



NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES
120 Torbay Road, P.O. Box 21040, St. John's, Newfoundland and Labrador, Canada, A1A 5B2

2020-11-04

Newfoundland Power Inc.

Kelly Hopkins
Corporate Counsel
Newfoundland Power Inc.
55 Kenmount Road, P.O. Box 8910
St. John's, NL A1B 3P6
E-mail: khopkins@newfoundlandpower.com

Newfoundland and Labrador Hydro

Shirley Walsh
Senior Legal Counsel, Regulatory
P.O. Box 12400
Hydro Place, Columbus Drive
St. John's, NL A1B 4K7
E-mail: shirleywalsh@nlh.nl.ca

Consumer Advocate

Dennis Browne, Q.C.
Browne Fitzgerald Morgan & Avis
Terrace on the Square, Level 2
P.O. Box 23135
St. John's, NL A1B 4J9
E-mail: dbrowne@bfma-law.com

Dear Madams/Sir:

Re: Newfoundland Power Inc. - 2021 Capital Budget Application - Technical Conference - Customer Service System Project - Board's Response to Consumer Advocate's Letter dated October 30, 2020

On October 30, 2020 the Consumer Advocate filed correspondence requesting that the technical conference scheduled for November 10, 2020, and other technical conferences, be transcribed and placed on the record of the proceeding, that the Commissioners participate in the conference, and that the public be invited to attend.

The Consumer Advocate referred to section 3(c) of the Capital Budget Application Guidelines (the Guidelines) and submitted that section 3(c) is inconsistent with section 97 of the *Public Utilities Act* which requires that a full and complete record be kept of all proceedings. Section 3(c) states that "*The technical conference will generally not be recorded and the information provided will not be part of the record.*" The Consumer Advocate also submitted that the attendance of the Commissioners "*should ensure that the Board is committed to the efficient and effective review of expenditures*" and that, as ratepayers will be paying for the project, the public should also have a right to attend.

Newfoundland Power Inc. ("Newfoundland Power") and Newfoundland and Labrador Hydro ("Hydro") filed comments in reply on November 3, 2020. Newfoundland Power submitted that the Consumer Advocate's requests were, in essence, a request for a public hearing and were

premature. Newfoundland Power stated that at this stage the Board has decided to hold a technical conference and has not yet determined whether a public hearing is required.

Newfoundland Power observed that the function of technical conferences is outlined in the Guidelines which state that “*technical conferences will be used in in concert with the RFI process to gain a full understanding of the scope and nature of the proposed projects.*” Hydro also stated that a technical conference does allow for the parties and the Board staff to gain a full understanding of the scope and nature of a project. Newfoundland Power also noted that past technical conferences have been relatively informal and typically not attended by Commissioners or transcribed.

Both Newfoundland Power and Hydro took the position that there is no inconsistency between section 97 of the *Public Utilities Act* and the Guidelines. Newfoundland Power submitted that section 97 applies to formal investigations and sworn testimonies obtained during those investigations and is not relevant to technical conferences where sworn testimony is not given and Commissioners may or may not be present. Hydro submitted that, where a technical conference is held with Board staff only, the technical conference is not a proceeding before the Board and any presentations or discussions that take place are not testimony so that a recording of the technical conference is not necessary.

With respect to the request that Commissioners attend, both Newfoundland Power and Hydro noted that the decision to attend is within the discretion of the Commissioners. Hydro noted that, where the Commissioners decide to attend, the Guidelines require that the technical conference be transcribed or recorded.

With respect to the Consumer Advocate’s request that the public be invited to attend, Newfoundland Power submitted that this is not consistent with the purpose of technical conferences which is to provide participants an opportunity to get detailed information on specific aspects and to facilitate further examination of the project.

Technical conferences have, in the opinion of the Board, contributed to the efficiency and effectiveness of capital budget proceedings. They have been of assistance to the parties during the discovery phase of a capital budget proceeding to gain a more complete understanding of the scope and nature of a project which often is very technical in nature. The less adversarial format of the technical conference is intended to facilitate the exchange of information and can help clarify and narrow the issues for the parties and Board staff. Any relevant information arising during a technical conference can subsequently be placed on the record of the proceeding through requests for information. Commissioners hearing the matter have the discretion to decide to attend. In this particular case the hearing panel has not determined that attendance at the conference would be of assistance.

The Board finds that section 3(c) of the Guidelines is not inconsistent with section 97 of the *Public Utilities Act*. The informal exchange of information during a technical conference, where Commissioners are not present, is not part of a proceeding before the Board as contemplated by section 97.

Whether a public hearing is necessary will be determined by the Board following the technical conference and a review of the completed record.

If you have any questions, please do not hesitate to contact the Board's Hearing Counsel, Maureen Greene, Q.C., by email, mgreene@pub.nl.ca or telephone (709) 726-3175.

Sincerely,



Cheryl Blundon
Board Secretary

CB/cj

ecc **Newfoundland Power Inc.**
Liam O'Brien, E-mail: lobrien@curtisdawe.com
NP Regulatory, E-mail: regulatory@newfoundlandpower.com
Newfoundland and Labrador Hydro
NLH Regulatory, E-mail: NLHRegulatory@nlh.nl.ca

Consumer Advocate
Stephen Fitzgerald, E-mail: sfitzgerald@bfma-law.com
Sarah Fitzgerald, E-mail: sarahfitzgerald@bfma-law.com
Bernice Bailey, E-mail: bbailey@bfma-law.com