



June 2, 2015

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

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

Ladies and Gentlemen:

**Re: Newfoundland Power Inc.'s 2016 Deferred Cost Recovery Application**

Please find enclosed one (1) original and twelve (12) copies the Consumer Advocate's Submission in relation to the above captioned matter.

We trust the enclosed is found to be in order.

Yours very truly,

O'DEA, EARLE

A handwritten signature in blue ink, appearing to read "Thomas Johnson", written over the printed name "THOMAS JOHNSON, Q.C.".

THOMAS JOHNSON, Q.C.  
TJ/cel

cc: Newfoundland Power  
Attention: Mr. Gerard Hayes/Peter Alteen, Q.C.

Newfoundland and Labrador Hydro  
Attention: Mr. Geoffrey Young

1 **IN THE MATTER OF** the Public  
2 Utilities Act, R.S.N.L. 1990, Chapter P-47  
3 (the "Act"); and  
4

5 **IN THE MATTER OF** an application by  
6 Newfoundland Power Inc. ("Newfoundland Power")  
7 to approve the deferred recovery of certain 2016 costs.  
8  
9

10  
11 To: The Board of Commissioners of Public Utilities of Newfoundland and Labrador  
12 Suite E 210, Prince Charles Building  
13 120 Torbay Road  
14 P.O. Box 21040  
15 St. John's, NL A1A 5B2  
16  
17 Attention: Ms. Cheryl Blundon, Board Secretary  
18  
19

20 **Submission of the Consumer Advocate**  
21

22 **Background**

23 Newfoundland Power lists five requests at paragraph 9 of its 2016 Deferred Cost Recovery  
24 Application:  
25

- 26 9. Newfoundland Power requests, pursuant to Sections 67 and 80 of the Act, that  
27 the Board make an Order:
- 28 (i) approving a 2016 forecast average rate base for Newfoundland Power of  
29 \$1,054,192,000;
  - 30 (ii) approving a just and reasonable 2016 rate of return on rate base for  
31 Newfoundland Power of 7.38% in a range of 7.20% to 7.56%;
  - 32 (iii) approving deferred cost recovery of \$3,991,000 for 2016;
  - 33 (iv) directing Newfoundland Power to file its next general rate application by June 1,  
34 2016 with a 2017 test year; and
  - 35 (v) continuing Newfoundland Power's existing rates, tolls and charges until modified  
36 by further order of the Board.  
37

38 The value of the 2016 forecast average rate base of \$1,054.192 million is supported by  
39 Schedule 1, Exhibit 2 of its evidence. This amount includes actual and forecast capital additions  
40 for years that have not been the subject of a GRA. The current proceeding does not include a  
41 review that is comparable to the normal scrutiny that would be undertaken of these expenditures

1 during a general rate application.

2  
3 The rate of return on rate base for 2016 of 7.38% in a range of 7.20% to 7.56% is based on the  
4 average capitalization and cost of capital as detailed in Schedule 1, Exhibit 3. The proposed  
5 return includes a lower cost of debt than was previously incurred by Newfoundland Power and a  
6 return on common equity of 8.80% which is unchanged from the rate approved in Order No.  
7 P.U. 13 (2013).

8  
9 The derivation of the proposed amount of the deferred cost recovery of \$3.991 million is  
10 provided in Schedule 1, Exhibit 4. The requested amount is the calculated change in the return  
11 on rate base due to the combined effects of the increased rate base and the decreased rate of  
12 return on rate base, grossed up for income tax purposes.

13  
14 Schedule 1, Exhibit 5 calculates a 2016 revenue requirement that is the approved 2014 Test  
15 Year revenue requirement adjusted only for the proposed (DCRA) and income taxes.

16  
17 Schedule 1, Exhibit 6 provides a calculation of the 2016 forecast returns based on NP's forecast  
18 costs and revenues, adjusted for the DCRA, which indicates that the regulated return on rate  
19 base would be 7.32% and the regulated return on equity would be 8.66%. These returns are  
20 below the returns used to derive the proposed amount of the DCRA because the net increase in  
21 other expenses are reflected in the forecast returns but have not been reflected in the amount  
22 being sought to be included in the DCRA.

23  
24 **Submission of the Consumer Advocate: Primary Position**

25 **Newfoundland Power's requests as set out in paragraph 9 of its application should be**  
26 **denied by the Board. The entire application rests on the untested assumption that the**  
27 **rate of return on common equity of 8.80% that was previously approved for the 2013,**  
28 **2014 and 2015 test years remains appropriate for 2016. This equity return has not been**  
29 **approved for 2016 in any previous order of the Board, nor has Newfoundland Power filed**  
30 **evidence to support a rate of return on common equity of 8.80% for 2016.**

31  
32 Newfoundland Power's application is clearly deficient in that it has not requested that the Board  
33 make an order approving a rate of return on common equity of 8.80% for the 2016 test year.  
34 The Consumer Advocate submits that the approvals requested cannot be accepted in the

1 absence of a Board order setting the equity return for 2016. The derivations of the proposed just  
2 and reasonable rate of return on rate base of 7.38% and the calculation of the requested  
3 deferred cost recovery of \$3,991,000 for 2016 cannot be made in the absence of an approved  
4 rate of return on common equity of 8.80%.

5  
6 In the absence of a finding of fact that 8.80% is a just and reasonable rate of return for 2016 the  
7 cornerstone of the Company's request is missing. Without this cornerstone, there is no support  
8 for the untested assertion that Newfoundland Power does not have a reasonable opportunity to  
9 earn a just and reasonable return in 2016.

10  
11 Further, any decision of the Board with respect to the just and reasonable return for 2016 must  
12 be based on evidence that has been tested in the rigorous manner that would be required if  
13 Newfoundland Power had filed a general rate application, or, at a minimum, the agreement of  
14 the parties. There is simply no credible evidence in support of Company's claim that the rate of  
15 return on rate base of 7.06% and the rate of return on equity of 8.08% are inadequate. This  
16 deficiency is confirmed in the response to PUB-NP-005 (and numerous other responses  
17 including NLH-NP-021), which states:

18  
19 *Newfoundland Power has not yet had an expert complete a review of the forecast cost of*  
20 *capital for 2016, as requested in this Request for Information.*

21  
22 **The Consumer Advocate submits that Board Order No. P.U. 13 (2013) precludes use of**  
23 **the rate of return on common equity approved in that order as the allowed return for the**  
24 **2016 test year in the absence of a full cost of capital review.**

25  
26 Newfoundland Power asserts at Schedule 1, page 4, lines 1-8 of its evidence:

27  
28 *For 2016, Newfoundland Power's forecast return on rate base is 7.06%. This is below*  
29 *the range of 7.32% to 7.68% approved by the Board for 2015 in Order No. P.U. 51*  
30 *(2014). It is also below a reasonable range of return on rate base for 2016 calculated in*  
31 *a manner similar to that used in Order No. P.U. 51 (2014).*

32  
33 *For 2016, Newfoundland Power's forecast return on equity is 8.08%. This is below the*  
34 *8.80% allowed in Order No. P.U. 13 (2013). It is also below the returns on equity*

1                    *currently allowed other investor owned Canadian regulated utilities.*

2  
3        The CA submits that reliance on the rate of return on common equity that was approved in  
4        Order P.U. 13 (2013) for determining recoverable costs for the 2016 test year is not consistent  
5        with Board Order P.U. 13 (2013). The Order was very clear that the equity return of 8.80% was  
6        to be used for the 2013, 2014 and 2015 test years but the rate would have to be reviewed for  
7        2016.

8  
9        In essence, in the absence of a full cost of capital review, there is no basis to presume that  
10       Newfoundland Power's return is not within a range that would be deemed to be appropriate for  
11       the 2016 test year. The Consumer Advocate notes that even if a rate of return on common  
12       equity of 8.80% were approved by the Board for the 2016 test year, the corresponding range for  
13       the return on rate base would not be 7.32% to 7.68%. As Schedule 1, Exhibit 3 of the  
14       Company's evidence clearly shows, given the forecast cost of debt and an equity return of  
15       8.80% the resulting forecast return on rate base is 7.38%. Hence, the corresponding range  
16       would be 7.20% to 7.56%. A reduction in the equity return below the 2013 rate of 8.80% that  
17       reduces the return on capital by 0.14% would be sufficient to reduce the range to 7.06% to  
18       7.42%. In that case, the Company's forecast return on rate base would be within the range and  
19       the proposed DCRA would be within the approved range.

20  
21       The Consumer Advocate's view that the equity return set in Oder No. P.U. 13 (2013) cannot be  
22       used rate as the equity return with a full cost of capital review is support by a reasonable  
23       reading of the Order which states at page 59:

24  
25                    **IT IS THEREFORE ORDERED THAT:**

26                    **RATE BASE, RETURN ON RATE BASE AND RANGE OF RETURN**

- 27  
28                    **1.        Newfoundland Power shall file an application for approval of a revised**  
29                    **forecast average rate base and rate of return on rate base for 2013 and**  
30                    **2014 based on the proposals in the application, incorporating the**  
31                    **determinations of the Board in this Order, including:**  
32                                    **i)        a common equity component in the capital structure not to**  
33                                    **exceed 45% for ratemaking purposes; and**  
34                                    **ii)       a ratemaking rate of return on common equity of 8.8%**

- 1           2.       ***The allowed range of rate of return on rate base shall be 36 basis points for***  
2                           ***2013, 2014 and 2015.***
- 3           3.       ***Newfoundland Power shall file an application for approval of a revised***  
4                           ***definition of the Excess Earnings Account.***
- 5           4.       ***Newfoundland Power shall file an application on or before November 17,***  
6                           ***2014 for approval of the 2015 forecast average rate base and rate of return***  
7                           ***on rate base maintaining the ratemaking common equity ratio and return***  
8                           ***on common equity established in this Order.***
- 9           5.       ***If one Power shall, unless otherwise directed by the Board, file its next***  
10                           ***general rate application with a 2016 test year on or before June 1, 2015.***  
11                           ***[Bold in the original.]***

12  
13 Paragraph 4 specifically approves the equity return of 8.80% for 2015 as well as for 2013 and  
14 2014, but not for 2016. Paragraph 5 clearly contemplates that the rate should be reconsidered  
15 as a part of a general rate application for 2016. In the submission of the Consumer Advocate,  
16 the exception envisioned by the words “unless otherwise directed by the Board” can reasonably  
17 be interpreted to have contemplated that the general rate application could be deferred, but it  
18 does not imply that the equity return of 8.80% would be deemed to be the applicable rate of  
19 return on common equity in the absence of a full review of Newfoundland Power’s cost of capital  
20 either as part of a general rate application or at least through a full cost of capital review  
21 comparable to the review that would take place as part of the review of a general rate  
22 application.

23  
24 The Board’s reasoning in its Order makes it even clearer that requiring Newfoundland Power to  
25 file a general rate application with a 2016 test year was based on the explicit intent to review,  
26 among other things, the rate of return on common equity that would be appropriate to use for  
27 the 2016 test year. Order P.U. 13 (2013) states at page 37:

28  
29           ***The Board will not order the use of the formula to establish the rate of return after***  
30           ***the 2013 and 2014 test years. The Board accepts that a ratemaking return on***  
31           ***common equity of 8.8% in 2015, with a deemed common equity component to***  
32           ***45%, will provide Newfoundland Power the opportunity to earn a just and***  
33           ***reasonable return on rate base that is consistent with the fair return principle and***  
34           ***the provision of least cost reliable power.***

1           ***The Board will require Newfoundland Power to file a general rate application***  
2           ***without 2016 test year on or before June 1, 2015. [Bold in the original.]***

3  
4           The Board very clearly limited its approval of the return on common equity of 8.80% to the 2013,  
5           2014 and 2015 test years. The Consumer Advocate submits that the inclusion of the  
6           requirement to file a general rate application with a 2016 test year in the bolded text appearing  
7           on page 37 clearly demonstrates that at the time of the order the Board did not consider the  
8           8.80% return to be appropriate for 2016. The Board clearly anticipated that a review of the rate  
9           of return on common equity would be required for the 2016 test year. That review has not taken  
10          place and therefore it cannot be assumed on the basis of a cursory review of the  
11          reasonableness of that rate that having a forecast return below 8.80% will not “provide  
12          Newfoundland Power the opportunity to earn a just and reasonable return on rate base that is  
13          consistent with the fair return principle and the provision of least cost reliable power” in the 2016  
14          test year.

15  
16          Newfoundland Power itself acknowledges in its response to NLH-NP-022 that Order No. P.U. 13  
17          (2013) did not anticipate or approve an equity return of 8.80%.

18  
19                 *There is no evidence in Order No. P.U. 13 (2013) that the Board anticipated*  
20                 *Newfoundland Power’s cost of capital, or any other costs, for 2016. It is clear that the*  
21                 *Board anticipated a Newfoundland Power general rate application (“GRA”) with a 2016*  
22                 *test year would be filed on or before June 1, 2015, unless otherwise directed by the*  
23                 *Board.*

24  
25          Given the express time limits placed on the applicability of the 8.80% in Order No. P.U. 13  
26          (2013), it is the Consumer Advocate’s view that the Company’s DCRA evidence is deficient in  
27          that it does not seek an order to establish the equity return for 2016 at 8.80% and does not  
28          include expert evidence on the appropriate equity return for 2016. Newfoundland Power could  
29          have made that request and could have filed expert evidence on the cost of capital if it had  
30          chosen to do so, even in the absence of a full general rate application. If it had done so, other  
31          parties would have had an opportunity to also file cost of capital evidence and properly test the  
32          Company’s evidence in support of an equity return of 8.80%. It is not clear to the Consumer  
33          Advocate why it did not include evidence in support of the 8.80% equity return unless it did not  
34          believe that the equity return that it is seeking could be successfully defended.

1  
2 The Consumer Advocate submits that if this assumption were subjected to the normal testing  
3 that would be required as part of a 2016 GRA, the allowed ROE would be reduced significantly.  
4 Furthermore, the Consumer Advocate is of the view that it would be unprecedented for the  
5 Board to approve an ROE as the basis for recovering costs, in the absence of either a full  
6 review of evidence supporting the ROE or an explicit agreement amongst the parties accepting  
7 the proposed ROE.

8  
9 **Submissions of the Consumer Advocate: In the Alternative**

10 **Newfoundland Power's forecast return on rate base of 7.06% and the forecast return on**  
11 **equity of 8.08% are just and reasonable**

12  
13 The range of rate of return on rate base was set by Order P.U. 13 (2013) as 36 basis points for  
14 2013, 2014 and 2015. No range was set for 2016.

15  
16 If the Board were to approve a rate of return on common equity for 2016 that is based on the  
17 equity return approved for the years 2013, 2014 and 2015, then it would be consistent to  
18 maintain the range of rate of return on rate base at 36 basis points as well.

19  
20 Adopting this range in the context of this application has several implications:

21  
22 First, a rate of return on rate base range of 36 basis points corresponds to a rate of return on  
23 equity range of 80 basis points. This can be determined by dividing the rate base range (36) by  
24 the equity ratio (0.45). The response to NLH-NP-071 confirms this calculation.

25  
26 Applying this range to the equity return is appropriate since debt cost is recognized prior to  
27 determining the Company's net income; hence, it is only the equity return that varies from the  
28 allowed return. As a consequence, the implicit range for Newfoundland Power's return on equity  
29 if the 8.80% return were approved would be 8.40% to 9.20%.

30  
31 Furthermore, if the allowed rate of return on common equity for 2016 were reduced from the  
32 2013 allowed return of 8.80% to 8.30%, the range would then be 7.90% to 8.70%.

33  
34 The Consumer Advocate submits that the response to PUB-NP-004, which is the only evidence

1 on the record that can be remotely considered to be cost of capital evidence, can be interpreted  
2 to be consistent with the view that returns on equity have been generally declining since 2013. If  
3 the allowed returns in Table 1 of that response are reordered by date of order, the result is  
4 shown below.

5

<b>Date of Order</b>	<b>Allowed Return</b>
December 21, 2012	9.00%
March 5, 2013	8.90%
May 10, 2013	8.75%
May 16, 2014	8.90%
November 20, 2014	9.30%
March 23, 2015	8.30%

6  
7 In the absence of a full cost of capital review, based on expert evidence that is tested in a  
8 hearing, there is as much justification to claim that the evidence supports a declining trend in  
9 equity returns as there is to claim, as Newfoundland Power does, that the orders support the  
10 retention of an equity return of 8.80% for 2016. An equally valid alternative view is that the most  
11 recently allowed return should be adopted for Newfoundland Power in the absence of the full  
12 cost of capital review that was anticipated by Board Order No. P.U. 13 (2013). On that basis the  
13 Board should set the allowed equity return for 2016 at 8.30% with a range of 7.90% to 8.70%.  
14 This alternate equity return finding would imply that Newfoundland Power's 2016 forecast return  
15 on equity of 8.08%, as shown at Schedule 1, Exhibit 1, line 32 would be well within the allowed  
16 range. If this lower rate of return on common equity is approved as the just and reasonable rate  
17 for 2016 based on the evidence filed in this proceeding, there can be no justification for  
18 establishing a Deferred Cost Recovery Account for the explicit purpose of increasing  
19 Newfoundland Power's 2016 return on equity.

20  
21 Furthermore, it cannot be presumed that Newfoundland Power's forecast 2016 return on equity  
22 of 8.08% would stand up to the scrutiny to which it would be subjected if the Company had filed  
23 a general rate application. For example, the responses to NLH-NP-043, and NLH-NP-044 show  
24 that the forecast growth in revenue and connected customers are significantly below the historic  
25 trends. Adjustment to these figures, O&M costs or other revenue and cost items could well  
26 reduce, or eliminate the shortfall relative to the equity return range that is identified by the  
27 Company.

28  
29 Hence, whatever equity return is approved by the Board for 2016, it cannot be concluded that  
30 Newfoundland Power's forecast earnings if subjected to the discipline of a general rate

1 application would fall fellow the bottom end of the equity return range. As a consequence, the  
2 evidence on the record in this proceeding is insufficient to make a determination that  
3 Newfoundland Power does not have a reasonable opportunity to earn a just and reasonable  
4 return on equity.

5  
6 The Consumer Advocate further submits that if Newfoundland Power had filed a general rate  
7 application for 2016 that included cost of capital evidence, evidence would also have been filed  
8 by the Consumer Advocate. The Consumer Advocate submits that it is reasonable to presume  
9 that the Company's own cost of capital evidence would have supported a reduction in its rate of  
10 return on equity, in line with the reduction in its cost of debt which is shown in Schedule 1,  
11 Exhibit 3, line 14 to have declined from 7.14% to 6.29%, an 85 basis point decline. Certainly, the  
12 Consumer Advocate would have filed evidence supporting a significant reduction in the equity  
13 return.

14  
15 Furthermore, the Consumer Advocate submits that based on the record in this proceeding there  
16 is significant uncertainty about whether or not Newfoundland Power has a reasonable  
17 opportunity to earn an equity return that is appropriate for 2016. Yet the Company itself  
18 acknowledges in its response to NLH-NP-017 that concerns about regulatory efficiency should  
19 not override the Board's responsibility to ensure that approval of the DCRA, when not properly  
20 tested, could result in future rates not being reasonable due to an excessive DCRA being  
21 recovered in rates:

22  
23 *It is not Newfoundland Power's position that approval of its application for cost recovery*  
24 *on a final basis to achieve regulatory efficiency outweighs the requirement of the EPCA*  
25 *that rates should be reasonable and not unjustly discriminatory.*

26  
27 It follows that unless the Board both explicitly approves 8.80% as the appropriate equity return  
28 for 2016 and also accepts all components of the Company's financial forecast showing that its  
29 forecast equity return is below the low end of the approved range, approval of the Company's  
30 application risks resulting in future rates that are not just and reasonable.

31  
32 This concern is further supported by the Company's response to NLH-NP-018 in which it states:

33  
34 *With respect to the interests of the utility, the Newfoundland and Labrador Court of*

1 Appeal, in the majority opinion in a stated case presented by the Board in 1996,  
2 recognized the fundamental nature of a just and reasonable rate of return in the  
3 following terms:

4  
5 *“The setting of a ‘just and reasonable’ rate of return is of fundamental importance*  
6 *to the utility and must always be an important focus of the Board’s deliberations;*  
7 *however, the ‘entitlement’ of the utility to a just and reasonable rate of return*  
8 *does not guarantee it that level of return. The ‘entitlement’ is to have the Board*  
9 *address that issue and to make its best prospective estimate, based on its full*  
10 *consideration of all available evidence, for the purpose of setting rates, tolls and*  
11 *charges.” (emphasis added)*

12  
13 The implication of this quotation from the Newfoundland and Labrador Court of Appeal is that  
14 the Board is required “to make its best prospective estimate, based on its full consideration of all  
15 available evidence” as to what constitutes a just and reasonable rate of return. It will not fulfill  
16 that duty by simply extending the applicability of an outdated equity return. Instead it must  
17 make a determination based on the available evidence. Its judgment may also be influenced by  
18 the decision of Newfoundland Power not to include expert cost of capital evidence in its filing.  
19 The absence of evidence relevant to 2016, although expert cost of capital evidence could have  
20 been filed, is not a justification for accepting than an equity return decision made in 2013  
21 remains appropriate in 2016.

### 22 23 **The Role of Prospective Costs in Setting Rates**

24 Newfoundland Power is requesting that the Board approve 2016 returns on rate base and equity  
25 that rely on retrospective rates; that is rates that were approved in 2013 based on financial  
26 market conditions at that time. Curiously, it defends this action and its decision not to file cost of  
27 capital evidence in support of its application on the grounds that rates should be established on  
28 the basis of prospective costs. The Company’s argument appears in its most complete form in  
29 the response to PUB-NP-006, at pages 2-3. Under the heading “Ratemaking is Prospective”,  
30 this response includes quotes from both the Newfoundland and Labrador Court of Appeal and  
31 the Public Utilities Board.

32  
33 The Consumer Advocate is supportive of the principle of setting rates on the basis of  
34 prospective costs. This does not imply however, that the cost forecast submitted by the

1 Company must be accepted without due process to test the reasonableness of those costs.  
2 Clearly Newfoundland Power itself recognizes that only costs that have been properly reviewed  
3 and tested by the Board should be used in setting rates. As a comparison of its forecast returns  
4 that appears in Schedule 1, Exhibit 1 to its pro forma 2016 returns on rate base in Schedule 1,  
5 Exhibit 3 clearly shows, the Company is not seeking to have other changes in its costs reflected  
6 in the DCRA. Presumably the Company recognizes that other costs cannot be approved in the  
7 absence of a general rate application, an agreement, or some other process for testing its  
8 evidence. The Consumer Advocate submits that it is no more appropriate to use a prospective  
9 return on equity that has been neither tested nor approved than it would be to accept other  
10 prospective costs that have been neither tested nor approved.

11  
12 **The five precedents identified by Newfoundland Power do not support approval of the**  
13 **DCRA.**

14 Newfoundland Power identifies five Orders in which the Board approved Deferred Cost  
15 recoveries. The Company has elaborated extensively on the details of these precedents in its  
16 responses to PUB-NP-001. The Consumer Advocate submits that these precedents  
17 demonstrate that it would not be appropriate to approve the requests set out in the current  
18 application.

19  
20 Four of the five precedents cited by NP simply passed through accounting costs in amounts that  
21 related directly to previous Board Orders. As a result, a prudence review of the type normally  
22 required in a GRA was not necessary in order to determine that it was appropriate to recover  
23 those costs in rates. Newfoundland Power acknowledges in its response to PUB-NP-001 at  
24 page 3, line 8 that “These have included use of values that have been tested in the previous test  
25 year.” Footnote 10 notes that this comment applies to “Order Nos. P.U. 40 (2005), P.U. 39  
26 (2006), P.U. 30 (2010) and P.U. 22 (2011), where the deferred cost recoveries were justified on  
27 the basis of the expiration of depreciation and other amortizations which were approved in a  
28 prior GRA.”

29  
30 The fifth precedent, involved a case in which the costs to be recovered in rates were assented  
31 to by the parties through an Agreement. Newfoundland Power acknowledges this critical  
32 element of the fifth precedent in its response to PUB-NP-001 at page 3, lines 11-13 where it  
33 states that “The Board has also used agreement between an applicant and intervenor as a  
34 basis for determining the appropriateness of deferred cost recovery.” The related footnote 13

1 states: "The Board approval of the deferred cost recovery to improve Newfoundland Power's  
2 2012 return in Order No. P.U. 17 (2012) was the subject of a settlement agreement between  
3 Newfoundland Power and the Consumer Advocate."  
4

5 The Consumer Advocate submits that this precedent would only be applicable if the Company's  
6 requests were the subject of a settlement agreement. In fact, the Consumer Advocate is  
7 strongly opposed. In the absence of a settlement agreement, the Company's requests which  
8 hinge on the untested and opposed cornerstone assumption that the appropriate equity return  
9 for 2016 is 8.80%, Order No. P.U. 17 (2012) does not constitute a precedent that is supportive  
10 of the Company's position. In fact, since it is the only identified case that addressed issues  
11 similar to those being addressed in this case, it demonstrates that the only acceptable  
12 alternative to the filing of cost of capital evidence that is subject to the full scrutiny that it  
13 normally attracts as part of a general rate application is a settlement agreement.  
14

15 Furthermore, as the Company accurately states in the response to PUB-NP-001 at page 3 lines  
16 29-32, "However, in all applications for deferred cost recovery, including each of the prior  
17 applications, the Board has been satisfied that the deferred cost recovery proposed was  
18 appropriate and necessary in the particular circumstances."  
19

20 The response to PUB-NP-007 is misleading in its comments on this issue. Page 2 of the  
21 response Newfoundland Power states at lines 11-16:  
22

23 *Following suspension of the Formula in 2012, the Board considered both Newfoundland*  
24 *Power's forecast rate base and returns to determine a just and reasonable return on rate*  
25 *base for 2015. The computation of the Company's forecast 2016 return on rate base is*  
26 *consistent with the approach used for 2015. The use of estimates of rate base to*  
27 *determine a just and reasonable return on rate base is expressly permitted by Section*  
28 *80(4) of the Public Utilities Act (the "Act").*  
29

30 While it is correct to state that "the computation of the Company's forecast 2016 return on rate  
31 base is consistent with the approach used for 2015", the fact that the arithmetic is consistent is  
32 irrelevant. The 2015 calculation was based on an equity return that was approved by the Board  
33 for 2015. The 2016 calculation is based on an equity return that has not been approved.  
34 Furthermore, the statement that "The use of estimates of rate base to determine a just and

1 reasonable return on rate base is expressly permitted by Section 80(4) of the Public Utilities Act  
2 (the "Act")" is also irrelevant. The calculation relies not only on "estimates of rate base" but also  
3 an equity return figure that cannot even be called an estimate. It is simply an out-of-date  
4 approved rate. This has no relevance for 2016. There is no consistency or parallel between the  
5 use of this calculation in 2015 and in 2016.

6  
7 The Consumer Advocate does not agree that the proposal is consistent with the approach in  
8 2015. There is a critically important difference. The Board explicitly approved the use of that  
9 rate for 2015 in Order No. P.U. 13 (2013), but it explicitly ordered NP to file a GRA for 2016,  
10 which would have necessarily included cost of capital evidence in light of the discontinuance of  
11 the automatic adjustment formula.

12  
13 In the current application, NP is seeking acceptance of a return on equity that has not been  
14 subject to a normal prudence review and has not been accepted by the parties. Under these  
15 circumstances, the Consumer Advocate submits that the record of this proceeding does not  
16 support a conclusion that the proposed deferred cost recovery is either appropriate or  
17 necessary.

### 18 19 **Conclusion**

20 If NP were to file a full GRA that was subjected to the normal review procedure, the Consumer  
21 Advocate believes that cost of capital evidence would support a reduction in the ROE that would  
22 eliminate the need for either a rate increase or the proposed deferral account. The minimum  
23 necessary reduction in the equity return would be just 32 basis points to 8.48%, which would  
24 result in the range being 8.08% to 8.88%. With this modest reduction, the forecast equity return  
25 would be within the range. The Consumer Advocate submits that the current evidence is as  
26 supportive of setting the allowed equity return at 8.30% as it is of setting the equity return at  
27 8.80% for the 2016 test year.

28  
29 In the absence of an Agreement amongst the parties that the calculated increased rate base  
30 and the unchanged return on equity are appropriate, Order No. P.U. 13 (2013) is not an  
31 applicable precedent. None of the other four precedents are applicable because they were  
32 dealing with the timely recovery of costs that had been previously approved.

33  
34 For the foregoing reasons, the Consumer Advocate recommends that the Board should deny

1 Newfoundland Power's Application in its entirety.

2  
3 Newfoundland Power would then have the option of filing an amended 2016 Deferred Cost  
4 Recovery application with the addition of a request for the Board to establish a rate of return on  
5 common equity based on appropriate expert evidence that would be subjected to the normal  
6 scrutiny that a proposed cost of capital attracts in a general rate application. It would also have  
7 the opportunity of filing a general rate application for 2016 later this year. This would be  
8 consistent both with Order No. P.U. 13 (2013) and accepted regulatory practice.

Dated at St. John's, in the Province of Newfoundland and Labrador, this 2<sup>nd</sup> day of June, 2015.



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