

1 **Q. What assurance can Newfoundland Power provide that the costs that will be borne**
2 **by Newfoundland Power's customers will be consistent with least cost reliable**
3 **power when Bell Aliant owns 40% of the joint use structures which will be under**
4 **the jurisdiction of the CRTC?**

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6 A. The new Joint Use regime which will exist following Bell Aliant's acquisition of 40% of
7 Joint Use Support Structures and implementation of the 2011 Joint Use Agreement (the
8 "2011 JUA") will be consistent with least cost reliable power delivery by Newfoundland
9 Power.¹

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11 These *agreed* arrangements are not subject to the jurisdiction of the CRTC as this
12 question appears to imply.

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14 The Canadian Radio-Television and Telecommunications Commission (the "CRTC") has
15 jurisdiction under Section 43(5) of the *Telecommunications Act* to establish conditions
16 for Joint-Use where a party ".....cannot, on terms acceptable to that person, gain access to
17 the support structure.....constructed on a highway or other public place,.....". This
18 indicates that the CRTC's jurisdiction over Joint Use arrangements arises only where a
19 party cannot gain access on acceptable terms. This provision has been interpreted by the
20 Supreme Court of Canada to preclude CRTC jurisdiction over support structures owned
21 by electricity companies or over *any* support structures situated on private land.²

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23 In circumstances where parties, such as Newfoundland Power and Bell Aliant, have
24 agreed comprehensive terms governing access to support structures, including
25 compensation, the CRTC does not have jurisdiction to intervene and alter those *agreed*
26 terms. In any event since 1989, the CRTC has not ruled, or attempted to rule, on any
27 aspect of Joint Use between Newfoundland Power and Bell Aliant, or its predecessors.

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29 Joint-Use Support Structure cost sharing on the basis of 60% for the electric utility and
30 40% for the telecommunications company was first agreed in Newfoundland and
31 Labrador in a Joint Use Agreement signed in 1988.³ This precedes the 1989 decision of
32 the Supreme Court of Canada in *Alberta Government Telephones v. Canada (CRTC)*,
33 which effectively determined that Newfoundland Telephone Co. Ltd. (a predecessor of
34 Bell Aliant) was subject to federal regulation as administered by the CRTC.⁴ The 60% /
35 40% cost sharing ratio is also the dominant cost sharing approach in Canada today.⁵
36 Accordingly, even if it could be argued that the CRTC had jurisdiction to alter the 40% /

¹ It is consistent with least-cost reliable electrical service because it avoids the cost of duplicate infrastructure (See Prefiled Evidence, Page 3, line 15 to Page 4, line 7) and because it is a lower cost alternative to the 2011 renewal of the Joint Use Facilities Partnership Agreement. It is fair and reasonable because the 60% / 40% cost sharing ratio between electric and telecommunications is both common across Canada and longstanding in Newfoundland and Labrador (See Prefiled Evidence, Page 5, line 8 to line 12).

² See *Barrie Public Utilities v. Canadian Cable Television Association* [2003] 1 S.C.R. 476.

³ Joint Use Agreement between Newfoundland Telephone Company Ltd. and Newfoundland Light & Power Co. Ltd. effective January 1, 1988 (executed on June 29th, 1988).

⁴ See the Response to Request for Information PUB-NP-11.

⁵ Nine of 13 (or 75%) electric utilities in 9 Canadian provinces surveyed by Newfoundland Power used the 60% / 40% cost ratio for Joint-Use Support Structure sharing. Twelve of 13 (or 92%) electric utilities in 9 Canadian provinces surveyed by Newfoundland Power reported that costs of Joint-Use Support Structures were shared on the basis of approximately 60%.

1 60% cost sharing agreement, it is difficult to conceive of any evidentiary basis that the
2 CRTC would have to alter such arrangements.⁶
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4 The CRTC does not appear to have any jurisdiction to alter the terms of *agreed* Joint-Use
5 arrangements between Newfoundland Power and Bell Aliant. Furthermore, the CRTC
6 has never attempted to exercise such jurisdiction since assuming regulatory authority
7 over Newfoundland Telephone and its successors in 1989. The longstanding economic
8 basis of Joint Use cost sharing in Newfoundland and Labrador and across Canada is
9 consistent with the agreed terms between Newfoundland Power and Bell Aliant. In such
10 circumstances, it is difficult to conceive of any evidentiary basis for the CRTC to act
11 even if it could be argued it had the jurisdiction to do.

⁶ The CRTC, like the Board, is required to decide matters on evidence. Decisions based otherwise than on evidence contravene legal notions of natural justice and fairness.