

# Office of the Consumer Advocate

PO Box 23135  
Terrace on the Square  
St. John's, NL Canada  
A1B 4J9

Tel: 709-724-3800  
Fax: 709-754-3800

November 16, 2020

Board of Commissions of Public Utilities  
120 Torbay Road, P.O. Box 2140  
St. John's, NL A1A 5B2

**Attention: G. Cheryl Blundon, Director of  
Corporate Services / Board Secretary**

Dear Ms. Blundon:

**Re: Newfoundland and Labrador Hydro - 2021 Capital Budget Application**

On August 2, 2020 Newfoundland and Labrador Hydro ("Hydro") submitted to the Public Utilities Board (the "Board") its 2021 Capital Budget Application ("2021 CBA"). Hydro indicates that its financial schedules include planned total expenditures of \$112.7 million, but its Application "*seeks approval of \$107.5 million as further analysis related to the solution to address the Charlottetown plant fire is ongoing, and Hydro is not yet ready to make a submission.*" This compares to capital expenditures of \$107,576,100 approved by the Board at Hydro's 2020 CBA (see Order P.U. 6(2020), point 4, page 14).

The Consumer Advocate has consistently expressed concerns about the significant level of capital spending by the two electric utilities in the Province, Hydro and Newfoundland Power. However, capital spending has become even more unsettling at the present time when rates could be adversely impacted in 2021 with the commissioning of the Muskrat Falls Project ("MFP"); also, we are in the midst of the Covid-19 global pandemic with its profound impacts on the Provincial economy and consumers generally.

The Board has directed the parties to file submissions on Hydro's 2021 Capital Budget Application by November 16, 2020. This submission documents the Consumer Advocate's position on Hydro's 2021 Capital Budget Application.

## **1. MIDGARD REPORT**

Midgard Consulting Inc. has been retained by the Board to review the current Capital Budget Guidelines. Midgard filed its report with the Board on August 24, 2020. As stated on page 3 of the report:

*“Midgard Consulting Incorporated (“Midgard”) has been retained by the Newfoundland and Labrador Board of Commissioners of Public Utilities (“NLPUB” or “the Board”) as an expert consultant to perform a review of the NLPUB’s existing Capital Budget Application Guidelines (“Guidelines”). The objective of this work is to provide recommended changes to the existing Guidelines to help improve the overall efficiency and effectiveness of the annual Capital Budget Application processes required under legislation.”*

The Consumer Advocate summarized Midgard’s recommendations in its submission on the Newfoundland Power 2021 Capital Budget Application<sup>1</sup>. The Midgard report recommendations would significantly improve the capital budget process without much need for changes to legislation.

Midgard received feedback from both the utilities and the intervenors involved in the Capital Budget Application process and has now gone through an extensive RFI process. Because Midgard’s recommendations can be implemented under existing legislation these are directly relevant to the 2021 Capital Budget Applications of both Newfoundland Power and Hydro. Some key findings and recommendations from the Midgard report that were documented in our submission on the Newfoundland Power 2021 CBA are restated below:

- 1) (Table 8, page 28) Midgard notes that while the ratepayer groups identified a number of concerns with the current Guidelines, the *“Utility groups are generally of the opinion that the current Guidelines are adequate and that most of the concerns raised by ratepayer groups are reasonably addressed under the current Guidelines.”*
- 2) (Page 54) *“The quantified results produced by asset management, risk management and asset condition assessment processes should help address stakeholder concerns regarding the informational asymmetries that impede their effective participation and intervention in the capital budget approval process.”*
- 3) (page 56) *“It is acknowledged that current NLPUB practice is to explicitly approve and disapprove each capital budget line item with the sum of the individual approved line items becoming the total approved budget (see Section 4.3). Upon review of legislation, it appears that the NLPUB can also approve a capital budget that includes a set of projects that is a combination of explicitly disapproved projects and a basket of approved projects that the utility then prioritizes and/or modifies to work within the approved budget.”* (later on page 56) *“Midgard does not believe that either the Capital Budget Application guidelines or existing legislation need to be changed to enable the NLPUB to adopt this practice.”* (page 62) *“Midgard recommends that the Board affirms its right to explicitly approve, modify or disallow individual budget line items, and in the absence*

---

<sup>1</sup> See: October 22, 2020 submission to Board titled Newfoundland Power Inc. – 2021 Capital Budget Application

*of explicit decisions regarding specific line items, require that the utility manage the list of budgeted projects within an approved budget envelope even if the total budget envelope is not equal to the sum of the individual budget line items. In Midgard's assessment, although this recommendation would involve a change in Board practice, it does not change the Board's legislated approval authority or process discretion."*

- 4) (page 61) *"declaring that a project went to competitive tender as evidentiary justification for meeting least cost reliable services does not address key Board questions such as "At what unit cost are system reliability and risk profile improved by the project", "Does the ratepayer value the improvement in system reliability and risk reduction more than the project cost?, and "How cost effective are the proposed improvements in system reliability and risk reduction compared to other budget items being proposed and other alternatives that are available?" Midgard goes on to say (on the same page) "Consequently, Midgard recommends that explicit reference to the trade-off between cost (to ratepayers), system reliability and risk be added to the Guideline policy statement to shift discussion regarding least cost reliability service away from execution activities such as tendering execution."*
- 5) (page 65) *"Midgard recommends that utilities be required to adopt formal asset management processes and standardized reporting to increase the level of accountability and transparency in decision making, but does not recommend at this time that a particular asset management standard (such as ISO 55000) be prescribed."*
- 6) (page 66 – recommended wording change) *"The burden of proof is on the Utility to provide sufficient data, information and analyses necessary to justify the Capital Budget Application, and to support the Board's decisions regarding the trade-off between cost to ratepayers, system reliability and risk, in accordance with formal asset management practices."*
- 7) (page 67) *"Midgard also recommends that all sections of the Capital Budget Application, expert reports, transcripts (if any) and RFI responses be attributed to a lead individual (e.g., department head or manager) who takes responsibility for the materials and contents therein."*
- 8) (page 74) *"Midgard recommends implementing the six (6) following Investment Classifications ordered in from lowest to highest in terms of utility discretion (except for General Plant which is a special category of its own): 1) Mandatory 2) Access 3) System Growth 4) Renewal 5) Service Enhancement 6) General Plant."*
- 9) (page 93) *"Projects and programs shall be evaluated for risk mitigation in the following categories: 1) Reliability 2) Safety 3) Environment. Risk mitigation shall be calculated*

*as the difference in risk before and after the proposed alternatives was implemented.” The calculation of risk shall conform to an internationally recognized standard for calculating risk. The evaluation shall be supported by a documented risk management program that clearly demonstrates how risk is evaluated and equivalency given to the different risk elements (i.e., how risk-based prioritization functions), and how risk reduction is calculated.”*

- 10) (page 94) “A prioritized list of all Projects and Programs shall be provided.” The text goes on to say that the list will be organized into the following sub-sections: mandatory, access, system growth, renewal, service enhancement and general plant.

## 2. CONSUMER ADVOCATE COMMENTS

It is within the context of Midgard’s findings and recommendations, and the current economic situation in the Province brought on by the Muskrat Falls Project and the Covid-19 pandemic that the Consumer Advocate makes the following comments on Hydro’s 2021 Capital Budget Application.

- While both Hydro and Newfoundland Power believe that the current Guidelines are adequate (point 1 in section 1), the ratepayers do not. There is a significant asymmetry of information between the utilities and the intervenors (point 2 in section 1). This suggests that the current Guidelines are favourable to the utilities. The Consumer Advocate notes that Midgard’s findings and recommendations identified in section 1 above are made within the context of existing legislation so there is nothing stopping the Board from incorporating the Midgard recommendations in its order on the 2021 CBAs. In the Consumer Advocate’s opinion, Hydro has not gone far enough in its 2021 CBA to address this asymmetry of information and has simply not provided the information necessary for the Board to make an informed decision about the merits of the projects identified in Hydro’s 2021 CBA.
- As recommended by Midgard (point 6 in section 1), the burden of proof is on the utility to provide sufficient data, information and analyses to justify its expenditures and support the Board’s decisions regarding the “*trade-off between cost to ratepayers, system reliability and risk, in accordance with formal asset management practices.*” Hydro appears to agree that the onus is on the utilities to justify its expenditures in CA-NLH-083. In other words, the onus is ***not*** on the intervenor to submit evidence that an expenditure is not needed.
- Hydro repeatedly states that they have not quantified the benefits of a project in terms of reliability improvements (improvements in reliability metrics such as SAIDI and SAIFI) or cost savings to consumers, and they have not quantified the risk of deferring the project to a future year.

In PUB-NLH-18 the Board asks Hydro to quantify risks of delaying projects by one or two years to reduce the impact on rates but Hydro maintains it is unable to quantify risk under its current asset management program. Hydro appears to opine that stating it needs a project to meet its mandate of providing reliable power at least cost is adequate justification, but as Midgard points out providing *“least cost reliable services does not address key Board questions such as “At what unit cost are system reliability and risk profile improved by the project”, “Does the ratepayer value the improvement in system reliability and risk reduction more than the project cost?”, and “How cost effective are the proposed improvements in system reliability and risk reduction compared to other budget items being proposed and other alternatives that are available?”* That is why conceivably every piece of equipment owned by Hydro might fail in 2021. However, the risk of failure and the impact of failure on consumers must be quantified if the Board is to make an informed decision on the Application.

- PUB-NLH-8 summarizes Hydro's response to the poor economic climate in Province. The Consumer Advocate acknowledges that unlike Newfoundland Power, Hydro is making an effort.
- In spite of the significant cost of projects needed to extend the life of Holyrood owing to issues with the Muskrat Falls Project Hydro has held its 2021 CBA expenditures at levels closely tracking levels approved by the Board at its 2020 CBA.
- In the Application, Hydro has prioritized its projects. This is a significant improvement over Newfoundland Power's refusal to prioritize its projects arguing that all of its projects are first priority.

### **3. SUMMARY OF CONSUMER ADVOCATE'S POSITION**

The Board's decision to engage Midgard was a welcome sign that Hydro's and NP's capital applications may be subject to more scrutiny than in the past. The Consumer Advocate notes that Hydro's 2021 CBA falls well short of recommendations in the Midgard report. Hydro has not quantified the risks of delaying projects in its 2021 CBA; neither has it quantified the benefits of the projects included in its 2021 CBA such as cost reductions owing to efficiency improvements, and improvements in reliability metrics such as SAIDI and SAIFI. However, unlike Newfoundland Power, Hydro has provided a prioritized list of projects in its 2021 CBA, has made an attempt to respond to the poor economic climate in the Province, and has held 2021 capital expenditures at levels slightly less than those approved by the Board at the 2020 CBA.

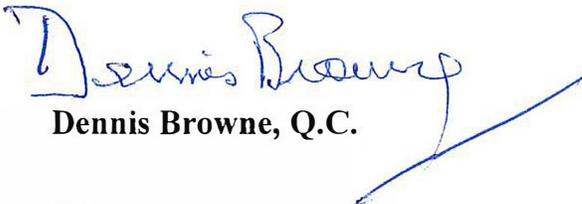
Midgard indicates that the Board has the authority to approve an envelope of expenditures rather than approve/disapprove individual projects. Midgard states that this can be done under current legislation and current Capital Budget Guidelines. By approving an envelope rather than individual projects, the

Board avoids the appearance of managing the utility. Further, it forces Hydro to “manage” its customers’ money. The Consumer Advocate strongly supports this approach. Given the current economic conditions in the Province there has never been a more urgent time to approve an envelope. This will send a message to the utilities that from this day forward they must justify their CBAs and “manage” their customers’ money. The concept of laissez-faire has no place in a regulatory proceeding. It is incumbent upon the Board to balance the interests of consumers in capital budget applications.

The Consumer Advocate urges capping Capital Budget Application investments at 2020 approved levels, or less, until the Utilities meet the requirements set out in the Midgard report. Hydro is seeking in its 2021 CBA approval of \$107.5 million which is slightly less than the 2020 approved levels. As a result, the Consumer Advocate recommends that the Board approve the expenditures requested, \$107.5 million. Further, the Consumer Advocate recommends that the Board serve notice to Hydro that in future CBAs, projects will only be approved if the benefits to consumers of the project in terms of cost savings and/or improvements in reliability metrics such as SAIDI and SAIFI, and the risks associated with project deferral are quantified.

Please contact the undersigned if you have any questions on this submission.

Yours truly,



**Dennis Browne, Q.C.**

/bb

cc

**Newfoundland & Labrador Hydro**

Shirley Walsh ([ShirleyWalsh@nlh.nl.ca](mailto:ShirleyWalsh@nlh.nl.ca))  
NLH Regulatory ([NLHRegulatory@nlh.nl.ca](mailto:NLHRegulatory@nlh.nl.ca))

**Newfoundland Power Inc.**

NP Regulatory ([regulatory@newfoundlandpower.com](mailto:regulatory@newfoundlandpower.com))  
Gerard Hayes ([ghaves@newfoundlandpower.com](mailto:ghaves@newfoundlandpower.com))  
Kelly Hopkins ([khopkins@newfoundlandpower.com](mailto:khopkins@newfoundlandpower.com))

**Board of Commissioners of Public Utilities**

PUB Official Email ([ito@pub.nl.ca](mailto:ito@pub.nl.ca))  
Jacqui Glynn ([jglynn@pub.nl.ca](mailto:jglynn@pub.nl.ca))  
Colleen Jones ([cjones@pub.nl.ca](mailto:cjones@pub.nl.ca))

**Industrial Customers Group**

Paul Coxworthy ([pcoxworthy@stewartmckelvey.com](mailto:pcoxworthy@stewartmckelvey.com))  
Dean Porter ([dporter@poolealthouse.ca](mailto:dporter@poolealthouse.ca))  
Denis Fleming ([dfleming@coxandpalmer.com](mailto:dfleming@coxandpalmer.com))

**Praxair Canada Inc.**

Sheryl Nisenbaum ([sheryl\\_nisenbaum@praixair.com](mailto:sheryl_nisenbaum@praixair.com))

**Teck Resources Limited**

Shawn Kinsella ([shawn.kinsell@teck.com](mailto:shawn.kinsell@teck.com))

**Labrador Interconnected Group**

Senwung Luk ([sluk@oktlaw.com](mailto:sluk@oktlaw.com))  
Julia Brown ([jbrown@oktlaw.com](mailto:jbrown@oktlaw.com))