

1 **Q. Please explain why in Newfoundland Power’s opinion it would not be reasonable to**
2 **set customer rates for 2024 based on the lower end of the proposed range of return**
3 **on rate base.**

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5 A. In Newfoundland Power’s view, setting customer rates in 2024 based on the lower end of
6 the proposed range of return on rate base of 6.85% would be inconsistent with the *Public*
7 *Utilities Act* (the “Act”), the *Electrical Power Control Act, 1994* (the “EPCA”) and past
8 practice of the Board. Further, Newfoundland Power submits that the approach would be
9 contrary to the Board’s directions in Order No. P.U. 3 (2022) and would not be consistent
10 with generally accepted rate-making practices in Canada.

11 **Legislation and Regulatory Practice**

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14 Section 3(a)(iii) of the EPCA provides, in effect, that customer rates be set so as to
15 provide sufficient revenue to the utility to enable it to earn a just and reasonable return as
16 construed under the Act. Section 80 of the Act provides, in effect, that a public utility is
17 entitled to an opportunity to earn a just and reasonable return on its rate base in each year.

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19 The Board has historically set the rate of return on rate base as a range of permissible
20 rates of return.¹ This practice was considered by the Newfoundland and Labrador Court
21 of Appeal in *Section 101 of the Public Utilities Act (Newfoundland)(Re)*, referred to as
22 the “Stated Case.”² In the Stated Case, Justice Green stated:

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24 *“Of course, in applying the rate of return to the rate base, as ascertained by the*
25 *Board, a single figure will have to be used since rates, tolls and charges are*
26 *expressed as finite numbers. The Board in practice has chosen the mid-point of its*
27 *stated range of rates of return as the figure to be used for this purpose. This is a*
28 *perfectly acceptable practice for the purpose of setting the rates.”³*

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30 Since 1998, the Board has set a just and reasonable return on rate base for Newfoundland
31 Power on an annual basis along with a range of ± 18 basis points.⁴ When the approval of
32 the Company’s return on rate base has resulted in a revision to customer rates, the mid-
33 point determined by the Board has been used to calculate customer rates.

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35 General rate orders include the approval of Newfoundland Power’s return on rate base,
36 and typically result in revisions to customer rates. For years considered test years in

¹ In Order No. P.U. 36 (1998-99), the Board established the 36-basis point range around the mid-point determined by the Board. The concept of the opportunity to earn a just and reasonable return within a range was also recognized by the Board prior to 1998. For example, in Order No P.U. 6 (1991), the Board ordered: *a just and reasonable return for NP is determined to be between 10.96% and 11.19% on its average rate base for 1992, which will provide an opportunity to earn a rate of return on common equity between the range of 13.00% to 13.50%. [emphasis added].*

² *Section 101 of the Public Utilities Act (Newfoundland) (Re)*, 164 Nfld & PEIR 60.

³ *Ibid.* at para 69.

⁴ For a fulsome discussion, see section 2.0 *Regulatory Practice* in the *2024 Rate of Return on Rate Base Report* filed with the Application.

1 general rate applications, the mid-point rate of return on rate base has been used to
2 determine customer rates.⁵

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4 Between 1998 and 2010, for years subsequent to a test year, the Board used the automatic
5 adjustment formula (the “Formula”) to determine a just and reasonable return on rate
6 base for Newfoundland Power to be used in setting customer rates. During this time, the
7 mid-point rate of return on rate base was used to determine customer rates.

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9 For example, when the Formula was implemented by the Board in Order No. P.U. 36
10 (1998-99) to determine Newfoundland Power’s rate of return on rate base between test
11 years, the Board ordered that:

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13 *“The new rate of return on rate base resulting from application of the formula will be*
14 *taken as the **midpoint of the range** which will be allowed for **calculating revised***
15 ***rates, tolls and charges.**” [emphasis added].⁶*

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17 Return on rate base applications in their current form were first required by the Board
18 following the suspension of the Formula in Order No. P.U. 13 (2013). In that order, the
19 Board provided that the Company may file for approval of a revised *Schedule of Rates,*
20 *Tolls and Charges* to reflect the revisions required to its 2015 rate of return on rate base
21 by the order.⁷ In that order, the Board accepted a return on equity for *ratemaking*
22 *purposes* for 2015 of 8.8% which was consistent with the return on equity used to
23 determine the mid-point return on rate base for the 2013 and 2014 test years in Order
24 No. P.U. 13 (2013).⁸

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26 In Newfoundland Power’s view, the Board’s longstanding approach to rate-setting using
27 the mid-point of rate of return on rate base appropriately gives effect to the range
28 approved by the Board and is consistent with its regulation of the Company’s return on
29 rate base under section 80 of the Act.

30 **Order No. P.U. 3 (2022)**

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32 In Order No. P.U. 3 (2022), the Board ordered that Newfoundland Power file an
33 application on or before November 15, 2023 for approval of the Company’s 2024
34 forecast average rate base and rate of return on rate base maintaining the common equity
35 ratio and return on common equity accepted for rate setting in that order of 8.50%.⁹

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38 As demonstrated in response to the additional information requested by the Board, in
39 order to determine revenue requirement and customer rates associated with a rate of
40 return on rate base at the lower end of the proposed range of return on rate base, a rate of

⁵ For example, while the Board ordered a just and reasonable return as a range in Order No P.U. 6 (1991), customer rates were determined by using the mid-point of the range. More recently, the rate of return on rate base (i.e. the mid-point) was used for both 2022 and 2023 test years to determine the customer rate change approved by the Board in Order No. P.U. 3 (2022).

⁶ See Order No. P.U. 36 (1998-99), page 71. See also Order No. P.U. 20 (1999-2000), page 2.

⁷ See Order No. P.U. 13 (2013), page 57, lines 23-24.

⁸ See Order No. P.U. 13 (2013), page 57, lines 21-24.

⁹ See Order No. P.U. 3 (2022), page 20, lines 17-20.

1 return on common equity of 8.10% must be used.¹⁰ This is inconsistent with Order No.
2 P.U. 3 (2022), which approved a return on common equity of 8.50% for rate setting
3 purposes through 2024.
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5 In Newfoundland Power's view, the use of an 8.10% return on equity would be contrary
6 to the Board's determinations in Order No. P.U. 3 (2022). Further, any approach that
7 resulted in customer rates being set at the low end of the proposed range of return on rate
8 base would be inconsistent with the ± 18 basis point range, which was also approved for
9 continued use in that order.

10 **Generally Accepted Industry Practice**

11 Section 4 of the EPCA states that:

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14 *"In carrying out its duties and exercising its powers under this Act or under the*
15 *Public Utilities Act, the public utilities board shall implement the power policy*
16 *declared in section 3, and in doing so shall apply tests which are consistent with*
17 *generally accepted sound public utility practice."*
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20 The Board has consistently used the mid-point of Newfoundland Power's rate of return
21 on rate base when setting customer rates. This is consistent with public utility practice in
22 Canada. See the response to Request for Information PUB-NP-004 for the results of a
23 jurisdictional scan of investor-owned utilities in Canada.
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25 Further, the Company is not aware of any jurisdiction in Canada that sets customer rates
26 based on a low end of a range on return on rate base. For this reason, in Newfoundland
27 Power's view, setting customer rates in this fashion would not be consistent with section
28 4 of the EPCA and would therefore not be reasonable.

¹⁰ See PUB Information Request (ii) filed with the Board on November 28, 2023.