

October 26, 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 2022/2023 General Rate Application  
Response to Consumer Advocate's Revised Witness List**

On October 19, 2021, the Consumer Advocate filed a revised witness list indicating that John D. Todd would be called as an additional witness in Newfoundland Power's *2022/2023 General Rate Application* (the "GRA").

On October 20, 2021, the Board of Commissioners of Public Utilities (the "Board") filed correspondence noting that the scheduled date for filing expert reports and pre-filed evidence was September 28, 2021. The Board set a due date of October 22, 2021 for a request from the Consumer Advocate for an amendment to the schedule to allow evidence to be filed, and October 26, 2021 for comments from Newfoundland Power and Newfoundland and Labrador Hydro.

On October 22, 2021 the Consumer Advocate filed a request to allow for the filing of additional evidence of Mr. Todd, and to call Mr. Todd as a witness in the proceeding. The additional evidence is a report co-authored by Mr. Todd dated August 13, 2021 (the "Elenchus Report") which was previously filed in relation to the Company's *2022 Capital Budget Application* (the "2022 CBA").

***The Relevance of the Elenchus Report***

The Consumer Advocate submits that the Board made the Elenchus Report relevant by way of filing request for information ("RFI") PUB-CA-011 on October 8, 2021. PUB-CA-011 asks, in the first instance, whether Dr. Booth is familiar with the Elenchus Report, and in the second instance, a follow-up question on the "utility death spiral," which assumes an affirmative response in the first instance.

**Newfoundland Power Inc.**

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Newfoundland Power disagrees with the Consumer Advocate's assertion that through the filing of PUB-CA-011, the Board has made the Elenchus Report relevant to this proceeding. The question as worded does not require Dr. Booth to familiarize himself with the report. Further, Dr. Booth's familiarity with the Elenchus Report, or lack thereof, should not require Mr. Todd to appear as a witness in the GRA.

The Elenchus Report is specific to the Company's 2022 CBA, as evidenced by its title: *Comments on Newfoundland Power's 2022 Capital Budget Application*. Its contents are not relevant to the GRA and have been fully interrogated and considered as part of a separate proceeding before the Board. Newfoundland Power submits that the filing of the Elenchus Report on the record of the GRA will not serve to advance the understanding of the GRA issues identified by the parties.

### ***No Prejudice to the Parties***

The Company notes the Consumer Advocate's assertion that the Board and Newfoundland Power are familiar with the Elenchus Report, and therefore no prejudice can be demonstrated. The Company respectfully disagrees. It is unreasonable to assume that information interrogated in one proceeding would be common knowledge to all parties working on a separate proceeding. In addition, although the Consumer Advocate correctly notes that both the Company and the Board have had the opportunity to ask RFIs on the Elenchus Report, these RFIs and their responses will not appear on the record of the GRA. It would be inequitable to the parties to allow the Elenchus Report to exist on the record without its accompanying RFIs.

### ***Conclusion***

In Newfoundland Power's view, through filing PUB-CA-011 the Board did not make the Elenchus Report relevant to the GRA.

The Company submits that the Elenchus Report is specific to its 2022 CBA, was fully interrogated and considered as part of that proceeding, and will not serve to advance the understanding of the GRA issues identified by the parties. As such, Newfoundland Power respectfully disagrees with the Consumer Advocate's assertion that Mr. Todd should appear as a witness in the GRA.

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If you have any questions regarding the enclosed, please feel free to contact the undersigned.

Yours truly,



Lindsay Hollett  
Legal Counsel

c. Shirley Walsh  
Newfoundland and Labrador Hydro

Dennis Browne, QC  
Consumer Advocate