



*Newfoundland
& Labrador*

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

IN THE MATTER OF THE
2003 GENERAL RATE APPLICATION
FILED BY
NEWFOUNDLAND POWER INC.

APPENDICES

**SUPPLEMENTARY DOCUMENT
TO BOARD ORDER No. P.U. 19 (2003)**

BEFORE:

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

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

**Mr. John William Finn, Q.C.
Commissioner**

**Board of Commissioners of Public Utilities
Order No. P.U. 19 (2003)
List of Appendices**

Appendix	Description	Dated
A	2003 General Rate Application of Newfoundland Power Inc. ("NP") Application filed pursuant to Order No. P.U. 22 (2002-2003).	October 11, 2002
B	Board Order No. P. U. 27 (2002-2003) Procedural order identifying registered Intervenor and setting the schedule of dates, the order of witnesses and the procedures for the hearing of NP's General Rate Application.	November 5, 2002
C	Board Order No. P. U. 33 (2002-2003) Order denying the Consumer Advocate's application for an Order of the Board to: a) strike Ms. Kathleen McShane's evidence from the record, or alternatively b) determine that the cost related to Ms. McShane's evidence be the responsibility of NP's shareholders; and c) provide direction to the parties as to the number of experts a party should be permitted to call on any particular issue in the hearing of NP's 2003 General Rate Application.	December 11, 2003
D	Board Order No. P.U. 34 (2002-2003) Procedural Order amending Procedural Order No. 27 (2002-2003) relating to the schedule of dates and order of witnesses for the hearing of NP's 2003 General Rate Application.	December 12, 2002
E	Board Order No. P.U. 35 (2002-2003) Procedural Order approving on an interim basis from January 1, 2003, the current schedule of rates, tolls and charges of NP as approved in Order No. P.U. 22 (2002-2003).	December 19, 2002
F	Board Order No. P.U. 1 (2003) Procedural Order amending Procedural Orders P.U. No. 34 (2002-2003) and P.U. 27 (2002-2003) relating to the schedule of dates and order of witnesses for the hearing of NP's 2003 General Rate Application.	January 21, 2003
G	NP's amended General Rate Application. Amendment to the 2003 General Rate Application, originally filed by NP on October 11, 2002.	February 10, 2003
H	Board Order No. P.U. 4 (2003) Procedural Order following from previous Procedural Orders P.U. 27 (2002-2003), P.U. 34(2002-2003) and P.U. 1 (2003) relating to the order of witnesses and the rules of procedure for the hearing of NP's 2003 General Rate Application.	February 26, 2003

**Board of Commissioners of Public Utilities
Order No. P.U. 19 (2003)
List of Appendices**

Appendix	Description	Dated
I	Board Order No. P.U. 5 (2003) Order denying NP's application for an Order of the Board: 1) limiting the Board's jurisdiction, 2) limiting the issues that would be considered at the hearing, and 3) striking portions of the Consumers Advocate's issues list, except that the Order clarifies that the issue relating to the setting and fixing of a rate of return on common equity for NP would not be heard to the extent that it is beyond the Board's jurisdiction.	February 27, 2003
J	Board Order No. P.U. 7 (2003) Order accepting and adopting the Mediation Report filed with the consent of the parties relating to certain cost of service and rate design issues.	March 5, 2003
K	Board Order No. P.U. 8 (2003) Order granting the request of the Consumer Advocate for the issuance of a subpoena to Bruce Chafe, Chairman of the Board of NP, and denying the request to issue further subpoenas.	April 3, 2003

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

ORDER NUMBER: P.U. 19 (2003)

APPENDIX A

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. (“Newfoundland Power”) filed pursuant to Order No. P.U. 22 (2002-2003);

TO: The Board of Commissioners of Public Utilities (the “Board”)

THE APPLICATION OF Newfoundland Power SAYS THAT:

A. Background:

1. Newfoundland Power is a corporation organized and existing under the laws of the Province of Newfoundland and Labrador, is a public utility within the meaning of the Act and is subject to the provisions of the *Electrical Power Control Act, 1994*.
2. By Order No. P.U. 22 (2002-2003), the Board ordered Newfoundland Power to file a general rate application for a full review of Newfoundland Power’s 2003 costs, including cost of capital.
3. By Order Nos. P.U. 32 (1968) and P.U. 1 (1974) the Board ordered the establishment of a Weather Normalization Reserve for Newfoundland Power.
4. By Order Nos. P.U. 16 and 36 (1998-99), the Board ordered, *inter alia*, that an automatic adjustment formula be established to set the electrical rates and allowed rates of return of Newfoundland Power in 2000, 2001 and 2002 based upon changes to the rate of return on rate base resulting from changes in long term Government of Canada bond yields (the “Formula”).
5. By Orders No. P.U. 36 (1998-99) and No. P.U. 28 (1999-2000) the Board ordered Newfoundland Power to file a revenue recognition study prior to the filing of Newfoundland Power’s next general rate application used to create an Unbilled Revenue Increase Reserve Account.
6. By Order No. P.U. 36 (1998-99) the Board determined that there were excess earnings in 1992 and 1993 totaling \$1,908,000 on an after tax basis. The Board ordered that a total of \$954,000 on an after tax basis be recovered by customers from Newfoundland Power. As of the end of 2002, the amount remaining to be recovered will be \$238,882.

7. By Order No. P.U. 25 (1999-2000) the Board approved a revised definition of an Excess Revenue Account for Newfoundland Power to be effective January 1, 2000. For the year 2001, an amount of \$944,000 was credited to this account.
8. Section 68 of the Act provides that the Board may ascertain or determine the proper and adequate rates of depreciation of the several classes of property of a public utility.

B. Newfoundland Power Proposals:

9. Newfoundland Power proposes the Board approve accounting treatments and policies with effect from January 1, 2003 (the "Accounting Matters") to:
 - a) amortize the recovery over a five year period, of an amount of \$5.6 million that has accumulated in the Weather Normalization Reserve;
 - b) adopt on a prospective basis, the market-related method of valuing pension assets for the purposes of determining pension expense;
 - c) amortize over a three year period, the estimated Board and Consumer Advocate's regulatory costs of \$1.2 million incurred with respect to this Application; and
 - d) credit one-half of the balance of \$944,000 in the Excess Revenue Account to Newfoundland Power's revenues in each of 2003 and 2004 to reduce revenue requirements from rates that would otherwise be recovered from customers in those years.
10. Newfoundland Power proposes the Board approve provision for customer recovery of the remaining balance of the 1992 and 1993 excess earnings by reducing revenue requirement to be recovered from rates by \$176,000 in 2003 and \$349,000 in 2004.
11. Newfoundland Power proposes the Board approve the calculation of depreciation expense with effect from January 1, 2003 by:
 - a) use of the depreciation rates as recommended in the Depreciation Study filed with the Application; and
 - b) adjustment of depreciation expense to amortize over a 3 year period an accumulated reserve variance of \$17.2 million identified in the Depreciation Study filed with the Application.
12. Newfoundland Power proposes that the Board approve rates, tolls and charges effective for service provided on and after May 1, 2003, to provide an average increase in electrical rates of 1.39 per cent, based upon:

- a) a forecast average rate base for 2003 of \$597,232,000 and for 2004 of \$619,125,000;
 - b) a rate of return on average rate base of 10.48 per cent in the range of 10.23 to 10.73 per cent; and
 - c) a forecast revenue requirement to be recovered from electrical rates, following implementation of the proposals set out in paragraphs 9, 10 and 11 of the Application, of \$377,328,000 for 2003 and \$385,010,000 for 2004.
13. Newfoundland Power proposes the Board approve continued use of the Formula with changes to:
- a) adopt the method used by the National Energy Board and the British Columbia Utilities Commission to determine the risk free rate;
 - b) use an equity risk premium of 4.75 per cent at a risk free rate of 6 per cent for 2003; and
 - c) allow a range of return on rate base of 50 basis points.
14. Newfoundland Power proposes the Board approve amendments to the Rules and Regulations governing Newfoundland Power's provision of electrical service to its customers to:
- a) eliminate the statement preparation fee;
 - b) reduce the fee applicable for customer name changes from \$14 to \$8; and
 - c) extend the application of the reconnection fee to circumstances where customers request reconnection of service following a landlord's request for disconnection of service.
15. Newfoundland Power proposes the Board defer dealing with outstanding issues related to revenue recognition and the Unbilled Revenue Increase Reserve Account pending resolution of an outstanding dispute with the Canada Customs and Revenue Agency.
16. Newfoundland Power proposes the Board approve additional capital expenditures for 2003 of \$425,000 to permit Newfoundland Power to undertake a load research program.

C. Order Requested:

17. Newfoundland Power requests the Board make an Order approving:
- a) pursuant to Section 58 and 80 of the Act, the Accounting Matters set out in paragraph 9 of the Application;
 - b) pursuant to Section 80 of the Act, the provision for customer recovery of the remaining balance of 1992 and 1993 excess earnings as set out in paragraph 10 of the Application;
 - c) pursuant to Section 68 of the Act, the calculation of depreciation expense as set out in paragraph 11 of the Application;
 - d) pursuant to Sections 70 and 80 of the Act, rates, tolls and charges based upon a just and reasonable return on rate base as set out in paragraph 12 of the Application;
 - e) pursuant to Section 80 of the Act, changes to the Formula as set out in paragraph 13 of the Application;
 - f) pursuant to Section 71 of the Act, amendments to the Rules and Regulations governing Newfoundland Power's provision of electrical service to its customers to effect the changes set out in paragraph 14 of the Application;
 - g) pursuant to Section 62 of the Act, deferral of consideration of outstanding issues related to revenue recognition as set out in paragraph 15 of the Application;
 - h) pursuant to Section 41 of the Act, \$425,000 in additional capital expenditures for the purposes set out in paragraph 16 of the Application; and
 - i) such further, other or alternate matters which may upon hearing of the Application appear just and reasonable in all of the circumstances.

D. Communications:

18. Communication with respect to this Application should be forwarded to the attention of Gillian D. Butler, Q.C. and Peter Alteen, Counsel to Newfoundland Power.

DATED at St. John's, Newfoundland, this 11th day of October, 2002.

NEWFOUNDLAND POWER INC.

Gillian D. Butler, Q.C. and Peter Alteen
Newfoundland Power Inc.
P.O. Box 8910
55 Kenmount Road
St. John's, Newfoundland
A1B 3P6

Telephone: (709) 737-5859
Telecopier: (709) 737-2974

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. (“Newfoundland Power”) filed pursuant to Order No. P.U. 22 (2002-2003);

AFFIDAVIT

I, Philip G. Hughes, of St. John's in the Province of Newfoundland and Labrador, Chartered Accountant, make oath and say as follows:

1. That I am employed with Newfoundland Power Inc. as President and Chief Executive Officer.
2. To the best of my knowledge, information and belief, all matters, facts and things set out in the Application are true.

SWORN to before me at St. John's
in the Province of Newfoundland and
Labrador this 11th day of October, 2002
before me:

Barrister

Philip G. Hughes

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

ORDER NUMBER: P.U. 19 (2003)

APPENDIX B

P.U. 27 (2002-2003)

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)

BEFORE:

Robert Noseworthy
Chair and Chief Executive Officer

Darlene Whalen, P.Eng.
Vice-Chairperson

John William Finn, Q.C.
Commissioner

PROCEDURAL ORDER

Newfoundland Power Inc. (“NP”), pursuant to Order No. P.U. 22 (2002-2003), filed an 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 NP, to be effective May 1, 2003.

Notice of the Application and Pre-hearing Conference was published in newspapers throughout Newfoundland and Labrador beginning on October 19, 2002.

On October 30, 2002 a Pre-hearing Conference was held in the Board’s Hearing Room, 2nd Floor, Prince Charles Building, 120 Torbay Road, St. John’s.

The primary objectives of the Pre-hearing Conference, as set out in the Notice, were as follows:

1. Identify Intervenors and other interested parties.
2. Establish an order of witnesses.
3. Establish an order of cross-examination of witnesses.
4. Establish a protocol and procedure for filing evidence, information requests, and other submissions to the Board.
5. Identify distribution lists for the service of documents.
6. Provide focus to the issues.
7. Determine other such matters relevant to the hearing.

Having heard from the parties and giving regard to their agreement with respect to the proposed schedule, order of witnesses, and procedures for the hearing of the Application, the Board makes the following order pursuant to the provisions of the *Act* and regulations there under.

THE BOARD ORDERS THAT:

1. The registered Intervenors, the schedule of dates, the order of witnesses, and the procedures for the hearing of the Application are as set out in Appendix “A” to this Order.

DATED at St. John's, Newfoundland and Labrador this 5th day of November 2002.

Robert Noseworthy,
Chair & Chief Executive Officer.

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

John William Finn, Q.C.
Commissioner.

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

Appendix "A"

- Item 1. Registered Intervenors**
- Item 2. Schedule of Dates**
- Item 3. Order of Witnesses**
- Item 4. Rules of Procedure**
- Item 5. Distribution Listings**

Appendix “A”-Item 1.**Registered Intervenors**

The following is a list of parties who are identified as registered Intervenors to this hearing:

1. **Consumer Advocate**
represented by
Dennis Browne, Q.C. and Stephen Fitzgerald
Browne Fitzgerald Morgan & Avis Legal Counsel
P. O. Box 23135
Terrace on the Square, Level II
St. John’s, NL
A1B 4J9
Telephone: 724-3800
Fax: 754-3800

2. **Newfoundland and Labrador Hydro**
represented by
Maureen P. Greene, Q.C. and Geoffrey Young
Vice-President Human Resources, Legal Counsel
General Counsel & Corporate Secretary
Hydro Place, Columbus Drive
P.O. Box 12400
St. John’s, NL
A1B 4K7
Telephone: 737-1465
Fax: 737-1782

Appendix “A”-Item 2.**Schedule of Dates**

The following dates are set:

November 2002

Nov. 27 Counsel Conference
Nov. 28 Motions Day

December 2002

Dec. 6 Requests for Information (“RFI’s”) submitted to NP
Dec. 6 NP files Issues list
Dec. 18 Counsel Conference
Dec. 19 Motions Day
Dec. 23 Responses to RFI’s filed by NP

January 2003

Jan. 7 Intervenors file Issues list
Jan. 10 Expert Reports and Pre-filed testimony filed by Intervenors and Board
Jan 10 Witness lists filed
Jan. 15 Counsel Conference - Issues
Jan. 17 RFI’s on Intervenor & Board Expert Reports and Pre-filed testimony
Jan. 24 Intervenor & Board responses to RFI’s
Jan. 28 & 29 Negotiation Days/Technical Conference
Jan. 31 Last filing date before hearing commencement, all answers to outstanding questions to be filed

February 2003

Feb. 5 Hearing to commence

Appendix “A”-Item 3.

Order of Witnesses

The following order of witnesses is established:

NP - Presentation of Application

NP - President & Chief Executive Officer	-	Philip Hughes
NP - Vice-President	-	Earl Ludlow
NP - Vice-President	-	Barry Perry

Cost of Service Witnesses

NP - Cost of Service Witness	-	Lorne Henderson
NP - Cost of Service Witness	-	Larry Brockman
CA - Cost of Service Witness	-	Doug Bowman

Other expert witnesses

NP - Regulatory Expert	-	John T. Browne
NP - Depreciation Expert	-	John F. Wiedmayer

Cost of Capital Witnesses

NP - Cost of Capital Expert Witness	-	Kathleen McShane
NP - Cost of Capital Expert Witness	-	Roger Morin
CA - Cost of Capital Expert Witness	-	Basil Kalymon

Other witnesses

NP - Forecasting	-	Ron Crane
BOARD - Financial Consultant	-	Bill Brushett

Appendix “A”-Item 4

Rules of Procedure

Public Record

1. Unless otherwise ordered by the Board, all documents filed with respect to this proceeding shall be placed on the public record.

Form of Documents

2. (1) Unless otherwise ordered by the Board, the official record of this proceeding will be the original paper copy filed with the Board’s Secretary
- (2) Every written document filed by a party shall be prepared as follows:
 - (a) Typed, written or printed on 8½” X 11” letter size paper, 3-hole punched for standard binders.
 - (b) Each page shall be numbered.
 - (c) Where reasonable, each line shall be numbered.

Filing of Documents

3. (1) All documents shall be filed with the Board Secretary.
- (2) Documents may be filed by:
 - (a) Hand delivery;
 - (b) Courier service;
 - (c) Registered Mail;
 - (d) Facsimile; or
 - (e) Other means directed by the Board.
- (3) Filing is accomplished when the Board receives the submission.
- (4) All documents shall be date and time stamped when received at the Board’s Office.
- (5) All documents filed according to the scheduled dates shall be filed no later than 3:00 P.M. on the date stipulated. Documents filed after this time or on a Board holiday shall be considered as filed on the next Board business day.

Revisions to Documents

4. (1) A party may revise any document where new information or information to correct errors on submitted filings becomes available before the completion of the hearing.
- (2) Where all or any part of a document is revised, each revision shall indicate the page(s) revised, the line(s) revised, the number of the revision (i.e. 1st revision), and the date of the revision.
- (3) Where a revision is made to a document the Board may, upon its own motion or upon the request of another party, after receiving submissions of the parties, make any order in respect of the revisions.

Service of Documents

5. (1) All documents shall be served upon the other parties in this proceeding.
- (2) Parties will appoint one person to receive documents for this proceeding.
- (3) Service may be made as follows:
 - (a) Hand delivery;
 - (b) Courier service;
 - (c) Registered Mail;
 - (d) Facsimile; or
 - (e) Other means ordered by the Board.
- (4) Service will be effective:
 - (a) On the day of delivery, where the document is sent by hand, courier or facsimile.
 - (b) On the date of receipt, where the document is delivered by registered mail.
 - (c) On a date determined by the Board, where service is made by any other means.

Number of Copies of Filings and other Documents

6. (1) Unless otherwise ordered by the Board, parties filing documents with the Board shall adhere to the following guidelines:
 - (a) File with the Board Secretary one original signed copy of each document.
 - (b) Provide 12 copies of the original documents with the Board.
 - (c) Serve one copy of each document to the parties.
 - (d) Distribute the documents as set out for each party in the Distribution Listing detailed in Item 5 of Appendix “A” to this Order.

Charge for Copies

7. (1) The Board will provide a copy of any document authored by the Board or its consultants at no charge.
- (2) Copies of documents originating or authored by a party should be requested directly from the party.
- (3) One copy of the transcript for each day of the hearing will be provided to each party at no cost.
- (4) Copies of the Legislation, Acts, and Regulations can be obtained from the Queen's Printer, viewed at the Board's Main Office, or viewed on the Board's Website at www.pub.nf.ca.
- (5) The Board will charge copy fees for the cost associated with the reproduction of any other document requested by an individual or party in accordance with the applicable legislation.

Electronic Filing

8. (1) Every party, unless otherwise ordered by the Board, shall file with the Board an electronic version of all documentation filed with the Board in this proceeding in the following manner:
 - a) Each individual document shall be converted while in electronic form to "read only" *.pdf format (Adobe Acrobat), still allowing for key word searches and cut and paste functionality.
 - b) Two days after the day of filing of the hard copy, one copy of the electronic *.pdf file will be emailed to ito@pub.nf.ca.
 - c) All Documents that are generated in-house by the parties are to be filed electronically in the manner prescribed in this Order, with the exception of:
 - i. Covering letters or correspondence;
 - ii. Background reports, Board orders or historical documentation that are unavailable or impractical to provide electronically, and
 - iii. Case law filed in support of Motions.
- (2) Copies of all documentation filed with the Board in this proceeding will be placed on the Board's website, (www.pub.nf.ca) where it will be available for review or download.
- (3) The electronic file will not be an official record for the purposes of this proceeding.

Public Viewing

9. Interested persons may view any or all documents filed in this proceeding on the Board's website, (www.pub.nf.ca) or at the Board's main office by contacting the Board Secretary.

Time

10. All references to time shall be clear days, that is the first and the last day shall be excluded.

Motions

11.
 - (a) As noted in the Schedule of Dates, certain days have been set aside for the purpose of hearing motions. Subject to part (b) of this section, any party intending to file a motion must do so in accordance with this schedule.
 - (b) The Board may hear motions on other than scheduled Motion days at the request of a party.
 - (c) Motions must be filed in writing with the Board and served upon the parties two days before the scheduled Motion day.
 - (d) The responding parties must file with the Board and serve upon the parties response briefs to a Motion one day before the scheduled Motion day.

Procedures for Presentation of Evidence and Cross-examination of Witnesses

12.
 - (a) Pre-filed testimony of all non-expert witnesses and reports of expert witnesses should be adopted upon their taking the stand, and, unless otherwise objected to, will be accepted as evidence.
 - (b) Direct examination should be limited to matters set out in the witness's pre-filed testimony. The Board may allow a witness to provide supplementary evidence or may restrict direct testimony where it is redundant with pre-filed evidence.
 - (c) Direct evidence may be presented by way of a panel of witnesses. Prior notice must be given to the Board Secretary and the parties. When examining a panel of witnesses Counsel shall put each question to a particular witness on the panel.
 - (d) Where co-counsel intend to examine the same witness, prior notice must be given to the Board Secretary and the parties. Only one counsel can examine a witness on a subject matter.

- (e) Direct examination will be followed by examinations in the following order, excluding the person calling the witness:

- Newfoundland Power
 - Consumer Advocate
 - Hydro
 - Board Hearing Counsel

- (f) After the examinations and Board questions are completed the person calling the witness will have an opportunity to re-direct examination.
- (g) Matters arising during the presentation of evidence will proceed in the order set out for examination excluding the person raising the issue.
- (h) When presenting a document to a witness one copy will be provided to the witness, 12 copies to the Board Secretary and one copy to each party.

Other

- 13. Unless otherwise ordered by the Board, the rules of procedure set out in *Regulation 39/96* apply in this proceeding to the extent that they are consistent with this Order.

Appendix “A”- Item 5.

Distribution Listings

DISTRIBUTION ADDRESS LIST

1. **Board of Commissioners of Public Utilities**

Suite E210, Prince Charles Building
120 Torbay Road
P. O. Box 21040
St. John’s, NL
A1A 5B2

Attention: G. Cheryl Blundon
Board Secretary
Telephone: 726-8600
Fax: 726-9604

e-mail: ito@pub.nf.ca
e-mail: cheryl@pub.nf.ca

2. **Newfoundland Power Inc.**

55 Kenmount Road
P.O. Box 8910
St. John’s, NL
A1B 3P6

Attention: Gillian Butler, Q.C.
Peter Alteen, Counsel
Telephone: 737-5859
Fax: 737-2974

e-mail: gbutler@newfoundlandpower.com
e-mail: palteen@newfoundlandpower.com

3. **Consumer Advocate**

c/o Browne Fitzgerald Morgan & Avis
P. O. Box 23135
Terrace on the Square, Level II
St. John’s, NL
A1B 4J9

Attention: Dennis Browne, Q.C.
Stephen Fitzgerald, Counsel
Telephone: 724-3800
Fax: 754-3800

e-mail: dbrowne@churchill-law.nf.net
e-mail: sfitzgerald@churchill-law.nf.net

4. **Newfoundland and Labrador Hydro**

Hydro Place, Columbus Drive
P.O. Box 12400
St. John’s, NL
A1B 4K7

Attention: Maureen P. Greene, Q.C.
Geoffrey Young, Counsel
Telephone: 737-1465
Fax: 737-1782

e-mail: mgreene@nlh.nf.ca
e-mail: gyoung@nlh.nf.ca

Appendix "A"- Item 5.

NEWFOUNDLAND POWER DISTRIBUTION LISTING

Newfoundland Power Inc.

55 Kenmount Road

P.O. Box 8910

St. John's, NL

A1B 3P6

Attention: Gillian Butler, Q.C.

Peter Alteen, Counsel

Telephone: 737-5859

Fax: 737-2974

e-mail: gbutler@newfoundlandpower.com

e-mail: palteen@newfoundlandpower.com

COPIES TO:

1. Board of Commissioners of Public Utilities

Suite E210, Prince Charles Building

120 Torbay Road

P. O. Box 21040

St. John's, NL

A1A 5B2

Attention: G. Cheryl Blundon

Board Secretary

Telephone: 726-8600

Fax: 726-9604

e-mail: ito@pub.nf.ca

e-mail: cheryl@pub.nf.ca

2. Consumer Advocate

c/o Browne Fitzgerald Morgan & Avis

P. O. Box 23135

Terrace on the Square, Level II

St. John's, NL

A1B 4J9

Attention: Dennis Browne, Q.C.

Stephen Fitzgerald, Counsel

Telephone: 724-3800

Fax: 754-3800

e-mail: dbrowne@churchill-law.nf.net

e-mail: sfitzgerald@churchill-law.nf.net

3. Newfoundland and Labrador Hydro

Hydro Place, Columbus Drive

P.O. Box 12400

St. John's, NL

A1B 4K7

Attention: Maureen P. Greene, Q.C.

Geoffrey Young, Counsel

Telephone: 737-1465

Fax: 737-1782

e-mail: mgreene@nlh.nf.ca

e-mail: gyoung@nlh.nf.ca

Appendix "A"- Item 5.

CONSUMER ADVOCATE DISTRIBUTION LISTING

Consumer Advocate

c/o Browne Fitzgerald Morgan & Avis

P. O. Box 23135

Terrace on the Square, Level II

St. John's, NL

A1B 4J9

Attention: Dennis Browne, Q.C.

Stephen Fitzgerald, Counsel

Telephone: 724-3800

Fax: 754-3800

e-mail: dbrowne@churchill-law.nf.net

e-mail: sfitzgerald@churchill-law.nf.net

COPIES TO:

1. Board of Commissioners of Public Utilities

Suite E210, Prince Charles Building

120 Torbay Road

P. O. Box 21040

St. John's, NL

A1A 5B2

Attention: G. Cheryl Blundon

Board Secretary

Telephone: 726-8600

Fax: 726-9604

e-mail: ito@pub.nf.ca

e-mail: cheryl@pub.nf.ca

2. Newfoundland Power Inc.

55 Kenmount Road

P.O. Box 8910

St. John's, NL

A1B 3P6

Attention: Gillian Butler, Q.C.

Peter Alteen, Counsel

Telephone: 737-5859

Fax: 737-2974

e-mail: gbutler@newfoundlandpower.com

e-mail: palteen@newfoundlandpower.com

3. Newfoundland and Labrador Hydro

Hydro Place, Columbus Drive

P.O. Box 12400

St. John's, NL

A1B 4K7

Attention: Maureen P. Greene, Q.C.

Geoffrey Young, Counsel

Telephone: 737-1465

Fax: 737-1782

e-mail: mgreene@nlh.nf.ca

e-mail: gyoung@nlh.nf.ca

Appendix "A"- Item 5.

HYDRO DISTRIBUTION LISTING

Newfoundland and Labrador Hydro

Hydro Place, Columbus Drive

P.O. Box 12400

St. John's, NL

A1B 4K7

Attention: Maureen P. Greene, Q.C.

Geoffrey Young, Counsel

Telephone: 737-1465

Fax: 737-1782

e-mail: mgreene@nlh.nf.ca

e-mail: gyoung@nlh.nf.ca

COPIES TO:

1. **Board of Commissioners of Public Utilities**

Suite E210, Prince Charles Building

120 Torbay Road

P. O. Box 21040

St. John's, NL

A1A 5B2

Attention: G. Cheryl Blundon

Board Secretary

Telephone: 726-8600

Fax: 726-9604

e-mail: ito@pub.nf.ca

e-mail: cheryl@pub.nf.ca

2. **Newfoundland Power Inc.**

55 Kenmount Road

P.O. Box 8910

St. John's, NL

A1B 3P6

Attention: Gillian Butler, Q.C.

Peter Alteen, Counsel

Telephone: 737-5859

Fax: 737-2974

e-mail: gbutler@newfoundlandpower.com

e-mail: palteen@newfoundlandpower.com

3. **Consumer Advocate**

c/o Browne Fitzgerald Morgan & Avis

P. O. Box 23135

Terrace on the Square, Level II

St. John's, NL

A1B 4J9

Attention: Dennis Browne, Q.C.

Stephen Fitzgerald, Counsel

Telephone: 724-3800

Fax: 754-3800

e-mail: dbrowne@churchill-law.nf.net

e-mail: sfitzgerald@churchill-law.nf.net

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

ORDER NUMBER: P.U. 19 (2003)

APPENDIX C

P.U. 33 (2002-2003)

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

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

AND IN THE MATTER OF a Motion by the
Consumer Advocate.

BEFORE:

Robert Noseworthy
Chair and Chief Executive Officer

Darlene Whalen, P.Eng.
Vice-Chairperson

John William Finn, Q.C.
Commissioner

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. As part of the Application Newfoundland Power filed with the Board the pre-filed evidence and testimony of the witnesses it intends to call in support of the Application, including the pre-filed testimony of two cost of capital witnesses, Ms. Kathleen McShane and Dr. Roger Morin.

On November 25, 2002 the Consumer Advocate filed a Notice of Motion with the Board requesting that a) the Board strike Ms. McShane’s evidence from the record; or b) in the alternative, if Ms. McShane’s evidence is allowed, that the cost related to Ms. McShane’s evidence should not be the responsibility of the ratepayers but be the responsibility of Newfoundland Power’s shareholders; and c) that the Board provide direction to the parties as to the number of experts a party should be permitted to call on any particular issue.

The Board convened on December 4, 2002 to hear from the parties regarding the motion. Submissions were made by the Consumer Advocate, Mr. Dennis Browne, by Newfoundland and Labrador Hydro’s counsel Mr. Geoff Young, and by Newfoundland Power’s counsel Ms. Gillian Butler. In this decision the Board will deal with each request of the Consumer Advocate separately.

The Consumer Advocate has requested that the Board strike the evidence of Ms. McShane from the record on the basis that “*The evidence is not relevant, having been adopted by no party, and is superfluous to this proceeding...*”. The Consumer Advocate further argued that the calling of two cost of capital experts in the same proceeding is without precedent in previous applications before the Board, that it adds to the cost of the hearing, and that the ratepayers should not have to bear the costs of two experts on the same issue. It was also stated by the Consumer Advocate that the evidence of Ms. McShane is not being relied upon by Newfoundland Power, since they have not accepted her recommendation with respect to the rate of return on equity and have instead relied on the recommendations of their other cost of capital witness, Dr. Morin.

Counsel for Newfoundland Power responded by stating that Ms. McShane’s evidence is relevant to the issue of what constitutes a just and reasonable rate of return on rate base for the utility. Ms. Butler reviewed Ms. McShane’s pre-filed testimony and the issues to be addressed by the witness, which will include capital market conditions, change in capital market conditions, the capital structure of the utility, returns on equity, and the automatic adjustment mechanism. It was argued by Newfoundland Power that since the process of determining what constitutes a just and reasonable rate of return is not an exact science, it is not unusual for experts to disagree on the type of tests and methodologies to be used. The procedural appropriateness of the request was also questioned, with Newfoundland Power arguing that, as the applicant in this matter, they should have the latitude to call and examine the witnesses it feels necessary to prove its case. Ms. Butler stated that “...*to strike out Kathleen McShane’s evidence on an issue this important*

would be not only an extraordinary exercise of the Board's authority but would definitely be procedurally unfair and deny the Applicant natural justice."

Without hearing the substance of the direct evidence and benefiting from the scrutiny of cross-examination on that evidence, the Board is not in a position to concur with the Consumer Advocate that Ms. McShane's evidence is either irrelevant, redundant or superfluous. The Board finds that, from a preliminary examination of Ms. McShane's prefiled evidence, it does pertain to the range of issues to be considered by the Board.

While the Board does have the authority to establish its own procedures, the Board does not, of its own motion, exercise this authority to vet and weigh the potential value of evidence in advance of hearing the evidence itself. The Board does not, for example, review or vet questions asked of the applicant by parties during a proceeding for their relevancy or potential value to the determination to be made by the Board. It is the Board's view that the questions are asked to enhance the parties' understanding of the matter and that it would be unfair, except in unusual circumstances, for the Board to prejudge the need for the information requested. The Board must be equally, if not more judicious, in its approach regarding the pre-filed evidence of expert witnesses.

The Board may exclude evidence upon hearing a motion from a party where it is satisfied that the information is not required for a full understanding of the matter before it. It is the Board's view, however, that given its duty of fairness, there would have to be compelling reasons for the Board to exercise this discretion. While the Board is very conscious of the costs associated with public hearings, the Board, without equivocation,

must defer to its primary duty of fairness and natural justice, both to the applicant and to the intervenors. As the applicant has the burden of proof to make and defend any application before the Board, the Board agrees that the applicant should have the latitude to determine which witnesses it feels it needs to call to make its case.

Accordingly the Board will not strike the evidence of Ms. McShane as requested by the Consumer Advocate.

The Consumer Advocate has also requested that, if the Board should allow Ms. McShane's evidence, that the cost related to Ms. McShane's evidence should not be the responsibility of the ratepayers but be the responsibility of Newfoundland Power's shareholder. Newfoundland Power contends that this request is premature. The Board has no basis upon which to base a decision on costs in advance of hearing the evidence itself. Section 90 of the Act gives the Board the authority and discretion to decide and award costs related to a proceeding before the Board. The Board does not view this authority as one that can be exercised in advance of a proceeding, which has been reflected in Board Orders on similar motions in past hearings. The Board will hear argument from all parties on the issue of costs at the end of the evidentiary portion of the hearing and the parties may argue the value and contribution to the proceeding of any of Newfoundland Power's expert witnesses, or those of any other party.

The issue of the costs related to Ms. McShane's evidence will be dealt with by the Board as part of its final decision on costs.

The Consumer Advocate has also requested that the Board provide directions to the parties as to the number of experts a party should be permitted to call on any particular issue. Upon questioning from the Board Chair, the Consumer Advocate clarified that he wished this direction to apply for this hearing and for all future proceedings before the Board. Again, the Board wishes to reiterate its desire to balance the right of any party to a fair hearing with the right of other parties, including consumers, to not have to bear any unnecessary costs. While the Board has the discretion to set its own procedures, the Board will not arbitrarily set in place a rule as to the number of experts an applicant or intervenor should be permitted to call on any particular issue. Consistent with the Board's ruling in this case, without the benefit of considering the particular circumstances involved, such a decision may compromise one of the Board's most fundamental underpinnings, that of fairness and natural justice. It is also the Board's view that, in light of the complexity of the many of the issues that come before the Board, such an order may actually limit the ability of the Board to gain a full understanding of the issue at hand. The Board expects all parties to be reasoned and judicious in terms of the value of the evidence to be brought before the Board on any matter, including that of expert witnesses.

The Board will not limit the number of experts a party should be permitted to call on any particular issue.

IT IS THEREFORE ORDERED THAT:

The motion of the Consumer Advocate is denied.

DATED at St. John's, Newfoundland and Labrador this 11th day of December, 2002.

Robert Noseworthy,
Chair and Chief Executive Officer.

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

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

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

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

ORDER NUMBER: P.U. 19 (2003)

APPENDIX D

P.U. 34 (2002-2003)

**AMENDMENT TO P.U. 27 (2002-2003)
PROCEDURAL ORDER**

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)

BEFORE:

Robert Noseworthy
Chair and Chief Executive Officer

Darlene Whalen, P.Eng.
Vice-Chairperson

John William Finn, Q.C.
Commissioner

AMENDED PROCEDURAL ORDER

WHEREAS Newfoundland Power Inc. (“NP”), pursuant to Order No. P.U. 22 (2002-2003) filed an 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 NP, to be effective May 1, 2003; and

WHEREAS Notice of the Application and Pre-hearing Conference was published in newspapers throughout Newfoundland and Labrador beginning on October 19, 2002 and the pre-hearing conference was held in the Board’s Hearing Room, 2nd Floor, Prince Charles Building, 120 Torbay Road, St. John’s; and

WHEREAS the Board issued Order No. P.U. 27 (2002-2003) which sets out a Schedule of Dates and the Order of Witnesses for the hearing of the Application; and

WHEREAS the parties to the within matter have all agreed that the Schedule of Dates set out in Order No. P.U. 27 (2002-2003), as well as the Order of Witnesses set out in Order No. P. U. 27 (2002-2003) should be revised; and

WHEREAS the Board is satisfied that the revisions to the Schedule of Dates and Order of Witnesses are necessary and appropriate.

THE BOARD ORDERS THAT:

1. The Schedule of Dates for the hearing of this Application is amended as set out in Appendix “A” – Item 2. – 1st Revision.
2. The Order of Witnesses for the hearing of this Application is amended as set out in Appendix “A” – Item 3. – 1st Revision.

DATED at St. John's, Newfoundland and Labrador this 12th day of December 2002.

Robert Noseworthy,
Chair & Chief Executive Officer.

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

John William Finn, Q.C.
Commissioner.

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

Appendix “A”-Item 2.

Schedule of Dates

The following dates are set:

November 2002

Nov. 27 Counsel Conference
Nov. 28 Motions Day

December 2002

Dec. 13 Requests for Information (“RFI’s”) submitted to NP by Board and Hydro
Dec. 18 RFI’s submitted to NP by CA
Dec. 18 Counsel Conference
Dec. 19 Motions Day

January 2003

Jan. 13 NP files Issues list
Jan. 13 Responses to RFI’s filed by NP
Jan. 21 Expert Reports and Pre-filed testimony filed by Intervenors and Board
Jan. 23 Intervenors file Issues list
Jan 23 Witness lists filed
Jan. 28 RFI’s on Intervenor & Board Expert Reports and Pre-filed testimony
Jan. 29 Counsel Conference
Jan. 30 Motions day

February 2003

Feb. 4 Intervenor & Board responses to RFI’s
Feb. 11 & 12 Negotiation Days/Technical Conference
Feb. 13 Last filing date before hearing commencement, all answers to outstanding questions to be filed
Feb. 18 Hearing to commence

Appendix “A” – Item 3.

Order of Witnesses

The following order of witnesses is established:

NP - Presentation of Application

NP - President & Chief Executive Officer - Philip Hughes
NP - Vice-President - Earl Ludlow
NP - Vice-President - Barry Perry

Other witnesses

NP - Forecasting - Ron Crane

Other expert witnesses

NP - Regulatory Expert - John T. Browne
NP - Depreciation Expert - John F. Wiedmayer

Cost of Capital Witnesses

NP - Cost of Capital Expert Witness - Roger Morin
NP - Cost of Capital Expert Witness - Kathleen McShane
CA - Cost of Capital Expert Witness - Basil Kalymon

Cost of Service Witnesses

NP - Cost of Service Witness - Lorne Henderson
NP - Cost of Service Witness - Larry Brockman
CA - Cost of Service Witness - Doug Bowman

Other witnesses

BOARD - Financial Consultant - Bill Brushett

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

ORDER NUMBER: P.U. 19 (2003)

APPENDIX E

P.U. 35 (2002-2003)

INTERIM RATES ORDER

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

AND IN THE MATTER OF a Application
By Newfoundland Power Inc. filed pursuant
to Section 75 of the *Act* and Order No.
P. U. 22 (2002-2003)

WHEREAS in Order No. P.U. 22 (2002-2003) (the "Order") the Board of Commissioners of Public Utilities (the "Board") approved a schedule of rates, tolls and charges for Newfoundland Power Inc. ("Newfoundland Power") to be effective on all energy consumed on and after September 1, 2002;
and

WHEREAS the Order further provided that the rates approved by the Board shall be in effect until December 31, 2002 and that Newfoundland Power file a general rate application for a full review of its 2003 costs, including cost of capital (the "2003 General Rate Application"), by October 11, 2002;
and

WHEREAS the effect of the Order is that there was no approved schedule of rates, tolls and charges for Newfoundland Power effective from and after January 1, 2003; and

WHEREAS Newfoundland Power filed its 2003 General Rate Application with the Board on October 11, 2002; and

WHEREAS Section 75 of the *Act* provides that the Board may make an interim order unilaterally and without public hearing or notice, approving with or without modification a schedule of rates, tolls and charges submitted by a public utility, upon the terms and conditions that it may decide; and

WHEREAS Newfoundland Power filed an application with the Board on December 16, 2002 for an order approving, on an interim basis from January 1, 2003, the current schedule of rates, tolls and charges (the “Interim Rate Order”) as approved in Order No. P.U. 22 (2002-2003) to remain in effect until further order of the Board following the hearing of the 2003 General Rate Application; and

WHEREAS the Intervenors in the 2003 General Rate Application have consented to the Board considering the application without a hearing; and

WHEREAS the Board is satisfied that granting the Interim Rate Order is necessary and appropriate in the circumstances.

THE BOARD ORDERS THAT:

Pursuant to Section 75 of the *Public Utilities Act*, RSN 1990, Chapter P-47, the Board approves, on an interim basis from January 1, 2003, the current schedule of rates, tolls and charges of Newfoundland Power as approved in Order No. P.U. 22 (2002-2003), which will remain in effect until a final order of the Board.

DATED at St. John's, Newfoundland and Labrador this 19th day of December 2002.

Robert Noseworthy,
Chair & Chief Executive Officer.

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

John William Finn, Q.C.
Commissioner.

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

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

ORDER NUMBER: P.U. 19 (2003)

APPENDIX F

P.U. 1 (2003)

**PROCEDURAL ORDER
AMENDMENT TO P.U. 34 (2002-2003)
WHICH AMENDED P.U. 27 (2002-2003)**

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)

BEFORE:

Robert Noseworthy
Chair and Chief Executive Officer

Darlene Whalen, P.Eng.
Vice-Chair

AMENDED PROCEDURAL ORDER

WHEREAS Newfoundland Power Inc. (“NP”), pursuant to Order No. P.U. 22 (2002-2003) filed an 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 NP, to be effective May 1, 2003; and

WHEREAS Notice of the Application and Pre-hearing Conference was published in newspapers throughout Newfoundland and Labrador beginning on October 19, 2002 and the pre-hearing conference was held in the Board’s Hearing Room, 2nd Floor, Prince Charles Building, 120 Torbay Road, St. John’s; and

WHEREAS the Board issued Order No. P.U. 27 (2002-2003) which sets out a Schedule of Dates and the Order of Witnesses for the hearing of the Application; which was further amended as set out in Order No. P.U. 34 (2002-2003); and

WHEREAS on January 7, 2003 NP filed an application with the Board to modify Order No. P.U. 34 (2002-2003) by adjusting the Schedule of Dates to extend the filing date for its responses to the Requests for Information to January 27, 2003 and to postpone the commencement of the hearing to March 3, 2003; and

WHEREAS upon hearing the motion on January 10, 2003 the Board rendered an oral decision extending the date for the filing of responses by NP to Requests for Information from January 13, 2003 to January 27, 2003; and

WHEREAS the Board reserved its decision on NP’s request to postpone the start of the hearing to March 3, 2003; and

WHEREAS the Board is satisfied that the postponement of the start date of the hearing from February 18, 2003 to March 3, 2003 as requested by NP is reasonable and justified in the circumstances; and

WHEREAS the delay in the start of the hearing will result in necessary changes to the Schedule of

Dates and may also impact on the Order of Witnesses as outlined in Order No. P.U. 27 (2002-2003).

WHEREAS the schedule for the hearing, including the order of witnesses, will be set by the Board in advance of the start of the hearing.

THE BOARD ORDERS THAT:

1. The Schedule of Dates for the hearing of this Application is amended as set out in Appendix “A” – Item 2. – 2nd Revision.
2. The Order of Witnesses as set out in Order No. P.U. 27 (2002-2003) Appendix “A” – Item 3 – 1st Revision is rescinded.

DATED at St. John’s, Newfoundland and Labrador this 21st day of January 2003.

Robert Noseworthy,
Chair & Chief Executive Officer.

Darlene Whalen, P.Eng.,
Vice-Chair

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

Appendix “A”-Item 2.

Schedule of Dates

The following dates are set:

November 2002

Nov. 27 Counsel Conference
Nov. 28 Motions Day

December 2002

Dec. 13 Requests for Information (“RFI’s”) submitted to NP by Board and Hydro
Dec. 18 RFI’s submitted to NP by CA
Dec. 18 Counsel Conference
Dec. 19 Motions Day

January 2003

Jan. 13 NP files Issues list
Jan. 27 Responses to RFI’s filed by NP

February 2003

Feb. 4 Expert Reports and Pre-filed testimony filed by Intervenors and Board
Feb. 5 Intervenors file Issues list
Feb. 5 Witness lists filed
Feb. 11 RFI’s on Intervenor & Board Expert Reports and Pre-filed Testimony
Feb. 12 Counsel Conference
Feb. 13 Motions day
Feb. 18 Intervenor & Board responses to RFI’s
Feb. 19 Last filing date before hearing commencement, all answers to outstanding questions to be filed
Feb. 24 & 25 Negotiation Days/Technical Conference
Mar. 3 Hearing to commence

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

ORDER NUMBER: P.U. 19 (2003)

APPENDIX G

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. (“Newfoundland Power”) filed pursuant to Order No. P.U. 22 (2002-2003);

TO: The Board of Commissioners of Public Utilities (the “Board”)

THE AMENDED APPLICATION OF Newfoundland Power SAYS THAT:

A. Background:

1. Newfoundland Power is a corporation organized and existing under the laws of the Province of Newfoundland and Labrador, is a public utility within the meaning of the Act and is subject to the provisions of the *Electrical Power Control Act, 1994*.
2. By Order No. P.U. 22 (2002-2003), the Board ordered Newfoundland Power to file a general rate application for a full review of Newfoundland Power’s 2003 costs, including cost of capital.
3. By Order Nos. P.U. 32 (1968) and P.U. 1 (1974) the Board ordered the establishment of a Weather Normalization Reserve for Newfoundland Power.
4. By Order Nos. P.U. 16 and 36 (1998-99), the Board ordered, *inter alia*, that an automatic adjustment formula be established to set the electrical rates and allowed rates of return of Newfoundland Power in 2000, 2001 and 2002 based upon changes to the rate of return on rate base resulting from changes in long term Government of Canada bond yields (the “Formula”).
5. By Orders No. P.U. 36 (1998-99) and No. P.U. 28 (1999-2000) the Board ordered Newfoundland Power to file a revenue recognition study prior to the filing of Newfoundland Power’s next general rate application used to create an Unbilled Revenue Increase Reserve Account.
6. By Order No. P.U. 36 (1998-99) the Board determined that there were excess earnings in 1992 and 1993 totaling \$1,908,000 on an after tax basis. The Board ordered that a total of \$954,000 on an after tax basis be recovered by customers from Newfoundland Power. As of the end of 2002, the amount remaining to be recovered is \$238,882.

7. By Order No. P.U. 25 (1999-2000) the Board approved a revised definition of an Excess Revenue Account for Newfoundland Power to be effective January 1, 2000. For the year 2001, an amount of \$944,000 was credited to this account.
8. Section 68 of the Act provides that the Board may ascertain or determine the proper and adequate rates of depreciation of the several classes of property of a public utility.

B. Newfoundland Power Proposals:

9. Newfoundland Power proposes the Board approve accounting treatments and policies with effect from January 1, 2003 (the "Accounting Matters") to:
 - a) amortize the recovery over a five year period, of an amount of \$5.6 million that has accumulated in the Weather Normalization Reserve;
 - b) adopt on a prospective basis, the market-related method of valuing pension assets for the purposes of determining pension expense;
 - c) amortize over a three year period, the estimated Board and Consumer Advocate's regulatory costs of \$1.2 million incurred with respect to this Application; and
 - d) credit one-half of the balance of \$944,000 in the Excess Revenue Account to Newfoundland Power's revenues in each of 2003 and 2004 to reduce revenue requirements from rates that would otherwise be recovered from customers in those years.
10. Newfoundland Power proposes the Board approve provision for customer recovery of the remaining balance of the 1992 and 1993 excess earnings by reducing revenue requirement to be recovered from rates by \$112,000 in 2003 and \$335,000 in 2004.
11. Newfoundland Power proposes the Board approve the calculation of depreciation expense with effect from January 1, 2003 by:
 - a) use of the depreciation rates as recommended in the Depreciation Study filed with the Application; and
 - b) adjustment of depreciation expense to amortize over a 3 year period an accumulated reserve variance of \$17.2 million identified in the Depreciation Study filed with the Application.
12. Newfoundland Power proposes that the Board approve rates, tolls and charges effective for service provided on and after August 1, 2003, to provide an average increase in electrical rates of 0.96 per cent, based upon:

- a) a forecast average rate base for 2003 of \$599,245,000 and for 2004 of \$622,650,000;
 - b) a rate of return on average rate base of 10.55 per cent in the range of 10.30 to 10.80 per cent; and
 - c) a forecast revenue requirement to be recovered from electrical rates, following implementation of the proposals set out in paragraphs 9, 10 and 11 of the Application, of \$378,327,000 for 2003 and \$385,490,000 for 2004.
13. Newfoundland Power proposes the Board approve continued use of the Formula with changes to:
- a) adopt the method used by the National Energy Board and the British Columbia Utilities Commission to determine the risk free rate;
 - b) use an equity risk premium of 4.75 per cent at a risk free rate of 6 per cent for 2003; and
 - c) allow a range of return on rate base of 50 basis points.
14. Newfoundland Power proposes the Board approve amendments to the Rules and Regulations governing Newfoundland Power's provision of electrical service to its customers to:
- a) eliminate the statement preparation fee;
 - b) reduce the fee applicable for customer name changes from \$14 to \$8; and
 - c) extend the application of the reconnection fee to circumstances where customers request reconnection of service following a landlord's request for disconnection of service.
15. Newfoundland Power proposes the Board defer dealing with outstanding issues related to revenue recognition and the Unbilled Revenue Increase Reserve Account pending resolution of an outstanding dispute with the Canada Customs and Revenue Agency.
16. Newfoundland Power proposes the Board approve additional capital expenditures for 2003 of \$425,000 to permit Newfoundland Power to undertake a load research program.

C. Order Requested:

17. Newfoundland Power requests the Board make an Order approving:
- a) pursuant to Section 58 and 80 of the Act, the Accounting Matters set out in paragraph 9 of the Application;
 - b) pursuant to Section 80 of the Act, the provision for customer recovery of the remaining balance of 1992 and 1993 excess earnings as set out in paragraph 10 of the Application;
 - c) pursuant to Section 68 of the Act, the calculation of depreciation expense as set out in paragraph 11 of the Application;
 - d) pursuant to Sections 70 and 80 of the Act, rates, tolls and charges based upon a just and reasonable return on rate base as set out in paragraph 12 of the Application;
 - e) pursuant to Section 80 of the Act, changes to the Formula as set out in paragraph 13 of the Application;
 - f) pursuant to Section 71 of the Act, amendments to the Rules and Regulations governing Newfoundland Power's provision of electrical service to its customers to effect the changes set out in paragraph 14 of the Application;
 - g) pursuant to Section 62 of the Act, deferral of consideration of outstanding issues related to revenue recognition as set out in paragraph 15 of the Application;
 - h) pursuant to Section 41 of the Act, \$425,000 in additional capital expenditures for the purposes set out in paragraph 16 of the Application; and
 - i) such further, other or alternate matters which may upon hearing of the Application appear just and reasonable in all of the circumstances.

D. Communications:

18. Communication with respect to this Application should be forwarded to the attention of Gillian D. Butler, Q.C. and Peter Alteen, Counsel to Newfoundland Power.

DATED at St. John's, Newfoundland, this 10th day of February, 2003.

NEWFOUNDLAND POWER INC.

Gillian D. Butler, Q.C. and Peter Alteen
Newfoundland Power Inc.
P.O. Box 8910
55 Kenmount Road
St. John's, Newfoundland
A1B 3P6

Telephone: (709) 737-5859
Telecopier: (709) 737-2974

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. (“Newfoundland Power”) filed pursuant to Order No. P.U. 22 (2002-2003);

AFFIDAVIT

I, Philip G. Hughes, of St. John's in the Province of Newfoundland and Labrador, Chartered Accountant, make oath and say as follows:

1. That I am employed with Newfoundland Power Inc. as President and Chief Executive Officer.
2. To the best of my knowledge, information and belief, all matters, facts and things set out in the Amended Application are true.

SWORN to before me at St. John's
in the Province of Newfoundland and
Labrador this 10th day of February, 2003
before me:

Barrister

Philip G. Hughes

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

ORDER NUMBER: P.U. 19 (2003)

APPENDIX H

P.U. 4 (2003)

PROCEDURAL ORDER

**FIRST PROCEDURAL ORDER P.U. 27 (2002-2003)
AMENDED BY P.U. 34 (2002-2003)
FURTHER AMENDED BY P.U. 1 (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)

BEFORE:

Robert Noseworthy
Chair and Chief Executive Officer

Darlene Whalen, P.Eng.
Vice-Chair

John William Finn, Q.C.
Commissioner

AMENDED PROCEDURAL ORDER

DECISION

Background

Newfoundland Power Inc. (“NP”), pursuant to Order No. P.U. 22 (2002-2003) filed an 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 NP, to be effective May 1, 2003. Notice of the Application and Pre-hearing Conference was published in newspapers throughout Newfoundland and Labrador beginning on October 19, 2002 and the pre-hearing conference was held on October 30, 2002. The Application was re-filed to reflect updated financial information on February 10, 2003.

After the pre-hearing conference the Board issued a procedural order, Order No. P.U. 27 (2002-2003), setting out, among other things, the Rules of Procedure and the Order of Witnesses for the hearing of the Application. This Order was amended by two subsequent orders of the Board, Order No. P.U. 34 (2002-2003), and Order No. P.U. 1 (2003).

Issues

On February 21, 2003 at the hearing of an application on another issue relative to the proceeding, Board Counsel presented for the consideration of the Board a revised Rules of Procedure as well as an Order of Witnesses for the hearing. In addition, Board Counsel entered as an information item a calendar of dates covering the duration of the hearing.

While the parties agreed with the Order of Witnesses as proposed, there were two areas of disagreement between the parties concerning Rules of Procedure, as follows:

- 1) Panel of witnesses; and
- 2) Documents which are not a part of the hearing record.

Findings

Order of Witnesses

The parties did not take issue with the Order of Witnesses as proposed by Board Counsel. The Board finds that the proposed Order of Witnesses is acceptable and reasonable in the circumstances.

Panel of Witnesses

A Panel of witnesses is common in tribunal hearings and has been used successfully by this Board for a number of years. Often the evidence presented in a hearing before the Board is technical and multi-disciplinary requiring the expertise of many people. The use of a panel of witnesses in appropriate circumstances allows the presentation of evidence on technical and complex issues to be completed in a comprehensive and timely fashion.

Supplementary or Clarifying Evidence

One area of disagreement between the parties is generally the extent to which a witness on a panel may supplement or clarify evidence given by another witness. The Consumer Advocate suggests that it is not appropriate for a witness on a panel to offer testimony unless a question has been posed directly to the witness. NP and NLH suggest that it is appropriate for a witness to provide supplementary or clarifying evidence in response to a question answered by another witness on the panel.

The Board will not impose undue procedural barriers to the introduction of relevant and helpful evidence. In the past, witness panels and parties have generally been respectful to the process and where supplementary or clarifying testimony is given, it has been helpful to the Board and has resulted in a more efficient process. The Board expects that the parties will continue to respect the orderly presentation of evidence. While in general a question put to a particular witness should be answered by that witness, the Board will allow another witness to offer supplementary or clarifying evidence where the testimony may be helpful.

Proposed Witness Panel on Forecasting

NP has proposed that Mr. Barry Perry, VP Finance and Chief Financial Officer, and Mr. Ron Crane, Director of Forecasts, present evidence on certain issues as a panel. NP submits the Board must first determine if the proposed panel is appropriate in the circumstances and subsequently must establish the process that is to be followed in presenting and cross-examining the witnesses.

Is the Proposed Panel Appropriate?

While the Consumer Advocate did question whether it was necessary for Mr. Perry and Mr. Crane to sit as a panel, he did not ask the Board to direct that the evidence be presented by the witnesses individually. As to the issue of whether a witness panel is appropriate in the circumstances, the Board is satisfied that prima facie, the party calling the witness panel is in the best position to make that assessment. The Board, therefore, will allow the evidence to be presented by way of a panel if NP chooses to do so.

What is the Appropriate Process for the Proposed Panel?

NP suggests that Mr. Perry and Mr. Crane testify as a witness panel on certain issues, and Mr. Perry testify alone as to other issues. Effectively NP proposes to limit the cross-examination of Mr. Perry when he is testifying alone to exclude the issues which would be addressed by the witness panel. The question arises as to whether Mr. Perry can present evidence both on a witness panel and alone and whether the Board should direct the parties as to their cross-examination of these witnesses.

In considering this issue the Board acknowledges both the right of the presenting party to control the presentation of its evidence as well as the right of the opposing party to manage the cross-examination of witnesses. In this context the Board must adopt procedures which respect the rights of the parties while allowing the efficient and comprehensive presentation of evidence.

In balancing the interests of NP and the other parties in this case, the Board is not satisfied that it is necessary to restrict the time for a panel witness with a view to excusing that particular witness and expecting the questioning party to lead their cross-examination to accommodate what is essentially a decision taken by the presenting party to schedule the witnesses as a panel. The Board has concerns that NP's proposal may introduce procedural difficulties into the hearing and limit cross-examination. The Board would expect the presenting party to consider the nature, time and extent of cross-examination in determining whether or not witnesses are presented individually or as a panel. The Board notes that where witnesses have testified individually in the past, there has not been an issue with a witness deferring a question to another witness who is better equipped to answer it.

The Board will not grant NP's request to permit NP to have Mr. Crane join Mr. Perry to form a witness panel for a limited portion of Mr. Perry's testimony. Should NP wish to present a witness panel then the parties will have the opportunity to cross-examine the witnesses as they determine appropriate.

Documents not a part of the record

As discussed already the issues and evidence presented in most of the matters before the Board are technical and comprehensive. The Board recognizes that witnesses must be familiar with the record in the proceeding which may consist of thousands of pages of documents detailing events over several years. The Board finds that it would be unfair to the witnesses and likely unhelpful to the process to allow cross-examination on documents with which a witness has not had a reasonable opportunity to become familiar. Therefore the Rules of Procedure will reflect that reasonable notice must be given to a witness where he or she is to be questioned on a document which is not part of the record of the proceeding.

The Board finds that reasonable notice requires that the party introducing the document must provide a copy of the document to the parties and the Board by 4:00 P.M. on the last business day before the witness is cross-examined on the document. The exceptions to this notice requirement are in the case of prior Orders of the Board and transcripts of the person's own testimony given before the Board in the last two years or in the 1998 NP general rate hearings. In these cases the witness will be given sufficient time during cross-examination to review and become familiar with the document presented.

ORDER

THEREFORE THE BOARD ORDERS THAT:

1. The Order of Witnesses in the proceeding is as set out in the attached Appendix "A" - Item 3.
2. The Rules of Procedure set out in Order P.U. 27 (2002-2003) Appendix "A"- Item 4 are rescinded and are replaced with the Rules of Procedure as set out in the attached Appendix "A" - Item 4.

DATED at St. John's, Newfoundland and Labrador, this 26th day of February, 2003.

Robert Noseworthy,
Chair & Chief Executive Officer.

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

John William Finn, Q.C.
Commissioner.

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

Appendix "A" - Item 3, Page 1 of 1

Order of Witnesses

The following order of witnesses is established:

NP - Presentation of Application

NP - President & Chief Executive Officer - Philip Hughes
NP - Vice-President - Barry Perry
NP - Forecasting - Ron Crane

Other witnesses

NP - Vice-President - Earl Ludlow

Cost of Service Witnesses

NP - Cost of Service Witness - Lorne Henderson
NP - Cost of Service Witness - Larry Brockman
CA - Cost of Service Witness - Doug Bowman

Cost of Capital Witnesses

NP - Cost of Capital Expert Witness - Roger Morin
NP - Cost of Capital Expert Witness - Kathleen McShane
CA - Cost of Capital Expert Witness - Basil Kalymon

Other expert witnesses

NP - Depreciation Expert - John F. Wiedmayer
NP - Regulatory Expert - John T. Browne

Other witnesses

BOARD - Financial Consultant - William Brushett

APPENDIX "A" - Item 4, Page 1 of 7

Rules of Procedure

1. Record

- (1) Unless otherwise ordered by the Board, all documents filed with respect to this proceeding shall be placed on the public record.
- (2) Unless otherwise ordered by the Board, the official record of this proceeding will be the original paper copy filed with the Board's Secretary

2. Form of Documents

- (1) Every written document filed shall be prepared as follows:
 - (a) Typed, written or printed on 8½" X 11" letter size paper, 3-hole punched for standard binders.
 - (b) Each page shall be numbered.
 - (c) Where reasonable, each line shall be numbered.

3. Filing of Documents

- (1) Unless otherwise ordered by the Board, one original signed copy of each document to be entered in the proceeding shall be filed with the Board as set out in the Distribution Listing in Item 5 of Appendix "A".
- (2) In addition to the original document a party shall submit to the Board twelve (12) copies.
- (3) Documents may be filed by:
 - (a) Hand delivery;
 - (b) Courier service;
 - (c) Facsimile;
 - (d) Registered Mail; or
 - (e) Other means directed by the Board
- (4) Filing is accomplished when the Board receives the document.

APPENDIX “A” - Item 4, Page 2 of 7

- (5) All documents filed according to the scheduled dates shall be filed no later than 3:00 P.M. on the date stipulated. Documents filed after 3:00 P.M, or those which are filed on a Board holiday, shall be considered to have been filed on the next Board business day.

4. Electronic Filing

- (1) Unless otherwise ordered by the Board, each party shall file with the Board an electronic version of all documents filed in this proceeding in the following manner:
- (a) Each individual document shall be converted while in electronic form to “read only” *.pdf format, still allowing for key word searches and cut and paste functionality.
 - (b) Within two days after the day of filing of the hard copy, one copy of the electronic *.pdf file will be emailed to ito@pub.nf.ca.
 - (c) All Documents that are generated in-house by the parties shall be filed electronically, with the exception of:
 - i. Covering letters or correspondence;
 - ii. Background reports, Board Orders or historical documentation that are unavailable or impractical to provide electronically, and
 - iii. Case law filed in support of Motions.
- (2) The electronic file will not be an official record for the purposes of this proceeding.

5. Service of Documents

- (1) A copy of each document filed with the Board shall be served on the other parties in this proceeding in accordance with the Distribution Listing detailed in Item 5 of Appendix “A” .
- (2) Parties will appoint one person to receive documents for this proceeding.
- (3) Service may be made as follows:
- (a) Hand delivery;
 - (b) Courier service;
 - (c) Registered Mail;
 - (d) Facsimile; or
 - (e) Other means ordered by the Board.

APPENDIX “A” - Item 4, Page 3 of 7

- (4) Service will be effective:
 - (a) On the day of delivery, where the document is sent by hand, courier or facsimile;
 - (b) On the date of receipt, where the document is delivered by registered mail, or
 - (c) On a date determined by the Board, where service is made by any other means.

6. Revisions to Documents

- (1) Any document may be revised where new information, or information to correct errors in documents, becomes available before the completion of the hearing.
- (2) Where all or any part of a document is revised, each revision shall indicate the page(s) revised, the line(s) revised, the number of the revision (i.e. 1st revision), and the date of the revision.
- (3) Where a revision is made to a document the Board may, upon its own motion or upon the request of another party, after receiving submissions of the parties, make any order in respect of the revisions.

7. Charges for Copies

- (1) The Board will provide a copy of any document authored by the Board or its consultants at no charge.
- (2) Copies of documents originating or authored by a party should be requested directly from the party.
- (3) One copy of the transcript for each day of the hearing will be provided to each party at no cost.
- (4) Copies of the Legislation, Acts, and Regulations can be obtained from the Queen’s Printer, viewed at the Board’s Main Office, or viewed on the Board’s Website at www.pub.nf.ca.
- (5) The Board may charge copy fees for the cost associated with the reproduction of any other document requested by an individual or party in accordance with the applicable legislation.

8. Public Viewing

- (1) Interested persons may view any or all documents filed in this proceeding on the Board’s website, (www.pub.nf.ca) or at the Board’s main office by contacting the Board Secretary.

APPENDIX "A" - Item 4, Page 4 of 7

9. Information Requests

- (1) Requests for Information and Responses shall form a part of the record in the proceeding and will be considered to be evidence in the proceeding.
- (2) Where ordered by the Board, a party providing a Response to an Information Request shall make a witness or witnesses available for cross-examination to speak to the information provided in the Response.

10. Interlocutory Applications

- (1) Applications on issues arising out of this proceeding (hereafter referred to as motions) must be filed in writing with the Board and served upon the parties two days before the hearing of the motion.
- (2) Where a party files a response brief it must be filed with the Board and served upon the parties one day before the hearing of the motion.
- (3) Unless otherwise ordered by the Board, motions shall proceed on a scheduled motions day.
- (4) A party wishing to have a motion heard on a date other than a scheduled motion day must, along with the motion, file with Board and serve upon the parties reasons why the motion should be heard on the proposed date.
- (5) The Board may, at its discretion, where the parties were advised and provided with an opportunity to make written submissions, consider a motion on the basis of written submissions.
- (6) The Board may consider the written consent of any party in reaching its decision on a motion.
- (7) The order of presentation of argument on a motion shall be as set out in the Order of Presentation described at page 7 of these Rules of Procedure.

12. Witnesses

- (1) **Direct Testimony**
 - (a) Pre-filed testimony of all non-expert witnesses and reports of expert witnesses should be adopted in direct examination, and, unless otherwise objected to, will be accepted as evidence.
 - (b) Direct examination should be limited to matters set out in the witnesses pre-filed testimony.

APPENDIX “A” - Item 4, Page 5 of 7

- (c) The Board may allow a witness to provide supplementary or clarifying evidence where it is relevant and of assistance to the Board.
- (d) The Board may restrict direct testimony where it is irrelevant or redundant and not helpful to the Board in making its decision.

(2) **Examination of Witness called by Other Parties**

- (a) Other counsel will have an opportunity to examine a witness in accordance with the Order of Presentation described at page 7 of these Rules of Procedure.
- (b) After the examinations by other counsel are completed there will be an opportunity for re-direct examination as set out in the Order of Presentation described at page 7 of these Rules of Procedure.

(3) **Board Questions**

- (a) After re-direct the Board may pose questions to the witness.
- (b) Questions on matters arising from the questions of the Board will proceed in the order set out in the Order of Presentation described at page 7 of these Rules of Procedure.

(4) **Objections**

Where an objection is made during the presentation of evidence, counsel shall state their position on the objection in the order set out in the Order of Presentation described at page 7 of these Rules of Procedure.

(5) **Panels of Witnesses**

- (a) Where evidence will be presented by way of a panel of witnesses, prior notice must be given to the Board Secretary and the parties.
- (b) When examining a panel of witnesses Counsel shall put each question to a particular witness on the panel.
- (c) A witness on a panel may answer or supplement a question that was posed to and answered by another witness on the panel where the evidence is relevant and may be of assistance to the Board.

APPENDIX "A" - Item 4, Page 6 of 7

(6) Co-Counsel

Where co-counsel intend to examine the same witness, or panel of witnesses, prior notice must be given to the Board Secretary and the parties. Co-counsel shall not examine the same witness on the same subject matter.

(7) Documents not part of the record of the proceeding

When a witness is presented with a document which is not part of the record of the proceeding:

- (a) Fourteen (14) copies shall be provided to the Board Secretary.
- (b) The witness shall be given a reasonable time to review any document that is the subject of cross-examination. In addition the witness cannot be cross-examined on a document that is not a part of the record in the proceeding unless:
 - i) A copy of the document is provided to the Board and all parties by 4 p.m. on the last business day before the cross-examination on the document;
 - ii) The document is a portion of a transcript of the witnesses own testimony given in the last two years or at the 1998 Newfoundland Power General Rate hearings; or
 - iii) The document is an Order of the Board.
- (c) Where the witness adopts the document it shall be marked as an exhibit to his testimony.
- (d) Where a document was not adopted as part of the witness' testimony the document may be:
 - i) if the parties consent, entered as a consent exhibit; or
 - ii) entered as an information item.

13. Time

- (1) All references to time shall be clear days, that is the first and the last day shall be excluded.

14. Other

- (1) Unless otherwise ordered by the Board, the rules of procedure set out in *Regulation 39/96* apply in this proceeding to the extent that they are consistent with these rules.

APPENDIX "A" - Item 4, Page 7 of 7

Order of Presentation

Examination

<u>WITNESS CALLED BY</u>	<u>WITNESS CROSS-EXAMINED BY</u>	<u>MATTERS ARISING FROM BOARD QUESTIONS</u>
<u>NP</u>	<u>CA</u>	<u>CA</u>
	<u>NLH</u>	<u>NLH</u>
	<u>BHC</u>	<u>BHC</u>
	<u>Redirect NP</u>	<u>NP</u>
<u>CA</u>	<u>NP</u>	<u>NP</u>
	<u>NLH</u>	<u>NLH</u>
	<u>BHC</u>	<u>BHC</u>
	<u>Redirect CA</u>	<u>CA</u>
<u>NLH</u>	<u>NP</u>	<u>NP</u>
	<u>CA</u>	<u>CA</u>
	<u>BHC</u>	<u>BHC</u>
	<u>Redirect NLH</u>	<u>NLH</u>
<u>BHC</u>	<u>NP</u>	<u>NP</u>
	<u>CA</u>	<u>CA</u>
	<u>NLH</u>	<u>NLH</u>
	<u>Redirect BHC</u>	<u>BHC</u>

Objections

Counsel making the objection
Responding Counsel
Remaining Counsel
Reply by the objecting Counsel
Board Hearing Counsel

Motions

Counsel making motion
Responding Counsel
Remaining Counsel
Reply by Counsel making motion
Board Hearing Counsel

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

ORDER NUMBER: P.U. 19 (2003)

APPENDIX I

P.U. 5 (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 an interlocutory
application from Newfoundland Power.

BEFORE:

Robert Noseworthy
Chair and Chief Executive Officer

Darlene Whalen, P.Eng.
Vice-Chair

John William Finn, Q.C.
Commissioner

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.

As part of the pre-hearing process parties were requested to file an Issues List setting out the issues the party intends to raise during the hearing. Newfoundland Power filed its Issues List on January 13, 2003. Newfoundland and Labrador Hydro filed its Issues List on February 5, 2003, and the Consumer Advocate filed his Issues List on February 6, 2003.

On February 17, 2003 Newfoundland Power filed an application with the Board objecting to the following issues as set out in the Consumer Advocate’s Issues List (the “Issues”):

- 2(b) Excess earnings by Newfoundland Power above the allowed Rate of Return on Equity since the implementation of the Automatic Adjustment Formula and since Board Orders in 1998 and subsequent Orders.
- 2(c) Rebate to consumers any excess earnings resulting from Newfoundland Power’s earnings above the allowed Rate of Return on Equity since the implementation of the Automatic Adjustment Formula and since Board Orders in 1998 and subsequent Orders.
- 2(h) A re-definition of Excess Earnings so that excess earnings will include excess earnings which are beyond the allowed Rate of Return on rate base and include also Excess Earnings which are beyond the allowed Rate of Return on Equity.

In the application Newfoundland Power is requesting an Order of the Board:

- (a) Pursuant to Section 27 of The Board of Commissioners of Public Utilities Regulations, 1996 (the “Regulations”), determining that the Board has no jurisdiction to:
 - i. Set and fix the return that Newfoundland Power may earn on equity, and
 - ii. Determine the existence of excess revenues other than on the basis of Newfoundland Power’s return on rate base,
- (b) Pursuant to Section 11 of the Regulations, directing that insofar as the issues raised

on the Consumer Advocate's Issues List are premised upon the Board possessing the jurisdiction to:

- i. Set and fix the return that Newfoundland Power may earn on equity, and
- ii. Determine the existence of excess revenues other than on the basis of Newfoundland Power's return on rate base,

those issues shall not be considered at the public hearing of the Application.

- (c) Pursuant to Section 26 of the Regulations, directing an amendment of the Consumer Advocate's Issues List to strike out those matters contained in the Consumer Advocate's Issues List that are premised upon the Board possessing the jurisdiction to:
 - i. Set and fix the return that Newfoundland Power may earn on equity, and
 - ii. Determine the existence of excess revenues other than on the basis of Newfoundland Power's return on rate base.

The Board convened on February 21, 2003 to hear from the parties regarding the application. Submissions were made by Newfoundland Power's counsel Ms. Gillian Butler, by the Consumer Advocate Mr. Dennis Browne and his counsel Mr. Stephen Fitzgerald, and by Newfoundland and Labrador Hydro's counsel Mr. Geoff Young. In this decision the Board will deal with each of the requests of Newfoundland Power separately.

Board's Jurisdiction

Newfoundland Power has asked the Board to issue an order determining that the Board has no jurisdiction with respect to certain matters. The Board is of the opinion it is not appropriate in the circumstances to issue an order setting out its jurisdiction. The Board will however address the jurisdictional issues raised by Newfoundland Power and set out its opinion on those issues.

- i) Set and fix the return that Newfoundland Power may earn on equity.

In its submission Newfoundland Power argued that the Issues are outside the jurisdiction of the Board as set out in governing legislation and as clarified by the Court of Appeal. In 1996 the Board stated a case for the opinion of the Court of Appeal pursuant to Section 101 of the *Act* (the “Stated Case”). The questions posed concerned the jurisdiction and powers of the Board as they affected the approach of the Board to the determination of a “just and reasonable return” on the rate base of the utility as required under Section 80(1) of the *Act*, as well as related matters. The Court’s opinion was issued on June 15, 1998.

It is the position of Newfoundland Power that the opinion in the Stated Case makes it very clear that the power to regulate on a return on rate base, as contained in Section 80(1) of the *Act*, does not include within it a power to regulate on a return on common equity basis. Counsel for Newfoundland Power reviewed the Stated Case in detail, pointing to the specific findings of the Court which, in her opinion, support the position that the Board does not have the jurisdiction to set and fix the rate of return on common equity for the company or to determine the existence of excess revenues other than on the basis of return on rate base. Newfoundland Power also submitted that the Board has appropriately, consistently and lawfully applied the findings of the Court in the Stated Case in at least seven Board Orders since 1998, dealing with setting and fixing the return on rate base, the existence of excess revenues, and the disposition of excess revenue in the same period.

On questions from the Board, the Consumer Advocate agreed that the Board does not have the authority to fix the rate of return on equity at a certain level. However the Consumer Advocate agreed that the Stated Case does not restrict the Board from dealing with other matters such as excess earnings and with ranges of rates of return on equity.

In his submission, counsel for Newfoundland and Labrador Hydro agreed that the *Act* and the

opinion of the Court of Appeal requires the Board to regulate on the basis of return on rate base. Mr. Young also submitted that, while the Board is limited to fixing and setting the return on rate base, there are ways within that framework that the Board can exercise its jurisdiction and consider the return on equity.

The Board addressed the opinion of the Court of Appeal and its impact on the Board's regulation of Newfoundland Power in Order No. P.U. 16 (1998-99) and Order No. P.U. 36 (1998-99), both issued subsequent to the release of the Court's opinion. In Order No. P.U. 36 (1998-99) the Board states the following (page 53):

“ Under section 80 of the Act, the Board must determine a just and reasonable return on rate base. In so doing, the Board must first determine the cost to the utility of the various sources of funds including debt, preference shares and common equity. The overall rate of return on rate base is calculated as a weighted average of the rates of return on each component source of capital funds. The Court finds in its opinion that the

“...calculation of an appropriate rate of return on common equity is truly a mere component in the overall process of determining a just and reasonable return on rate base.” (Paragraph 57)

The Court concludes that the Board does not have the power to prescribe a rate of return to be earned by the company on common equity.

The Court is of the opinion that

“...the Board has the jurisdiction to set the rate of return on rate base as a range of permissible rates. Any rate of return earned within the range would be regarded as permissible and it is only when a rate of return exceeds the upper limit of the range that it would be regarded by the Board as subject to any excess revenue regulation.” (Paragraph 70)

Having decided that the Board can prescribe the maximum rate of return on rate base that a utility can earn in a given year, the Court goes on to say that

“...it is a necessary consequence of such a determination that revenue earned in excess of the maximum of the prescribed range of return is excess earnings to which, by definition, the utility will not be entitled.” (Paragraph 74)

Since this Order there have been no legislative or other changes suggesting that the Board's jurisdiction is different than as set out above. While it was suggested that the Board may have some jurisdiction with respect to consideration of common equity the parties agreed that the Board has no jurisdiction to set and fix the return that Newfoundland Power may earn on equity.

The Board concurs with the parties and reiterates it does not have the jurisdiction to set and fix the return that Newfoundland Power may earn on equity.

- ii) Determine the existence of excess revenues other than on the basis of Newfoundland Power's return on rate base

Newfoundland Power also asked for an order determining that the Board does not have the jurisdiction to determine the existence of excess revenues other than on the basis of its return on rate base. While it is accepted that the Board does not have the jurisdiction to set and fix the return that Newfoundland Power may earn on common equity, it is not clear that this absence of specific jurisdiction under Section 80(1) of the *Act* limits the Board's broader powers to regulate the utility. While specific examples were not offered, both the Consumer Advocate and Newfoundland and Labrador Hydro suggested the Board may have jurisdiction to consider common equity for other purposes consistent with the Board's mandate. The Board is of the view that evidence presented during the hearing may clarify the jurisdiction of the Board in regards to the determination of excess earnings and the Board's ability to deal with them.

Based on the submissions of the parties the Board is not prepared at this time to rule it does not have the jurisdiction to determine excess revenues other than on the basis of Newfoundland Power's return on rate base.

Limitation of Issues for Public Hearing

Newfoundland Power has requested that the Board order that the Issues not be considered at the public hearing. Counsel for Newfoundland Power argued that nothing would be gained from “allowing evidence, either in chief, cross examination or in allowing argument on, for example, the rebate to consumers of excess earnings over a range of return on equity because it runs contrary to the legislation...”. Newfoundland Power submits that the inclusion of those Issues not relevant to the Application would delay the process, add costs and result in a less efficient hearing.

The Consumer Advocate argued that Newfoundland Power’s application is an attempt to foreclose hearing evidence on the issues of return on equity and earnings above the forecast return on equity. The Consumer Advocate’s position is that if the Board were to rule that matters relating to these Issues be excluded from the hearing as requested by Newfoundland Power the expert witnesses would be precluded from being able to testify on rate of return on equity and excess earnings. He urged the Board to reserve its decision until the Board has heard the evidence of the expert witnesses and the Board’s financial consultants and that to do otherwise would lack due process and impact on the ability of the Board to conduct a fair hearing.

Counsel for Newfoundland and Labrador Hydro stated that in his view it would be ill advised or improper for the Board not to consider further the Issues identified as 2(b) and 2(h). As to the remaining Issue 2(c) Mr. Young expressed concern about the Board’s jurisdiction to consider this issue, and also suggested that it may raise issues of retroactive rate making contrary to generally accepted sound public utility practice.

The Board acknowledges that, in the interests of fairness and efficiency it has a duty to limit debate and evidence on certain matters clearly extraneous to the issue to be decided. However the Board also acknowledges the right of a party to be heard and present relevant evidence as it determines is appropriate. The Board, in balancing these interests, generally does not exclude evidence in advance of hearing the evidence. The Board, after hearing the evidence, is able to assess the relevance and value of the evidence. It is difficult to make this assessment in advance of hearing the evidence. This approach is viewed by the Board as being fair to all parties and ensures the Board has a full and complete picture when making its decisions.

The Board has confirmed above that it does not have the jurisdiction to set and fix the rate of return that Newfoundland Power may earn on equity. The Board notes however that this decision does not mean that evidence on the appropriate return on equity and the relationship of return on equity and return on rate base should not be considered in the public hearing. As part of the decision to set and fix an appropriate return on rate base as required by the *Act*, the Board will need to hear evidence from the experts on a number of matters, including the appropriate risk free rate of return, the appropriate risk formula for selecting an appropriate rate of return for common equity, and also the comparable equity returns for other utilities. It is difficult at this stage to separate the issue of earnings above the forecast return on equity from the issues related to the operation of the Automatic Adjustment Formula, including the issue raised by the Board's financial consultant with respect to the differing results for the returns on rate base and equity over the period of operation of the Formula. These are, in the Board's opinion, important issues for this upcoming hearing.

Based upon the finding of the Board that it does not have the jurisdiction to set and fix the return that Newfoundland Power may earn on equity, the Board will not hear evidence or submissions relating to the setting and fixing of a rate of return on common equity for Newfoundland Power. However, bearing in mind the concerns set out above, the Board is not prepared to restrict the introduction of evidence or submissions on any other issues at this time.

Striking of Issues from Issues List

Newfoundland Power is also requesting that the Board direct an amendment of the Consumer Advocate's Issues List to strike those matters that are not within the Board's jurisdiction to consider.

The Board requested the filing of an Issues List from the parties as a tool to assist the Board and the parties in organizing the hearing. This is a new procedure for the Board and the Board is of the opinion that such Issues Lists are valuable to the parties and the Board in identifying the matters and issues that will be raised during the hearing and also will serve to assist the Board as it prepares to write its decision. It was not intended that the Issues Lists would be vetted or interfered with by the Board and the Board will not direct any amendments to the Lists as filed. Irrespective of the Issues Lists, the Board always reserves the right to decide which matters will be considered at a hearing.

The Board will not direct an amendment of the Consumer Advocate's Issues List.

IT IS THEREFORE ORDERED:

1. The Board will not hear evidence or submissions relating to the setting and fixing of a rate of return on common equity for Newfoundland Power to the extent that it is beyond the Board's jurisdiction.
2. Except as set out in Paragraph 1 above the relief sought by Newfoundland Power is denied.

Dated at St. John's, Newfoundland and Labrador this 27th day of February 2003.

Robert Noseworthy,
Chair & Chief Executive Officer.

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

John William Finn, Q.C.,
Commissioner.

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

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

ORDER NUMBER: P.U. 19 (2003)

APPENDIX J

P.U. 7(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. (“Newfoundland Power”) filed pursuant
to Order No. P. U. 22 (2002-2003)

AND IN THE MATTER OF a Mediation Report
filed with respect to certain issues regarding cost of
service allocation, rate structure and tariff matters
arising from the Application.

BEFORE:

Robert Noseworthy
Chair and Chief Executive Officer

Darlene Whalen, P.Eng.
Vice-Chair

John William Finn, Q.C.
Commissioner

WHEREAS Newfoundland Power filed 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; and

WHEREAS the Application was re-filed to reflect updated financial information on February 10, 2003 with revised proposed rates for the various customers of Newfoundland Power to be effective August 1, 2003; and

WHEREAS at a pre-hearing conference the Board issued Procedural Order No P.U. 27(2002-2003), establishing a Schedule of Dates which set out a time for a technical conference to be held in advance of the hearing; and

WHEREAS with the assistance of a Board appointed mediator, Dr. John Wilson, the parties participated in a mediation of certain issues regarding cost of service allocation, rate structure and tariff matters arising from the Application (the “Issues”); and

WHEREAS the parties reached agreement regarding a proposed resolution of the Issues, save for one issue related to meter reading, and have consented to the filing with the Board a report detailing the outcome of the Mediation (the “Mediation Report”); and

WHEREAS the Mediation Report is attached as Schedule A to this Order; and

WHEREAS in the Mediation Report the parties consent to the Board making its determination on the Issues based on the Cost of Service Documentation as well as the proposals set out in the Mediation Report; and

WHEREAS in the Mediation Report the parties also consent to the admission of all pre-filed testimony and exhibits of witnesses pertaining to the Issues (the “Cost of Service Documentation”), without the calling of those witnesses for the purpose of cross-examination; and

WHEREAS the Mediation Report and the Cost of Service Documentation have been entered as consent documents in the proceeding; and

WHEREAS the Board has considered the Mediation Report and the Cost of Service Documentation and is satisfied that the proposed resolution is reasonable.

IT IS THEREFORE ORDERED:

1. The Board accepts and adopts the Mediation Report attached as Schedule A to this Order, with the exception of paragraph “j” which is replaced as follows to account for a typographical error noted by the parties after consent was given:
 - j. To the extent possible, there should be no adverse customer rate impacts. Any overall revenue change should be distributed equally to each class of customers. With the exception of any change in basic customer charges (see issue “n” below), no customer should have a rate change that produces an annual cost change that is more than twice the system average (unless the dollar impact is minimal).²

2. The Board accepts the proposed resolution of the “Issues on Which the Parties Agree” as set out in the Mediation Report and will incorporate the same in its final decision rendered on the Application.

3. The Board reserves decision on the “Remaining Issue on Which Parties Do Not Agree” as set out in the Mediation Report.

DATED at St. John’s, Newfoundland and Labrador this 5th day of March, 2003.

Robert Noseworthy,
Chair & Chief Executive Officer.

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

John William Finn, Q.C.,
Commissioner.

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

SCHEDULE A – MEDIATION REPORT

IN THE MATTER OF the Public
Utilities Act, R.S.N., c. P-42 (the “Act”)

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)

Mediation Report

In accordance with the mediation process established in this proceeding, the undersigned consenting parties have reached agreement regarding the proposed resolution of the following issues in this case as stated below. This agreement, if approved by the Board, resolves all issues that have been identified by the parties in this proceeding regarding cost of service allocation, rate structure and tariff design matters, except for the issue concerning monthly meter reading (issue “q”, below).

This agreement pertains to the parties’ recommendations in this proceeding and does not preclude parties from advocating alternative positions on the same or similar issues in other proceedings as they may deem appropriate. The agreement does not resolve cost of capital, accounting and related revenue requirement issues in this proceeding.

As a result of this agreement, reached through the mediation process, the parties consent to the admission in the record of this case of all prefiled testimony and exhibits pertaining to (1) cost of service allocation; (2) rate structure design; and (3) tariff rules and regulations, without the calling of witnesses for the purpose of cross-examination on these issues. The consenting

parties recommend that the Board make its determination on these issues based on the parties' prefiled testimony and exhibits and the parties agreed upon proposed resolution of these issues as stated in this Mediation Report.

I. Issues on Which All Parties Agree

- a. Newfoundland Power's ("NP's") cost of service study filed in this proceeding is fundamentally appropriate and in general compliance with Board Orders from previous hearings that have accepted NP's use of embedded cost of service studies as a guide in determining the revenue requirement increases or decreases to be applied to each class.
- b. The following changes to NP's cost of service methodology, which received temporary Board Approval in NP's 1996 General Rate Proceeding, should be approved in this case:
 - Classification of NP's hydraulic plant using system load factor on energy rather than 100 per cent demand;
 - Allocation of NP's generating plant using a Single Coincident Peak allocation ("1CP") rather than Non-Coincident Peak allocation ("NCP");
 - Allocation of NP's transmission plant using 1CP rather than NCP;
 - Allocation of purchased power transmission demand costs using 1CP rather than NCP;

- Allocation of purchased power generation demand costs using 1CP rather than NCP;
 - Allocation of NP's funding of Newfoundland Hydro's rural deficit based on allocated class costs (with the rural deficit amount removed from determination of allocators to class cost).
- c. The Board should approve two additional changes to NP's cost of service methodology:
- General expenses (i.e., General System Costs and Administration and General Costs) should be functionalized and classified based on the assumption that a portion of these costs is related to net utility plant (capital labor expense as a percentage of capital labor expense plus operating labor expense), rather than assuming (as previously) that all of these costs relate to operating and maintenance (O&M) expense.
 - The cost of service study should use normalized revenue and normalized purchased power expense rather than actual revenue and purchased power expense, unadjusted for normalization, as previously.
- d. The Board should approve NP's use of an NCP allocation for distribution demand costs even though this differs from the 1CP allocator that Newfoundland Hydro was directed to use for distribution demand costs in Order No. P.U. 7 (2002-2003).

- e. The Board should approve an additional \$425,000 in capital expenditures by NP for the metering, meter reading equipment and computer software needed to implement a new load research program to obtain customer class demand information for representative samples from each customer class that is required in allocating demand costs among customer groups. The amount actually spent for this purpose shall be documented by NP and reported to the Board and parties to this mediation prior to NP's next rate filing.
- f. The Board should approve tail block rate increases above the average class increase for Rates 2.2, 2.3 and 2.4 so as to better reflect short-run marginal energy costs in these tail block rates.
- g. The Board should approve the elimination of minimum monthly ("ratcheted") demand charges, linked to the customer's maximum demand during the previous twelve months, in General Service Rates 2.2, 2.3 and 2.4.
- h. The Board should retain the Curtailable Service Option Credit of \$29/kva in Rates 2.3 and 2.4 and require NP to inform customers of the possibility of significant future changes in this credit.¹
- i. The Board should approve NP's proposed merger of street light and area lighting rates for the 400W MV fixtures with the 250W HPS fixtures that replace them.

The Board should also approve NP's proposed removal from the Schedule of

¹ It is noted that whereas NP states the \$29 credit "is reasonable," the CA's position is that until there are cost-reflective wholesale power purchase rates (from Newfoundland Hydro), benefits to NP from the Curtailable Service Option will be hidden, and there is now little evidence to suggest changing the current option. The implication is that while all parties agree that the Curtailable Service Option Credit should now be retained as is, a change may be appropriate if Hydro's wholesale rates change.

Rates and Regulations, the charges for the 1,000W MV fixture, the 700W MV fixture, and the 150W HPS post top fixture, since these no longer exist on NP's system.

- j. To the extent possible, there should be no adverse customer rate impacts. Any overall revenue change should be distributed equally to each class of customers. With the exception of any change in basic customer charges (see disagreed issue "a", below), no customer should have a rate change that produces an annual cost change that is more than twice the system average (unless the dollar impact is minimal).²
- k. The Board should approve a change to Regulation 9(o) to reduce the application fee for a customer name change from \$14.00 to \$8.00 (the current new service fee).
- l. The Board should approve the removal of clause 9(n) to eliminate charges for the preparation of account statements for billing information prior to the most recent twelve months.
- m. The Board should approve a change to Regulation 9(f) and a proposed new clause 12(g) permitting charging the reconnect fee to new customers in apartments where a reconnection is required subsequent to a request by a landlord to disconnect an apartment. Such customers will not be required to pay the new service application fee.

² It is noted that possible future rate changes, such as those that may be justified by the results of future load research, may warrant a redistribution of revenue responsibility between rate classes and/or annual cost changes for some customers that differ significantly from the system average.

- n. The current basic monthly customer charges for domestic (residential) service and small general service rate 2.1 should be reduced by \$1.00. The revenue loss associated with this change should be made up by adjusting the energy component of these same rates so that the change does not impact customers in other rate classes. NP also agrees that (1) it will not propose a basic customer charge increase as a result of any wholesale rate increase in Hydro's 2003 GRA proceeding, and (2) in its next GRA, NP will cap the customer charge recovery of distribution costs allocated to customers at 50% of these allocated distribution costs for these rate classes, with the remainder to be recovered through energy charges. Distribution costs are distribution network costs beyond the service drop and do not include customer specific costs such as meters, meter reading, billing and service drops.
- o. The Board should proceed, as planned, to consider implementation of improved cost-reflective wholesale power rates to be charged to NP by Newfoundland and Labrador Hydro. To facilitate that process, the Board should schedule (and provide such notice as may be required for) a one-day consultation to take place within 30 days after Hydro's GRA filing, wherein Hydro would discuss and provide information to stakeholders on Hydro's proposed wholesale power rate design.
- p. The Board should direct NP (in consultation with the C.A. and Board Staff) to propose a "peer group" of utilities and performance measures upon which to evaluate NP's performance. Upon Board approval of the peer group and performance measures, NP will collect and report statistical information relative

to the peer group performance annually. NP should be entitled to recover its reasonable documented costs of this effort.

II. Remaining Issue on Which Parties Do Not Agree

- q. The CA recommends that the wording of the first sentence of “Rules and Regulations 8. Meter Reading” should be revised to read:

With the exception of circumstances beyond its reasonable control, the company shall read meters monthly.

NP recommends retaining the present language which states:

Where reasonably possible the Company shall read meters monthly provided that the Company may, at its discretion, read meters at some other interval and estimate the reading for the intervening months.

The C.A. believes that customers who receive estimated bills often think that the estimates are high and that they would prefer an actual meter reading rather than an estimated bill. NP believes that its estimates are reasonably accurate, that there are few customer complaints and that the estimation process during summer vacation months saves costs (approximately \$40,000) by reducing the need for temporary employees. The parties agree that the resolution of this issue does not require the calling of expert cost of service or rate design witnesses, and that the Board panel will be able to resolve the issue based on arguments that the parties will make in their briefs and on hearing examination of the parties’ policy and revenue requirements witnesses.

Notice of Consent to Mediation Report

Agreed to this 26th day of February, 2003.

For Newfoundland Power Inc.

For the Consumer Advocate

For Newfoundland and Labrador Hydro

John W. Wilson, Mediator

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

ORDER NUMBER: P.U. 19 (2003)

APPENDIX K

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 3rd day of April 2003.

Robert Noseworthy,
Chair & Chief Executive Officer.

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

John William Finn, Q.C.
Commissioner.

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

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**.

Commissioner

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.



Newfoundland & Labrador

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES
120 TORBAY ROAD, ST. JOHN'S, NL

Website: www.pub.nf.ca
E-mail: ito@pub.nf.ca

Telephone: 1-709-726-8600
Toll free: 1-866-782-0006
