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Via Email

The Board of Commissioners of Public Utilities
Prince Charles Building
120 Torbay Road, P.O. Box 21040
St. John's, NL A1A 5B2

Attention: Jo Galarneau, Executive Director and Board Secretary

Dear Ms. Galarneau:

Re: Newfoundland Power Inc. - 2024 Capital Budget Application
Request for Oral Hearing

1. On June 22, 2023, Newfoundland Power filed its 2024 Capital Budget Application with the Board. By its Application, Newfoundland Power is seeking $120,042,000 of ratepayers' money to pay for their proposed budget ($100,331,000 in 2024, $19,414,000 in 2025 and $297,000 in 2026).

2. The Consumer Advocate submits that in light of the numerous uncertainties in the province's electricity supply and costs brought on in large part by the Muskrat Falls project, there is an extremely high sensitivity on the part of electrical consumers in the province to ensure that expenditures by a utility be subject to transparent, effective oversight. In Board Order No. P.U. 36(2021) the Board, "*acknowledges the rate pressures which are expected in association with the commissioning of the Muskrat Falls Project. The Board believes that, given the circumstances, both Newfoundland Power and Hydro should renew their efforts to provide evidence which demonstrates that every effort is being made to reduce costs for customers while ensuring the continued provision of reliable service.*"

3. Having regard to the sheer scale of Newfoundland Power's current application for $120 million, and the relentless trajectory of significant capital budget costs year over year, the ratepayers are entitled to complete justification from Newfoundland Power for its expenditures to ensure that the Electrical Power Control Act, 1994 is complied with and that Newfoundland Power is delivering power to consumers in the province consistent with the requirements set out in the Act which requires that power be delivered to customers at the lowest possible cost, in an environmentally responsible manner, consistent with reliable service. It is the Consumer Advocate's further position that the Board should order an oral hearing open to the public on the Capital Budget items listed below, which clearly have not been fully justified by Newfoundland Power, despite the RFI process.

4. In the Consumer Advocate's submission, **the Issues** arising in the proceeding that have not been adequately addressed in evidence filed to date are as follows:

   a) ***Capital spending on the Memorial Substation***. Proposed expenditures on Memorial Substation total roughly $6 million, about $1.6 million for MUN T-2 transformer replacement approved by the Board in Order No. P.U. 14(2023) and about $4.4 million for Memorial Substation Refurbishment and Modernization proposed in the 2024 Capital Budget Application (CA-NP-148). All but $48,000 is proposed to be spent in 2024.

As noted in the response to CA-NP-148, the Consumer Advocate requested the Board to re-hear the MUN T-2 Application, but the Board refused, stating:

The Board is satisfied that the treatment of the MUN-T2 transformer replacement at Memorial Substation is consistent with Newfoundland Power's approved cost of service and longstanding regulatory principles and is in no way unfair or discriminatory.

It is unclear how the Board reached this level of satisfaction because the MUN T-2 transformer replacement is ***not*** consistent with the approved cost of service, is ***not*** consistent with long-standing regulatory principles in this jurisdiction, is ***not*** fair and is ***not*** nondiscriminatory. The Board may have reached this level of satisfaction owing to incorrect and incomplete information and errors in evidence. For example, Order No. P.U. 14(2023) states "*The Board notes that General Service customers are supplied through a single supply point which is included in Newfoundland Power's cost of service and funded by all ratepayers.*" We point out that the original response to CA-NP-032 states:

"*The supply point of any Newfoundland Power customer is considered the point at which the customer is metered. While multiple customers may receive service from the same substation, transmission line, distribution feeder, or other infrastructure, Newfoundland Power customers do not share a supply point.*"

However, Newfoundland Power has since revised the response, stating (CA-NP-032, 1st Revision):

"*The supply point of any Newfoundland Power customer is considered the point at which power and energy is delivered from the Company's facilities to the Customer's electrical system. This is the location where Newfoundland Power facilities connect to the customer supplied facilities. A customer's supply point is typically located near the customer's meter. One supply point can supply multiple customers.*"

Therefore, the supply point is ***not*** the point at which the customer is metered, but rather the point where power is delivered to the customer. Second, General Service customers are ***not*** necessarily supplied through a single supply point, but rather, a single supply point can serve multiple customers. Third, as stated in CA-NP-152 (e), the supply points of General Service Rate 2.4 customers are ***not*** funded by all ratepayers, but only General Service customers in the same rate class. This is confirmed in Newfoundland Power's response to CA-NP-152 (e) which states "*Specifically Assigned Costs that are assigned to a particular customer rate class are used solely in determining the cost recovery from that particular rate class. These costs would not be recovered from all rate payers.*" Clearly, the costs for General Service customer supply points are not funded by all customers as stated by the Board in P.U. 14(2023).

Next, consider the circumstance in which a single customer would pay. In that regard, Newfoundland Power's response to CA-NP-153 states: "*Radial transmission lines that serve* *multiple customers are considered common transmission assets.*" The response goes on to say "*It is Newfoundland Power's existing practice to charge a customer for connection facilities that benefit only one or a few customers where appropriate.*" The Consumer Advocate views this as a fair and logical manner for assigning costs and avoiding cross-subsidization in rates.

For example, the response to CA-NP-156 states "*Newfoundland Power owns the Roycefield Tap ("RFD") Substation and Transmission Line 104L that extends from RFD Substation to the customer's electrical equipment at the mine site. To connect to Newfoundland Power's electricity system, the customer was required to pay a Contribution in Aid of Construction towards the construction of RFD Substation and Transmission Line 104L.*" The response goes on to say "*The Rate #2.4 customer served by the RFD Substation is not served from another substation.*" Therefore, the RFD Substation and Line 104L do not form part of a redundant supply; regardless, Newfoundland Power required the customer to pay a Contribution in Aid of Construction and the costs are not included in rate base "*to ensure those costs are not allocated to Newfoundland Power's other customers*"(see response to CA-NP-156 (a)). Further, in the response to CA-NP-181 Newfoundland Power states "*Costs associated with Newfoundland Power's General Service Rate #2.4 customers that do not require a Contribution in Aid of Construction or other contribution in accordance with the Company's Contribution in Aid of Construction Policy or Schedule of Rates, Rules & Regulations are recovered through the rates charged to the General Service Rate #2.4 customer rate class.*" In other words, Contributions in Aid of Construction are not included in the cost of service study and recovered in rates charged to the General Service Rate #2.4 customer class.

According to the response to CA-NP-161, transmission line 104L and the RFD Substation benefit only the Rate 2.4 customer served by these facilities as no other customer on the system would be without service if Line 104L or the Royce Substation were removed from service. The funding and allocation of the costs for line 104L and the Royce Substation appear to have been handled in a fair and nondiscriminatory manner.

Compare this to Memorial Substation. The responses to CA-NP-159 and PUB-NP-053 are unclear with respect to the benefit of the lines into Memorial Substation, but it is clear that at least all facilities from the high-voltage switchgear at the substation through to the low-voltage switchgear including transformers MUN T-1 and MUN T-2 benefit only Memorial University. Newfoundland Power states in response to CA-NP-159 "*The loss of any transformer at MUN Substation would not have any effect on customers other than Memorial University.*" Therefore, the MUN transformers and all low-voltage switchgear benefit only Memorial University. Yet according to CA-NP-154, $2.1 million of the $6 million proposed to be spent at Memorial Substation would be recovered from all customers and $3.9 million would be collected from only Rate 2.4 customers. Newfoundland Power is spreading the costs of the Memorial Substation across all customers when the bulk, if not all, of the proposed costs benefit only Memorial University. These costs should be recovered from Memorial University alone as the sole beneficiary, and should not be included in the cost of service study or rate base.

In the response to CA-NP-181, Newfoundland Power states "*if Memorial University were to be directly assigned all costs associated with its service from MUN Substation, consideration* *would have to be given to whether it remained appropriate for Memorial University to continue to pay a rate that recovers a portion of costs associated with substations, transformers, and distribution equipment that are used to serve other customers in the General Service Rate #2.4 customer rate class."* This statement has a number of flaws. First, transmission assets where there is looped flow benefit all customers, so should be collected from all customers. Radial transmission facilities that benefit only one of a few customers should be recovered from only those one or a few customers that benefit. Second, the response ignores the fact that there are other customers besides Memorial University that are served from the transmission/distribution system and have been required to pay a Contribution in Aid of Construction, or otherwise pay for the facilities directly (see paragraph above concerning the RFD Substation and Line 104L). There is no evidence on the record that when Newfoundland Power imposed the Contribution in Aid of Construction on these customers it filed an application for a rate that no longer recovered a portion of the common transmission and distribution assets from these customers. Third, this statement in no way justifies, and is immaterial to, allocating $6 million to customers that do not benefit from the expenditures and allowing Newfoundland Power to increase its rate base and profits. Newfoundland Power is not a neutral bystander in the Memorial Substation projects. If Newfoundland Power believes that a review of its rate classes is necessary then it should file an application.

The response to CA-NP-153 states "*Newfoundland Power observes that the load profile of Memorial University is expected to change substantially in the coming years due to the planned installation of electric boilers, the addition of new buildings, and the potential establishment of a capacity assistance agreement. In the Company's view, a review of the rates charged to Memorial University would be appropriate when these changes materialize to ensure the University continues to pay rates that are consistent with the cost of providing it with electrical service.*" While it may be appropriate to review rates after these changes take place, in its current Application Newfoundland Power is requesting the Board to approve $4.4 million of expenditures and assign the costs to customers who do not benefit from the expenditures. This is on top of the $1.6 million expenditure for the MUN T-2 Replacement project approved by the Board in Order No. P.U. 14(2023). Waiting until after the $6 million has been assigned to customers who do not benefit from the expenditure is not fair to these customers and amounts to a windfall profit for Newfoundland Power.

In the response to CA-NP-148 it is stated "*Newfoundland Power assesses the fairness of its customer rates by comparing the revenue collected from each rate class with the cost to serve that class, as determined through an embedded cost of service study (the "revenue-to-cost ratio"*). This is an extremely limited view of fairness. First, Newfoundland Power's current cost of service study is far from being an accurate and fair representation of costs, consumption characteristics and cost allocation as witnessed by the fact that they are currently undertaking load research and rate design studies. The information in the current cost of service study is far out-of-date, the reason the Consumer Advocate insisted that the studies be undertaken. Second, the cost of service study and resulting revenue-to-cost ratios are but one measure of fairness. Allocating costs to customers for facilities that are not used and useful for their supply cannot by any measure be considered fair, and requiring such customers to pay for these facilities is clearly discriminatory. Contrary to the Board's statement, by approving Newfoundland Power's proposed MUN T-2 transformer replacement, it has set a precedent that fair and nondiscriminatory rates are no longer an accepted regulatory principle in this jurisdiction.

Clearly, an oral hearing is needed to clarify how the costs of radial facilities and supply points are recovered from customers and why Newfoundland Power is not demanding a customer contribution toward the cost of the Memorial Substation Refurbishment and Modernization project as it has from other Rate 2.4 customers, including those who do not have a redundant supply. It is also necessary to clarify statements included in Order P.U. 14(2023) relating to the MUN T-2 Transformer Replacement Application given the erroneous statements made in the Order. It is paramount that this error not be compounded in the 2024 CBA. And finally, there is a need for a better understanding of the treatment of costs for other facilities that are radial in nature and benefit only one customer, such as the LCV, RFD and LPD Substations and Lines 410L, 104L and 36L.

b) ***Newfoundland Power Distribution Planning Process.*** In response to CA-NP-027 Newfoundland Power indicates that it does not plan its distribution system in an integrated manner. It states "*Information related to integrated resource planning, reductions in harmful environmental emissions and government zero-carbon efforts, is not included in these guidelines. The topic of integrated resource planning is being considered as part the Board's review of Newfoundland and Labrador Hydro's Reliability and Resource Adequacy Study.*" In the response to CA-NP-165 Newfoundland Power reconfirms "*that its current practices do not fully incorporate integrated distribution system planning.*"

In responding to CA-NP-046 Newfoundland Power states "*For example, the 2024 Feeder Additions for Load Growth project evaluates the use of commercial-grade battery storage technology as an alternative to proposed feeder upgrades. This alternative was determined to be cost prohibitive.*" Further, in response to CA-NP-046 it is stated "*the Company does not currently consider customer generation to be a factor that exposes its assets to a risk of becoming stranded.*" However, Newfoundland Power does not provide evidence that battery storage and customer-owned generation are cost prohibitive under the range of scenarios currently facing the province. The government's net-zero carbon emissions policy could result in customer-owned generation and battery storage becoming economic if fossil fuels were to be ruled out as potential supply options. Further, considerable uncertainty in the reliability of Muskrat Falls generation and the LIL, in Holyrood as a backup source of power generation, and the potential for significant rate increases owing to the same, would clearly impact future customer decisions relating to customer-owned generation and battery storage. We note that many of the projects in Newfoundland Power's capital budget have 60-year lifespans, and possibly more.

Newfoundland Power's EV Load Management Pilot Application indicates that under the moderate growth scenario, light-duty EV adoption is expected to hit 150,000 vehicles in the province by 2040. This means that there will potentially be 150,000 battery storage facilities located throughout the province for use during periods of need on the system. Newfoundland Power acknowledges that customer-owned battery storage could become a feasible supply resource when it states (CA-NP-170):

As the number of electric vehicles in the province increases, customer-owned battery storage will also likely increase, but not necessarily at the same rate. For electric vehicles capable *of bidirectional charging, the battery can be used to provide power to the grid when charged. As a result, as charging times are reduced, grid-tied battery availability is increased.*

In answering CA-NP-075, Newfoundland Power states "*Ontario, British Columbia, Quebec and the Yukon have active NWA initiatives, however the majority of projects are in the pilot phase.*" Such studies inform distribution planning. Should the province not likewise be conducting a pilot on NWA (non-wires alternatives) to inform future distribution planning activities? The parties and the Board would benefit from an oral hearing with cross-examination of Newfoundland Power expert witnesses to provide greater depth of evidence and understanding of this important topic. Otherwise, the Board cannot determine if Newfoundland Power is meeting supply in an environmentally-responsible manner consistent with the Electrical Power Control Act, 1994 and government policy.

c) ***NP Asset Management Study***. As pointed out in the Utility Management Responsibility Report by Midgard Consulting Incorporated, the ways that regulators review capital budgets and utilities approach capital budget applications are changing. The response to NP-CA-006 states "*Three (3) of the four (4) regulatory approaches used across Canada explicitly have some form of capital budget envelope…*". Further, the response to NP-CA-007 states "*Manitoba Hydro is implementing its value model through the industry-recognized Copperleaf C55 asset investment planning software. Manitoba Hydro has already completed its initial implemented of Copperleaf C55 and is currently working to improve its implementation.*" As stated in NP-CA-001:

In CA-NP-012 (pertaining to NP's 2024 CBA) it is stated "Newfoundland Power is currently undertaking a review of its asset management practices to ensure its practices continue to be adequate, given the age of its electrical system, and remain consistent with industry best practices." However, in the same response, NP states "There have been no substantial changes to Newfoundland Power's approach to asset management since June 2022." The Consumer Advocate believes there is an urgent need to finalize the Capital Budget Application Guidelines because: 1) it is not clear that NP will change its asset management practices until required to do so, and 2) it will better inform the asset management strategy reviews that are currently underway and help to avoid further delays to the implementation of asset management practices that will benefit consumers.

The Board would benefit from hearing an oral cross-examination of Newfoundland Power senior staff about the ongoing asset management review to determine if it is consistent with changes going on in the industry and best practice emerging in provinces such as Manitoba. At the very least, such cross-examination would benefit the Board as it moves to finalize the Capital Budget Application Guidelines.

d) ***Use of Historical Averages to Determine Budget Requests.*** In responses to CA-NP-195 and CA-NP-196 Newfoundland Power identified nine programs of \$750,000 and under and 11 programs over \$750,000, respectively, for which capital budget requests are based on their historical averages. According to the Attachments to those responses, the aggregate amounts for those programs in the 2024 CBA are \$4.105 million for programs \$750,000 and under and \$48.865 million for program over \$750,000. That gives an overall total of approximately

$53 million. This amount is more than half of the $100.3 million budget proposed for 2024 by Newfoundland Power in its 2024 CBA.

While the historical average method may be a practical rule of thumb for some small or uncertain expenditures, it is concerning that such a large portion of the total budget is not based on detailed cost estimates or engineering studies nor tied to reliability performance. For the most part, the proposed budget for each of these programs is based solely on the previous five-year inflation-adjusted average expenditures on it, with adjustment for expected inflation. No other adjustments are made, except for (i) a few programs for which the forecast number of new customers is taken into account in which case the historical average is based on the inflation adjusted historical average per-customer expenditure, and (ii) as Newfoundland Power states in response to CA-NP-200, on occasion it has adjusted a historical average that contains an outlier year; we note that it appears no such adjustment for outliers was made in its 2024 CBA.

Also, in response to CA-NP-200, Newfoundland Power states that it has been using this historical average method for more than two decades and that it has not considered other methods that could be used to systematically address outlier years. It is time to re-assess this practice.

Our concerns with the current practice are as follows. First, as stated above, it is troubling that such a large portion of spending is not based on engineering studies, cost assessment or data indicating reliability is at risk. It begs the question as to what other methods might be more effective. There may be many options but one possibility is the application of a budget envelope to a subset, if not all, of total capital expenditure. We note that the Utility Management Responsibility Report by Midgard Consulting deals with how various forms of budget envelopes are used by regulatory boards elsewhere in Canada. Further, as noted in the response to NP-CA-006 "*The three identified regulatory approaches across Canada do not have specific statutes, regulations, or regulatory guidelines that explicitly establish or prohibit capital budget envelopes. Instead, these regulatory approaches implicitly incorporate capital budget envelopes*." Second, reliance on historical averages to determine future spending can perpetuate high spending if the utility opts to spend the budgeted amount, or more, in each year for which there is regulatory approval. Third, the historical average approach does not take into account any improved technology that is embodied in replacement and new components that are provided by these programs. Fourth, Newfoundland Power adjusts historical averages by using its own inflation adjustment, namely a combination of the rate associated with the GDP deflator and the rate of increase in Newfoundland Power's own labour costs. However, as noted in CA-NP-202, Newfoundland Power's annual inflation rate forecasts are consistently higher than the rates associated with the GDP deflators for 2024 to 2028 inclusive. Thus, Newfoundland Power's inflation adjustment factor is higher than the recognized broad national measure of inflation and, if consistently so, its application would increase the utility's capital expenditures by more than that broad, widely accepted, measure of inflation.

An oral hearing could address this methodological issue. Testimony from Newfoundland Power personnel and experts would help the Board assess whether the historical approach should be used as extensively as it is by Newfoundland Power. An oral hearing could also determine if that approach is considered best practice or whether other approaches are superior in terms of determining appropriate capital expenditures and containing costs to ratepayers.

e) ***Fortis' Influence***. In CA-NP-207 the following question was asked:

Is it the policy of Fortis that its subsidiaries, including Newfoundland Power, should grow their rate bases according to how much capital expenditures they can get through from a regulated point of view?

In its answer Newfoundland Power has stated as follows:

b. Newfoundland Power's rate base largely reflects its annual capital expenditures, which are determined in accordance with the Provincial Power Policy. The company's capital planning process applies sound engineering and objective data to determine which expenditures are required annually to provide customers with access to safe and reliable service at the lowest possible cost.

Despite this answer, in a public statement dated on or about September 20th, 2023, Fortis, Newfoundland Power's sole shareholder, referenced its $25 billion capital spending plan described as a five-year capital plan.

In describing the plan, Fortis made it known that its plan was not speculative in nature, but was based in part on the projected capital expenses they expected to get approved from a regulated point of view. This public statement suggests that Fortis is likely relying, in part, on what Newfoundland Power itself could get through from a regulatory point of view, which suggests further that either Newfoundland Power has provided Fortis with a target capital budget amount that Newfoundland Power expects to obtain from the Board or Fortis has informed Newfoundland Power of its ambitious capital spending plan and expects Newfoundland Power to contribute to it by maximizing how much capital expenses they can get through the 2024 capital budget process.

The Consumer Advocate submits that it is entitled to an unequivocal answer to CANP-207 as to whether Fortis's declared capital budget policy shapes Newfoundland Power's 2024 capital budget application or not, and a cross examination of Newfoundland Power executives on this issue would better inform the Board and ratepayers on this issue.

5. As noted above, there is a great deal of evidence missing in the Application. The parties and the Board do not have a complete understanding of the issues, and the Board is not in a position to determine if the proposed expenditures meet the requirements of the Electrical Power Control Act, 1994. It is not at all clear that Newfoundland Power has given proper weighting to alternatives with much smaller environmental footprints than the proposed projects. There is no consistency in the allocation of costs for radial supply facilities such as the Memorial Substation which has already led to a Board Order on the MUN T-2 Replacement project that is contrary to the regulatory principle that rates be fair and non-discriminatory. It is our submission that an oral hearing addressing the above topics is necessary for the Board to make a more informed decision. Newfoundland Power's submission lacks the evidentiary quality required for approval of these

expenditures by ratepayers. We are prepared to participate in this hearing in a timely fashion, which we anticipate would take two (2) days.

Finally, we close on a general observation. There has not been an oral hearing on utilities' capital budget applications in 20 years. While annual hearings might not be needed, we believe that for the parties to gain a more complete understanding of the issues related to capital spending there should be oral hearings, open to the public, from time to time. Now is an opportune time.

Yours truly,

Dennis Browne

Dennis Browne, KC
Consumer Advocate

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