

1 **Q. Is it possible to amend the agreement, and what factors would be considered, to**  
2 **allow for a delay in the finalization of the agreement and resulting application until**  
3 **the pole count survey has been completed?**

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5 **A. A. Amendment of the Purchase Agreement**

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7 Any amendment to the Purchase Agreement requires the written consent of both Bell  
8 Aliant and Newfoundland Power. Newfoundland Power has not addressed the matter of  
9 the terms, if any, upon which Bell Aliant might be prepared to consent to the delay  
10 indicated.

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12 The consequences of the delay indicated are addressed in the Response to Request for  
13 Information PUB-NP-6.

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15 A primary factor which would be considered by Newfoundland Power as result of  
16 delayed approval by the Board would be addressing the financial and operational  
17 uncertainty which would result. As part of the negotiation of the terms of the new Joint  
18 Use regime, Newfoundland Power and Bell Aliant agreed that if Board approval is not  
19 obtained by June 30, 2011, then either may terminate the Purchase Agreement. This,  
20 amongst other things, permits either, or both, Bell Aliant and Newfoundland Power to  
21 renegotiate the terms of Joint Use of Support Structures including those applicable for  
22 2011.

23  
24 It bears observation that Newfoundland Power and Bell Aliant *agreed* to payment of the  
25 sale price in advance of the confirmation of field data which will be provided by the pole  
26 count survey. This reflects the parties' consensus that the pole count survey will not  
27 affect the agreed fundamental cost sharing arrangements in any material way. It also  
28 reflects the longstanding use of estimates in Joint Use matters. This approach is similar  
29 to that taken when Newfoundland Power purchased Joint Use Support Structures from  
30 Aliant Telecom in 2001. In 2001, the number and location of Joint Use Support  
31 Structures purchased by Newfoundland Power from Aliant Telecom was essentially  
32 based upon estimates agreed between the parties.

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34 **B. Regulatory Considerations**

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36 Section 53 of the *Public Utilities Act* (the "Act") provides that the Board may establish  
37 the terms, conditions and compensation for Joint Use of Support Structures "...in case of  
38 failure to agree..." on such matter. In addition, under the Act the Board has general  
39 supervision over Newfoundland Power's operations.

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41 In Newfoundland Power's view, delay in the Board's consideration of the application  
42 until the number and location of the Joint Use Support Structures have been clearly  
43 determined is not warranted on the record of this application.

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45 There is (and has historically been) a degree of imprecision associated with the specific  
46 location and attributes of individual utility Support Structures in the field. The pole count  
47 survey will serve to reduce this somewhat.

1 But the results of the pole count survey will not affect:

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- 3 (i) the fundamental cost-sharing and access arrangements agreed between
- 4 Newfoundland Power and Bell Aliant which are consistent with current Canadian
- 5 utility practice;
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- 7 (ii) the essential relief sought by Newfoundland Power in the application which is the
- 8 approval of the Board to sell 40% of Joint Use Support Structures to Bell Aliant;
- 9 and
- 10
- 11 (iii) the service provided by Newfoundland Power to its customers or rights of access
- 12 enjoyed by owners of third party attachments to Joint Use Support Structures.
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14 Newfoundland Power respects that the Board has general supervision over its operations.

15 Should the Board wish to keep itself informed in relation to the results of the pole count

16 survey, it can require Newfoundland Power to report on the matter.

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18 Such an approach would be consistent with the Board's oversight of capital expenditure.

19 Each year the Board approves annual expenditures in advance of construction. This

20 approval covers construction each year of thousands of Support Structures without details

21 as to the number and location of those Support Structures. As a condition of the annual

22 approval, however, the Board routinely requires Newfoundland Power to report on

23 material variances.