

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

**Transcript of the hearing of
NEWFOUNDLAND POWER INC.'s
2012 COST OF CAPITAL APPLICATION**

June 12, 2012

Present for the Board:

Andy Wells, Chair and CEO
Darlene Whalen, P.Eng. Commissioner
Dwanda Newman, LLB, Commissioner
James Oxford, Commissioner

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BOARD OF COMMISSIONERS
OF PUBLIC UTILITIES

JUN 12 2012

ST. JOHN'S, NL

Present on behalf of the Board:

Maureen Greene, Q.C., Hearing Counsel
Jacqueline Glynn, Board Counsel
Cheryl Blundon, Board Secretary
Jacqueline Glynn, Board Counsel

Present for Newfoundland Power:

Ian Kelly, Q.C., Counsel for Newfoundland Power
Gerard Hayes, Newfoundland Power

Present for the Consumer Advocate:

Thomas Johnson LLB, Consumer Advocate

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<p>1 CHAIRMAN WELLS:</p> <p>2 Q. Well, good morning, everybody. I see a</p> <p>3 familiar cast, so I don't think introductions</p> <p>4 are necessary. So Madam, you can start.</p> <p>5 MS. GLYNN:</p> <p>6 Q. Turn it right over to me. Thank you, Mr.</p> <p>7 Chair. Good morning to the Panel and to all</p> <p>8 the parties and everybody else who has joined</p> <p>9 us here this morning. I will be short and</p> <p>10 sweet here this morning, I think. I confirm</p> <p>11 that on March 30th, 2012, the Board received a</p> <p>12 Cost of Capital Application from Newfoundland</p> <p>13 Power to establish a just and reasonable</p> <p>14 return on rate base for 2012 and to</p> <p>15 discontinue the use of the automatic</p> <p>16 adjustment formula. Notice of the application</p> <p>17 was published in newspapers throughout the</p> <p>18 province, starting on April 9th, 2012. The</p> <p>19 Intervenors in this application were the</p> <p>20 Consumer Advocate, Newfoundland and Labrador</p> <p>21 Hydro and the Island Industrial Customers.</p> <p>22 Hydro and the Industrial Customers had limited</p> <p>23 participation in the application. Notice of</p> <p>24 this hearing today was published in The</p> <p>25 Telegram on June 2nd, 2012. A settlement</p>	<p>1 my appreciation to counsel for Newfoundland</p> <p>2 Power and to the Consumer Advocate for their</p> <p>3 co-operation and their accessibility</p> <p>4 throughout the process. It was actually an</p> <p>5 enjoyable process, I think, for my very first</p> <p>6 experience in that role and I am happy to</p> <p>7 report that it was a success in terms of</p> <p>8 having reached a settlement agreement.</p> <p>9 So looking a little bit at the factual</p> <p>10 background to the settlement agreement, the</p> <p>11 last time that the Board formally considered</p> <p>12 the issue of the appropriate return on equity</p> <p>13 or the fair return on rate base for</p> <p>14 Newfoundland Power, was in the context of</p> <p>15 Newfoundland Power's 2010 General Rate</p> <p>16 Application. And by Board Order 43 in 2009,</p> <p>17 the Board ordered that Newfoundland Power's</p> <p>18 2010 customer rates be based upon an allowed</p> <p>19 return on rate base, which reflected a</p> <p>20 regulated return on equity of 9 percent and</p> <p>21 that the return on rate base for 2011 and 2012</p> <p>22 be set using an automatic adjustment formula.</p> <p>23 The 2011 return on rate base was approved by</p> <p>24 Board Order No. P.U. 32 of 2010 at 7.96 in a</p> <p>25 range of 7.78 to 8.14. And this reflected a</p>
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<p>1 agreement was executed by the parties June 5,</p> <p>2 2012, Board hearing counsel will speak to that</p> <p>3 agreement in a few moments. An amended</p> <p>4 application reflecting the settlement</p> <p>5 agreement was filed by Newfoundland Power on</p> <p>6 June 7th, 2012. Both the application and the</p> <p>7 amended application have been properly filed.</p> <p>8 There are no preliminary matters for the Panel</p> <p>9 to consider and I would now ask Ms. Greene,</p> <p>10 Board hearing counsel to speak to the</p> <p>11 settlement agreement.</p> <p>12 GREENE, Q.C.:</p> <p>13 Q. Good morning everyone. I am pleased to advise</p> <p>14 that the parties have reached a settlement</p> <p>15 agreement. At this time I think it would be</p> <p>16 helpful to provide some background information</p> <p>17 for the Commissioners to put the settlement</p> <p>18 agreement into context and I believe that by</p> <p>19 doing so, this will demonstrate to the panel</p> <p>20 that the settlement agreement is reasonable</p> <p>21 and should be approved. First the settlement</p> <p>22 process was initiated by Board counsel and as</p> <p>23 hearing counsel, Board hearing counsel, I</p> <p>24 acted as the mediator or the facilitator for</p> <p>25 the sessions. I would first like to express</p>	<p>1 return on equity of 8.38 percent and this was</p> <p>2 established by the use of the automatic</p> <p>3 adjustment formula.</p> <p>4 In 2012, however, the formula wasn't used</p> <p>5 to establish the return on equity.</p> <p>6 Newfoundland Power applied for approval to</p> <p>7 suspend the operation of the formula for 2012</p> <p>8 and to continue on an interim basis the 2011</p> <p>9 return which was 8.38 percent. The</p> <p>10 application was to continue with the 2011 rate</p> <p>11 on an interim basis until such time as the</p> <p>12 matter was formally set by the Board. At that</p> <p>13 time Newfoundland Power advised that their</p> <p>14 application was driven by the changes in the</p> <p>15 financial market and that the use of the</p> <p>16 formula would not produce a fair return for</p> <p>17 2012.</p> <p>18 In that application, the Consumer</p> <p>19 Advocate filed evidence from an expert and</p> <p>20 advised that he did not take issue with</p> <p>21 Newfoundland Power's position on maintaining</p> <p>22 the 2011 return on equity into 2012. The</p> <p>23 Board then, by Order Number P.U. 25 of 2011</p> <p>24 did suspend the operation of the automatic</p> <p>25 adjustment formula and they approved the</p>

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<p>1 continued use of the 2011 rate of return on 2 rate base which reflects an ROE of 8.38 3 percent on an interim basis until a further 4 order. And the Board also stated in that 5 Order, that the process and timing to be 6 followed to determine the reasonable return 7 for 2012 and with respect to the filing of the 8 next General Rate Application will be 9 established by further direction.</p> <p>10 Newfoundland Power had been previously 11 been directed to file a 2013 GRA in May of 12 2012. Subsequently, Newfoundland Power, on 13 March 30th, filed the current application. 14 Again they asked for approval to discontinue 15 the use of the formula and to set a rate of 16 return on rate base for 2012. The issue of 17 the use of the formula has been deferred from 18 this current application and will be dealt 19 with later this year or in 2013.</p> <p>20 Newfoundland Power was also directed by 21 the Board to file its next general rate 22 application by September 14, 2012 using a 2013 23 test year. That meant that the only issue in 24 the current application which is now before 25 the Commissioners is the appropriate return</p>	<p>1 only issue being the 2012 rate of return with 2 the other issue of the use of the formula and 3 the fair return beyond 2012 being dealt with 4 later this year or early next year after 5 Newfoundland Power files their next General 6 Rate Application.</p> <p>7 The other matter that I would like to 8 bring to the attention of the Commissioners is 9 that there have been two recent Canadian 10 decisions by two Canadian regulators which 11 have considered the fair return for regulated 12 utilities in Canada for 2012. I believe that 13 these cases are relevant and I would like to 14 bring them to the attention of the Board.</p> <p>15 The first was a decision from the Alberta 16 Utilities Commission that was given on 17 December 8, 2011. That Commission considered 18 the changes in the financial environment since 19 2009 which was the last time that this Board 20 formally looked at the issue of appropriate 21 fair return for Newfoundland Power. And using 22 the Capital Asset Pricing Model and the 23 Discounted Cash Flow Model determined that a 24 generic ROE for an average risk utility would 25 be 8.75 percent for 2011 and 2012 and on an</p>
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<p>1 for 2012. The issue of the use of the formula 2 for the future and the appropriate ROE for 3 2013 will be dealt with in the next General 4 Rate Application which Newfoundland Power has 5 been directed to file by September.</p> <p>6 With respect to the current application, 7 Newfoundland Power filed evidence from two 8 Cost of Capital experts. The first expert, 9 Ms. Kathleen McShane, who has appeared before 10 the Board before, her opinion is that the fair 11 return for Newfoundland Power for 2012 is 10.5 12 percent. The second expert, Dr. Vander Wiede, 13 stated his opinion that 10.4 would be a fair 14 return for Newfoundland Power for 2012. The 15 Consumer Advocate filed evidence by Dr. 16 Lawrence Booth which stated his opinion that 17 a fair return for 2012 for Newfoundland Power 18 would be 8.15 percent within a range of 7.65 19 to 8.7. All three of the experts provided 20 evidence on the financial market conditions 21 and the historic low risk free rate forecast 22 for 2012 and how this impact setting a fair 23 return.</p> <p>24 The settlement process was initiated as a 25 very practical matter when we looked at the</p>	<p>1 interim basis for 2013. The Commission did 2 state that it would initiate a proceeding 3 later to set a final ROE for 2013 and to re- 4 visit the possible use of the automatic 5 adjustment formula. This decision is on the 6 record and was filed in response to 7 information request CA-MP 206.</p> <p>8 The second decision was from the Regie de 9 L'Energie which was issued in November and an 10 english translation of this decision is 11 available in response to information request 12 CA-MP 202. There the Regie rely principally 13 on the CAP M test to set the fair ROE for 2012 14 for Gas Metro which was acknowledged to be an 15 above average risk utility at 8.9 percent. 16 The Regie also did take the results of the 17 Discounted Cash Flow Test into account and an 18 automatic adjustment formula is to be used 19 there to adjust the ROE for 2013.</p> <p>20 So, coming to the settlement discussions, 21 they took place in the context of the 22 following facts; (1) there is continuing 23 uncertainty in the financial markets and the 24 risk free rate is at a historic low. The 25 second relevant fact is the ROE is only being</p>

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<p>1 set for 2012. The appropriate fair return for</p> <p>2 2013 and the use of the automatic adjustment</p> <p>3 formula will be dealt with after Newfoundland</p> <p>4 Power files its next General Rate Application</p> <p>5 in September of this year. And the third</p> <p>6 relevant fact was the recent regulatory</p> <p>7 Canadian decisions on the 2012 Return for</p> <p>8 Regulated Utilities in Canada.</p> <p>9 So, that was the context in which we</p> <p>10 started the discussions. And I'm very happy</p> <p>11 to say that we were able to reach a</p> <p>12 settlement. The essence of the settlement</p> <p>13 which is before the Commissioners today is</p> <p>14 that the regulated return on equity for 2012</p> <p>15 be 8.8 percent. And that Newfoundland Power</p> <p>16 be entitled to deferred recovery of an amount</p> <p>17 of revenue in 2012 which reflects the</p> <p>18 difference between the current 8.38 percent</p> <p>19 currently in rates and the agreed 8.8 percent.</p> <p>20 The settlement agreement, of course, is</p> <p>21 without prejudice to any positions the parties</p> <p>22 may take in future proceedings, particularly</p> <p>23 the upcoming one with the next General Rate</p> <p>24 Application.</p> <p>25 As Ms. Glynn has already mentioned,</p>	<p>1 Utilities Act.</p> <p>2 Those are all the comments that I had to</p> <p>3 make this morning. I believe each of the</p> <p>4 parties will also address their position on</p> <p>5 the settlement agreement. Thank you.</p> <p>6 CHAIRMAN WELLS:</p> <p>7 Q. So, I guess we'll start with the solicitor for</p> <p>8 Newfoundland Power.</p> <p>9 KELLY, Q.C.:</p> <p>10 Q. Thank you, Chair, Commissioners. I'll be very</p> <p>11 brief. First of all I'd like to thank Ms.</p> <p>12 Green and Mr. Johnson for their participation</p> <p>13 in the settlement process. Secondly,</p> <p>14 Newfoundland Power has filed an amended</p> <p>15 application reflecting the agreed upon ROE for</p> <p>16 2012 and related matters that then flow out of</p> <p>17 that ROE. Newfoundland Power therefore</p> <p>18 requests that the Board grant the orders</p> <p>19 requested in the amended application that are</p> <p>20 reflective in paragraph 13 of the application</p> <p>21 and I won't take the time to take the Board at</p> <p>22 this stage. Mr. Chairman, I think that's all</p> <p>23 I really need to add in the circumstances.</p> <p>24 CHAIRMAN WELLS:</p> <p>25 Q. Yes, sir?</p>
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<p>1 Newfoundland Power did file a revised</p> <p>2 application on June 7 to reflect the</p> <p>3 settlement and also to look after the</p> <p>4 ancillary matters that must be taken into</p> <p>5 account to implement the agreed settlement.</p> <p>6 Also as Ms. Glynn mentioned, the Hydro and the</p> <p>7 Industrial Customers did file limited</p> <p>8 interventions in the matter. They were</p> <p>9 provided with copies of the settlement</p> <p>10 agreement. They both advised in</p> <p>11 correspondence to the Board that they do not</p> <p>12 object to the settlement agreement. Counsel</p> <p>13 for the Industrial Customers did state that if</p> <p>14 the agreement is not approved or is modified</p> <p>15 by the Board, it would like to be advised too,</p> <p>16 so that it could make, if necessary,</p> <p>17 submissions to the Board.</p> <p>18 So, to summarize, I believe that the</p> <p>19 settlement agreement which is before the</p> <p>20 Commissioners which has been agreed to by the</p> <p>21 parties is fair and reasonable in the current</p> <p>22 circumstances and that it should be approved.</p> <p>23 It will allow a fair return for 2012 for</p> <p>24 Newfoundland Power and I believe it meets the</p> <p>25 requirements of Section 80 of the Public</p>	<p>1 MR. JOHNSON:</p> <p>2 Q. Mr. Chairman, Commissioners, as set out in the</p> <p>3 settlement agreement, the Consumer Advocate</p> <p>4 recommends that the Board implement the</p> <p>5 agreement of parties regarding the settled</p> <p>6 issues in the Board's order which will emanate</p> <p>7 from this proceeding. In the current context</p> <p>8 of setting a just and reasonable return on</p> <p>9 rate base for 2012, the Consumer Advocate</p> <p>10 regards the settlement agreement as</p> <p>11 reasonable. Newfoundland Power will be filing</p> <p>12 a rate application by September 14, 2012, so</p> <p>13 the Board will be hearing full ROE testimony</p> <p>14 from the parties expert witnesses and</p> <p>15 examining Newfoundland Power's ROE adjustment</p> <p>16 mechanism in the fall. So, we will be back</p> <p>17 before the Board very soon for what I'm sure</p> <p>18 will be a very interesting hearing on Cost of</p> <p>19 Capital issues. In the meantime, I would like</p> <p>20 to express appreciation to the Board counsel,</p> <p>21 to Board Hearing Counsel, Ms. Greene, Q.C. for</p> <p>22 her role as mediator or facilitator of the</p> <p>23 negotiation process that led to the</p> <p>24 settlement. And as well, to thank</p> <p>25 Newfoundland Power for their participation and</p>

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1 co-operation. And finally I'd like to
2 acknowledge the assistance of Dr. Booth who is
3 now back from Turkey, for his assistance
4 throughout this proceeding. Thank you.

5 CHAIRMAN WELLS:

6 Q. Okay. Is there any comments from any -
7 GREENE, Q.C.:

8 Q. Mr. Chair, now that all the parties have
9 spoken to the settlement agreement, I believe
10 it's appropriate that we file this document,
11 the settlement agreement, as a consent
12 exhibit. I believe you all have copies before
13 you, as do that parties. So, I will like to
14 enter the agreement and have it marked as a
15 consent exhibit.

16 CHAIRMAN WELLS:

17 Q. I guess we're adjourned then.

18 Upon conclusion at 9:47 a.m.

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1 CERTIFICATE

2 I, Paulette Murphy, do hereby certify that the
3 foregoing is a true and correct transcript of a hearing
4 regarding the Settlement Agreement for the Proposed
5 Resolution of Issues Arising from the Cost of Capital
6 Application of Newfoundland Power for just and reasonable
7 rate of return on rate base for 2012 heard on the 12th
8 day of June, 2012 at the offices of the Public Utilities
9 Board, St. John's, Newfoundland and Labrador and was
10 transcribed by me to the best of my ability by means of
11 a sound apparatus.

12 Dated at St. John's, NL this

13 12th day of June, 2012

14 Paulette Murphy

15 Discoveries Unlimited Inc.

<p>-1-</p> <p>1 [1] 8:22 10.4 [1] 6:13 10.5 [1] 6:11 12th [2] 14:7,13 13 [1] 11:20 14 [2] 5:22 12:12</p> <p>-2-</p> <p>2009 [2] 3:16 7:19 2010 [3] 3:15,18,24 2011 [9] 3:21,23 4:8,10 4:22,23 5:1 7:17,25 2012 [36] 1:11,14,18,25 2:2,6 3:21 4:4,7,17,22 5:7,12,16,22 6:1,11,14 6:17,22 7:1,3,12,25 8:13 9:1,7,14,17 10:23 11:16 12:9,12 14:7,8,13 2013 [8] 5:11,19,22 6:3 8:1,3,19 9:2 202 [1] 8:12 206 [1] 8:7 25 [1] 4:23 2nd [1] 1:25</p> <p>-3-</p> <p>30th [2] 1:11 5:13 32 [1] 3:24</p> <p>-4-</p> <p>43 [1] 3:16</p> <p>-5-</p> <p>5 [1] 2:1</p> <p>-7-</p> <p>7 [1] 10:2 7.65 [1] 6:18 7.78 [1] 3:25 7.96 [1] 3:24 7th [1] 2:6</p> <p>-8-</p> <p>8 [1] 7:17 8.14 [1] 3:25 8.15 [1] 6:18 8.38 [4] 4:1,9 5:2 9:18 8.7 [1] 6:19 8.75 [1] 7:25 8.8 [2] 9:15,19 8.9 [1] 8:15 80 [1] 10:25</p> <p>-9-</p> <p>9 [1] 3:20 9:47 [1] 13:18</p>	<p>9th [1] 1:18</p> <p>-A-</p> <p>a.m [1] 13:18 ability [1] 14:10 able [1] 9:11 above [1] 8:15 accessibility [1] 3:3 account [2] 8:17 10:5 acknowledge [1] 13:2 acknowledged [1] 8:14 Act 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