

1 **Q. If the Purchase Agreement is terminated, PUB-NP-5 states that Bell Aliant and**
2 **Newfoundland Power can renegotiate the terms of the joint use support structures,**
3 **and PUB-NP-6 states the Newfoundland Power would have no comprehensive**
4 **regime for the joint use of support structures from January 1, 2011. Has**
5 **Newfoundland Power developed a contingency plan for Joint Use Support**
6 **Structures in the event the Purchase Agreement is terminated?**

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8 A. Newfoundland Power has not created a contingency plan, as an alternative to the
9 comprehensive negotiated Joint Use regime, in case the Board determines not to approve
10 the Application and the Purchase Agreement is terminated.

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12 As indicated in the evidence filed in support of this Application, since the 1990s, the
13 terms of Joint Use have been predominately established by way of negotiated agreement.¹
14 This is consistent with the terms of the *Public Utilities Act* which govern Joint Use of
15 Support Structures.²

16
17 The regime for the Joint Use of Support Structures negotiated between Bell Aliant and
18 Newfoundland Power with effect from January 1, 2011 is based upon Canadian public
19 utility practice, is consistent with least-cost, and is fair. Terms of Joint Use based upon
20 Canadian public utility practice will tend to result in arrangements which (i) meet the
21 regulatory imperative of least-cost,³ and (ii) achieve fairness as between the various users
22 Joint Use Support Structures.⁴ Negotiated agreement of such terms tends to lead to
23 administrative efficiency.⁵

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25 Newfoundland Power has, in an open and transparent manner, commenced establishment
26 of the new Joint Use regime in which the principal users of Joint Use Support Structures
27 in the Company's service territory are participating. Currently, Newfoundland Power,
28 Bell Aliant, Rogers Communications and Eastlink are co-operating in a pole count survey
29 to confirm the number of attachments in the field and ensure a sound basis for continued
30 Joint Use.⁶ It is expected that following establishment of the Joint Use arrangements
31 between Newfoundland Power and Bell Aliant and completion of the pole count survey,

¹ Prefiled Evidence, Page 1, lines 11 to 14; Footnote 2.

² Section 53 of the *Public Utilities Act* requires the sharing of Support Structures and provides for the Board to determine terms where parties cannot agree.

³ As indicated in the Prefiled Evidence (Page 3, line 15 to Page 4, line 7), the least-cost imperative practically supports the sharing of facilities due to the large economies associated with Joint Use. The construction cost of a single Joint Use Support Structure is approximately ½ of the construction cost of separate Support Structures of each of an electric utility and a telecommunications provider.

⁴ As indicated in the Prefiled Evidence (Page 4, lines 9 to 16 and footnote 10), fair and equitable distribution of the economic benefits of Joint Use is typically achieved in a regulatory sense when each user (i) shares equally in the common costs and (ii) fully bears the costs related to its specific requirements.

⁵ Prior to the mid-1990s, a significant proportion of issues related to Joint Use Support Structures were the subject of proceedings before the Board. This had significant direct costs such as regulatory costs. It also had significant indirect costs related to the day-to-day administration of Joint Use between various users. Since the mid-1990s, there have been very few disputes between users relating to Joint Use of Support Structures.

⁶ Rogers Communications and Eastlink collectively have over 99% of total third party attachments (See Response to Request for Information PUB-NP-2, footnote 5). The pole count survey commenced in April 2011 and is currently approximately 7% complete.

1 negotiations would commence to refresh current arrangements between Newfoundland
2 Power and cable service providers.⁷ Once these negotiations are concluded, a fully
3 refreshed regime governing the rights and obligations of all who use Newfoundland
4 Power Joint Use Support Structures will have been fully settled.

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6 Should the Board not approve the Application, and the Purchase Agreement be
7 terminated, Newfoundland Power would have to respond to the consequences of this
8 development in light of the circumstances then presenting themselves.

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10 For example, without receipt of the \$45.7 million by mid-2011 as anticipated in the
11 Purchase Agreement, Newfoundland Power's financial outlook will be negatively altered.
12 With the consequent uncertainty surrounding Joint Use arrangements as between
13 Newfoundland Power and Bell Aliant, the timetable for addressing the refreshing of
14 arrangements with the cable service providers may well change. These are examples of
15 some of the contingencies which will exist and have to be addressed if the Purchase
16 Agreement is terminated.

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18 Given the circumstances which govern the Joint Use of Support Structures, including the
19 requirement to conform to the various practices and principles indicated above at lines 12
20 through 23 of page 1 of this Response, the development of a contingency plan as an
21 alternative to the comprehensive negotiated Joint Use regime was not practical. Due to
22 this impracticality, development of such contingency plans has not been an historical
23 practice in Joint Use negotiation at Newfoundland Power.

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25 Please refer to the Responses to Requests for Information PUB-NP-5, PUB-NP-6 and
26 PUB-NP-23 for further information regarding the impact of the Board's refusal to
27 approve the Application.

⁷ Prefiled Evidence, Page 11, footnote 28. Current contractual arrangements with cable service providers date from the late 1990s.