



NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES
120 Torbay Road, P.O. Box 21040, St. John's, Newfoundland and Labrador, Canada, A1A 5B2

2021-01-14

Newfoundland Power Inc.

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Dear Madams/Sir:

Re: Newfoundland Power Inc. - 2021 Capital Budget Application - Customer Service System Replacement Project - Response to Consumer Advocate's Request for Board to Reconsider Decision

This is in reply to the request dated January 11, 2021 from the Consumer Advocate for the Board to reconsider its January 6, 2021 decision to request further Requests for Information ("RFIs") in this matter and to render its decision based on the record as it currently stands.

The Consumer Advocate submitted that a request for additional RFIs at this time is not contemplated by the Capital Budget Guidelines ("Guidelines"), is in effect creating *ad hoc* procedural guidelines and results in procedural unfairness. The Consumer Advocate further submitted that, as the Board has requested additional RFIs at this time, *ipso facto*, Newfoundland Power Inc. ("Newfoundland Power") has not discharged its burden of proof in relation to the project and the Board has unilaterally changed the Guidelines which was not anticipated by the Consumer Advocate.

In its response dated January 13, 2021 to the Consumer Advocate's request, Newfoundland Power submitted that the Board's decision to allow additional RFIs on the project at this time is consistent with its authority under the *Public Utilities Act* ("Act") which in section 16 establishes that the Board is responsible for the general supervision of utilities and has the right to obtain all information from a utility necessary to fulfil its duties. Newfoundland Power submitted that section 22 of the *Board of Commissioners Regulations, 1996*, ("Regulations") establishes that, when the

Board doesn't proceed by way of public hearing, it may dispose of a matter on the basis of written documentation. The Board may require further information to be furnished and section 15 of the Regulations requires the Company to provide full and adequate response to the RFIs. Newfoundland Power submitted that the established schedule requiring RFIs to be filed by January 15, 2021 should be maintained.

Newfoundland and Labrador Hydro ("Hydro"), in its response dated January 13, 2021, also referred to section 16 of the *Act* and the Regulations and stated it had no objection to the RFIs at this point in the process. Hydro submitted that the addition of a further round of RFIs to address additional questions identified by one or more parties and the Board is consistent with the Board's authority.

As the Board has stated previously, including in its letter of January 6, 2021, the Guidelines allow for effective and efficient oversight of capital spending by the utilities in the Province. The Guidelines set out a framework which provides clarity as to the application requirements for capital budget filings from the utilities and a full opportunity for intervenors to question the rationale, details and cost implications of a capital budget proposal. The Guidelines provide for RFIs to allow the Board and intervenors to obtain relevant information on a proposed capital project. The Guidelines do not specify or limit any specific number or rounds of RFIs.

The Consumer Advocate, in his letter of December 16, 2020, requested a public hearing to obtain additional information from an expert that had prepared reports for Newfoundland Power on the proposed capital project and listed several issues that he wanted to question the expert on at a hearing. As stated in its January 6, 2021 letter, the Board believes it is important for the parties have a full opportunity to question capital budget proposals, including questioning the experts whose reports are filed in support of the application. RFIs are an essential part of the process designed to solicit the relevant information required for the Board and intervenors to get a full understanding of a capital project.

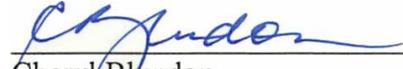
The Board, as an administrative tribunal, is not bound by the formal rules of evidence and has broad discretion with respect to the processes and procedures employed to exercise its statutory jurisdiction. The legislation clearly provides the Board with the authority to establish its own procedure, to obtain necessary information from the utilities and to proceed based on the written record. The decision to allow additional RFIs at this time is well within the Board's discretion. Moreover, the decision does not result in any procedural unfairness. The Consumer Advocate has the opportunity, if he wishes, to explore the areas of inquiry he had identified and to obtain information in response to RFIs to assist in his assessment of the project and his final submission on the project. Newfoundland Power has the opportunity to provide additional information which may be helpful to the Board as it balances the interest of the utility and consumers in its assessment of this project.

The Board agrees with the Consumer Advocate's submission that Newfoundland Power has the onus of proof in relation to the project for which they are seeking approval. However, the Board notes that the assessment of whether this burden has been met occurs after the record is closed and all evidence and submissions are concluded, which has not occurred yet in this matter.

The Board will extend the date for the filing of Requests for Information to Monday, January 18, 2021 with responses to be filed by January 26, 2021.

If you have any questions, please do not hesitate to contact the Board's Hearing Counsel, Maureen Greene, Q.C., by email, mgreene@pub.nl.ca or telephone (709) 726-3175.

Sincerely,


Cheryl Blundon
Board Secretary

CB/cj

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