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September 20, 2021

Board of Commissioners  
of Public Utilities  
P.O. Box 21040  
120 Torbay Road  
St. John's, NL A1A 5B2

Attention: G. Cheryl Blundon  
Director of Corporate Services  
and Board Secretary

Dear Ms. Blundon:

***Re: Newfoundland Power's 2022 Capital Budget Application – Consumer Advocate's Request for Oral Hearing***

## **1.0 Introduction**

Newfoundland Power Inc. (“Newfoundland Power” or the “Company”) filed its *2022 Capital Budget Application* (the “Application”) on May 18, 2021. On May 27, 2021, the Consumer Advocate requested that the Board hold an oral hearing on the Application. On June 2, 2021, the Board stated that the Consumer Advocate may file a request for an oral hearing following the filing of responses to requests for information (“RFIs”) and intervenor evidence, as outlined in the schedule for the Application.

The Consumer Advocate filed its request for an oral hearing on September 16, 2021. The Board requested Newfoundland Power’s response to the Consumer Advocate’s request be filed by September 20, 2021.

In its request for an oral hearing, the Consumer Advocate’s identifies issues with both the adequacy of the Board’s process for hearing capital budget applications, as well as the adequacy of the information provided by Newfoundland Power. These issues are addressed below.

## **2.0 Newfoundland Power’s Response**

### ***Adequacy of Current Process***

The Consumer Advocate has alleged that the current process for hearing capital budget applications is a “*substandard process*” that “*falls short of national standards.*”<sup>1</sup> The Consumer Advocate further alleges that the current process provides “*no actual public accountability*” and

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<sup>1</sup> See the Consumer Advocate’s correspondence to the Board regarding *Application for a Public Hearing – Newfoundland Power 2022 Capital Budget*, May 27, 2021, page 1.

Newfoundland Power Inc.

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that subjecting a utility's proposals to cross-examination in a public forum would better identify the strengths and weaknesses of the Application.<sup>2</sup>

Newfoundland Power's annual capital budget applications are filed and reviewed in accordance with the Board's 2007 *Capital Budget Application Guidelines* (the "Guidelines"). The Guidelines were established pursuant to Section 3 of the *Board of Commissioners of Public Utilities Regulations, 1996* (the "Regulations"), which provides the Board wide discretion to manage its proceedings.

Since 2007, the Guidelines have created a framework for the efficient and transparent review of utilities' capital budget applications, largely by way of paper-based processes. Section 22 of the Regulations specifically grants the Board the authority to dispose of a matter on the basis of the written documentation before it. Disposing of a matter on the basis of written documentation is common regulatory practice in Canada. As examples, legislation in the provinces of Nova Scotia, Prince Edward Island and New Brunswick permits the respective regulators to dispose of matters based on written documentation.<sup>3</sup>

The Board has previously addressed the Consumer Advocate's concerns with the adequacy of the capital budget application process. The Board indicated that oral hearings for capital budget applications are not routine in Canada.<sup>4</sup> The Board also noted that the process for reviewing a utility's capital budget application is always a full public proceeding.<sup>5</sup> In Order No. P.U. 29 (2021), the Board observed:

*"Written hearings provide a fair and reasonable opportunity for interested persons to participate and allow for effective and efficient oversight of utility capital expenditures with shorter timeframes and less costs than would be associated with an oral hearing."*<sup>6</sup>

In Newfoundland Power's view, the Application is being reviewed by way of a thorough and transparent process. The Company filed responses to 174 RFIs on the Application on August 4, 2021. The Board subsequently permitted the Consumer Advocate to file an additional 59 RFIs. Responses to the additional RFIs were filed on September 14, 2021. In total, the Company has responded to 233 RFIs, among the most RFIs filed in respect of a capital budget proceeding since 2007.

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<sup>2</sup> See the Consumer Advocate's correspondence to the Board regarding *Newfoundland Power's 2022 Capital Budget Application*, September 16, 2021, pages 2 to 3.

<sup>3</sup> See Section 9(1) of the *Board Regulatory Rules* of Nova Scotia, Section 27 of the *Electric Power Act* of Prince Edward Island, and Section 127(4) of the *Electricity Act* of New Brunswick.

<sup>4</sup> This was acknowledged by the Consumer Advocate in its correspondence to the Board regarding *Newfoundland Power 2022 Capital Budget Application*, September 16, 2021, page 2, stating: "The PUB says that having no public hearing is the norm. The Consumer Advocate does not understand why this is so."

<sup>5</sup> See the Board's correspondence to the Consumer Advocate regarding *Newfoundland Power Inc. – 2022 Capital Budget Application*, June 25, 2021, pages 1 to 2.

<sup>6</sup> See Order No. P.U. 29 (2021), page 7, lines 11 to 14.

In Newfoundland Power's view, the RFI process conducted as part of the Application has been comprehensive. The RFI process functions as an efficient and effective substitute for oral cross-examination of the Application's proposals, which is further enhanced when the intervenor has the opportunity to submit additional RFIs requesting clarification on earlier responses. The process for reviewing the Application has also allowed for the filing of intervenor evidence by the Consumer Advocate, with an opportunity for written submissions to follow.

### ***Adequacy of Information Filed***

The Consumer Advocate's request does not identify specific issues with the discrete capital projects proposed by Newfoundland Power in the Application. Rather, the Consumer Advocate broadly claims that the material provided by the Company does not quantify the risks or benefits to customers of various projects. The *Sandy Brook Plant Penstock Replacement* project, the only proposed capital project referenced in the Consumer Advocate's request, is provided as an example of a project where the Company has not quantified risks or benefits to customers.

Newfoundland Power submits that the evidence filed on the record of this proceeding is quantitative in nature and properly assesses the risks and benefits to customers arising from the projects contained in the Application.

To use the Consumer Advocate's example, the *Sandy Brook Plant Penstock Replacement* project is accompanied by detailed engineering and economic evaluations. A condition assessment was provided by Kleinschmidt Canada Inc. ("Kleinschmidt").<sup>7</sup> Kleinschmidt's condition assessment quantified that 1/3 of the penstock's saddles have moderate to severe cracking and that the entire length of the penstock is experiencing joint leakage between the staves. Kleinschmidt determined that failure of the penstock is likely due to wood stave collapse and/or loss of support from the saddles due to excessive cracking in the timbers.

An economic evaluation of the Sandy Brook Plant assessed whether continued operation of the plant, including penstock replacement, is least-cost for customers.<sup>8</sup> The evaluation quantified that the net benefit of continued plant production is between 7.04 ¢/kWh and 10.21¢/kWh. Further, Newfoundland Power conducted numerous sensitivity analyses through the RFI process. These analyses show operation of the plant would continue to be least-cost for customers, even with changes in major assumptions. For example, operation of the plant would continue to be least-cost for customers if marginal costs were reduced by 50% over the plant's entire service life,<sup>9</sup> or if production ceased in 2041 following expiration of the current Churchill Falls contract.<sup>10</sup>

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<sup>7</sup> See the *2022 Capital Budget Application, Report 1.2 Sandy Brook Penstock Replacement Project, Appendix B.*

<sup>8</sup> *Ibid.*, Appendix A.

<sup>9</sup> See response to Request for Information NLH-NP-019.

<sup>10</sup> See response to Request for Information CA-NP-161.

Newfoundland Power also quantified the consequences of deferring the *Sandy Brook Plant Penstock Replacement* project. The Company assessed that failure of the penstock would increase plant downtime by between 52 and 72 weeks. This would increase the cost of purchasing energy from Newfoundland and Labrador Hydro by between \$1.3 million and \$1.8 million. Penstock failure would also pose significant safety and environmental risks.<sup>11</sup>

The information on the record with respect to the *Sandy Brook Plant Penstock Replacement* project illustrates the thorough interrogation of the Application that has occurred through the Board's established process. The Company observes that other issues raised by the Consumer Advocate, such as the impact of the COVID-19 pandemic on the 2022 capital budget,<sup>12</sup> public statements by Fortis Inc. concerning its consolidated forecasts,<sup>13</sup> and the prudence standard,<sup>14</sup> have also been addressed through the RFI process.

### 3.0 Conclusion

The Board has previously articulated how it determines whether an oral hearing is required. The Board considers all information filed, including the Application, issues and projects to be addressed, responses to RFIs, intervenor evidence, and the justification for the request for an oral hearing. The Board has observed that, as oral hearings can be very costly and these costs are passed on to customers, the determination must consider whether an oral hearing would be in customers' best interests.<sup>15</sup>

Newfoundland Power submits that the Consumer Advocate's request for an oral hearing is not justified. The Consumer Advocate has not identified specific issues regarding projects proposed in the Application, and has, in effect, requested a public hearing for the sole purpose of cross-examining the Company's management on the proposed capital projects. Newfoundland Power submits that the Consumer Advocate has been afforded a full opportunity through the written review process to understand the nature and scope of Newfoundland Power's proposals and to test the evidence provided by the Company.

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<sup>11</sup> See response to Request for Information CA-NP-024.

<sup>12</sup> Newfoundland Power does not expect that execution of its capital program will be affected by the COVID-19 pandemic in 2022. See, for example, response to Request for Information CA-NP-164.

<sup>13</sup> Newfoundland Power's planned capital expenditures for 2022 through 2026 were not influenced by, and do not coincide with or reflect, public statements made by Fortis Inc. See response to Request for Information CA-NP-005.

<sup>14</sup> There is no direction in the province's statutory framework identifying a specific methodology be used in a prudence review. The Board has previously indicated that it selects a methodology based on what is reasonable in the circumstances before the Board. Newfoundland Power submits that all capital projects proposed for 2022 are prudent, consistent with the Company's obligations under the *Public Utilities Act* and the *Electrical Power Control Act, 1994*. See response to Request for Information CA-NP-173.

<sup>15</sup> See the Board's correspondence to the Consumer Advocate regarding *Newfoundland Power Inc. – 2022 Capital Budget Application*, June 25, 2021.

Further, the schedule for the Application provides the Consumer Advocate with an opportunity to provide a final written submission for the Board's consideration.

Newfoundland Power observes that the Board's current process has proven effective and efficient in providing oversight of utilities' capital expenditures. The process, which follows the procedures established in the Guidelines, has been thorough and transparent. No justification has been presented that bearing the cost of an oral hearing would be in customers' best interests, or that an oral hearing is required to ensure that proposed 2022 capital expenditures are consistent with the provision of safe and reliable service to customers at least cost. An oral hearing of the Application is therefore not required.

Yours truly,

NEWFOUNDLAND POWER INC.



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