

1 **Q. In relation to the termination of the Purchase Agreement, please reconcile the**  
2 **responses in PUB-NP-5 and PUB-NP-6 with the Purchase Agreement paragraph**  
3 **9.1(c) and with the definition of “Outside Date” in the Purchase Agreement.**  
4

5 A. The Purchase Agreement paragraph 9.1(c) provides that in the event of termination of the  
6 Purchase Agreement the rights and obligations of Newfoundland Power and Bell Aliant  
7 under the 2001 Joint Use Facilities Partnership Agreement (“JUFPA”) are specifically  
8 preserved.<sup>1</sup> The Purchase Agreement paragraph 9.1(b) provides that termination can also  
9 occur at the request of either party due to a lack of timely regulatory approval by the  
10 Board. Timely approval is governed by the definition of an “Outside Date”.<sup>2</sup>  
11

12 The JUFPA provides for certain matters upon its termination following non-renewal by a  
13 party. Amongst the matters provided for are the (i) purchase by Bell Aliant of 40% of  
14 Joint-Use Support Structures and (ii) transfer of billing and collection rights of amounts  
15 due from 3<sup>rd</sup> parties for attachments. But the provisions of the JUFPA do not provide for  
16 the continuation of Joint-Use of Support Structures in any comprehensive way.<sup>3</sup> It is for  
17 this reason that Newfoundland Power and Bell Aliant negotiated the comprehensive  
18 terms of the new Joint-Use regime to govern all aspects of Joint-Use of Support  
19 Structures from January 1<sup>st</sup>, 2011.  
20

21 Termination of the Purchase Agreement due to lack of timely regulatory approval by the  
22 Board will place the parties in the position of not having a comprehensive Joint-Use  
23 regime from January 1<sup>st</sup>, 2011.<sup>4</sup> As described in the Responses to Requests for  
24 Information PUB-NP-5 and PUB-NP-6 this creates a significant degree of financial and  
25 operational uncertainty for Newfoundland Power.

---

<sup>1</sup> See Sections 9.07 (b) and (c) of the JUFPA.

<sup>2</sup> The “Outside Date” as defined in the Purchase Agreement is June 30, 2011 subject to the rights of the parties to agree to extension. In the Response to Request for Information PUB-NP-5, Newfoundland Power indicated that amendment of the Purchase Agreement to allow for delay would require the written consent of Newfoundland Power and Bell Aliant. Extension of the “Outside Date” would similarly require the written consent of Newfoundland Power and Bell Aliant. See Section 1.10 of the Purchase Agreement which requires all amendments or waivers of any provision to be consented to in writing.

<sup>3</sup> For example, there is no provision whatsoever in the JUFPA for Joint-Use of Support Structures erected following termination on December 31, 2010.

<sup>4</sup> Termination of the Purchase Agreement also results in termination of the 2011 JUA and all associated service arrangements (see Section 9.1 (c) of the Purchase Agreement).