

1 **Volume 1, Section 3 – Finance**
2

3 **Q. Please provide copies of all proposals the Company made to settle its dispute with**
4 **Canada Customs Revenue Agency (which was the subject matter of RFI - CA 319 in**
5 **the last GRA hearing) together with replies received from Canada Customs and**
6 **Revenue Agency.**
7

8 **Please also provide all proposals of Canada Customs and Revenue Agency or its**
9 **counsel and the company's reply to same.**
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11 A. Newfoundland Power objects to the provision of the materials requested by this request
12 for information on the basis that the information (i) is not required for a satisfactory
13 understanding of the matter to be considered in *this* application and (ii) is the subject of
14 solicitor-client privilege.
15

16 In Order No. P.U. 40 (2005) the Board considered the settlement of the tax reassessments
17 between Newfoundland Power and the Canada Revenue Agency which is the subject
18 matter of this request for information.
19

20 The Board found in Order No. P.U. 40 (2005) that:
21

22 It is evident that consumers have benefited from NP's actions through the
23 avoidance of additional tax and interest liabilities arising from the tax
24 reassessments. There is now certainty for both consumers and NP on a
25 go-forward basis with respect to this outstanding tax issue. As well the
26 change in accounting policy to the Accrual Method for revenue
27 recognition for regulatory purposes starting in 2006 brings NP's
28 regulatory practice in line with its reporting for accounting and tax
29 purposes and also with other utilities in Canada. The Board views these
30 outcomes as very positive and has no reason to disallow any of the
31 expenditures or revenues associated with the tax dispute on an imprudence
32 basis. (see pp. 20-21).
33

34 The Consumer Advocate sought the leave of the Newfoundland and Labrador Court of
35 Appeal to appeal the decision of the Board in Order No. P.U. 40 (2005). Leave to appeal
36 was denied by the Court of Appeal (see: 2006 NLCA 20).
37

38 In Order No. P.U. 40 (2005), the Board determined that the settlement between
39 Newfoundland Power and the Canada Revenue Agency of the tax reassessments
40 benefited customers for a number of reasons.
41

42 Given the specific determinations of the Board in Order No. 40 (2005) and the decision
43 of the Court of Appeal to deny leave to appeal Order No. 40 (2005), the information
44 requested is not necessary for a satisfactory understanding of any of the matters to be
45 considered in *this* application.

1 Accordingly, Newfoundland Power objects to the provision of the information requested
2 in this request for information pursuant to Section 14 of the *Board of Commissioners of*
3 *Public Utilities Regulations, 1996.*
4

5 In addition, the materials requested comprise communications between Newfoundland
6 Power's tax counsel and the Canada Revenue Agency's tax counsel who negotiated the
7 ultimate settlement of the tax reassessments after they were made in 1995. Such
8 communications are the subject of solicitor-client privilege between Newfoundland
9 Power and its counsel and are not required to be disclosed.

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11 Newfoundland Power asserts its right to keep both communications between it and its
12 counsel and communications between its counsel and counsel for the Canada Revenue
13 Agency confidential and says the materials requested are the subject of solicitor-client
14 privilege.