



NEWFOUNDLAND AND LABRADOR

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

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Newfoundland Power Inc.

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Dear Madams/Sir:

Re: Newfoundland Power Inc. - 2023 Capital Budget Application - To Parties - Response to Consumer Advocate's Request for Oral Hearing

On October 12, 2022 the Consumer Advocate filed a request for the Board to conduct an oral hearing in relation to Newfoundland Power's 2023 Capital Budget Application (the "Application"). The Consumer Advocate submitted that an oral hearing "is necessary if the Board is to make an informed decision" because the Application "lacks the evidentiary quality required for approval of these expenditures by ratepayers."

In support of the request the Consumer Advocate noted that Hydro has twice the rate base of Newfoundland Power, yet the proposed 2023 expenditures in the Application exceed Hydro's by approximately \$33 million. The Consumer Advocate also referenced a number of recent developments relating to electricity supply in the province, including the release of Hydro's Reliability and Resource Adequacy Study Update on October 3, 2022, the cost of the Muskrat Falls Project which is to be paid by island ratepayers, and the recent findings of the Auditor General on its review of Nalcor's spending. According to the Consumer Advocate there is an extremely high sensitivity on the part of electrical consumers in the province to ensure that

significant expenditures by a utility be subject to transparent, effective oversight. The Consumer Advocate stated:

Having regard to the sheer scale of Newfoundland Power's current application for \$123 million, and the relentless trajectory of significant capital budget costs year over year, the ratepayers are entitled to complete justification from Newfoundland Power for its expenditures to ensure that the *Electrical Power (Control) Act* is complied with and that Newfoundland Power is delivering power to consumers in the province at "the lowest possible cost consistent with reliable service."

The Consumer Advocate's position is that the Board should order a public hearing on the following capital budget items which, according to the Consumer Advocate, "clearly have not been fully justified by Newfoundland Power" despite the Request for Information (RFI) process:

1. Financial aspects of projects proposed in the Application, which should be analyzed on the basis of payback periods as well as net present value because long payback periods will indicate that benefits will not accrue for a long time.
2. Insufficient justification of projects including the addition of reclosers, the Transmission Line 55L rebuild and the refurbishment of distribution feeder SUM-01.
3. The continual increase in Newfoundland Power's capital spending, including the expected \$33 million increase in the renewal category of spending.
4. Capital spending on utility-owned electric vehicle charging infrastructure paid for by electricity consumers, particularly in light of the recently released Reliability and Resource Adequacy Study Update.

Newfoundland Power filed a response to the Consumer Advocate's request on October 14, 2022. In its response Newfoundland Power stated that the comparison of Newfoundland Power's capital spending to that of Hydro is without merit as differences in spending by the utilities reflect differences in the utilities' electrical systems, service territories and operational requirements. Newfoundland Power also noted that, while the Application provides all expenditures that are anticipated in 2023, Hydro's 2023 Capital Budget does not include planned supplemental applications totaling over \$15 million. In addition, while Hydro's capital plan shows annual expenditures reaching as high as \$158 million over the next five years, Newfoundland Power noted that these expenditures do not reflect the considerable investments expected to result from the recommendations of Hydro's Reliability and Resource Adequacy Study. With respect to the issues raised by Consumer Advocate relating to the Muskrat Falls Project and Nalcor Energy, Newfoundland Power pointed out that these matters are exempt from the **Public Utilities Act** and are not subject to oversight by the Board whereas its operations and capital expenditures are thoroughly reviewed by the Board through annual capital budget applications and periodic general rate applications.

Newfoundland Power further stated that each of the four issues raised by the Consumer Advocate has been thoroughly addressed throughout this proceeding, including via an introductory presentation, technical conference and two rounds of RFIs. Newfoundland Power provided comments on the project specific issues raised by the Consumer Advocate, including

reference to the evidence on the record of the proceeding supporting its approach to assessing costs and benefits of capital investments as well as evidence related to the need for the Transmission Line 55L rebuild, distribution feeder automation and the refurbishment of distribution feeder SUM-01. Newfoundland Power also noted that it had assessed the risk of deferring each of these projects using its risk matrix methodology, which it developed to comply with the Board's Provisional Capital Budget Guidelines.

With respect to the Consumer Advocate's concern with increases in capital spending Newfoundland Power stated that, in its view, these statements are unfounded and are not reflective of the information on the record of this proceeding. Newfoundland Power concluded:

In Newfoundland Power's view, the Consumer Advocate's request for an oral hearing is not justified and an oral hearing would not further the evidentiary record of this proceeding.

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. The process has been robust. It has included a presentation and Requests for Information, a detailed technical conference on nine issues identified by the Consumer Advocate, and a second round of Requests for Information that afforded intervenors the opportunity to request clarification and to ensure completeness of the evidentiary record. A total of 240 Requests for Information have been answered as part of this proceeding.

The written record of this proceeding provides comprehensive information on the nature, scope and justification of the projects proposed in the Application. No justification has been presented in the Consumer Advocate's Request that shows bearing the cost of an oral hearing would be in customers' best interests, or that an oral hearing is required to ensure that proposed 2023 capital expenditures are consistent with the provision of safe and reliable service to customers at least cost.

In recent years, capital budget applications brought before the Board have been addressed through fully public and transparent written hearing processes. Through these processes the Board, the Consumer Advocate and other interested parties use the documentary evidence, utility presentations, technical conferences and written RFIs to understand and test the proposals set out in a capital budget application. After this full exchange of information the parties file written submissions for the Board's consideration. The Board believes that these written hearing processes provide a fair and reasonable opportunity for participation of the Consumer Advocate and other interested persons in capital budget applications and provide effective and efficient oversight of utility capital expenditures. The Court of Appeal, in two separate decisions, determined that the Board has the authority and expertise to choose its own procedures, as appropriate to the matter before it.¹ The Board also notes that the use of written processes is a common feature of Canadian public utility regulation.

¹ *Consumer Advocate vs. Board of Commissioners of Public Utilities*, 2021 NLCA 50; *Consumer Advocate vs. Board of Commissioners of Public Utilities*, 2022 NLCA 39.

With respect to the holding of an oral hearing the Board's Provisional Capital Budget Guidelines provide as follows:

An oral hearing of an annual capital budget application may be held where the Board determines, on its own motion or at the request of a party, that it is necessary to assist the Board in gaining a full understanding of the issues to be decided in the application. For example the Board may decide that an oral hearing should be held to address evidentiary concerns. A party requesting an oral hearing must set out the reasons for the request, demonstrating that an oral hearing is required in the circumstances. In making its determination as to whether there will be an oral hearing the Board will consider all of the circumstances including the reasons provided in support of a party's request, the application proposals and supporting evidence, the issues and expenditures to be addressed, responses to the RFIs and other evidence, including intervenor evidence. The Board may limit the scope of an oral hearing to one or more issues, a particular witness or submissions of the parties.

The Consumer Advocate submits that an oral hearing to address the issues is necessary if the Board is to make an informed decision and further that Newfoundland Power's submission lacks the evidentiary quality required for approval of these expenditures. As the party requesting an oral hearing, the Consumer Advocate has the onus to explain how an oral hearing would assist the Board in gaining a full understanding of the issues identified in the request. The question to be determined at this stage is not whether Newfoundland Power has met the evidentiary test as that determination will be made by the Board when it makes its determinations in relation to the Application proposals, whether or not the proceeding includes an oral hearing. Rather the question is whether an oral hearing is necessary for the Board to make its determinations. The request from the Consumer Advocate submits the evidence is insufficient to justify certain of Newfoundland Power's proposals but does not set out why an oral hearing is necessary for a full understanding of those issues.

The Board finds that the Consumer Advocate has not met the onus of showing that an oral hearing is necessary in this Application. While the Board agrees that careful scrutiny of Newfoundland Power's 2023 Capital Budget Application is required, the Board is satisfied that the written hearing process in this matter has afforded the Consumer Advocate a full opportunity to understand the nature and scope of the proposals and to test the evidence filed. The Board is satisfied that the issues to be decided in this Application can be addressed based on the written record and that an oral hearing is not necessary in the circumstances.

The Board will therefore not grant the Consumer Advocate's request for an oral hearing in Newfoundland Power's 2023 Capital Budget Application.

If you have any questions, please do not hesitate to contact the Board's Legal Counsel, Jacqui Glynn, by email, jglynn@pub.nl.ca or telephone (709) 726-6781.

Sincerely,



Cheryl Blundon
Board Secretary

CB/cj

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