiency of the price signal during cross examination (page 119, Oct 25, 2007 Transcript). In fact, Newfoundland Power attempts to better reflect marginal costs in all of its rates.

51. The Basic Customer Charge can be reduced while maintaining acceptable customer impacts. As can be seen in the response to CA-NP 449 (1st Revision) and summarized in the table (CDB-3) introduced by Mr. Bowman in his Direct Evidence (October 26, 2007), if the Basic Customer Charge is reduced by $1.00/month,

customers consuming less than 1500 kWh per month, representing over 67% of the customers in the class, will see reduced bills, or remain mostly indifferent, compared to the Newfoundland Power proposal to freeze the Basic Customer Charge at current levels. Customers consuming more than 2000 kWh/month, representing less than 16% of the customers in the class, would see higher bills, ranging from 0.29% to 0.63% higher than under the Newfoundland Power proposal to freeze the Basic Customer Charge. The largest rate increase is for those consuming more than 3000 kWh per month. The impact on these high consumption customers is still far less than if the energy charge were increased to the full marginal cost of supply, the equivalent of increasing the energy charge from the proposed 9.03 cents/kWh to 10.05 cents/kWh. The largest bill impact is more than 2% less than the 7% increase originally proposed by Newfoundland Power for these customers. Further, it is comparable to, or less than, the increases proposed by Newfoundland Power for segments of customers in the other customer classes relative to the average rate increase. For example, if one looks at CA-NP 197 (1st Revision), one observes that there are customers in each of the Rate 2.2, 2.3 and 2.4 classes that will experience rate increases that are greater than 1% more that the average increase proposed for the class as a whole.

52. Decreasing the Basic Customer Charge does not require a change to the rate design. The rate design will continue to include a customer charge and a single block energy charge. Only the magnitude of the charges in each component are being changed just as the magnitude of charges are being changed in rates for other customer classes. The magnitude of the charges has to change if a different revenue allocation brought on by the proposed rate increase is to be recovered. Delaying a decision to reduce the Basic Customer Charge until after the Rate Design Study will forego the

opportunity to reduce production from Holyrood for at least three years. This is entirely inconsistent with the Energy Plan and Mr. Ludlow's testimony that the major consideration with regard to rates is the price of oil and Holyrood production.

53. Mr. Henderson suggests that some customers may respond to the entire bill rather than the marginal price signal. Mr. Bowman's evidence is that that suggestion is not only contrary to economic theory that pricing marginal consumption at the marginal cost of supply will result in the efficient allocation of resources in the economy, the basic premise of rate design, but also suggests that rates should be set on the basis that some customers are not sophisticated enough to respond to the marginal price signal. As Mr. Bowman stated (October 26, 2007, p. 62 - 63):

> **"Now with regard to Mr. Henderson's suggestion that some customers may respond to the entire bill rather than marginal price signal, there's several issues here. I think I heard Mr. Henderson agree that economic theory is that pricing marginal consumption at marginal cost of supply will result in efficient allocation of resources in the economy. I think he said sometimes customers don't react according to the efficiency of the price signal. Now this is a basic premise, the efficient allocation of resources is a basic premise in every rate design training course I've ever been involved with or anyone I've ever seen anyone else involved with. As far as I know, this is, it's always been a rate-design principle here, and I believe Mr. Henderson reinforced that statement yesterday.**
>
> **Now, the issue here is this jurisdiction has never set rates on the basis that some customers are not sophisticated enough to respond to a marginal price signal. If that's the case, should we set all our rates on a single flat charge with no price signal, because some customers may be in every class aren't sophisticated enough to respond?"**

54. Respectfully, we recommend that the Board not follow Mr. Henderson's opinion in this regard.

55. The fact is, many customers are sophisticated enough to respond to the price signal, and in any regard, as Mr. Bowman testified, the market definitely is sophisticated enough to respond to the price signal. For example, a manufacturer shows on the package how much a customer can save in electricity costs by purchasing an energy efficient light bulb. Appliance manufacturers show how much a customer can save over the lifetime of the appliance by buying its brand. The savings are based on the rates paid by customers – not whether a customer's overall bill is going up or down. This is why rates are so important to the Province's energy efficiency initiative.

56. In summary, the Consumer Advocate recommends that the basic Customer Charge for the Domestic class be reduced by $1.00/month. The energy charge would be increased to recover the remainder of the approved revenue allocation to this class. This will improve the efficiency of the rate, is consistent with regulatory practice elsewhere in Canada, and is consistent with the Government's Energy Plan and priorities/concerns expressed by Newfoundland Power. What the Board needs to decide is if the benefits resulting from the efficiency gains justify the customer bill impacts. As noted, about 67% of customers will be mostly indifferent, or see a reduction in their electricity bills as a result of the change. About 16%, representing the higher consumption customers who are imposing the greatest costs on the system, will see an increase ranging from about 0.3% to 0.6%. Even with this increase, these customers will see bill impacts that are more than 2% less than originally proposed by Newfoundland Power.

5. Inter-Corporate Relationships

(a) *Pricing Issues*

57. Transactions between the utility and its affiliates present unique challenges, as they are non-arms-length transactions. Economically, it must be observed, there is no real incentive for NP to seek to maximize benefits to the advantage of its ratepayers. If NP charges more for the service it provides to its parent or affiliates, it will reduce the profits of its shareholder.

58. This Board has already stated that benefits with regard to the provision of staff and other services to NP's affiliates should "be transparent, demonstrable and maximized to the advantage of ratepayers". [P.U. 19 (2003), p. 57]

59. This is not happening in certain areas, however:

(i) ***Centralized Insurance Administration - Staff Time***

At CA NP 156, NP has produced its Report on Inter-Corporate Charges dated March 31, 2004. At the top of p. 4, NP states:

> **"Transactions <u>not governed by specific directives</u> are valued on the basis of fair market value, where a market is ascertainable. Where no market is ascertainable, charges to Related Companies are based on Newfoundland Power's fully distributed cost. (emphasis added)**

60. NP defines <u>Fair Market Value</u> as meaning "a price equivalent to the price reached in an open and unrestricted market between informed and prudent parties, acting at arms length and under no compulsion to act." NP defines <u>Fully Distributed Cost</u>

as meaning "the full cost, both direct and indirect, of providing a service including a fair return on assets, where appropriate."

61. NP's Internal Guidelines for Pricing Inter-Corporate Transactions (see CA NP 156, Appendix "C") state that a review of the market, where possible, is required to determine the market rate. Engineering services are charged based on Fair Market Value. For Executives and Managers, staff time will be based on a proxy for market price using a market proxy rate set to equal 1.2 times Fully Distributed Cost. However, it is specifically stipulated that staff time for the administration of the group insurance program is charged based on the recovery of fully distributed cost and not fair market value. Indeed no proxy rate is even applied. The question for the Board is whether this is appropriate.

62. The Board will note that the monies which NP receives for its internal insurance expertise has remained fairly flat over the past number of years. [see CA NP 158]. This is despite the fact that the number of companies that NP's internal staff are providing services to have been growing and in fact now includes Terasen, Fortis BC and Fortis Alberta, according to Ms. Jocelyn Perry. The Consumer Advocate does not view this as being consistent with NP maximizing the benefits to ratepayers. These services should be charged out at fair market value. These services are valuable and involve a considerable amount of expertise. I would commend to the Board Mr. Philip Hughes' comments on the service of Mr. Knight and his staff from the last GRA which is contained in Information No. 7.

63. The Consumer Advocate notes that NP at p. 4, footnote 9 of its report on Inter-Corporate charges states:

"Newfoundland Power's policy on inter-corporate transactions provides for a number of methods for determining fair market value. Such methods include competitive tendering, competitive quotes, benchmarking studies, catalogue pricing, replacement cost comparisons and recent market transactions."

64. It is requested that the Board order NP to undertake and file a fair market value determination for its staff associated with insurance and to commence charging that so determined rate as soon as possible. Should no market rate be determinable, NP should charge a market proxy rate. That market proxy rate should be no less than the mark-up that NP effectively charges Persona and Aliant (see CA NP 399) for the use of its technologists.

(ii) ***Management and Executive Time***

65. NP filed its report on Inter-Corporate Charges with the Board on March 31, 2004. NP did not commence charging a mark-up on its executives' and managers' time until April 1, 2004. Accordingly, the very extensive work performed by NP's managers and executives in 2003 (post-the release of P.U. 19/2003) and for the first quarter of 2004 in relation to the Fortis West acquisition was charged out without a mark-up.

66. NP proposes a 20% mark-up on managers' and executives' time.

67. To get a sense of the reasonableness of this 20% mark-up, the Consumer Advocate asked NP to provide a breakdown of the labour charges presented in CA NP 165, Table 1 with respect to the provision of Mr. Alteen's services in relation to the Acquisition of Terasen Gas in which he acted as a legal counsel to Fortis Inc. His

hourly rate including the 20% mark-up was $174.03 per hour based on the information provided in U-3. A solicitor of Mr. Alteen's experience (over 20 years at the bar) and expertise would not bill $174.03 an hour to Fortis Inc. in a non-arms-length transaction over a matter of such obvious complexity and responsibility. NP has not seen fit to actually provide the rates paid by Fortis Inc. to its various solicitors on the transaction as witnessed by the Lexpert publication filed with the Board during the hearing. So we are left to look at sources of information such as the September 2005 Canadian Lawyer Magazine survey provided as Information No. 15. Though the information is somewhat dated, it does report that for a lawyer of <u>just 10 years</u> at the bar, rates would range from $170.00 per hour in Atlantic Canada to $260.00 per hour in Ontario and the prairie provinces. A senior practitioner would yield significantly higher rates then that, of course. The mark-up on Mr. Alteen's cost is unfair to consumers, though a very good deal indeed for Fortis Inc. Given NP's refusal to even ask Fortis to supply its billing data in respect of the legal fees it was charged by its arms-length counsel in the Terasen transaction, the Consumer Advocate is concerned that Fortis Inc. will continue to avail of Mr. Alteen at below-market prices.

68. In P.U. (2003) at p. 57, this Board stated that "the onus will be placed on the utility to establish, to the satisfaction of the Board, that the transaction is prudent and that any corresponding costs reflect "fair market value" or "cost based pricing" as appropriate. NP has failed to discharge this onus.

69. The Consumer Advocate, accordingly, recommends that prior to Mr. Alteen attending to any further work of a legal nature for any affiliates or for Fortis Inc., NP must first establish to the satisfaction of the Board that the rates to be charged in

respect of Mr. Alteen's services are equal to or greater than the rates charged by solicitors of similar experience having regard to the complexity of the matter involved.

70. Moreover, the Consumer Advocate is not of the view that the proposed 20% mark-up for executives and management represents an adequate market proxy rate. Consumers ought not be penalized for the lack of an observable market for executive and management time.

71. As this Board is aware, NP executives and managers have been called on quite extensively in the past by its affiliates. NP's executives and managers are the very personnel who are charged with leading and guiding the utility. CA NP 401 provides the breakdown of the personnel, hours and travel included in the charges to affiliated companies in relation to the acquisitions of Fortis West and Terasen Gas. When in one year, as in 2003, executives are spending 2986.5 hours to assist in matters that do not better NP's ratepayers, it is not unreasonable for the Consumer Advocate to be concerned. The fact is that NP's executive and management personnel have been quite available to affiliated companies in the past and it is unreasonable to expect that these key personnel will not be called upon in the future, whether it be 2008 or beyond. Securities laws prevent us from inquiring into what lies on Fortis' horizon in terms of future corporate development. In fact, we know from NP's response to CA NP 402 that NP's executives can earn bonuses as part of Fortis Development Incentives for their contribution to the corporate development of Fortis Inc. For instance, NP's executives earned $137,331.00 in respect of "Incentive Year" 2003 related to the successful acquisition of Fortis West. Bonuses were paid out in 2005 and 2007 as well under the Fortis Development

Incentives for services performed in 2004 and 2006 respectively. It would appear from CA NP 402 that further bonus payments will be paid either later this year or in 2008 in relation to the acquisition of Terasen Gas which transaction concluded in 2007.

72. Though NP states that its proposed 20% mark-ups on executive and management time is as high as any other Canadian utility charges its affiliates the evidence is that NP did not take into account the extent to which NP provides and has provided management and executive services to affiliates as compared to the other utilities surveyed. This is, it is submitted, a material consideration given that this Board has stated that benefits should be not only transparent and demonstrable <u>but also maximized to the advantage of ratepayers</u>. If NP is a net seller of executive and management services relative to other utilities, it is not appropriate to fail to take that into account when the goal is to maximize the benefits of ratepayers. As the Board observed in P.U. 19 (2003) using a charge out rate other than cost plus overhead basis "recognizes the value of the service being provided by NP." Proposing a proxy that does not take into account the fact that NP's management and executives have been frequently called upon on matters of great importance to Fortis Inc. cannot be said to truly recognize the value of the service being provided by NP to its affiliates.

73. Again, we have been prevented from assessing the reasonableness of the rates proposed to be charged by NP for its executives and managers by comparing what Fortis Inc. pays for its arms-length advisors and consultants on such deals as the Fortis West and Terasen Transactions. It is reasonable to assume that NP's executives and managers can bring a unique and valuable insight when it assists its

affiliates that a non-embedded consultant or advisor cannot bring to the table. In light of this predictament, the Consumer Advocate has no confidence whatever that NP's rate payers are being properly compensated for the use of NP's executives and managers. Even if NP were to start charging a 25% mark-up as the CRTC used to insist upon (see CA NP 156, Schedule 3, p. 3 of 4, sub-section 2.2.2) it would not instill confidence.

74. If, as is the case, NP's executives are actually incented through personal bonuses paid as part of the Fortis Development Incentives (referenced in CA NP 402) to assist affiliates and to participate in affiliate transactions including acquisitions, this speaks to the value that Fortis Inc. places upon the services that NP's executives provide over and above what NP is compensated for in respect of these services. The Consumer Advocate would encourage the Board to consider this as part of its determination as to whether consumers are being given <u>maximum benefit</u>.

75. The Board should also require NP to charge a specified retainer fee in recognition of the pool of talent that NP has available to assist its affiliates. Such a retainer charge was referenced in the 1996 Deloitte and Touche report on inter-corporate charges at CA NP 397. At p. 20-21 of the report, it states:

> **"Although costs must usually be supported, there is a precedent for an inter-corporate charge where it was not practical to develop adequate support. However, it deals with a charge from a regulated entity to non-regulated affiliates. The NEB required that West Coast charge a retainer fee of $200,000.00 for the service, although there was no detailed evidence to support this charge."**

76. Frankly, the Consumer Advocate believes that in the circumstances a retainer fee is the most practical solution together with strict limits concerning how much time NP's executives and managers can be permitted to spend on non-NP business. Otherwise, customers have no assurance that they will not see a repeat of the recent past when NP's executives and managers made themselves available to assist with Fortis' development to the extent shown in CA NP 401.

(iii) ***Other Staff Charges***

77. On October 23, 2007 at page 81 of the transcript, the Consumer Advocate requested NP to provide the charge out rate for Mr. Alteen and the support staff who assisted him in connection with the Terasen Gas transaction. Undertaking Number 3 shows that there was a 20% mark-up applied to Mr. Alteen's services but no mark-up applied to the services provided by the member of the support staff in respect of the 463.6 hours of service provided to assist in this transaction. This raises the issue as to whether NP is appropriately charging out its staff.

78. NP's Policy on Inter-Corporate Transactions at CA NP 162 (see p. 2) as regards pricing, states:

> **"Inter-corporate charges for non-utility services will be based on Fair Market Value. If market cannot be established, the charges should be based on cost. Where cost is used, it will be based on Fully Distributed Cost including a fair return on assets, where appropriate."**

79. Section 6.0 of NP's Policy on Inter-Corporate Transactions states: *"Fully Distributed Cost* with respect to:

(i) the use of personnel, means the full cost of such personnel for the duration of their service to the Related Company, including salary and benefits."

80. It would appear to the Consumer Advocate that the least NP should be expecting to be paid for the use of its personnel for non-utility services is the person's Fully Distributed Cost. That just ensures that ratepayers are not being disadvantaged by the transaction. That is the least one should expect. But this Board has stated in P.U. 19 (2003) at p. 57:

> **"With regard to the provision of staff and other services to its affiliates the Board agrees NP may indeed be deriving benefit on behalf of ratepayers. The Board believes, however, such benefits should be transparent, demonstrable and maximized to the advantage of ratepayers." (emphasis added)**

81. This Board effectively decided that it was not enough for NP to show that a transaction did not disadvantage the interests of ratepayers. NP had the onus to show that ratepayers and the utility will derive some demonstrable benefit from such transactions. While it is arguable that a staff person who assists an affiliate may pick up some beneficial experience in the process, that should not be a justification for failing to charge a market rate or at least a reasonable proxy rate for the staff persons' services. Is this intangible of "work experience" a "demonstrable benefit" within the meaning of P.U. 19 (2003)? Indeed, if "work experience" constitutes a sufficiently "demonstrable benefit" within the meaning of P.U. 19 (2003), why did the Board feel compelled to introduce the mark up on executive and management time in the first place? The same logic applies to staff charges. A party in an arms-length transaction would not fail to charge an appropriate mark-up on the grounds that the person being hired out was being exposed to a valuable

learning experience. A person who is charged out at market rates also obtains learning experience, do they not? An arms-length party would be seeking to maximize its benefits from the transaction and that is what P.U. 19 (2003) sets forth in its reasons and that is what consumers expect. Accordingly, it is the Consumer Advocate's submission that staff charges should be adjusted to charge fair market value or an appropriate mark-up. The use of Fully Distributed Cost has no place where consumers have the right to maximum benefits. This would be in keeping with the principles enunciated by the Board in P.U. 19 (2003).

(b) ***An Inter-Corporate Code of Conduct for NP***

82. This Board in P.U. 19 (2003) recognized, in light of the corporate growth of the Fortis family, that explicit regulatory policy direction was required to govern NP's inter-corporate transactions into the future. Since the last hearing, the Fortis family has grown considerably.

83. It is submitted that providing explicit regulatory policy direction as regards NP's inter-corporate transactions is an example of an exercise of the Board's core regulatory function to ensure that the interests of ratepayers are protected.

84. A review of NP's Policy on Inter-Corporate Transactions (at CA NP 162) demonstrates that the entire focus of the document is the setting of rules for determining the charges in respect of inter-corporate transactions. Obviously, there are matters involving the relationship between NP and its affiliates which extend beyond the "pricing" piece. As an example, in P.U. 19 (2003), the Board stated at p. 56:

"Furthermore, in the case of Central Newfoundland Energy (CNE), Board Hearing Counsel notes professional staff are provided by NP to a sister company, 50% owned by Fortis, which may arguably be viewed as a competitor of NP since it produces energy and sells it in the Province."

85. The point is not whether the specific instance referenced by the Board Hearing Counsel is still occurring, the real point is whether this Board should provide policy direction about matters beyond the pricing of goods and personnel as between NP and its affiliates.

86. Fortis Alberta has an Inter-Affiliate Code of Conduct (see Information No. 4) that has been approved by its regulator, the Alberta Energy and Utilities Board. The Fortis Alberta Code, beyond addressing pricing issues, deals with Governance and Separation of Utility Businesses, Confidentiality of Information and Compliance Measures. In fact, Fortis Alberta's designated Compliance Officer is obliged to file a Compliance Report with the regulator and post it on the utility's website. Indeed, Fortis Alberta's Inter-Affiliate Code of Conduct is itself required to be posted on the utility's website.

87. The Consumer Advocate submits that matters pertaining to Governance, Confidentiality and Compliance are of no less interest to consumers in this province than they are in Alberta. The Consumer Advocate would therefore urge the Board to undertake a process aimed at establishing a comprehensive Inter-Affiliate Code of Conduct for NP.

6. Safety Communications Coordination

88. Obviously, electricity is a lethal commodity and it is important for both NP and NLH to promote the safety message. For NP and NLH, safety is a top priority.

89. Mr. Delaney (October 24, 2007 - p. 51) stated that it was not necessary for the Board to direct the company to actively coordinate with NLH on utility safety issues. He stated that coordination and cooperation already exists and he pointed to a number of examples of that such as the exchange of accident reports, safety alerts and the sharing of safety programs. Both utilities provide electrical safety training to firefighters. Both utilities work with the WHSCC on delivery of the Power Line Hazards Course. After an unfortunate and tragic death caused by a contact near Deer Lake, NP and NLH issued a <u>joint</u> safety notice to 15,000 workplaces.

90. On the other hand Mr. Delaney acknowledged (October 25, 2007, p. 5) that the utilities do not really coordinate safety messaging or know in advance what the other is planning to do by way of safety messaging. The following passage illustrates:

> **"Q. Is Newfoundland Power aware of what Newfoundland Hydro's plans would be in relation to safety messaging, you know, before Newfoundland Hydro actually, you know, executes its plan?**
>
> **A. We would be aware to the extent that there's conversation going back and forth between the utilities. <u>There's no formal mechanism by which we prepare each other or we coordinate each other with respect to our safety messaging, but we do meet at various levels within the organization</u>. And one interesting thing, actually, Hydro does recently in their last reliability meeting, Hydro starts all their meetings now with a safety moment. That's a new sort of thing which I think is pretty, a pretty neat idea, actually. And during that, I know the meetings I had with Jim Haynes and Mr. Henderson and**

> **Hydro on a regular basis, we always start the meeting off with a discussion of safety and what's going on in our relative organizations." (emphasis added)**

91. Mr. Delaney acknowledges (October 25, 2007, p. 5) that NP and NLH do not undertake any joint television or radio ads with respect to safety messaging.

92. The Consumer Advocate submits that there should be more formal coordination between NP and NLH on safety messaging. Conversation "back and forth" is fine but it is not coordination of the type that is required. There should also be more joint messaging to let the public know that the utilities are on the same page and that the issue is of such importance that the utilities are both solidly behind the safety message - working as a team.

93. Accordingly, the Consumer Advocate recommends that the Board direct NP to undertake efforts to actively promote and coordinate with Newfoundland and Labrador Hydro on the development and implementation of communication programs related to utility safety issues, with such initiatives to include coordination of safety messages, sharing of media space, printing and production costs and to provide a record and report of the progress of these initiatives at NP's next GRA.

7. Vacancy

94. In Mr. Delaney's direct evidence (October 24 2007, p. 48) he explains that NP does not have a rigid organizational structure. NP has a flexible approach to work requirements which, as required, involves moving employees to meet operational needs as required. If an employer leaves or retires, NP first determines whether the

duties can be performed by modifying or expanding the duties of existing employees. Accordingly, as Mr. Delaney put it, **"we forecast our labour requirements not on the basis of a fixed compliment of staff, but on the basis of Full Time Equivalents, or FTEs. Under this approach the tracking of vacancies is not useful and Newfoundland Power has not done so for many years."** Mr. Delaney states (p. 49) that NP's flexible approach to staffing ensures that it avails of opportunities to reduce the workforce whenever it is prudent to do so.

95. NP's reply to CA NP 352 indicates that FTE's are forecast based on the determination of the Company's annual labour requirements an, in turn, annual labour requirements are driven by the Company's forecast operational and capital plans.

96. As understood by the Consumer Advocate from NP's response to CA NP 332 (see footnote 1):

> **"An FTE is a mathematical representation of the Company's workforce. The FTE calculation involves the summation of all actual paid work including all forms of paid leave by Company employees over a period of time, divided by the number of regular hours routinely worked by a single employee over that same period of time. Changes in FTEs are mathematically related to the number of hours worked by all employees on capital and operating products and are not necessarily proportional to, or representative of, the actual number of employee positions."**

97. Now it would appear from Mr. Delaney's evidence (October 25, 2007, p. 85) that certain assumptions related to vacancy are made by NP when NP prepares its FTE forecast:

> **"In terms of establishing our FTE process, we do that now. We make**

assumptions with respect to things like maternity leave, who's going, who's coming, at what point. It's all on an employee basis. It gets complicated on a position basis. We have various people on LTD who may be coming back, so they would be part of our FTE complement, retirements and hires. So the movement inside of the workforce, in terms of coming and going, there's a larger number of things done to come up with our FTE forecast."

98. Mr. Delaney was asked to use the position of the occupational health nurse (October 25, 2007) to illustrate how the forecast labour bill is made and the following exchange took place:

"Q. So if you're - let's use the example of the occupational health nurse. If you're saying, look, we've got this man or woman occupying this position, they make X amount of dollars a year, benefits, etcetera, and now we've got to try to project forecasts forward as to what our salary and benefits costs are going to be, and you were talking about –well, do you assume that position is going to be occupied the full year?

A. In our FTE forecast, if we know when we do our budget, if we got a reasonable, make a reasonable assumption that that person is not going to be there, then we – it would all depend on the person and what duties they're taking. We may get into a situation where someone else, an occupational health nurse wouldn't be an example of this, but there may be others, say, a technologist or someone else that we may – others may come in and fill that role or there could be a situation where we may have to hire a temporary employee to fill the role. It's very flexible and fluid. And it just speaks to the complications of trying to bring in a vacancy rate system."

99. It would certainly appear that NP does attempt to take absences into account on a person by person basis when projecting its FTEs and labour cost forecast. But what is not clear from the record are the assumptions that are used and what those

assumptions are based upon. For instance, what is the forecast FTE and labour expense forecast unadjusted for these assumptions of "vacancy" (whether by reason of LTD, Maternity, etc) and how does that compare to the forecast FTE and labour expense forecast once these assumptions and/or adjustments have been incorporated.

100. In short, NP's assertion that it does not find vacancy tracking by position useful for its purposes does not remove the relevance of vacancy for regulatory purposes.

101. Accordingly, the Consumer Advocate requests that the Board order NP to file as part of its next GRA a detailed description of the method used to forecast its Test Year FTEs and labour expense forecasts with detailed explanation as to how assumptions as to employee vacancy(ies) were arrived at and incorporated into the Test Year forecasts.

Dated at St. John's, in the Province of Newfoundland and Labrador, this 2rd day of November, 2007.

Thomas Johnson, Consumer Advocate
323 Duckworth Street
P.O. Box 5955
St. John's, NL A1C 5X4
Telephone: 726-3524
Facsimile: 726-9600

Attachment A

Data and Information Request

Development of Distribution Reliability and Service Standard for Newfoundland Power

1. Please provide the Company policy relating to responses to customer complaints expressed directly to the Company, and alternatively, to the Company through the Board. In particular, in what time frame does Newfoundland Power target to file a substantive response to such complaints; i.e., 14 calendar days?

2. Please provide Newfoundland Power's policy defined in union contracts relating to restrictions on outside work during inclement weather.

3. Please provide Board reports for the past five years relating to complaints from customers; i.e., escalated complaints (see October 24, 2007 Transcript page 107). Please provide a comparison of the number of complaints filed with the Board versus the total number of customers for each of the past five years.

4. Please provide for the past five years the total number of billing adjustments (i.e., re-bills) as a percentage of the total number of bills rendered (page 107 of the October 24, 2007 Transcript indicates that Newfoundland Power tracks high bill enquiries, damage claims and billing adjustments). Please provide the source for these data and identify any data exclusions.

5. Please provide all performance measures currently being tracked by Newfoundland Power relating to work completion; i.e., appointments met on schedule, work completed on time, etc. For example, Newfoundland Power tracks performance relating to energizing new services within 3 to 5 business days of receipt of electrical inspection authorization (see CA-NP 440). Please provide a description of how each measure is being tracked, and performance relative to the measure in each of the past five years.

6. What is the margin of error for the current customer satisfaction survey methodology?

7. Please provide a table showing SAIDI and SAIFI figures for each of the past five years under the following scenarios:

    a. Including all outages to Newfoundland Power customers; i.e., Hydro-related outages, severe storms, planned and unplanned outages;
    b. Including all outages to Newfoundland Power except Hydro-related outages;
    c. Including all outages to Newfoundland Power customers except Hydro-related outages and major storms. Please define major storms; and
    d. Including all outages to Newfoundland Power customers except Hydro-related outages, major storms and planned outages.

8. Please provide the criteria used to determine which feeders are the worst performing feeders. Does Newfoundland Power utilize a composite performance index to evaluate feeder performance such as that used by Delmarva Power?

9. Green Mountain Power states on its website "We're ready to put our money where our mouth is" (http://www.greenmountainpower.com/customer-service/guarantees.html). This statement relates to its performance guarantees. For example, if they don't complete a service installation within five days of the promised delivery date, they give the customer $25. Alberta similarly provides a $75 credit to customers who are disconnected in error. Which of the performance guarantees in Exhibit CDB-2, Attachment A, Section IV is Newfoundland Power willing to provide its customers, and in what form and/or monetary level is it willing to provide with the service guarantee?