

**P.U. 8 (2003)**

**IN THE MATTER OF** the *Public Utilities Act*  
R.S.N. 1990, Chapter P-47 (the “*Act*”);

**AND IN THE MATTER OF** a General Rate  
Application (the “Application”) by Newfoundland  
Power Inc. filed pursuant to Order No. P. U. 22  
(2002-2003)

**AND IN THE MATTER OF** a request from the  
Consumer Advocate to issue certain subpoenas.

**BEFORE:**

**Robert Noseworthy**  
**Chair and Chief Executive Officer**

**Darlene Whalen, P.Eng.**  
**Vice-Chair**

**J. William Finn, Q.C.**  
**Commissioner**

**Background**

Newfoundland Power, pursuant to Order No. P.U. 22 (2002-2003) filed an application (the “Application”) with the Board of Commissioners of Public Utilities (the “Board”) on October 11, 2002 for an Order or Orders of the Board approving among other things, the proposed rates for the various customers of Newfoundland Power, to be effective May 1, 2003. The Application was re-filed to reflect updated financial information on February 10, 2003. Intervenors in the application are Mr. Dennis Browne, Consumer Advocate and Newfoundland and Labrador Hydro.

The public hearing of the Application began on March 3, 2003. On April 1, 2003 the Consumer Advocate submitted written requests for subpoenas to be issued by the Board to the following persons:

1. Mr. Bruce Gilbert, Conservation Corps Newfoundland and Labrador
2. Mr. Brian Martin, Canada Mortgage and Housing Corporation
3. Mr. Gerard Locke, Newfoundland Power
4. Mr. Alex Knight, Newfoundland Power
5. Mr. Bruce Chafe, Chair of the Board of Directors, Newfoundland Power

Newfoundland Power requested an opportunity to make submissions on the requests for subpoenas. On April 1, 2003, the Board heard from the parties on this issue.

## Board Authority

Section 63 of the *Act* deals with the power of the Board to compel the attendance of witnesses at a hearing or inquiry:

*“At a hearing or inquiry the board may hear evidence upon oath or affirmation and may compel the attendance before it of witnesses by subpoena signed and sealed by the chairperson or a member of the board, and may by subpoena compel the production by a witness of papers, books or documents, and a witness who is served with a subpoena and paid the fees allowed to a witness for travel and attendance in the Trial Division shall be subject to the same penalties for disobeying the subpoena as he or she would be had the subpoena been issued out of the Supreme Court, and a member of the board may administer the oath or affirmation to a witness.”*

Section 93 of the *Act* deals with the power of commissioners to issue subpoenas and compel attendance of witnesses and provides that:

- (1) A commissioner for the purposes mentioned in this Act, shall have the power to administer oaths and affirmations, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.*
- (2) In case of failure on the part of a person to comply with a subpoena or on the witness may be interrogated before the board or a commissioner, it shall be the duty of the Trial Division, on application of the board or a commissioner, to compel refusal of a witness to testify to a matter regarding which the obedience in the manner that the Trial Division thinks appropriate.*

It is clear that the Board has the authority to issue subpoenas and to compel the attendance of witnesses at a hearing. This authority includes the discretion to issue or decline to issue a subpoena as appropriate in the circumstances.

## Discretion of the Board

The main issue for the Board therefore is the circumstances under which it is appropriate for the Board to exercise its discretion to issue a subpoena. In exercising this discretion, the Board acknowledges that it has a duty to act fairly, judiciously and not arbitrarily.

The Board recognizes that individuals who are compelled to attend by subpoena may be significantly inconvenienced. For this reason, the Board has to ensure that the attendance of

these witnesses is necessary and that the information being sought is not available by any other means such as through information requests, undertakings, or other witnesses.

The Board must be provided with clear reasons why, in the opinion of the requesting party, the subpoena should be granted. In particular the submission should enable the Board to determine whether the attendance and testimony of the witnesses to be called is useful, necessary and relevant for the purposes of the matter before the Board, in this case the general rate application of Newfoundland Power.

### The Subpoenas

The Board has considered the submissions of the Consumer Advocate in regards to each of the subpoenas requested and has also considered the submissions of Newfoundland Power and Newfoundland and Labrador Hydro.

With respect to the request to issue subpoenas to Mr. Alex Knight, Mr. Gerard Locke and Mr. Brian Martin, the Board is not satisfied that the evidence to be adduced through these witnesses would have a meaningful impact upon or add in a material way to the evidence already before the Board on the issues to be decided in this hearing. Therefore the Board will not exercise its discretion to issue the subpoenas to Mr. Knight, Mr. Locke and Mr. Martin.

With respect to the request to issue a subpoena to Mr. Bruce Gilbert the Board acknowledges that the Consumer Advocate has raised conservation as an issue in the proceeding. However, the Board notes that the Consumer Advocate stated that the purpose of compelling Mr. Gilbert to appear before this Board is to provide evidence in reference to the funding of the Conservation Corps Newfoundland and Labrador. The Board will not issue a subpoena to compel Mr. Gilbert to appear.

In respect of the requested subpoena for Mr. Bruce Chafe, Chair of the Board for Newfoundland Power, the Board is persuaded that the evidence sought on the issue of executive compensation may add to the evidence already before the Board on this issue. The Board will therefore grant

the request to issue a subpoena to Mr. Bruce Chafe but will limit the scope of the subpoena to his knowledge of executive compensation arising from his role as Chair of the Human Resources and Governance Committee of the Board of Directors, which is the committee that decides and approves the overall compensation for members of Newfoundland Power's executive.

**IT IS THEREFORE ORDERED THAT:**

- 1. The request of the Consumer Advocate for the issuance of subpoenas to Mr. Alex Knight, Mr. Gerard Locke, Mr. Brian Martin and Mr. Bruce Gilbert is denied.**
- 2. The request of the Consumer Advocate for the issuance of a subpoena to Mr. Bruce Chafe is granted in the form as set out in Schedule "A" to this Order.**

Dated at St. John's, Newfoundland and Labrador this 3<sup>rd</sup> day of April 2003.

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Robert Noseworthy,  
Chair & Chief Executive Officer.

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Darlene Whalen, P.Eng.,  
Vice-Chairperson.

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John William Finn, Q.C.  
Commissioner.

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G. Cheryl Blundon,  
Director of Corporate Services and  
Board Secretary.

**Schedule “A”**

**Order No. P.U. 8 (2003)**



NEWFOUNDLAND AND LABRADOR

**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

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IN THE MATTER OF: the Public Utilities Act, R.S.N. 1990, c. P.47 as amended

AND IN THE MATTER OF: a General Rate Application (the "Application")  
By Newfoundland Power Inc.  
("Newfoundland Power") filed pursuant to Order P.U. 22 (2002-2003)

SUMMONS TO A WITNESS BEFORE the Public Utilities Board:

TO: Bruce Chafe, Chairman of the Board  
Newfoundland Power Inc.  
55 Kenmount Road, P. O. Box 8910  
St. John's, NL A1B 3P6

You are hereby summoned and required to attend before the Public Utilities Board at a hearing held at **the Main Hearing Room at the Board's office at Suite 210E, 120 Torbay Road, St. John's, Newfoundland** on **Friday** the **4th** of **April 2003**, at the hour of **9:00** o'clock in the **Fore** noon , or at such time thereafter as may be directed by the Board, to give evidence on oath as to your knowledge of the compensation of the executives of Newfoundland Power arising from your role as chair/member of the Human Resources and Governance Committee.

Dated this **2nd** day of **April, 2003**.

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Commissioner

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Board Secretary

If you fail to attend and give evidence at the hearing, or produce the documents or things specified, at the time and place specified, without lawful excuse, you are liable to, punishment by the Supreme Court of Newfoundland in the same manner as if for contempt of that Court to a subpoena.