Office of the Consumer Advocate

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November 27, 2023

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-Anne Galarneau
Executive Director and Board Secretary

Dear Ms. Galarneau:

Re: Newfoundland Power Inc. 2024 Capital Budget Application
- Submission of the Consumer Advocate

On June 22, 2023, Newfoundland Power ("NP") submitted to the Public Utilities Board (the "Board") its 2024 Capital Budget Application ("NP 2024 CBA" or "Application"). The Application seeks Board approval for the following (Application, para. 2):

(a) proposed single-year 2024 capital expenditures in the amount of $84,583,000 comprising projects and programs costing in excess of $750,000;
(b) proposed single-year 2024 capital expenditures of $10,514,000 comprising projects and programs costing $750,000 and under;
(c) proposed multi-year projects commencing in 2024 with capital expenditures of $5,234,000 in 2024, $19,414,000 in 2025 and $297,000 in 2026; and
(d) ongoing multi-year projects previously approved in Order No. P.U. 36 (2021) and Order No. P.U. 38 (2022) with capital expenditures of $14,921,000 in 2024 (the "Previously Approved Multi-Year Projects").

Thus, the Application entails capital expenditures in 2024 of $115,252,000 consisting of $100,331,000 (=$84,583,000 + $10,514,000 +$5,234,000), for which NP is seeking Board approval, plus $14,921,000 associated with previously approved projects.

The Application is also requesting the Board to fix its average rate base for 2022 in the amount of $1,230,434,000 (Application, para. 9(c)).

The Board directed intervenors to file submissions on the Application by November 27, 2023.

This document is the Consumer Advocate's submission. What follows consists of five sections under the headings: Context; Issues Relevant to the Application; Specific Recommendations; Addressing Issues Arising from the CBA in the next GRA; and Conclusion.

1. CONTEXT

NP's application comes at a time of massive spending on the province's electricity system. The inclusion of the Muskrat Falls Project ("MFP") in rates will have a profound impact on electricity rates. The latest capital cost estimate for the MFP is $13,400 million.[1] Hydro's *Reliability and Resource Adequacy Study – 2022 Update* (*RRAS-2022 Update*) indicates that owing to continuing issues with the MFP, especially the Labrador-Island Link (LIL), the Holyrood TGS may be kept in service until 2030. Costs for Holyrood if required to operate in generation mode through 2030 are $1,013 million ($140 million for capital, $176 million for operating costs and $697 million for fuel).[2] Further, Hydro is proposing to construct Unit 8 at the Bay d'Espoir hydro generating station at a capital cost of $522 million. Also, Hydro has submitted a 2024 CBA with a planned capital spend of $748.3 million in the period 2024 to 2028 (Hydro 2024 CBA, Five-Year Capital Plan (2024-2028), Appendix A) and indicates that in its deferral accounts the amount owing by customers as of June 30, 2023 is $278.3 million (CA-NLH-008 from Hydro's 2024 CBA). Including the capital budget amounts anticipated by NP in its 2024 CBA for the next five years of $656 million (NP 2024 CBA, 2024-2028 Capital Plan, Table A-1), total expenditures for the undertakings listed above is approximately $16.5 billion.[3] The provincial government's rate mitigation plan associated with the integration Muskrat Falls into the island system has yet to be defined[4] but, regardless, ratepayers will pay the bulk of that enormous cost.

The Board is also cognizant of the forthcoming cost challenges for ratepayers. As stated in Board Order No. P.U. 36(2021)-Reasons for Decision, 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*."

Additionally, NP has recently filed its 2025/2026 General Rate Application ("GRA") proposing rate increases of 1.5% on July 1, 2024 and an additional 5.5% on July 1, 2025 (see NP's

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[1] NL Hydro CEO Jennifer Williams says the revised cost of the hydroelectric project, which has met repeated delays and is now dealing with challenges involving GE's software, is up from $13.1 billion to $13.4 billion. https://vocm.com/2022/06/17/muskrat-falls-revised-cost/#:~:text=The%20total%20cost%20is%20now,increase%20of%20about%20%24300%20Million.

[2] See Reliability and Resource Adequacy Study – 2022 Update, Volume III – Long-term Resource Plan, Tables 8 and 9.

[3] Total excludes $99.0 million for Holyrood TGS capital projects that are presumably accounted for in both the Reliability and Resource Adequacy Study – 2022 Update and the 2024 CBA (see Hydro's 2024 CBA, Five-Year Capital Plan (2024-2028), page 2).

[4] Reference September 29, 2023 Quarterly Update – Items Impacting the Delay of Hydro's Next General Rate Application Hydro indicates that it cannot submit its next GRA until the details of the government's rate mitigation plan are finalized (CA-NLH-016 from Hydro's 2023 CBA).

2025/2026 GRA, cover letter, pages 2 of 4 and 3 of 4). These rate increases, if approved, would be on top of the expected rate increases that NL Hydro will be seeking in its next GRA. These developments reinforce the Board's statement that the two utilities must take every effort to reduce costs for customers while ensuring continued reliability.

Capital expenditure adds to rate base, which adds to costs for customers. Reduced capital expenditure, strategically done so as not to impair safety or bring reliability to an unacceptable level, can ease the cost burden on ratepayers. NL Hydro has apparently made a commitment to do so, stating in its 2024 Capital Budget Application – Revision 2 (Capital Budget Overview, page 36) that "*Hydro recognizes other capital investment proposals before the Board and continues to take deliberate actions to reduce requested capital investment as compared to prior years*." NP likewise should be focusing on limiting its capital expenditures to what is absolutely necessary and fully justified.

In the 2024 Capital Budget Overview NP states (page 12) "*In Newfoundland Power's view, the Company's approach to capital planning tends to minimize overall costs to customers over the longer term.* That claim is questionable. Over the past two decades, NP's capital spending levels have sustained substantial growth in its inflation-adjusted rate base. Such additions to rate base must be paid for by customer in their rates.

As shown in Table 1, the growth in NP's rate base has well exceeded the growth in the price level, i.e., inflation, over the past 20 years.

Table 1
Historical Comparison of Rate Base and Price Levels[5]

	Change from 2001 to 2011	***Change from 2011 to 2022***	***Change from 2001 to 2022***
NP Rate Base	53.5%	43.9%	120.9%
Price Level (GDP Deflator)	26.2%	29.9%	63.9%

The last column in Table 1 shows that NP's rate base increased by 120.9% from 2001 to 2022 while the price level in the economy (as measured by the GDP deflator for Canada) increased by 63.9%. Thus, NP's capital expenditures were well in excess of that needed to maintain the 2001 rate base in inflation-adjusted terms. Table 1 shows, in second and third columns respectively, that this was the case for the sub-periods of 2001 to 2011 and 2011 to 2022. As a result, NP's capital expenditures over the past two decades have led to sustained increases in its

[5] The percentages reported in Table 1 are calculated using rate base values of $553,586,000, $849,929,000 and $1,223,086 for 2001, 2011 and 2022, respectively, and GDP Deflator values of 0.66, 0.77 and 1.00 for the corresponding years. These values are provided in CA-NP-003 Attachment A.

rate base in inflation-adjusted terms. The consequence is an inflation-adjusted rate base that is 34% higher than in 2001.[6]

NP's capital expenditures plans continue to drive growth in rate base. In its 2024 Rate of Return on Rate Base Application, dated November 23, 2023, NP's forecasts of average rate base for 2023 and 2024 are $1,289,706,000 and $1,360,058,000, respectively.[7] Based on the current application's 2022 figure for an average rate base of $1,230,434,000, this implies a 4.8% growth in 2023 compared to 2022, and the figures for 2023 and 2024 imply 5.45% growth in the rate base for 2024 relative to 2023.[8] The Conference Board of Canada's forecast inflation rates for those two years are 0.91% and 1.95%, respectively.[9] Thus, NP anticipates growing its rate base in 2023 and 2024 by substantially more than the inflation rate in each of those two years. This is a continuation of the pattern displayed in Table 1.

Not only is NP growing its rate base at more than inflation, it has high levels of capital expenditures. Specifically, NP's capital expenditure per customer is higher than the average of three utilities in the Maritime Provinces, namely Nova Scotia Power, New Brunswick Power and Maritime Electric. Table 2 gives comparative data for 2012 and 2021.[10] For both years, capital expenditure per customer by NP was higher, just over 10% more in 2012 and almost 13% higher in 2021.

Table 2
Comparison of Capital Expenditure per Customer
by NP and Utilities in the Maritimes

Year	Newfoundland Power	Maritime Utilities	Relative Difference
2012	$4,071	$3,693	10.2%
2021	$5,646	$5,009	12.7%

High levels of capital expenditures might be expected if NP were delivering an unacceptably low level of reliable service to its customers, but NP provides high reliability. Table 3 gives average values of two reliability indices, namely, SAIDI (average duration of interruptions) and SAIFI (average number of interruptions) for NP and for the set of Electricity Canada Region 2 utilities.

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6 In CA-NP-003 Attachment A, NP's inflation adjusted rate base is $912,885,000 in 2001 and $1,223,086,000 in 2022. The latter is 34% higher than the former.

7 2024 Rate of Return on Rate Base, Appendix A, page 1 of 1.

8 (1,289,706,000 – 1,230,434,000)/1,230,434,000 = 0.0482, or approximately 4.8%; (1,360,058,000 – 1,289,706,000)/1,289,706,000 = 0.0545, or approximately 5.5%

9 See CA-NP-202 Attachment 1 for inflation forecasts, as measured by the GDP deflator.

10 Per capita values given in Table 2 are from the response to CA-NP-059.

Table 3
Reliability Comparisons for the Period 2012-2021

	SAIDI (hours of outages)	SAIFI (number of outages)
Newfoundland Power	2.7	1.9
Electricity Canada Region 2 Utilities	4.3	2.1

Source: CA-NP-060

NP's reliability is superior according to both measures; outages are fewer and the average duration of outages is much lower. Indeed, NP's SAIDI performance has been stronger every year from 2004 to 2021; see PUB-NP-021, Figure 1. Also, NP's SAIDI, at 2.7 for 2012-2021, is better than the corresponding average of 3.9 for the three Maritime utilities -NB Power, NS Power and Maritime Electric (Application, Capital Budget Overview, page 12).

In sum, soon ratepayers will be required to pay for the Muskrat Falls Project and new generation projects, the Board has called on the utilities to reduce costs, and NL Hydro is making efforts to reduce capital investment. From 2001 to 2022, NP has added to rate base by much more than inflation and its capital expenditure is higher per customer than in the Maritimes while its reliability is superior to similar utilities. Therefore, contrary to its claims, Newfoundland Power's capital spending appears excessive as it adds substantially to rate base in real terms, which is hardly consistent with the least-cost delivery of reliable service to customers. In these circumstances, it is not unreasonable to believe that, for 2024, NP can reduce its proposed capital budget without a detrimental impact on reliability. As the Board assesses NP's Application, it should take this context into account.

2. ISSUES RELEVANT TO THE APPLICATION

This section identifies matters that are not contained in the Application but are relevant to it.

a) Capital Budget Application Guidelines and Oral Hearings.

On October 23, 2023, which was subsequent to the filing and responses to two rounds of RFIs, the Consumer Advocate requested an oral hearing on the NP 2024 CBA.

The Board denied that request. In its response dated November 7, 2023, the Board, among other things, states (page 2) "*The Board is of the view that the public written hearing process is the preferred approach for annual capital budget applications as it provides for a full and fair review, bearing in mind the costs and time required to hold an oral hearing.*"

That is a sweeping statement. Rather than decline the request for an oral hearing on this particular application, the Board is making a general statement about the need for oral hearings.

For the Board, the public written hearing process is preferred. Of course, an oral hearing will always entail some time and cost. On this basis, all requests for an oral hearing could be declined.

If the Board does not believe that the capital budget application process allows enough time for an oral hearing, or that oral hearings on annual capital budget applications are costly and not particularly useful, then it should not have accommodated oral hearings in the Provisional Capital Budget Application Guidelines (see Schedule in Appendix B of the Guidelines), and should not have made allowance for an oral hearing in the schedule for the 2024 CBA (see NP 2024 CBA schedule issued by the Board on July 18, 2023). When allowance is made for an oral hearing in the schedule, the parties logically believe they are entitled to request an oral hearing and plan accordingly, with the expectation that there is a reasonable chance that their request will not be declined.

The Public Utilities Board is a creature of statute and is quasi-judicial. According to Black's Law Dictionary public administrative bodies are required to investigate facts or ascertain the existence of facts, hold hearings, draw conclusions, and to exercise discretion of a judicial nature.[11]

The Public Utilities Board is subject to the rules of natural justice, which include procedural fairness, listening fairly to the sides and reaching a decision untainted by bias. A statement by the Public Utilities Board that the public written hearing process is the preferred approach is troubling. Bias is defined as a predisposition. The Consumer Advocate has consistently advocated for full in-person public hearings. Now, the Board's statement is that such full public hearings are not a preference. In the result it is fair to conclude that there is a reasonable apprehension of bias on the part of the Board on this issue. This has to be addressed.

It is therefore with some urgency that the Board needs, in consultation with the parties, to finalize the Capital Budget Application Guidelines and to ensure that all parties and intervenors can rely on the basic rules of natural justice.

b) The MUN-T2 Transformer at the Memorial Substation

On March 3, 2023, NP made a Supplemental Capital Expenditure Application to the Board for Memorial Substation Power Transformer Replacement. That application requested $1,614,000 (with $48,000 for 2023 and the remaining $1,566,000 to be spent in 2024) for the replacement of one of the two power transformers at the substation, MUN-T2. On March 29, 2023, the Consumer Advocate submitted comments on the application indicating opposition to adding this $1.6 million to rate base and, among other concerns, argued that the project should be funded by a customer contribution. On March 28, 2023, NL Hydro submitted comments on the supplemental application and stated that "*In the interest of regulatory fairness and consistency with accepted utility practice in this jurisdiction, Hydro believes that, prior to approving the proposed project, the Board should require Newfoundland Power to enter into an agreement*

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11 Black's Law Dictionary (5th Ed.)

with Memorial University requiring a contribution from the customer for the total capital cost required to maintain redundant supply, including the replacement of transformer T2."

On May 31, 2023, the Board in Order P.U. No. 14(2023) approved the project and did not accept the Consumer Advocate and NL Hydro's position that the project be funded by a customer contribution.

On June 5, 2023, the Consumer Advocate filed a request that the Board rehear the matter because the cost of the replacement of the MUN-T2 transformer was not to be recovered from the customer. In response to invitations from the Board to the parties to comment on the Consumer Advocate's request for a rehearing, NL Hydro was supportive. In its letter of June 12, 2023 to the Board, NL Hydro wrote that it "*...agrees with the Consumer Advocate's position that the Board's Order is inconsistent with generally accepted utility practice in this province, and should be reconsidered. The costs of the project proposed in Newfoundland Power's Application should be recovered from the customer.*"

In a letter dated July 7, 2023, the Board declined the request for a rehearing.

The Consumer Advocate believes that a rehearing would have clarified and resolved this matter with a requirement for a customer contribution. The error embodied in Order P.U. No. 14(2023) will have implications for future capital applications including the NP 2024 CBA. In fact, this issue was one of a number identified by the Consumer Advocate in the request for an oral hearing on the Application. In the Consumer Advocate's opinion, this is a matter that remains unresolved and it arises again in the Application. Further elaboration follows in Section 3 of this submission.

c) Cost of Service.

On page 5 of the Board's Response to Consumer Advocate Request for Oral Hearing, it is stated "*The Board does not accept the Consumer Advocate's suggestion that the current cost of service is "far from being an accurate and fair representation of costs, consumption characteristics and cost allocation." Newfoundland Power's current cost of service was reviewed in its last general rate application filed in 2021 and approved in 2022 and was the subject of an agreement of all of the parties in that proceeding, including the Consumer Advocate.*"

The Board is correct that the Consumer Advocate does not consider the current cost of service study to be an accurate and fair representation of costs. As noted in our Request for Oral Hearing, the information in the cost of service study is far out of date, and the reason we negotiated that a load research study be undertaken at NP's 2022/2023 GRA. As noted in NP's Load Research Study Plan dated June 15, 2023 (page 1) the last load research study was completed in 2006 and "*was based on load research collected over three winter seasons from December 2003 to March 2006.*" Further (on the same page), it is stated "*This Load Research Study Plan is a direct result of NP's need to initiate a new load research study.*" And finally (on the same page) relating to the purpose of the Load Research Study "*When completed, the 2023 Load Research Study will be used in NP's future cost of service studies, used to assess future customer rate designs, and* *provide information for other planning activities at NP.*" Clearly, NP agrees that the current cost of service study is out of date.

Also, a settlement agreement does not mean that the parties agree with everything in the agreement. In this case, it meant that the parties accept the terms of the agreement in regards to the 2022/2023 GRA only, but as stated in Paragraph 4 "*This Settlement Agreement is without prejudice to the positions the Parties may take in proceedings other than the Application. It sets no precedent for any issue addressed in this Agreement in any future proceeding or forum.*" The Consumer Advocate accepted the cost of service study as a necessary trade-off in negotiations. It by no means suggests that the Consumer Advocate believes the current cost of service study to be an accurate and fair representation of costs, consumption characteristics and cost allocation. The Board's misunderstanding of this issue is surprising given that Board staff was involved in the negotiations. Interpretation of the settlement agreement in the manner presented by the Board will discourage the parties from negotiating settlement agreements on future GRAs.

3. SPECIFIC RECOMMENDATIONS

For an intervenor, it is challenging to determine which, if any, of NP's proposed capital projects are premature, unnecessary or inadequately justified. Within the regulatory process, there is an information asymmetry that favours the applicant. The Board's consultant, Midgard, alludes to the information asymmetry as follows: [12]

To function effectively and ensure the necessary tension between interests, a capital budget approval process requires the applicant to provide complete and accurate supporting information for the planned investments. It is important to recognize that even if the application is full, complete and accurate, a significant informational asymmetry always exists between the applicant (i.e., utility) and the intervenors and regulatory Board.

Further highlighting the information asymmetry problem:

(CA-NP-017) "*Newfoundland Power confirms it does not calculate a quantifiable risk mitigation value associated with its asset management program.*"

(CA-NP-040) "*The Company's core asset management technology does not currently have the data or software necessary to provide calculations of risk mitigation or reliability improvement.*"

(CA-NP-020) NP was asked "*What is the overall improvement in productivity stemming from the projects included in the 2024 Capital Budget Application? Please identify the expected cost savings and provide an estimate of the impact on rates.*" In response, NP identified three projects that enhance productivity, the LED Street Lighting Replacement Project, the Application

[12] See October 29, 2020 report by Midgard Consulting Inc. titled "Capital Budget Application Guideline Review", page 18.

Enhancements Project and the Distribution Feeder Automation Project, but did not quantify the productivity improvement resulting from these or any other project/program included in the 2024 CBA.

It is difficult for the intervenors and the Board to know if a project is justified when the applicant is unable to quantify the risk associated with project deferral, or the reliability and productivity improvement brought on by a project. Compounding the information asymmetry issue, the Board declined to proceed with an oral hearing on this Application as requested by the Consumer Advocate, meaning intervenors have not had the opportunity to cross-examine NP witnesses to gain a complete understanding of the merits of the projects included in the Application. As a result, the Consumer Advocate is unable to determine if projects in the 2024 CBA are justified. Further, the Consumer Advocate is unable to call witnesses, such as Midgard, to present our case.

The obligation to prove one's case by affirmatively establishing the facts is generally upon the party making the claim. In law, ***the onus is on the applicant*** to fully justify its proposed capital expenditures; ***the onus is not on the intervenors*** to prove that a project is not justified. There is no reverse onus here.[13] There is nothing in law which shifts the onus to the intervenors in these circumstances.

This submission offers four recommendations specific to the Application's expenditure proposals for 2024. One relates to the Memorial Substation Refurbishment and Modernization project and three are in regard to NP's use of historical averages to determine budgets for several of its programs over $750,000.

a) The Memorial Substation

The 2024 CBA contains a budget of $4,351,000 for Memorial Substation Refurbishment and Modernization, a single year project (Application, Schedule A, page 2 of 6). The project's budget is based on detailed engineering estimates and had been deferred from 2023 to 2024. NP deferred the project "*to align with the customer's schedule for upgrades to the substation*" (Application, Schedule B, page 69). Presumably, the purchase and installation of the replacement of the MUN-T2 transformer, which was approved by Order P.U. No. 14(2023) and entails a $1,566,000 expenditure in 2024, will be coordinated with this project.
The MUN Substation project brings up the same issue that the Consumer Advocate and NL Hydro raised with respect to the MUN-T2 transformer replacement. That is the question of who pays for the project. In NP's 2024 CBA, the cost of the Memorial Substation Refurbishment and Modernization project is to go into rate base rather than be paid for by its sole beneficiary, Memorial University. On the contrary, the customer should pay for the project.

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[13] See: Burden of Proof, Labour Law Terms (Lancaster, p. 33)

This matter is why the Consumer Advocate has continued to object to Order P.U. No 14(2023)'s rejection of a customer contribution to the cost of the MUN-T2 transformer replacement. It sets a precedent for cost allocation of the Memorial Substation Refurbishment and Modernization project.

For this reason, the Consumer Advocate sought a rehearing of the MUN-T2 decision in June 2023 and in September 2023 included this subject as one of the reasons for an oral hearing on this Application. In that regard, the Board in its November 7 letter dismissing the request an oral hearing stated (page 5) "*The Board notes that the capital expenditures in relation to the MUN-T2 transformer at the Memorial substation are not an issue to be decided in this proceeding as they have already been approved in Order No. P.U. 14(2023). The Consumer Advocate did not appeal this order and, having not pursued an appeal, it is inappropriate and inefficient to now argue that the order was in error*."

The Consumer Advocate continues to pursue this matter because of its relevance to the 2024 CBA. Further to this point, as quoted above the Board stated, "*The Board notes that the capital expenditures in relation to the MUN-T2 transformer at the Memorial substation are not an issue to be decided in this proceeding as they have already been approved in Order No. P.U. 14(2023).*" That statement implies that the Board agrees errors may be in the order but it is immaterial because the order has been issued. This argument ignores the fact that every Board order establishes regulatory precedence for subsequent applications. This is especially concerning because NP's 2024 CBA proposes another project for the Memorial Substation without demanding a capital contribution from Memorial University, the only customer that would benefit from the project.

There is no ambiguity that Memorial University is the only beneficiary. The Application makes that clear. A detailed description of the project is given in Schedule B, pages 67-70. NP (page 69) states that continued deferral of the project is not viable "*...as it would increase risks to the delivery of safe and reliable service to the University*" and that is followed by "*The Memorial Substation Refurbishment and Modernization project will mitigate risks to the delivery of reliable service to the Company's largest customer*." NP also states (page 70) "*Addressing deteriorated and obsolete equipment identified through an engineering assessment will support the continued delivery of reliable service to the Company's largest customer*." These statements do not identify any other customer that benefits from the Memorial Substation. They indicate that there is only one customer that benefits from the Substation's service and would be adversely affected by its failure, namely, Memorial University.

The question is whether a customer, who is the sole beneficiary of a facility, should pay for that facility. Responses to various RFIs in the CBA process are helpful in answering that question.

NP states (CA-NP-153) "*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.*" This is a fair and logical method for assigning costs and avoiding cross-subsidization in rates.

To illustrate that this method has been applied in the province, the Consumer Advocate submitted a number of RFIs on the Roycefield Tap (RFD) Substation and Transmission line. 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)).

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.

Now, compare this to the Memorial Substation project. The responses to CA-NP-159 and PUB-NP-053 are unclear with respect to the benefit of the transmission lines into Memorial Substation, 12L and 14L, but we understand that the lines benefit many customers on the system, so costs should be collected from all benefiting customers. For example, we understand that if a transmission line into King's Bridge Road Substation is forced out of service, supply to customers served by the Substation will be maintained via the loop of transmission lines that remain in service. The same can be said for customers supplied by the Stamp's Lane Substation. Therefore, transmission lines 12L and 14L into Memorial Substation support supply to customers served by King's Bridge and Stamp's Lane Substations while providing supply redundancy to Memorial University in the sense that if either line is forced out of service (e.g., during a storm), the other line has the capacity to supply the load served by the Memorial Substation.

However, the Memorial Substation itself benefits only Memorial University. At the very least, all facilities from the high-voltage switchgear at the Memorial 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 approximately $6 million ($1.6 million for MUN-T2 replacement and the $4.4 million for the Memorial Substation in the

Application) proposed to be spent at Memorial Substation would be recovered from all customers and the remaining $3.9 million would be collected from all Rate 2.4 general service customers.[14] None of the costs would be recovered directly from Memorial University, the only customer that benefits from these assets. Rather, Newfoundland Power is spreading the costs of the Memorial Substation across all customers. These costs should be recovered from Memorial University alone as it is the sole beneficiary, and that recovery should be via a direct contribution.

Yet, NP is not requiring any contribution from the University and seems unable to address the issue directly. 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.*" Why does NP state that "*consideration would have to be given*" rather than submit evidence that the rate charged Memorial University either is, or is not, appropriate? Does NP not know what costs are collected in its rates? Transmission assets where there is looped flow benefit all customers, so should be collected from all customers. Radial transmission facilities that benefit only one or a few customers should be recovered from only those one or a few customers that benefit. Does NP not know if its rates reflect these basic principles?

NP's Application requests $4.4 million for the Memorial Substation without requiring a contribution from the sole beneficiary of that expenditure. If allowed then this would be a repeat of what happened with NP's supplemental application for the $1.6 million MUN-T2 Transformer replacement. It would be inconsistent with generally accepted utility practice in this province.

Recommendation #1. The request for the $4,351,000 expenditure for the Memorial Substation Refurbishment and Modernization project should be approved for 2024 only on condition that NP demand a contribution from Memorial University to cover that expense.

If the Board is not prepared to make approval of the Memorial Substation Refurbishment and Modernization project conditional on a customer contribution then this matter should be held in abeyance for consideration in NP's upcoming General Rate Application.

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[14] Newfoundland Power identified the costs, but not the components of the projects that would be recovered from all customers versus only the General Service Rate 2.4 class.

b) Projects of over $750,000 with Budgets Determined by Historical Averages

Newfoundland Power has 11 programs over $750,000 for which its CBA2024 budget requests are based on historical averages (CA-NP-196). The Application seeks $48.865 million for these programs in 2024 (CA-NP-196 Attachment A). That amount is approximately 42.4% of the Application's proposed 2024 expenditure of $115.252 million and 57.8% of total requested funding of $84.583 million for single-year programs and projects for 2024.[15] It is worrying to see such a large proportion of proposed capital expenditures determined by the historical averages of past spending rather than by engineering cost studies and assessments of need. We recognize that for some ongoing programs, use of historical averages may be a useful rule of thumb especially where there may be considerable uncertainty. However, the proportion of spending determined by that method seems inordinately high, especially since each of these programs involves large expenditures, all in excess of $750,000.

There are other reasons to be generally concerned about the historical average method. First, there is a risk that reliance on historical averages to determine future spending perpetuates spending at the average level in inflation-adjusted terms, especially if the utility opts to spend the budgeted amount. This is concerning because, as suggested by Table1, NP's capital spending has been driving growth in rate base. Secondly, 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. Presumably, this phenomenon means that the system is more reliable and necessary repairs and replacements are fewer, and components last longer. That should act to lower capital costs for these programs.

In addition to these general reservations about extensive reliance on the historical average method, the Consumer Advocate has concerns specific to the current Application's requests for these programs. It might be expected that use of the historical averages would cause the requests for some programs to go up and others to go down, with the overall effect being aggregate spending rising by the rate of inflation. That is not the case for 2024.

To illustrate this, it is useful to separate the programs into those that are based on the forecast numbers of new customers and the remainder.

In NP 2024 CBA, budget requests for two of the 11 programs take account of forecast number of new customers as well as historical averages. The two are the Extensions and New Services programs. Table 4 shows the determination of the implied increase in per customer expenditure in 2024 versus 2023.

[15] There are nine programs of $750,000 and under that also have their budgets determined by the historical averaging method (CA-NP-195 Attachment A). The sum of requested funding for them for 2024 is $4.1 million.

Table 4

Extensions and New Services Programs

	Extensions	New Services
Expenditure 2023F (Row 1)	$12,218,000	$2,916,000
Number of New Customers 2023 (Row 2)	2,205	2,205
Implied Expenditure per New Customer 2023 (Row 1 divided by Row 2)	$5,541	$1,322
Expenditure, Budget 2024 (Row 4)	$12,140,000	$2,847,000
Number of New Customers 2024 (Row 5)	2,053	2,053
Implied Expenditure per New Customer 2024 (Row 4 divided by Row 5)	$5,913	$1,387
Increase in Expenditure per New Customer	6.7%	4.9%

Source: CA-NP-196 Attachment A

As shown in Table 4, while Newfoundland Power is requesting a lower budget for each of these programs, the number of new customers is forecast to decline. However, these expenditure requests embody substantial increases on a per new customer basis. As shown in the last column of the table, the increase in per customer expenditure for Extensions is 6.7% and for New Services is 4.9%. NP provides no evidence whatsoever to justify such increases.

Had the CBA maintained per new customer expenditure at 2023 levels then Extensions per new customer in 2024 would be $11.376 million ($5,541 per customer x 2,053 new customers) and for New Services the corresponding amount is $2.714 million ($1,322 per customer x 2,053 new customers). These amounts are reasonable considering the Board's call for utilities to reduce cost and the low rate of inflation expected for 2023. There is no evidence presented by NP to indicate that per new customer cost will increase in 2024 by more than inflation. Thus, two recommendations follow.

Recommendation #2. The CBA 2024 Budget amounts for Extensions program should be set at $11,376,000.

Recommendation #3. The CBA 2024 Budget amounts for New Services program should be set at $2,714,000.

Acceptance of these two recommendations by the Board would result in a saving in capital costs of approximately **$897,000.**[16] Customers would benefit by not having to bear the burden of paying for that additional capital.

[16] Saving = ($12,140,000 – $11,376,000) + ($2,847,000 – $2,714,000) = $764,000 + $133,000 = $897,000.

There are nine other programs over $750,000 where the 2024 Budget is based on historical averages, and where the forecast number of new customers is not an explicit component of determining the expenditure proposals. Table 5 below identifies those programs and compares proposed spending on them in 2024 with the 2023 level.

Table 5

Programs over $750,000 based on Historical Averages
Other than Extensions and New Services

Programs:	Expenditure 2023F (000s)	Budget 2024 (000s)	Increase
Reconstruction	$6,699	$6,953	3.8%
Rebuild Distribution Lines	$4,945	$4,974	0.6%
Relocate/Replace Distribution Lines for Third Parties	$3,803	$4,066	6.9%
Replacement Transformers	$3,345	$3,681	10.0%
New Transformers	$2,967	$3,264	10.0%
New Street Lighting	$2,618	$2,629	0.4%
Replacement Street Lighting	$770	$863	12.1%
Substation Replacements Due to In-Service Failures	$4,422	$4,797	8.5%
Transmission Line Maintenance	$2,610	$2,651	1.6%
TOTAL	**$32,179**	**$33,878**	**5.3%**

As shown in Table 5, Newfoundland Power's budget requests for most of these programs give rise to large increases from 2023 to 2024. Overall, the sum of the requests for these programs leads to a 5.3% increase in expenditures in 2024 compared to 2023. NP fails to provide any specific evidence that any overall increase in these program expenditures is needed. More so, a 5.3% increase is hardly consistent with the Board's request to the utilities to "*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.*" There is no cost reduction for these programs proposed in the Application, nor evidence of any effort to reduce cost. A reasonable compromise in the circumstances is to maintain spending on them in 2024 at 2023 levels.

Recommendation #4. The CBA 2024 Budget total amount for the Reconstruction, Rebuild Distribution Lines, Relocate/Replace Distribution Lines for Third Parties, Replacement Transformers, New Transformers, New Street Lighting, Replacement Street Lighting, Substation Replacements Due to In-Service Failures, and Transmission Line Maintenance programs should be set at $32,179,000.

Acceptance of this recommendation by the Board would remove a $1,699,000 increase in spending on those programs.[17] Customers would benefit by not having to bear the burden of paying for that additional capital.

[17] $33,878,000 - $32,179,000 = $1,699,000.

The reduction in the increase in the budget for these programs to $32,179,000 could be accomplished in a number of ways. For instance, each program's budget could be maintained at its 2023 level; or the amounts in the Budget 2024 column of Table 5 could each be prorated so that their relative proportions are unchanged while producing an overall total equal to that of 2023; or Newfoundland Power could be awarded the aggregate of $32,179,000 for 2024 and given the flexibility to allocate this sum among these nine programs. The last of these three options, which is akin to an envelope for a subset of spending, i.e., these nine programs, may be best because it allows NP to make the most efficient use of the funds.

Acting on Recommendations #2, 3 and 4 would be a deviation from the historical average method, but for three good reasons. First, for 2024 that method would lead to higher spending. Secondly, as laid out in Section 1, the electricity system will be under rate pressure and consequently the utilities have been urged by the Board to reduce costs. Thirdly, as shown in Table 3, NP provides reliability above the norm so reducing the increase in spending on these programs in 2024 can hardly be expected to impede reliability of service to customers.

4. ADDRESSING ISSUES ARISING IN THE NEXT GRA

On November 9, 2023, NP filed a General Rate Application. This creates an opportunity. Normally, reviews of capital budgets are not incorporated in GRAs in this jurisdiction because the timing of GRAs, approximately every 3 years, does not normally coincide with the timing of capital budgets (applications filed annually). But in this case, owing to the early filing of NP's 2025/2026 GRA, the timing does coincide, so substantive issues raised in this 2024 CBA proceeding can be addressed within the 2025/2026 GRA.

a) The Funding of Facilities that Benefit a Single or Few Customers

In fact, the Board itself has suggested that one issue arising in 2024 CBA could be examined in the GRA, namely, the cost allocation for the Memorial Substation. Specifically, the Board stated "*In the Board's view the issues raised by the Consumer Advocate related to the cost allocation of capital expenditures for the Memorial substation are more appropriately addressed in a comprehensive review of Newfoundland Power's cost of service. Consideration of the direct assignment of certain costs to Memorial University must necessarily involve a full consideration of how costs are currently allocated to the university, other customers in the rate class as well as other rate classes.*" And then went on "*These issues may be addressed in Newfoundland Power's upcoming general rate application which is expected to involve an oral hearing and the presentation and cross-examination of experts.*"[18]

While maintaining that Recommendation #1 be acted upon now, the Consumer Advocate is pleased with the Board's willingness to consider the cost allocation issue within NP's next GRA.

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[18] These statements are from the Board's letter of November 7, 2023 (page 5) in regard to the Consumer Advocate's October 23, 2023 request for an oral hearing.

The Consumer Advocate would welcome the opportunity to cross-examine experts on matters relating to:

- the treatment of costs for radial facilities in the cost of service study and rate base,
- the treatment of costs that are not radial in nature in the cost of service study,
- the policies relating to customer contributions to the cost of assets that benefit only one or a few customers,
- the suitability of the General Service rate classes, and more specifically, General Service Rate 2.4 customers such as Memorial University that are supplied directly from the transmission system, and
- the need for a new rate for Memorial University in light of the potentially significant changes to its load.

There are other issues raised by the Consumer Advocate in the CBA proceedings that could be constructively and more fully resolved by including them in the GRA.[19] Some are identified below.

b) Newfoundland Power Distribution Planning Process and Asset Management Study

The Distribution Planning Process and Asset Management Study can be fully addressed through a thorough cross-examination of NP witnesses at the GRA on topics such as the environmental implications of projects and their consistency with government policy and legislation, consistency with best practice and experience elsewhere, the promotion of alternative forms of generation that do not burn carbon fuels, and the advent and repercussions on the planning process of the "*prosumer*", defined as (see the chapter from The Palgrave Handbook of International Energy Economics titled *Integration of Non-Dispatchable Renewables*, first online May 28, 2022, by Marco Baroni).[20] *"These producers are often connected to mid- or low-voltage levels grids (distribution grids), generally closer to demand centres, and are often consumers of electricity themselves."* Baroni goes on to say "*The main change introduced by prosumers is their number, scale and diffusion. This is already having an important impact on transmission and distribution grids, and is expected to change the way that transmission system operators (TSO) and distribution system operators (DSO) function and interact, including the possibility for DSOs to provide flexibility services to the system through the aggregation of small active actors (TSO–DSO 2019)."*

c) An Envelope Approach to Capital Budgets

As part of this CBA process the Consumer Advocate engaged Midgard Consulting to prepare the Utility Management Responsibility Report, which was filed as intervenor evidence on Sept. 21, 2023. Among other things it deals with how various forms of budget envelopes are used by regulatory boards elsewhere in Canada. Midgard (page 23) points out: "*Three (3) of the four*

[19] These issues were included as issues in the Consumer Advocate's request for an oral hearing of October 23, 2023.
[20] https://link.springer.com/chapter/10.1007/978-3-030-86884-0_16

(4) regulatory approaches used across Canada explicitly have some form of capital budget envelope (COS, PBR, Rate Setting), with the difference being the degree of management authority to adapt its capital plans within the financial constraints applied by the board (i.e., either through a revenue requirement or rates). For line-by-line capital approvals, there is nothing inherent in that approach that precludes considering a capital budget envelope."

It is worth noting that in some jurisdictions, the envelope approach is employed without having an explicit statute or regulation to authorize it. NP-CA-006 requested "*For the three identified regulatory approaches across Canada that explicitly have some form of capital budget envelope, please provide the statute, regulation, or regulatory guideline that explicitly establishes a capital budget envelope.*" Midgard responded "*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.*"

Considering the challenges facing the electricity sector in this province, and especially the adverse impact on ratepayers, it is worthwhile to examine the application of a budget envelope to utilities' total capital expenditures or perhaps a subset of those expenditures, such as those now set by the historical average method.

d) Fortis's Role in NP's Operational and Investment Planning

The issue relating to Fortis' influence can likewise be vetted at the GRA in order for the Board and the parties to gain a more complete understanding of how Fortis, NP's sole shareholder, interacts with NP senior management. This matter was raised in CA-NP-206 and CA-NP-207 as well as in the Consumer Advocate's request for an oral hearing. While NP states that it "*is not involved in the calculations of Fortis' rate base or the preparation of Fortis' growth forecasts*"[21] it is still unclear whether announcements by Fortis such as on September 20th, 2023, which dealt with its capital plan, influence NP or whether there could be other means of influence.

There may be other matters that might be usefully addressed in the upcoming GRA. The Consumer Advocate suggests that the Board provide an opportunity for the parties to identify additional relevant issues arising from the CBA that may be included in the forthcoming GRA.

5. CONCLUSION

The Public Utilities Board as a regulatory body is entrusted to balance the interests of consumers and the utility. This submission provides four formal recommendations regarding Newfoundland Power's 2024 Capital Budget Application. To reiterate, they are:

[21] Letter of October 27, 2023 (page to the Board regarding the Consumer Advocate's request for an oral hearing.

- Recommendation #1. The request for the $4,351,000 expenditure for the Memorial Substation Refurbishment and Modernization project should be approved for 2024 only on condition that NP demand a contribution from Memorial University to cover that expense.
- Recommendation #2. The CBA 2024 Budget amounts for Extensions program should be set at $11,376,000.
- Recommendation #3. The CBA 2024 Budget amounts for New Services program should be set at $2,714,000.
- Recommendation #4. The CBA 2024 Budget total amount for the Reconstruction, Rebuild Distribution Lines, Relocate/Replace Distribution Lines for Third Parties, Replacement Transformers, New Transformers, New Street Lighting, Replacement Street Lighting, Substation Replacements Due to In-Service Failures, and Transmission Line Maintenance programs should be set at $32,806,000.

Recommendation #1 is very important because it involves both a considerable sum and the policy question of who ought to pay for capital expenditures by NP that benefit only one customer. Regarding the latter, both NL Hydro and the Consumer Advocate argue that the expenditure should be funded by a contribution from the one customer who benefits, and not be added to rate base. If the Board is not prepared to enact the recommendation at this time then we ask that the matter of who pays be addressed in the upcoming GRA and, in the interim, the expenditure not be authorized for inclusion in rate base.

Recommendations #2, 3 and 4 stem from the concern over the arithmetic of the historical method for determining budget expenditures for the programs involved. In particular, for 2024, the automatic application of that method results in higher expenditures in 2024 on these programs that is not only higher than in 2023 but well in excess of expected inflation. Considering the circumstance as discussed in Section 1, especially the Board's request to the utilities to reduce costs and NP's record of growing rate base at higher rates than inflation, these recommendations are very reasonable. If acted on for 2024, they would pose no risk to NP's reliability and provide some relief for customers as NP continues to grow its rate base.

Finally, based on the foregoing, we ask the Board to act accordingly.

Yours truly,

Dennis Browne

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