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December 16, 2020

Board of Commissions of Public Utilities
120 Torbay Road, P.O. Box 2140
St. John's, NL A1A 5B2

**Attention: G. Cheryl Blundon, Director of
Corporate Services / Board Secretary**

Dear Ms. Blundon:

**Re: Newfoundland Power Inc. - 2021 Capital Budget Application –
Customer Service System Replacement Project
- Request for Public Hearing**

On July 9, 2020 Newfoundland Power (“NP”) submitted to the Public Utilities Board (the “Board”) its 2021 Capital Budget Application (“2021 CBA”). A significant component of Newfoundland Power’s 2021 CBA is the proposed Customer Service System (“CSS”) Replacement Project at an estimated cost of \$31.6 million to be completed over the 3-year period beginning in 2021 and ending in 2023. After an initial round of Requests for Information (RFIs) on the application, which included approximately two dozen from the CA dealing with the CSS, the Board has decided to treat this project separately from the rest of the Application and a Technical Conference on the project was held on November 10, 2020. Subsequently, Newfoundland Power responded to additional RFIs submitted by the Board and the Consumer Advocate in relation to the CSS. In a December 8, 2020 letter, the Board requests the Parties to advise if they are requesting a public hearing on the CSS Replacement Project and, if so, to provide the basis for the request and identify the areas of concern to be addressed. This letter is the Consumer Advocate’s response.

Consumer Advocate’s Request

The Consumer Advocate requests that the Board order a public hearing on Newfoundland Power’s proposed Customer Service System Replacement Project.

The Basis for the Consumer Advocate’s Request

The data and information documented in the Application, the Technical Conference and the two rounds of RFIs are inadequate, falling well short of that needed by the intervenors and the Board to

properly assess the merits of the proposed CSS project. While there has been a substantial amount of material provided by NP, much of it is repetitive and qualitative and fails to *quantify the risks or benefits* to consumers. This project is described by Newfoundland Power as a “*once-in-a-generation*” project (see Application Volume 1, Schedule B, page 94 of 98). At an estimated cost of \$31.6 million, it merits greater scrutiny than other asset replacement projects, particularly during this time of poor economic conditions in the Province, a concern alluded to by the Board in PUB-NP-001. These circumstances are compounded by heightened uncertainty arising from the Muskrat Falls Project and the yet unknown provincial policy on rate mitigation, as well as the continuing impacts of the Covid-19 global pandemic which has dampened the economy and disrupted normal business operations.

Newfoundland Power bases the merits of the project on a study and report prepared by Ernst and Young LLP (“EY”), including the assessment of alternatives, and project risks, benefits, costs and schedule. Newfoundland Power makes numerous references to EY’s expertise on Customer Service Systems. For example, in CA-NP-154 (a) NP states “*EY developed its cost estimate based on its extensive expertise in implementing similar projects for other utilities*”. In PUB-NP-015 NP (page 4 of 5) Newfoundland Power states “*EY is an industry leader in Customer Information Systems. EY’s recommended scope and cost estimate were based on: (i) a comprehensive assessment of Newfoundland Power’s operations; (ii) assessments of market trends and industry best practices; and (iii) EY’s experience in undertaking similar projects for other utilities.*” Further, in its October 1, 2020 letter to the Board regarding the Consumer Advocate’s request for a technical conference Newfoundland Power states (pages 6 of 8 and 7 of 8) “*All costs to execute this project, including product and implementation costs, are included in EY’s recommended cost estimate. Acquisition of a specific vendor was therefore not necessary to develop a sound cost estimate.*” Clearly EY, rather than NP, is the expert on CSS. Yet, Newfoundland Power did not make EY available to respond to questions at the Technical Conference or to answer RFIs. To our knowledge, not a single RFI was responded to by an EY expert.

Alternative approaches to full replacement of the CSS are simply written off by Newfoundland Power. Risks of continuing with the existing CSS are ranked as “*high*” but without quantifying the probability of failure and the cost consequences on customers if the existing CSS were to fail. Many of the identified benefits to customers fall into the category of “*nice-to-have*” rather than “*must-have*”, and when the customers were consulted on the project they were not given the information necessary to assess the trade-off between benefits and increased costs. It appears that Newfoundland Power never told customers that they would be paying \$31.6 million for the “*nice-to-have*” improvements in service (CA-NP-151).

There has not been a single comparator project documented by EY or Newfoundland Power in terms of budgeted cost and schedule, or actual cost and schedule. Newfoundland Power has not even provided such information for its sister companies located across Canada. NP simply states in its response to CA-NP-163 that it “*does not have information on the costs of systems implemented by these utilities.*” Without such information, intervenors and the Board are not able to gauge the accuracy and relevance of the project and determine if it is in the best interests of customers. The

only similar project for which such information is provided is the current CSS implemented in 1993 which had a cost overrun of about 35.6% (CA-NP-157). Newfoundland Power states (CA-NP-157) that its “*planning and execution of this project is designed to avoid large cost overruns for a new Customer Information System.*” This is difficult to verify when there is no information provided on experience in other jurisdictions with similar projects. NP has provided no quantification of the magnitude of “*large cost overruns*”. With the workplace disruptions caused by Covid-19 expected to continue into much of 2021, there is added reason to be wary about cost estimates; did EY factor that in when it completed its cost estimate?

The Consumer Advocate is concerned that Newfoundland Power is unnecessarily prioritizing this project now to get the project through the approval process before more stringent capital budget requirements are placed on the Province’s utilities either through adoption of the modifications to the Capital Budget Guidelines recommended by the Board’s consultant Midgard, or through potential changes in legislation relating to the regulatory format for the Province; e.g., the potential adoption of performance-based regulation as recommended in the Final Report of the Muskrat Falls Inquiry, Vol. 4, p.48. There is a very good argument for the Board to direct Newfoundland Power to re-submit this “*once-in-a-generation*” \$31.6 million project under whatever new Capital Budget Application Guidelines the Board may adopt. In the absence of such a re-submission, at the very least a public hearing on the project is needed to provide more information to assess whether it is in the best interests of customers rather than Newfoundland Power’s. A public hearing will enable the parties to better understand what EY learned over the course of its study, how experience elsewhere has influenced its recommendations in this Province and what it expects if the project were to proceed. ***A public hearing will allow the parties to hear directly from the CSS experts at EY rather than rely on Newfoundland Power to suggest EY’s answers.***

The Areas to be Addressed in a Public Hearing

As noted above, Newfoundland Power makes numerous references to EY’s expertise on Customer Service Systems. Clearly EY, rather than NP, is the expert on CSS, yet to date EY has not been involved in the Application process. The Consumer Advocate therefore wants the opportunity to question EY directly in a public setting to gain further project insights with respect to the following:

- CA-NP-153 indicates that four broad options were considered by EY. The Consumer Advocate wants the opportunity to gain a further understanding from EY on why the options, other than the new system, were so readily dismissed, and about what other utilities with the same CSS as NP are doing to prolong the life and why this is not a viable solution for Newfoundland Power.
- NP has a great deal of faith in the EY estimate of \$31.6 million, using it to justify full project approval now rather than in two stages.¹ As noted earlier, NP states (pages 6 of 8 and 7 of 8 of its October 1, 2020 letter to the Board) “*All costs to execute this project including product and implementation costs, are included in EY’s recommended cost estimate. Acquisition of*

¹ The second stage approval would follow selection of a vendor to perform the procurement advisor function.

a specific vendor was therefore not necessary to develop a sound cost estimate.” The Consumer Advocate does not have the same level of faith in the EY estimate as Newfoundland Power. In this regard, we wish to explore with EY:

- EY’s confidence level in the \$31.6 million estimate and the breakdown of costs in each cost category.
- EY’s confidence level in its \$31.6 million estimate in light of the Covid-19 global pandemic. Does the pandemic increase the estimated cost and schedule as a result of stay-at-home orders, travel restrictions, increases in construction materials and services costs, etc? Did EY take account of Covid-19’s impact on cost when it was preparing the cost estimate?
- EY performance on project cost estimates and schedules in the past. On other CSS-type projects, how have EY budget estimates compared to actual project costs and schedules? In EY’s experience, how accurate have estimates been by competing CSS consultants? It is important to consider that EY’s cost estimate is said to be valid for any procurement advisor, not only itself, since presumably a different procurement advisor may be selected under a competitive solicitation.
- Newfoundland Power describes the existing CSS as being very simple relative to the capabilities of a new CSS (CA-NP-158). Given its simplicity, why did it have such huge cost overruns? What is different now from when the current CSS was implemented 30 years ago?
- Is a 10% contingency included in the cost estimate common practice in the industry, and is a contingency needed at all given EY’s extensive experience in CSS?
- In CA-NP-161 NP states *“Specific configurations for successful delivery of Newfoundland Power’s requirements will be determined during the procurement stage of the project.”* Does this suggest that there could be significant variations in actual costs from budget given that *“specific configurations”* are not yet known? Are there different configurations for a new system that would be less costly than the one advanced by Newfoundland Power in its application?
- On the second project relating to the CSS project, namely the March 2020 Report-*Customer Information System: Assessment Results and Planning Recommendations*, the actual cost billed Newfoundland Power was \$552,000 compared to the EY bid price of \$483,000 (CA-NP-139). NP explains that the cost overrun was due to its request that EY map an additional 23 business processes. This is a 14.3% increase over budget. Is it possible that similar issues leading to cost overruns might come up during the implementation phase of the proposed new CSS, particularly when *“specific configurations”* are not yet known (as discussed above)?
- Newfoundland Power is subject to cost of service regulation, and like all regulated jurisdictions, regulatory precedent is an important consideration. Yet neither EY nor NP have put on the record cost data for CSS replacement projects in other jurisdictions. It is difficult for the intervenors and the Board to faithfully accept the EY estimate given the absence of such information on the record (CA-NP-162 and CA-NP-163). It would seem that many of these utilities are regulated so the budget

estimates and actual costs should be publicly available. The Consumer Advocate wants to gain further understanding of why EY has not provided such information in its report, and if regulators in other jurisdictions simply accept CSS replacement projects in the absence of such cost and schedule comparators.

- Finally, the Consumer Advocate wants to understand if NP confidence in EY's cost estimate is warranted. Specifically, can EY guarantee its cost estimate in a competitive procurement without knowing what its competitors will bid? How can EY make such a guarantee unless it has already been awarded/promised the contract, or it has built considerable leeway in the estimate to ensure prospective bidders will come in less than the amount included in the cost estimate? The Consumer Advocate wants assurance that the EY cost estimate is truly an estimate rather than a quote.
- In its June 2018 CSS Technical Risk Assessment, page 1, EY recommended that Newfoundland Power "*formalize and deepen its examination of CSS modernization options to include a thorough evaluation of the costs and benefits of replacement and deployment options. In addition, Newfoundland Power should develop contingency plans for CSS support and training to mitigate any unexpected loss of key personnel over the next five years*" (from 2018 when the study was undertaken until its replacement in 2023). NP ignored the second recommendation stating "*Based on Newfoundland Power's research, it is not feasible to develop a contingency plan for CSS support and training*" (CA-NP-143(b)). Given Newfoundland Power's confidence in EY's extensive experience in this area, the Consumer Advocate wants to further understand why it made a recommendation to develop contingency plans that NP claims is not feasible.
- EY provides a risk assessment that categorizes risk parameters as low, moderate and high (and in between). The Consumer Advocate wants to gain further clarification on what constitutes "*high risk*". We want to explore how risk might be quantified in terms of probability of failure, the consequences of failure, and the cost of rectifying any failure. For example, what is the probability that the existing CSS will fail in 2023, and how will the failure impact customers in terms of costs and service? Has EY quantified such risks under a formal asset management plan such as ISO 55000 in other jurisdictions, and if so, why not here?
- The Board's consultant Midgard identified key questions for the Board with respect to capital projects including "*At what unit cost are system reliability and risk profile improved by the project*" and "*Does the ratepayer value the improvement in system reliability and risk reduction more than the project cost?*" The Consumer Advocate wants to understand if the EY experts attempted to answer these questions in their review, and if not, why not? Has EY responded to such requirements in other jurisdictions?
- In CA-NP-147 NP states "*In the Company's experience, CSS operates reliably. This is consistent with EY's findings.*" In the same response NP goes on to say "*There have been no security violations for CSS within the last 10 years. This is consistent with EY's finding*

that the system operates securely.” The Consumer Advocate wants to explore with EY experts if this is likely to change if replacement of the CSS is delayed by two to five years.

- In CA-NP-155(e) NP states *“In Newfoundland Power’s view, the record of this proceeding provides fulsome information that the replacement of CSS is necessary to continue providing least-cost, reliable service to customers.”* We want to explore with EY experts if they also believe that NP will be unable to provide least-cost, reliable service if the project is delayed by two to five years.
- In PUB-NP-017 it is stated *“Newfoundland Power has contingency plans in place for all of its critical applications, including CSS. The contingency plan for CSS has 3 principal elements”*. NP goes on to identify the three principal elements: 1) disaster recovery, 2) replication of customer data, and 3) paper forms. The Consumer Advocate wants to explore with EY experts if this is an adequate contingency plan and typical of the industry. In EY’s experience, how long into the future would this contingency plan be adequate?
- The Consumer Advocate wants to explore with EY experts which of the identified customer benefits are *“must-haves”* and which are *“nice-to-haves”*. Newfoundland Power states (CA-NP-139, Attachment A, page 20 of 34) *“Over the last 20 years, customers have indicated an average satisfaction level of 88%.”* The Consumer Advocate wants to question EY experts about how much NP customer satisfaction might increase if the CSS is replaced with a new system, or decrease if it is not.
- In CA-NP-148 it appears that the existing CSS is still capable of providing customers with the current standard of service. Crucially, to date we have not seen (i) evidence that the existing CSS will suffer a major failure, (ii) an estimate of the probability of failure, (iii) evidence that a failure cannot be readily rectified in a timely manner, or (iv) what a failure entails and how it might affect customers if at all. These issues should be explored in a public hearing that includes EY.
- The Consumer Advocate wants to obtain information on direction and correspondence provided by Newfoundland Power to EY over the course of the study. In CA-NP-092 Newfoundland Power objected to providing such correspondence, claiming *“it is not necessary for a satisfactory understanding of the matters to be considered in this Application”*. We respectfully disagree and want to explore this area further with EY in a public hearing.
- In CA-NP-140 NP states *“the use of an objective third-party Procurement Advisor will help ensure a fair and equitable solicitation process in a manner that is consistent with industry best practice.”* The Consumer Advocate understands the need for an independent procurement advisor for this *“once-in-a-generation”* project, but we want to understand if EY has an unfair advantage over its competitors given that it has been working for Newfoundland Power for the past two years receiving revenues of about \$0.5 million. We

want EY's opinion on whether this advantage is likely to impact the competitiveness of the solicitation for CSS procurement advisor.

Summary

The burden of proof is on the utility to provide sufficient data, information and analyses to justify its expenditures and support the Board's decisions regarding the "*trade-off between cost to ratepayers, system reliability and risk, in accordance with formal asset management practices.*" NP appears to agree that the onus is on the utility to justify its expenditures when it states (CA-NP-128 of its 2021 Capital Budget Application) "*It is Newfoundland Power's position that the onus is on the utility to fully support with evidence the expenditures proposed in its capital budgets.*" In the opinion of the Consumer Advocate Newfoundland Power has fallen far short of this requirement. In PUB-NP-001 the Board requests NP to "*highlight any actions that Newfoundland Power has taken in response to the current economic conditions within Newfoundland and Labrador to control and/or reduce capital expenditures while maintaining reliable service.*" Regrettably, NP's response to the Board is to provide a description of its approach to capital expenditures under "*all economic conditions.*" NP thereby effectively dismisses the Board's specific question.

In CA-NP-092 Newfoundland Power objects to providing correspondence between them and EY. They claim, "*it is not necessary for a satisfactory understanding of the matters to be considered in this Application*". We respectfully disagree and believe that a public hearing is needed so we can query EY directly. Alternatively, the Board could direct Newfoundland Power to re-submit the project under the Capital Budget Guidelines that may be devised by the Board following the recommendations of the Board's consultant Midgard. That would potentially provide closer scrutiny of the CSS proposal and would come at a time when the effects of Covid-19 will have hopefully passed and the province's rate mitigation strategy will be known.

The CSS Replacement Project is described by Newfoundland Power as a "*once-in-a-generation*" project. At an estimated cost of \$31.6 million, it deserves utmost scrutiny to determine whether it would deliver benefits to customers in excess of the cost that it would impose on them. Newfoundland Power has failed in this regard, and has not provided the quantitative information necessary to judge the merits of the project. Therefore, we believe the Board ought to order a public hearing on this "*once-in-a-generation*" project. The Consumer Advocate has provided justification for a public hearing and identified topics that we wish to explore with NP and, particularly, EY in that forum.

The current 2007 Capital Budget Guidelines apply to Newfoundland Power's Application for the CSS Replacement Project.

In Midgard's Report to the Board dated August 24, 2020, Midgard summarized the evidentiary requirements of the 2007 Guidelines as follows:

Step 3: Evidence Requirements

It is the utility's responsibility to provide the necessary evidence (e.g., data, information, analyses, etc.) to support the capital expenditures proposed in annual Capital Budget Applications. The evidentiary requirements outlined in the existing Guidelines are derived from the intersection of expenditure classification and materiality segmentation thresholds and are focused on either an individual project or program. Based on these breakdowns, the evidence and review required for each budget item in the Capital Budget Application will be focused on supporting a clear, concise and transparent understanding of why the investment is necessary to achieve lowest cost reliable service in the context of balancing ratepayer cost, system reliability and risk. (Emphasis added)

(See: Midgard Capital Budget Guidelines Review, Aug 2020, p. 87)

Newfoundland Power has taken the position that the 2007 Guidelines should apply to this project; however, the Board cannot ignore the serious deficiencies cited by its own consultants in these 2007 Guidelines and proceed as if this information did not exist. The 2007 Guidelines are, for the most part, obsolete. Ratepayers will have been given the short shrift if Newfoundland Power is enabled to file this once in a generation \$31.6 million project using antiquated Guidelines, when new Guidelines would require more stringent scrutiny.

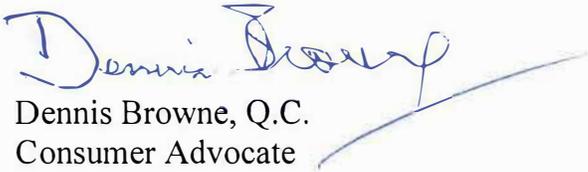
However, even under the 2007 Guidelines, it is the Consumer Advocate's submission that "a transparent understanding of why the investment is necessary" (in this case, the CSS Replacement Project) cannot be achieved when the evidence grounding the Application, being evidence of representatives of EY, is insulated from the Board's scrutiny by layers of Newfoundland Power's own version of the EY evidence. The Consumer Advocate submits that transparency requires more than the presentation of hearsay evidence, especially when considering the magnitude of the CSS Project.

Finally, this new CSS system is not being considered in light of the technological advances available to ratepayers now. Consumers no longer depend upon Newfoundland Power to deal with their own energy management; there is now an App for that. For example, MYSA and Casa Wi-fi have systems to enable ratepayers to control their own energy requirements from distant locations and to monitor usage in specific rooms and to determine the electricity usage in each room. Thermostats can be scheduled hourly, daily or monthly. Information/feedback is provided. Remote wi-fi control allows energy usage and temperature to be controlled remotely from a smartphone or similar device connected to wi-fi/cell coverage. In short, continuous changing technology that is available to consumers should also be considered. It does not appear that Newfoundland Power has considered other technology. This is a larger issue which should be of interest to ratepayers, Newfoundland Power and the Board. A hearing could facilitate this discussion.

There is no threshold established for when the Board should convene a public hearing. However, given all of the above, it is our position that the threshold has been met in this instance and we are requesting a public hearing on this issue.

A public hearing would allow the Board and the Intervenor direct access to the EY proponents of the CSS for cross-examination, as they have been presented by Newfoundland Power as experts in the field. It would also provide an opportunity to determine the requirements for a declaration of the term "independent consultant". A public hearing would allow ratepayers a fulsome hearing on this CSS proposal.

Yours truly,



Dennis Browne, Q.C.
Consumer Advocate

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cc

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