

**NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

AN ORDER OF THE BOARD

NO. P.U. 26(2021)

IN THE MATTER OF the *Electrical Power Control Act, 1994* SNL 1994, Chapter E-5.1 (the “EPCA”) and the *Public Utilities Act, RSNL 1990*, Chapter P-47 (the “Act”), as amended, and regulations thereunder; and

IN THE MATTER OF a general rate application by Newfoundland Power Inc. to establish customer electricity rates for 2022-2023.

BEFORE:

**Darlene Whalen, P.Eng., FEC
Chair & CEO**

**Dwanda Newman, LL.B.
Vice-Chair**

**John O’Brien, FCPA, FCA, CISA
Commissioner**

**Christopher Pike, LL.B.
Commissioner**

PROCEDURAL ORDER

1 On May 27, 2021 Newfoundland Power Inc. (“Newfoundland Power”) filed a general rate
2 application (the “Application”) with the Board of Commissioners of Public Utilities (the “Board”)
3 requesting approval of, among other things, proposed rates to be effective March 1, 2022. Notice
4 of the Application and Pre-hearing Conference was published beginning on June 12, 2021.
5 Following the publishing of the notice the Board received intervenor submissions from:
6

- 7 1. The Consumer Advocate, Dennis Browne, Q.C.
- 8 2. Newfoundland and Labrador Hydro
- 9

10 On July 6, 2021 a Pre-hearing Conference was held in the Board’s hearing room and the following
11 appeared on behalf of the applicant and the intervenors:
12

- 13 1. Liam O’Brien and Dominic Foley, Newfoundland Power Inc.
- 14 2. Stephen Fitzgerald, and Dennis Browne, Q.C., the Consumer Advocate
- 15 3. Shirley Walsh, Newfoundland and Labrador Hydro
- 16

17 The matters addressed at the Pre-hearing Conference include the intervenor submissions, the Rules
18 of Procedure and the Schedule of Dates. No objections were raised in relation to the intervenor
19 submissions or the proposed Schedule of Dates.
20

21 In relation to the Rules of Procedure the Consumer Advocate requested an amendment with respect
22 to Section 6(e) related to the format of the responses to requests for information (RFIs). The
23 Consumer Advocate provided the following suggested language:
24

25 A party providing a response to an RFI shall identify the person or persons who can speak
26 to the information provided in the response, in the response itself, and where directed by
27 the Board the party shall make that person or persons available for cross examination.¹
28

29 At the Pre-hearing Conference counsel for the Consumer Advocate noted that there have been
30 occasions in the past when a witness is not able to answer a question and that it would be better to
31 have full disclosure of who the proponents of the evidence are going to be in advance of the
32 hearing. Counsel for Newfoundland Power responded that, in his view, the naming of an
33 individual(s) on an RFI would not be of assistance to the Board or the parties and that it would be
34 difficult to name an individual as responding to RFIs is a process which involves a number of
35 people. Counsel stated:
36

37 The normal course is to allow the utility to present its case and to put forth an individual
38 who can speak to the components of the case and adopt the pre-file evidence and the RFIs
39 and if need be, have a panel that can do that, but that’s the choice of the utility, not the
40 choice of the Consumer Advocate.²
41

42 Counsel for Newfoundland and Labrador Hydro also questioned the value of the suggested change

¹ Email dated July 5, 2021

² Transcript, page 20/10-18

1 and explained:
2

3 Similar to Newfoundland Power, our view with respect to RFIs is that it is a process where
4 a number of people within the organization, you know, have input into those RFIs. In terms
5 of the subject matter, it could be across a number of teams depending on the question that's
6 being asked and then through the review process, so we view the RFIs as being responses
7 from the organization as a whole. And we would view, as Newfoundland Power said, our
8 witness lists to be the people who could speak to all of the issues that we have provided
9 evidence upon in an application.³

10

11 The Board agrees that there should be full disclosure in advance of the hearing as to the proponents
12 of the evidence, including the RFI responses. The proposed Rules of Procedure and Schedule of
13 Dates for the proceeding set out a process to provide for this disclosure. The Schedule of Dates
14 requires that parties file a witness list and an issues list well in advance of the start date of the
15 hearing. Read together, these lists provide clarity as to the witnesses that will be presented to
16 address all aspects of the evidence. In the event that it is not clear after the filing of these lists a
17 party may seek clarification as to who will address the evidence which was presented in an RFI
18 response. If it remains unclear after seeking clarification a request may be filed, pursuant to Section
19 6(e) of the rules, for the Board to direct that a party identify the witness which will be made
20 available to speak to information provided in an RFI response.

21

22 The Board believes that the proposed Rules of Procedure and Schedule of Dates allows for full
23 disclosure of the proponents of the evidence in advance of the hearing and that an amendment to
24 the rules is not necessary for this proceeding. In addition, based on the information provided by
25 the utilities in relation to the process for the development of the responses to the requests for
26 information and the witness list, the Board believes that the approval of the proposed amendment
27 may result in a less efficient process for the hearing of this Application. The Board will approve
28 Rules of Procedure for this proceeding as proposed.

29

30

31 **IT IS THEREFORE ORDERED THAT:**

32

33 1. The intervenors in the Application are as set out in Schedule A to this Order.

34

35 2. The Schedule of Dates for the Application shall be as set out in Schedule B to this Order and
36 may be amended by the direction of the Board.

37

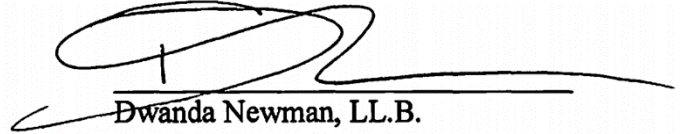
38 3. The Rules of Procedure for the Application shall be as set out in Schedule C to this Order.

³ Transcript, page 14/7-20

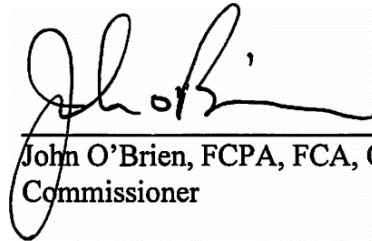
DATED at St. John's, Newfoundland and Labrador this 19th day of July, 2021.



Darlene Whalen, P. Eng., FEC
Chair and Chief Executive Officer



Dwanda Newman, LL.B.
Vice-Chair



John O'Brien, FCPA, FCA, CISA
Commissioner



Christopher Pike, LL.B., FCIP
Commissioner



Cheryl Blundon
Board Secretary

Newfoundland Power Inc.
2022-2023 General Rate Application
Intervenors

- | | | |
|----|---------------------------------------|----------------------------------|
| 1 | 1. Consumer Advocate | Represented by: |
| 2 | Dennis Browne, Q.C. | Stephen Fitzgerald |
| 3 | P.O. Box 23135 | P.O. Box 23135 |
| 4 | Terrace on the Square, Level 2 | Terrace on the Square, Level 2 |
| 5 | St. John's, NL A1B 4J9 | St. John's, NL A1B 4J9 |
| 6 | Telephone: 709-724-3800 | Telephone: 709-724-3800 |
| 7 | E-mail: dbrowne@bfma-law.com | E-mail: sfitzgerald@bfma-law.com |
| 8 | | |
| 9 | | |
| 10 | 2. Newfoundland Labrador Hydro | |
| 11 | Shirley Walsh | |
| 12 | P. O. Box 12400 | |
| 13 | Hydro Place, Columbus Drive | |
| 14 | St. John's, NL A1B 4K7 | |
| 15 | E-mail: shirleywalsh@nlh.nl.ca | |

Newfoundland Power Inc.
2022-2023 General Rate Application
Schedule of Dates

1	May 2021	
2		
3	May 27, 2021 (Thursday)	Application filed
4		
5	June 2021	
6		
7	June 12, 2021 (Saturday)	Notice of Application and Pre-Hearing Conference
8	June 23, 2021 (Wednesday)	Intervenor Submissions
9		
10	July 2021	
11		
12	July 6, 2021 (Tuesday)	Pre-Hearing Conference
13		
14	August 2021	
15		
16	August 2, 2021 (Monday)	Requests for Information filed (RFIs)
17	August 23, 2021 (Monday)	Responses to RFIs filed
18		
19	September 2021	
20		
21	September 7, 2021 (Tuesday)	2 nd Round of RFIs filed
22	September 21, 2021 (Tuesday)	Responses to 2 nd round of RFIs filed
23	September 28, 2021 (Tuesday)	Experts Reports and pre-filed evidence filed
24		(including Board's Financial Consultants Report)
25		
26	October 2021	
27		
28	October 12, 2021 (Tuesday)	RFIs on Expert Reports and pre-filed evidence
29		(including Board's Financial Consultants Report)
30		Witness lists and issues lists filed
31	October 13, 2021 (Wednesday)	Motions Day (if required)
32	October 25, 2021 (Monday)	Responses to RFIs on Expert Reports
33		
34	November 2021	
35		
36	November 1 - 5, 2021	Negotiation Period
37	November 6, 2021 (Saturday)	Notice of Public Hearing and Invitation to
38		Participate
39	November 10, 2021 (Wednesday)	NP Rebuttal Evidence
40	November 17, 2021 (Wednesday)	Filing of settlement agreement, updated issues list
41		and witness lists, and proposed order of witnesses
42		Final deadline for filing of any outstanding
43		information
44	November 23, 2021 (Tuesday)	Public Hearing begins

**Newfoundland Power Inc.
2022-2023 General Rate Application
Rules of Procedure**

1 **1. Public Record**

- 2
- 3 (a) Unless otherwise directed by the Board, all documents filed with the Board shall be
4 placed on the public record.
- 5
- 6 (b) A party may file a document on a confidential basis and the information contained in the
7 document shall be considered confidential unless the Board, on its own motion, or upon
8 the request of another party, determines that an application must be filed to request
9 confidential treatment. A document which is considered to be confidential may be viewed
10 by the Board only, or may be released upon the conditions set by the Board.
- 11
- 12 (c) The Board is bound by the provisions of the *Access to Information and Protection of*
13 *Privacy Act, RSNL 2002 Chapter A-1.1*. Requests for access to confidential documents
14 will be dealt with in accordance with the provisions of this legislation.
- 15

16

17 **2. Filing of Documents**

- 18
- 19 (a) All documents shall be filed with the Board Secretary.
- 20
- 21 (b) Documents may be filed by:
- 22
- 23 (a) hand delivery;
- 24 (b) courier service;
- 25 (c) registered mail;
- 26 (d) electronic mail; or
- 27 (e) facsimile.
- 28
- 29 (c) Filing is accomplished on the date when the Board first receives the submission, whether
30 electronically or in paper format.
- 31
- 32 (d) When documents are filed electronically, paper copies must be filed within 24 hours or
33 the next business day. For parties located outside of the St. John's area, the Board will
34 allow three (3) business days for the filing of paper copies.
- 35
- 36 (e) Documents filed after 3 p.m. or on a Board holiday shall be considered as filed on the
37 next Board business day.
- 38
- 39

40 **3. Form of Documents**

- 41
- 42 (a) Paper and electronic filings are considered public records in this proceeding.
- 43
- 44 (b) All paper documents filed shall be prepared as follows:
- 45 (i) typed, written or printed on 8½" X 11" letter size paper, 3-hole punched;

- 1 (ii) single or double sided;
- 2 (iii) each page shall be numbered; and
- 3 (iv) where reasonable, each line shall be numbered.

4
5 (c) All documents filed electronically must be searchable and allow for key-word searching.
6 This will require documents to be scanned with optical character recognition (OCR) or
7 converted to OCR before they are filed with the Board.

8
9 (d) The electronic copy must be an exact copy of the original signed document, including
10 covering letters.

11
12 (e) Upon request the Board may consider filing exceptions regarding the form of documents.
13

14 **4. Revisions to Documents**

15
16
17 (a) A party may revise any document to correct errors or to provide new information before
18 the completion of the hearing.

19
20 (b) Where all or any part of a document is revised, each revision shall indicate the page(s)
21 revised, the line(s) revised, the number of the revision (i.e. 1st revision), and the date of
22 the revision.

23
24 (c) Where all or any part of a document is revised, the document must be re-filed
25 electronically in its entirety; however, only the revised pages are required to be filed in
26 paper copy.

27
28 (d) Where a revision is made to a document the Board may, upon its own motion or upon
29 the request of another party, after receiving submissions of the parties, make any order
30 in respect of the revisions.

31 32 **5. Number of Paper Copies to be Filed**

33
34 (a) Unless otherwise directed, a party filing a document with the Board shall:

- 35 (i) file with the Board Secretary one (1) original signed copy of each document;
- 36 (ii) provide nine (9) copies of the original document to the Board; and
- 37 (iii) serve one (1) copy of each document on the other parties. If a party requires
38 additional copies, they may make a request to the Board. If a party does not require
39 hard copies, they may notify the Board Secretary. If a party chooses to only receive
40 electronic copies, they will not receive any hard copies (i.e., a party cannot choose
41 to receive some documents in hard copy and others in electronic).

42
43
44
45 (b) A copy of the cover letter must accompany each paper copy filed.

1 **6. Information Requests**

- 2
- 3 (a) A party may file requests for information (“RFIs”).
- 4
- 5 (b) RFIs shall be:
- 6
- 7 (a) labeled with the initials of the party issuing the RFI;
- 8 (b) designated so as to provide notice of to whom the RFI is directed;
- 9 (i.e. PUB-NP-001; PUB-CA-001); and
- 10 (c) numbered consecutively with whole numbers. The number should not contain sub-
- 11 numbering (e.g. PUB-NLH-001A). However, sub-numbering can be used within
- 12 the request itself (e.g. the number will still be a whole number: PUB-NLH-001 but
- 13 may contain a, b, c, etc. within the body of the request).
- 14
- 15 (c) Responses to RFIs shall be:
- 16
- 17 (a) filed as individual pages. The electronic copy of each response shall be filed as a
- 18 separate page; and
- 19 (b) numbered on the top right-hand corner of each page with the RFI number and the
- 20 page number. If the response has an attachment, the RFI number and the attachment
- 21 number as well as the number of pages should be included on the top right-hand
- 22 corner of each page.
- 23
- 24 (d) RFIs, and responses to RFIs, constitute part of the record in the proceeding and will be
- 25 considered to be evidence in the proceeding.
- 26
- 27 (e) Where directed by the Board, a party providing a response to an RFI shall make a witness
- 28 or witnesses available for cross-examination to speak to the information provided in the
- 29 response.
- 30

31

32 **7. Service of Documents**

33

34 The Board may direct to whom service shall be provided.

35

36

37 **8. Time**

- 38
- 39 (a) The parties shall observe the schedule for the proceeding established by the Board as
- 40 amended from time to time.
- 41
- 42 (b) All references to time shall be clear days. The first and last day shall be excluded.
- 43
- 44

45 **9. Motions**

- 46
- 47 (a) Motions must be filed with the Board and served upon the other parties no later than three
- 48 (3) days before the scheduled Motion Day.

- 1 (b) Motions shall be filed in writing, contain a clear concise statement of the facts, the order
2 or the decision sought, and the reasons for such an order or decision.
3
4 (c) The responding parties must file with the Board and serve upon the other parties response
5 briefs one (1) day before the Motions Day.
6
7 (d) A motion may be made orally or in writing at any time during the course of the hearing
8 and shall be disposed of in accordance with such procedures as the Board may direct.
9

10
11 **10. Procedures for Presentation of Evidence and Cross-examination of Witnesses**
12

- 13 (a) Pre-filed testimony should be adopted as evidence by the witness in sworn testimony.
14
15 (b) Direct examination should be limited to matters set out in the witness pre-filed testimony.
16 The Board may allow a witness to provide supplementary evidence or may restrict direct
17 testimony where it is irrelevant, redundant or not helpful to the Board in making its
18 decision.
19
20 (c) Direct evidence may be presented by way of a panel of witnesses where prior notice has
21 been given to the Board Secretary and the parties. When examining a panel of witnesses
22 counsel shall put each question to a particular witness on the panel.
23
24 (d) Co-counsel may examine the same witness, or panel of witnesses, provided notice is
25 given to the Board Secretary and the parties prior to the start of the cross-examination of
26 the witness. Co-counsel should not examine the same witness on the same subject matter.
27
28 (e) The party calling the witness shall be afforded an opportunity for re-direct examination
29 and all parties shall have an opportunity to pose questions in relation to new matters
30 arising from questions of the Board.
31
32 (f) A party wishing to examine or cross-examine a witness on a document that is not:
33
34 (i) already part of the record of the proceeding;
35 (ii) a portion of a transcript of the witness' own prior testimony; or
36 (iii) an Order of the Board;
37
38 shall file one (1) original and nine (9) copies of the document with the Board and serve
39 one (1) copy on each party by 3:00 p.m. on the last business day before the examination
40 or cross-examination is to take place. Copies of each document to be used during cross-
41 examination shall be filed separately and not collated with other documents.
42
43 (g) Where the witness adopts the document it will be marked as an exhibit.
44
45 (h) Where a document was not adopted as part of the witness' testimony the document may
46 be, if the parties consent, entered as a consent exhibit; or entered as an information item.

1 **11. Public Viewing**

2
3 Interested persons may view any or all documents filed with the Board, except confidential or
4 private information, on the Board's website (www.pub.nl.ca) or at the Board's office by
5 contacting the Board Secretary.
6

7
8 **12. Copies of Documentation/Information Filed in this Proceeding**

9
10 (a) The Board will provide one copy of any document authored by the Board or its
11 consultants, and which is not available on its website, at no charge.

12
13 (b) Copies of documents originating or authored by a party should be requested directly from
14 that party.

15
16 (c) Transcripts of the hearing will be distributed electronically normally by 7:00 p.m. daily
17 and will be posted on the Board's website. Unless requested by a party, the Board will
18 not provide paper copies of the transcripts.

19
20 (d) Copies of the legislation can be obtained from the Queen's Printer, viewed at the Board's
21 Office, or viewed on the Board's website at www.pub.nl.ca.

22
23 (e) The Board may charge for the cost associated with the reproduction of any document
24 requested in accordance with the applicable legislation.
25

26
27 **13. Exceptions**

28
29 The Board may dispense with, vary or supplement any provisions of these Rules on those terms
30 the Board considers necessary.
31

32
33 **14. Failure to Comply**

34
35 Where a party to a proceeding has not complied with any requirement of these rules or any
36 direction of procedure or order issued by the Board, the Board may stay the proceedings until
37 satisfied that such requirement has been complied with or take such other steps as it considers
38 reasonable.