



Newfoundland Power Inc.

55 Kenmount Road
P.O. Box 8910
St. John's, NL A1B 3P6
Business: (709) 737-5600
Facsimile: (709) 737-2974
www.newfoundlandpower.com

HAND DELIVERED

October 3, 2012

Board of Commissioners
of Public Utilities
P.O. Box 21040
120 Torbay Road
St. John's, NL A1A 5B2

Attention: G. Cheryl Blundon
Director of Corporate Services
and Board Secretary

Ladies and Gentlemen:

Re: 2013 Hydro Capital Budget Application

In accordance with the Board's schedule of August 15th, 2012, please find enclosed the original and eight copies of Newfoundland Power's Submission in respect of Newfoundland and Labrador Hydro's 2013 Capital Budget Application.

A copy of this letter, together with enclosures, has been forwarded directly to the parties listed below. An electronic copy in pdf format will follow.

If you have any questions regarding the enclosed, please contact the undersigned at your convenience.

Yours very truly,

Peter Alteen
Vice President
Regulation & Planning

c. Geoffrey Young
Newfoundland & Labrador Hydro

Thomas Johnson
O'Dea Earle Law Offices

Dean A. Porter
Poole Althouse

Paul Coxworthy
Stewart McKelvey



Join us in the fight against cancer.

IN THE MATTER OF the *Public Utilities Act*, (the “Act”); and

IN THE MATTER OF an Application by Newfoundland and Labrador Hydro for an Order approving: (1) its 2013 capital budget pursuant to s. 41(1) of the Act; (2) its 2013 capital purchases, and construction projects in excess of \$50,000 pursuant to s.41(3)(a) of the Act; (3) its leases in excess of \$5,000 pursuant to s. 41(3)(b) of the Act; and (4) its estimated contributions in aid of construction for 2013 pursuant to s.41(5) of the Act and for an Order pursuant to s. 78 of the Act fixing and determining its average rate base for 2011.

**BRIEF OF ARGUMENT
OF
NEWFOUNDLAND POWER INC.
October 3, 2012**

CONTENTS

	Page
1.0 INTRODUCTION	1
2.0 LEGISLATIVE FRAMEWORK.....	1
3.0 NEWFOUNDLAND POWER’S SUBMISSION.....	2
3.1 General.....	2
3.2 15-Year Washroom Installation Program	3
3.3 Capitalization of Design Costs.....	6
3.4 Holyrood Thermal Generating Station.....	8

1.0 INTRODUCTION

Newfoundland and Labrador Hydro's ("Hydro") 2012 Capital Budget Application (the "Application") was filed with the Board of Commissioners of Public Utilities (the "Board") on August 8th, 2012. Newfoundland Power filed a Notice of Intention to Participate in the hearing of the Application on August 17, 2012.

This is Newfoundland Power's submission with respect to the Application.

2.0 LEGISLATIVE FRAMEWORK

Section 37(1) of the *Public Utilities Act* states that a public utility shall provide service and facilities that are reasonably safe and adequate and just and reasonable. Section 37(1) is a cornerstone of Hydro's and Newfoundland Power's obligation to serve their customers.

Section 3(b) of the *Electrical Power Control Act, 1994* states that all sources and facilities for the production, transmission, and distribution of power in the province should be managed and operated in a manner that would result in:

- (i.) the most efficient production, transmission, and distribution of power,
- (ii.) consumers in the province having equitable access to an adequate supply of power, and
- (iii.) power being delivered to customers in the province at the lowest possible cost consistent with reliable service.

1 Section 3(b) does not create a hierarchy between these three principles; rather, each is equally
2 important in the management and operation of electrical facilities in the province.

3 4 **3.0 NEWFOUNDLAND POWER'S SUBMISSION**

5 **3.1 General**

6 The principal question for the Board in its consideration of this proceeding is whether Hydro's
7 proposed capital expenditures in 2013 are reasonably required for it to meet its statutory
8 obligation to provide reasonably safe and adequate, least cost service to its customers, including
9 Newfoundland Power.

10
11 Newfoundland Power's submission focuses on the following 3 matters:

- 12 (i) Hydro's proposal to commence a 15 year program to install additional washrooms
13 in certain facilities with \$250,900 in 2013 capital expenditures.
- 14 (ii) Hydro's proposal to have the Board approve \$472,100 in front end engineering
15 design work in 2013; and
- 16 (iii) Hydro's failure to comply with the provisions of Order No. P.U. 5 (2012)
17 regarding provision of an overview of proposed capital expenditures for Holyrood
18 Thermal Generating Station ("Holyrood") with its 2013 Capital Budget
19 Application.

3.2 15-Year Washroom Installation Program

Background

Hydro's 2013 Capital Budget introduces a project *Install Additional Washrooms* that will require installation of approximately 60 *additional* washrooms at *all* of Hydro's remote sites over a 15 year period. The project estimates expenditure of \$250,900 in 2013 and a total of \$1,319,000 through 2017. No estimates are provided for the last 10 years of the project.

Reference: Schedule D, Page 210 *et. seq.*
2013 Capital Plan, Appendix A, Page A14.

Hydro maintains that its current washroom facilities at the remote sites in question fail to comply with Section 61(2)(c) of the *Occupational Health and Safety Regulations, 2012*. The evidence appears to indicate that a single phone conversation on June 28, 2012 with an enforcement officer of Occupational Health and Safety Division is the basis of Hydro's conclusion that the facilities at these 60 remote locations do not comply with Section 61(2)(c).

Reference: Schedule D, Page 213.
Response to Requests for Information NP-NLH-002 and NP-NLH-003.

The *Install Additional Washrooms* project is classified by Hydro as 'mandatory'.

Reference: Response to Request for Information NP-NLH-001.

1 Section 61(2)(c) of the *Occupational Health and Safety Regulations, 2012* provides:

2 ...(2) Sufficient and suitable toilet facilities referred to in subsection (1) include the
3 following:

4
5 ...(c) where both males and females *are employed*, separate toilets shall be
6 provided and suitably identified for workers of each sex;...(emphasis
7 added)

8 Reference: *Occupational Health and Safety Regulations, 2012*

9
10 Hydro's position *vis-à-vis* its obligation to provide separate washrooms at *all* of its remote
11 facilities appears to be based on the assumption that its staff are "...employed..." at all 60 remote
12 terminal stations and diesel plants.¹ The requirement in Section 61(2)(c) of the *Occupational*
13 *Health and Safety Regulations, 2012* that separate toilets be provided where males and females
14 are '...employed...' has existed since at least 1979.

15 Reference: *Occupational Health and Safety Regulations, 2012, s. 61(2)(c)*
16 *Occupational Health and Safety Regulations, 1996, s. 13(c)*
17 *Occupational Health and Safety Regulations, 1979, s. 13(1)(c)*

¹ Remote facilities on electrical systems typically include places where employees would work for relatively short periods of time as opposed to places where employees would necessarily be *employed* on a continual or consistent basis. The Response to Request for Information CA-NLH-066 contains Hydro's current list of such remote facilities.

1 Hydro has not yet completed an assessment of its facilities to determine (i) where work is
2 required to be completed; (ii) the order in which facilities will be completed; (iii) or what
3 facilities will be completed in 2013.

4 Reference: Response to Requests for Information CA-NLH-066 and CA-NLH-067.

5
6 ***Submission***

7 In this Application, Hydro proposes to commence a 15 year program to install additional
8 washrooms in remote facilities to comply with a regulatory requirement that has existed for
9 decades. The evidentiary basis supporting this mandatory capital expenditure is, in effect, a
10 telephone discussion with an enforcement officer which occurred approximately 6 weeks prior to
11 filing of the Application. In addition, the scope of the program does not appear clear on the
12 record before the Board.

13
14 Newfoundland Power submits that the Board is required to authorize the expenditure necessary
15 to ensure that Hydro meets its regulatory requirements on a least-cost basis. The evidence before
16 the Board in respect of the project *Install Additional Washrooms* does not indicate that the
17 proposed expenditures are necessary to ensure such least-cost compliance. For these reasons,
18 Newfoundland Power submits the Board should withhold approval of the project until Hydro
19 provides reasonable evidence of (i) a clear regulatory requirement² and; (ii) the scope (including
20 forecast costs) of the proposed project.

² Evidence of a clear regulatory requirement might include a regulatory directive, order or other formal indication of a regulator's position. Such formality avoids situations where a regulated entity acts upon the opinion of regulatory staff as opposed to the regulator itself. In Order No. P.U. 16 (2006), the Board declined approval of a Hydro proposal to recover the cost of low sulphur fuel from ratepayers, in part, due to the absence of clear indication the use of low sulphur fuel was necessary to ensure compliance with environmental regulations.

3.3 Capitalization of Design Costs

Background

Hydro's 2013 Capital Budget proposes a project *Front End Engineering Design* in the amount of \$472,100 which are estimated costs associated with preparation of Hydro's 2014 Capital Budget Application. The costs included in this project are attributable to bringing specific assets into existence and are, therefore, properly capitalized under accounting standards. The front end engineering design costs associated with those projects that are not approved as capital expenditures by the Board will be expensed by Hydro.

Reference: Schedule D, Page D-231 *et. seq.*
Response to Request for Information IC-NLH-005

For its 2013 Capital Budget, Hydro incurred \$229,700 in front end engineering design costs which are included in the cost of specific projects proposed in the 2013 Capital Budget Application. These engineering costs were not approved by the Board *in advance* of Hydro's submission of its 2013 Capital Budget Application.

Reference: Response to Request for Information IC-NLH-005.

The estimated \$472,100 in front end engineering design costs proposed in the 2013 Capital Budget which relate to Hydro's 2014 Capital Budget is not yet allocated to specific projects.

Reference: Response to Request for Information IC-NLH-005.

It is Hydro's view that approval for front end engineering design costs should be sought from the Board in the capital budget submission for the year in which the costs are to be incurred.

Reference: Response to Request for Information NP-NLH-004.

1 The Board has declined approval of proposed capital expenditures where there is insufficient
2 detail to justify approval.

3 Reference: See, for example, Order No. P.U. 36 (2002-2003) p.p. 15-16, where the Board
4 would not approve a proposed Newfoundland Power expenditure of \$500,000 for
5 a transmission system engineering study due, in part, to insufficient information.
6

7 ***Submission***

8 In this Application, Hydro, in effect, proposes to have the Board approve estimated front end
9 engineering design costs in advance of the Board's consideration of the capital projects to which
10 those costs are attributable. Currently, Hydro seeks approval of the capitalization of these costs
11 at the same time the project is considered.³
12

13 Newfoundland Power submits that Hydro's stated intention to perform an increased degree of
14 front end engineering is conducive to improved regulatory transparency and worthy of the
15 Board's support.
16

17 Board approval of front end engineering costs in advance of the Board's consideration of
18 projects is not, in Newfoundland Power's submission, conducive to improvement in regulatory
19 transparency. In this application the project *Front End Engineering Design* provides a budget
20 estimate for approval without details regarding the individual project descriptions, associated
21 project scopes or project justification as would be normal practise. Hydro is, in effect, requesting

³ There is no question that Hydro is entitled to perform the engineering design work in advance of Board approval as a capital expenditure. The Board has no regulatory jurisdiction over a utility's engineering design work under the *Public Utilities Act* or the *Electrical Power Control Act, 1994*. The Board's jurisdiction is practically limited to determinations of prudence and recovery, whether as an operating or capital cost.

1 the Board's prior approval of estimated front end engineering costs as a capital expenditure
2 without any indication of the specific capital projects involved.⁴

3
4 This approval is not justified when Hydro currently submits such expenditure details in the
5 context of the specific future capital projects at the time it seeks approval of the specific capital
6 project as part of a capital budget. The advance approval sought is simply not necessary and
7 reduces, rather than improves, regulatory transparency.

9 3.4 Holyrood Thermal Generating Station

10 *Background*

11 In Order No. P.U. 5 (2012), the Board ordered Hydro to provide an overview in relation to
12 proposed capital expenditures for Holyrood as part of its 2013 Capital Budget Application.

13 Reference: Order No. P.U. 5 (2012) pp. 13-14 and 17.

14
15 In the Response to Request for Information PUB-NLH-006, Hydro provided a table outlining
16 specific Holyrood projects and certain details associated with those projects. The table provided
17 neither an overview or context for the specific capital expenditures.

18 Reference: Response to Request for Information PUB-NLH-006.

⁴ Another example of how advance approval might impact regulatory transparency negatively would occur in the case where the Board approves the capitalization of front end engineering costs but declines to approve the actual capital project. In such a case, Hydro would write off a capital cost that has already been approved by the Board.

Submission

Newfoundland Power submits that Hydro has failed to comply with Order. No. P.U. 5 (2012) insofar as it relates to providing an overview in relation to proposed capital expenditures at Holyrood. Further, Newfoundland Power submits that the Board should order Hydro to comply with this requirement in the filing of its 2014 Capital Budget Application.

RESPECTFULLY SUBMITTED at St. John's, Newfoundland and Labrador, this 3rd day of October, 2012.



NEWFOUNDLAND POWER INC.

P.O. Box 8910

55 Kenmount Road

St. John's, Newfoundland A1B 3P6

Telephone: (709) 737-5859

Telecopier: (709) 737-2974