



NEWFOUNDLAND AND LABRADOR

**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

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2023-11-07

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Dear Madam/Sirs:

**Re: Newfoundland Power Inc. - 2024 Capital Budget Application – Response to Consumer Advocate's Request for Oral Hearing**

The Consumer Advocate has requested that the Board order an oral hearing in Newfoundland Power's 2024 Capital Budget Application.

The Consumer Advocate submitted that there is an extremely high sensitivity on the part of consumers to ensure that utility expenditures are subject to transparent, effective oversight in light of the numerous uncertainties in the province's electricity supply and the costs brought on in large part by the Muskrat Falls project. Newfoundland Power disagrees that an oral hearing is necessary to ensure the Board's transparent, effective oversight of capital expenditures and submitted the principle of regulatory efficiency requires a determination of whether an oral hearing would be in customers' best interests. In Newfoundland Power's view an oral hearing would result in additional costs to customers with no benefit.

The Board's policy with respect to capital budget applications is set out in the Capital Budget Application Guidelines (Provisional) (the "Guidelines") as follows:

The Board is committed to the efficient and effective oversight of utility capital expenditures through open and transparent processes which provide a full and

fair opportunity for interested parties to participate and which ensure cost-effective regulation and timely determinations of the Board.<sup>1</sup>

The Guidelines provide that annual capital budget applications will normally be addressed through a public written hearing process. The Board may decide to hold an oral hearing where it is found to be necessary to assist the Board in gaining a full understanding of the issues to be determined. In either case, whether a capital budget application is addressed through a written hearing or an oral hearing, the application is tested through a public process which involves the full participation of interested parties and the filing of detailed technical information which is tested and challenged over the course of many months.

The Newfoundland and Labrador Court of Appeal has found that the written hearing process is appropriate for utility capital budget applications in two recent appeals filed by the Consumer Advocate. The Court of Appeal stated:

The Board's choice of procedure allowed for an open and transparent process, appropriate to the capital budget decision, with reasonable opportunity for those affected, including the Consumer Advocate, to participate.<sup>2</sup>

The Court of Appeal noted the annual capital budget application is not an adversarial process between parties but rather an assessment of issues relevant to the Board's pursuit of its mandate to implement the power policy of the province and supervise the utility.<sup>3</sup>

The Board is of the view that the public written hearing process is the preferred approach for annual capital budget applications as it provides for a full and fair review, bearing in mind the costs and time required to hold an oral hearing. Newfoundland Power's 2024 Capital Budget Application was filed on June 22, 2023. Since then there has been a comprehensive process which included public notice, a presentation by Newfoundland Power, a technical conference and two rounds of requests for information. The documentation on the record is extensive, including the detailed information and reports required to be filed in accordance with the Guidelines as well as responses to requests for information which included over 700 questions. As the party requesting an oral hearing, the onus is on the Consumer Advocate to demonstrate how ordering an oral hearing in this proceeding would assist the Board in gaining a full understanding of the issues and would be in the customers' best interests, considering the potential for delays in the conclusion of the matter and the costs of an oral hearing which may be passed on to customers.<sup>4</sup>

The Consumer Advocate submitted that considering the magnitude of Newfoundland Power's capital expenditures and having regard to the "sheer scale" of Newfoundland Power's capital

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<sup>1</sup> Guidelines, January 2022, page 1.

<sup>2</sup> Consumer Advocate vs. Board of Commissioners of Public Utilities, 2021 NLCA 50.

<sup>3</sup> Consumer Advocate vs. Board of Commissioners of Public Utilities, 2022 NLCA 39.

<sup>4</sup> September 22, 2021 Board Letter on the Consumer Advocate's request for an oral hearing in Newfoundland Power's 2022 Capital Budget Application, page 1; and October 18, 2022 Board Letter on the Consumer Advocate's request for an oral hearing in Newfoundland Power's 2023 Capital Budget Application, page 4.

budget and “the relentless trajectory of significant capital budget costs year over year” rate payers are entitled to complete justification of Newfoundland Power’s expenditures.

The Board notes that issues related to increases in Newfoundland Power’s capital spending have been raised by the Consumer Advocate in previous capital budget applications. In Newfoundland Power’s 2022 Capital Budget Application the Board stated:

While Newfoundland Power’s 2022 Capital Budget has increased significantly since 1996, the increase does not appear to be unreasonable, considering inflationary pressures and the need to maintain and replace aging assets over a 25-year period. The Board notes that Hydro’s capital budget increased by approximately the same proportion over the same period. From 1996 to 2021 Hydro’s capital budget increased by approximately three times, from \$33 million to \$104 million. In addition based on available information, the increase in Newfoundland Power’s capital spending appears to be comparable with the experience of other Atlantic Canadian utilities. Newfoundland Power’s investment in transmission and distribution assets was the lowest of other Atlantic Canadian utilities over the 10-year period ending 2019, and increased at a rate of 9% less than the average of these utilities.<sup>5</sup>

The Board believes that appropriate capital spending is in the interest of both customers and utilities as customers benefit from a utility which is well positioned to provide safe, reliable and adequate services and utilities benefit when the rates to be paid by customers are reasonable and just.<sup>6</sup> As previously stated by the Board:

In accordance with the *Act* the Board must ensure the provision of least cost, safe and reliable service. It is in this context that the Board has resisted requests over the years to set arbitrary limits on capital spending. The Board does not assume that higher levels of capital budget spending are always undesirable. Sometimes a higher level of spending is reasonable and necessary in the circumstance which may involve aging assets, increasing load, inflation, and changing regulatory standards and requirements. Each capital budget is comprehensively reviewed for reasonableness with a view to ensuring the provision of least cost, safe and reliable service.<sup>7</sup>

Newfoundland Power’s proposed 2024 Capital Budget in the amount of \$115 million does not reflect a marked increase in capital spending and is in-keeping with the level of Newfoundland Power’s capital budget in recent years on an inflation adjusted basis. Based on the evidence filed in this proceeding Newfoundland Power’s proposed capital expenditures for 2024 continue to be consistent with historical spending on an inflation adjusted basis and with other Atlantic

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<sup>5</sup> Order No. P.U. 36(2021), Reasons for Decision, page 45.

<sup>6</sup> Guidelines, pages 1-2.

<sup>7</sup> Order No. P.U. 38(2010), page 6.

Canadian utilities.<sup>8</sup> The Board does not accept that the amount of Newfoundland Power's 2024 Capital Budget Application would justify an oral hearing in this proceeding.

The Consumer Advocate argued that an oral hearing is required in Newfoundland Power's 2024 Capital Budget Application to address a number of specific issues which, in the view of the Consumer Advocate, have not been fully justified by Newfoundland Power. In relation to a similar argument by the Consumer Advocate in Newfoundland Power's 2023 Capital Budget Application, the Board stated:

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.<sup>9</sup>

The Board reiterates that the determination as to whether an oral hearing is necessary is not based on whether Newfoundland Power has made its case. Rather, it is made based on whether oral testimony and cross-examination are necessary and would be of assistance to the Board in the issues to be decided in the application. The specific matters raised by Consumer Advocate are addressed below.

### **Memorial Substation**

Newfoundland Power's 2024 Capital Budget Application proposes expenditures of approximately \$4.4 million for the Memorial substation refurbishment and modernization project. The Consumer Advocate submitted that an oral hearing is necessary to address how the costs are allocated and recovered by Newfoundland Power and to clarify why Newfoundland Power is not demanding a customer contribution toward the cost of the MUN substation project and how the costs of radial facilities and supply points are recovered from customers. According to the Consumer Advocate there is a need for a better understanding of the treatment of costs for other facilities that are radial in nature and benefit only one customer. The Consumer Advocate did not request an oral hearing to address whether the proposed capital expenditures for the Memorial substation should be approved. Newfoundland Power disagreed with the Consumer Advocate and submitted that the evidence is comprehensive and sufficient for the Board to understand the justification for the project and no additional relevant evidence would be forthcoming through oral testimony.

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<sup>8</sup> Application, 2024 Capital Budget Overview, pages 9-13, PUB-NP-058, CA-NP-059 and CA-NP-060.

<sup>9</sup> October 18, 2022 Board Letter on the Consumer Advocate's request for an oral hearing in Newfoundland Power's 2023 Capital Budget Application, page 4.

The Board notes that, in accordance with regulatory practice in this jurisdiction, Newfoundland Power's 2024 Capital Budget Application is to be evaluated in accordance with the existing Guidelines and Newfoundland Power's currently approved cost of service. Newfoundland Power's cost of service provides for the assignment of costs and forms the basis for customer rates. Changes to this assignment of costs would normally be considered as part of the review of cost of service in its general rate application. The Board does not accept the Consumer Advocate's suggestion that the current cost of service is "far from being an accurate and fair representation of costs, consumption characteristics and cost allocation." Newfoundland Power's current cost of service was reviewed in its last general rate application filed in 2021 and approved in 2022 and was the subject of an agreement of all of the parties in that proceeding, including the Consumer Advocate.

In the Board's view the issues raised by the Consumer Advocate related to the cost allocation of capital expenditures for the Memorial substation are more appropriately addressed in a comprehensive review of Newfoundland Power's cost of service. Consideration of the direct assignment of certain costs to Memorial University must necessarily involve a full consideration of how costs are currently allocated to the university, other customers in the rate class as well as other rate classes. As noted by Newfoundland Power direct assignment of costs would require consideration of how other costs are allocated, for example the costs may already be recovered through customer rates. In addition, a review of cost allocation with respect to the Memorial substation at this time would not permit consideration of all potentially relevant information including the anticipated changes in the load profile of Memorial University and the updated rate design review currently being completed by Newfoundland Power. These issues may be addressed in Newfoundland Power's upcoming general rate application which is expected to involve an oral hearing and the presentation and cross-examination of experts.

The Consumer Advocate also argued an oral hearing is necessary to clarify "erroneous" statements included in Order No. P.U. 14(2023) approving capital expenditures to replace the MUN-T2 Transformer. Newfoundland Power submitted that an oral hearing to revisit a previous Board order is not appropriate and would not contribute to the evidentiary record necessary for the Board to make a decision in relation to Newfoundland Power's 2024 Capital Budget Application.

The Board notes that the capital expenditures in relation to the MUN-T2 transformer at the Memorial substation are not an issue to be decided in this proceeding as they have already been approved in Order No. P.U. 14(2023). The Consumer Advocate did not appeal this order and, having not pursued an appeal, it is inappropriate and inefficient to now argue that the order was in error. The Board disagrees with the Consumer Advocate's suggestion that the order sets a precedent that "fair and non-discriminatory rates are no longer an accepted regulatory principle in this jurisdiction." Fair and non-discriminatory rates are legislatively required in this jurisdiction and are an integral part of the regulatory principles adhered to by the Board. As the Board stated in the Consumer Advocate's request for the reconsideration of Order No. P.U. 14(2023):

The Board is satisfied that the treatment of the MUN-T2 transformer replacement at Memorial Substation is consistent with Newfoundland Power's approved cost of

service and longstanding regulatory principles and is in no way unfair or discriminatory.<sup>10</sup>

The Board finds that the Consumer Advocate has failed to demonstrate that an oral hearing should be held to address how the costs to refurbish and modernize the Memorial substation and radial facilities and supply points are allocated and recovered from customers.

### **Non-Wires Alternatives and the Distribution Planning Process**

The Consumer Advocate submitted that the parties and the Board would benefit from an oral hearing with cross-examination of Newfoundland Power expert witnesses to provide a greater depth of evidence and understanding of issues surrounding non-wire alternatives (“NWAs”) to allow the Board to determine if Newfoundland Power is meeting supply in an environmentally-responsible manner consistent with the **Electrical Power Control Act, 1994** (the “EPCA”)<sup>11</sup> and government policy. Newfoundland Power does not agree and submitted that the evidence thoroughly addresses the issues and the record provides a level of information on NWAs adequate for the Board to have a full understanding of the proposals and no additional relevant evidence would be forthcoming through oral testimony.

The Board notes that Newfoundland Power has filed information in this proceeding addressing its consideration of NWAs in its distribution planning process,<sup>12</sup> consideration of battery storage options,<sup>13</sup> and the issues in relation to bidirectional charging.<sup>14</sup> When this issue was raised by the Consumer Advocate in Newfoundland Power’s 2022 Capital Budget Application the Board found that Newfoundland Power’s capital planning process included an assessment of alternatives such as NWAs and that the implementation of NWAs solutions in Canada was in the early stages of development.<sup>15</sup> The Board is satisfied that the written record is adequate and an oral hearing would not be of assistance for the Board in understanding the issues to be decided in this proceeding in relation to NWAs in Newfoundland Power’s distribution planning process or to address whether Newfoundland Power is meeting the requirements in the **EPCA** with respect to environmental responsibility.

### **Asset Management**

The Consumer Advocate submitted that the Board would benefit from an oral hearing and cross-examination of Newfoundland Power senior staff about its ongoing asset management review to determine if it is consistent with changes in the industry and best practice and that it would benefit the Board as it moves to finalize the Guidelines. Newfoundland Power does not agree and submitted that oral cross-examination will not elucidate any information on its asset

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<sup>10</sup> July 7, 2023 Board Letter on the Consumer Advocate’s request for a rehearing of Order No. P.U. 14(2023), page 2.

<sup>11</sup> **Electrical Power Control Act, 1994**, SNL 1994, Chapter E-5.1.

<sup>12</sup> CA-NP-165.

<sup>13</sup> CA-NP-169.

<sup>14</sup> CA-NP-176.

<sup>15</sup> Order No. P.U. 36(2021), Reasons for Decision, pages 40-41.

management review and that this proceeding is not the appropriate forum to interrogate the Board's capital budget approval process.

The Board notes that Newfoundland Power's review of its asset management is ongoing and until this work is completed it would be premature to address issues associated with asset management. As Newfoundland Power's review proceeds the Board will determine the process which should be established to address asset management. Given the potential for overlap with similar issues being addressed by Hydro, the Board may determine that there is value in considering Newfoundland Power's and Hydro's asset management approaches together in a proceeding where all the interested parties can address the issues. The Board believes that Newfoundland Power's asset management review should be addressed outside of Newfoundland Power's 2024 Capital Budget Application to allow for appropriate analysis and study and consideration of all of the relevant issues and perspectives.

In addition, the Board notes that the Guidelines are not an issue in this proceeding. The current Guidelines were established provisionally in January 2022 and continue to be addressed in a separate Board process.<sup>16</sup> The Board does not believe that it is appropriate to address potential changes to the Guidelines in Newfoundland Power's 2024 Capital Budget Application as the issues should continue to be addressed in the established process which involves parties who are not participating in Newfoundland Power's 2024 Capital Budget Application and issues which may also be relevant for Hydro.

The Board does not believe that an oral hearing with cross-examination of Newfoundland Power senior staff with respect to asset management would be of assistance in understanding the issues to be decided in this proceeding.

### **Use of Historical Averages to Determine Capital Budget Requests**

The Consumer Advocate commented that a significant portion of Newfoundland Power's 2024 Capital Budget Application is based on historical averages and argued that testimony from Newfoundland Power personnel and experts would help the Board assess whether the historical approach should be used as extensively as it is and determine if that approach is considered best practice or whether other approaches are superior in determining appropriate capital expenditures and containing costs. Newfoundland Power disagreed and submitted that the record is comprehensive in relation to the use of historical averages and an oral hearing would not be in the interest of regulatory efficiency.

The Board notes that historical averages are used to estimate expenditures likely to be required in a year where the specific expenditures to be incurred have not been quantified at the time of the filing of the capital budget application. These expenditures include routinely required high-volume work such as responding to requests for service and addressing equipment failures.<sup>17</sup>

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<sup>16</sup> The Board most recently wrote the participants in this process on June 12, 2023.

<sup>17</sup> The proposed expenditures using historical averages are: Extensions (\$12,140 million); Reconstruction (\$6,953 million); Rebuild Distribution Lines (\$4,974); Relocate/Replace Distribution Lines for Third Parties (\$4,066 million);

While the proposed amounts for this work are based on historical averages, the amount added to rate base to be recovered from customers will be based on the actual expenditures which are incurred. The historical averages change each year based on actual expenditures, and as a result they will reflect expenditure reductions due to technology advances. The evidence suggests that the historical averages used by Newfoundland Power, including the assumed inflation, have served as a reasonable basis for estimating the actual expenditures for these programs/projects.<sup>18</sup> The Board notes that historical averages are commonly used by Canadian utilities to estimate these expenses and have been used by both Newfoundland Power and Hydro for many years.<sup>19</sup> While the amount of proposed capital expenditures based on historical averages is significant there is significant oversight and review of these expenditures by virtue of the information which is required to be filed in this process and the ongoing regulatory oversight associated with the subsequent reporting requirements. The Board is satisfied that the written record includes ample evidence with respect to the use of historical averages and there would be no value in holding an oral hearing in relation to this issue in this proceeding.

### **Fortis Influence**

The Consumer Advocate submitted that it is entitled to an unequivocal answer as to whether Fortis's declared capital budget policy shaped Newfoundland Power's 2024 Capital Budget Application and that a cross-examination of Newfoundland Power's executives on this issue would better inform the Board and ratepayers on this issue. Newfoundland Power submitted that capital planning at Newfoundland Power is not influenced by Fortis and an oral examination of Newfoundland Power personnel would have limited effectiveness in showing how Fortis develops its forecasts.

This issue has been raised by the Consumer Advocate in several of Newfoundland Power's most recent capital budget applications and the evidence showed in each case that Fortis is not involved in Newfoundland Power's capital planning.<sup>20</sup> In 2021 the Board rejected the Consumer Advocate's suggestion that statements by Fortis demonstrated that Newfoundland Power has a preference for alternatives with high levels of capital investment.<sup>21</sup> The evidence filed in Newfoundland Power's 2024 Capital Budget Application also addresses this issue.<sup>22</sup> The Board does not believe that an oral hearing to interrogate Fortis's role in Newfoundland Power's 2024 Capital Budget Application would be of any assistance for the Board in the issues to be decided in this proceeding.

In conclusion the Board has considered the Consumer Advocate's request for an oral hearing in Newfoundland Power's 2024 Capital Budget Application and finds that the written hearing

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Replace Transformers (\$3,681); New Transformers (\$3,264 million); New Services (\$2,847 million); New Street Lighting (\$2,629 million); Replacement Street Lighting (\$863 million); Substation Replacements Due to In-Service Failures (\$4,797 million) and Transmission Line Maintenance (\$2,651 million).

<sup>18</sup> CA-NP-120.

<sup>19</sup> CA-NP-200.

<sup>20</sup> Newfoundland Power's 2022 Capital Budget Application, CA-NP-005.

<sup>21</sup> Order No. P.U. 36(2021), Reasons for Decision, page 41.

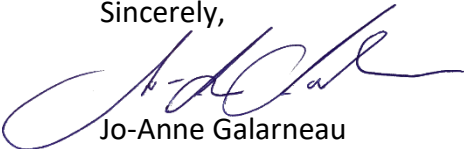
<sup>22</sup> CA-NP-207.



process has allowed for a full and effective and open and transparent review. The public written hearing process followed for utility annual capital budget applications has been upheld by the Court of Appeal and in the Board's view provides for a full and fair review, bearing in mind the costs and time required to hold an oral hearing. The Consumer Advocate expressed the view that while annual hearings may not be needed, there should be oral hearings from time to time for the parties to gain a more complete understanding of the issues related to capital spending. The Board does not agree that now is an opportune time for an oral hearing as it would serve to delay the conclusion of this proceeding without being beneficial with respect to the issues to be decided. The Board notes that Newfoundland Power is due to file its next general rate application on or before June 1, 2024 and this will provide the opportunity for the parties, including the Consumer Advocate, to probe relevant issues related to capital expenditures, the assignment of these costs and the impacts on rates, in a format which will provide the opportunity for oral testimony and cross-examination. In addition, other issues raised by the Consumer Advocate may be addressed through other Board processes which provide for the full participation of all interested parties and the consideration of all relevant issues including whether there should be similar approaches for Newfoundland Power and Hydro. The Board is satisfied that there is no basis upon which to determine that an oral hearing is necessary or would be of any assistance to the Board in addressing the issues to be determined in this proceeding.

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

Sincerely,



Jo-Anne Galarneau  
Board Secretary

JG/cj

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