

1 **Q. On page 9 of Newfoundland Power's evidence, it states:**

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3 *The Framework, however, contemplates a significant degree of*
4 *flexibility and discretion to a utility in a number of critical areas*
5 *of net metering service design. This includes (i) customer*
6 *eligibility criteria, (ii) technical connection requirements and (iii)*
7 *utility recovery of connection costs.*

8
9 **Please advise if Newfoundland Power believes that the use of a rate, other than the**
10 **retail rate, for the annual settlement of credits is within the utility's discretion and**
11 **would be consistent with the provincial Net Metering Policy Framework.**

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13 **A. 1. The Framework**

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15 The policy framework released in July 2015 by the Government of Newfoundland
16 and Labrador (the “Framework”) provides that “The customer will be compensated
17 for the net excess generation at the retail rates that are used to determine the bill for
18 the customer’s net consumption.”¹

19
20 The primary driver of the policy reflected in the Framework is to provide customers
21 with the option to offset their own energy usage through small scale customer-owned
22 generating resources. Newfoundland and Labrador is the only province which does
23 not currently provide customers this service option. By its terms, the Framework
24 was intended to “...provide *the utilities* with the policy parameters to inform the
25 development and implementation of *their own* net metering programs...” (emphasis
26 added).

27
28 The Framework itself is not legislation. Further, the Framework itself is not a
29 directive to the Board pursuant to Section 5.1 of the *Electrical Power Control Act,*
30 *1994.*² So, the majority of the policy parameters reflected in the Framework are not
31 embodied in the provincial regulatory legislative scheme at all.

32
33 The only aspects of the Framework which are reflected in the provincial regulatory
34 legislative scheme are those contained in the *Net Metering Exemption Order* made
35 under the *Electrical Power Control Act, 1994.*³ The *Net Metering Exemption Order*
36 essentially enables net metering by exempting net metering purchases by
37 Newfoundland Power from the restrictions contained in Section 14.1 of the *Electrical*

¹ See Exhibit 2, page 5.

² These directives are made to the Board (as opposed to the utilities) and take the form of an Order in Council issued under the authority of Section 5.1 of the *Electrical Power Control Act, 1994*. See, for example, OC2009-063 which clearly directs the *Board* that, “in calculating the return on rate base for Newfoundland and Labrador Hydro, to set the same target return on equity as was most recently set for Newfoundland Power through a General Rate Application...”.

³ See Newfoundland and Labrador Regulation 47/15, filed July 28, 2015.

1 *Power Control Act, 1994.*⁴

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3 Based upon this legislative analysis, Newfoundland Power does not consider the
4 Framework to have the same effect as legislation. The provincial regulatory
5 legislative scheme is paramount in circumstances where the Framework conflicts
6 with that scheme.⁵

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8 Support for this perspective can be found in the Framework itself. Nothing in the
9 Framework indicates its parameters were intended to bind the Board.⁶ This may be
10 contrasted with Section 3 of the *Electrical Power Control Act, 1994* which clearly
11 purports to be the power policy of the province of Newfoundland and Labrador and
12 binds both public utilities and the Board.

13 **2. Newfoundland Power's Application of the Framework**

14 *Application of the Framework*

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16 Any proposed net metering service offering of a utility must meet the requirements
17 of the provincial regulatory legislative scheme for the Board to approve it.

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19
20 Because the majority of the policy parameters in the Framework do not have the
21 force of legislation, they do not have the legal effect of modifying the provincial
22 regulatory legislative scheme. So, in circumstances where a proposed utility net
23 metering service option meets the requirements of the provincial regulatory
24 legislative scheme, but does not satisfy all of the policy parameters in the
25 Framework, the lack of conformity with the Framework presents no impediment
26 whatsoever to Board approval.

27
28 The majority of the policy parameters contained in the Framework were never
29 intended to alter the terms of the provincial regulatory legislative scheme, or the
30 Board's powers. They were simply intended to provide guidance to utilities in the
31 development and implementation of the utility's net metering programs. In its
32 application of the Framework, Newfoundland Power did not interpret these
33 parameters as presenting limitations on the terms of those programs. If this were the
34 government intention, it would be reasonable to assume the Government would have
35 either (i) clearly stated so in the Framework, (ii) defined those limitations in
36 legislative terms, or (iii) informed Newfoundland Power of this in its post
37 Framework consultations with the Company.

⁴ Section 14.1 of the *Electrical Power Control Act, 1994* effectively prohibits Newfoundland Power from purchasing energy from any entity other than Newfoundland and Labrador Hydro.

⁵ See Company Evidence, page 9, lines 14-17 and footnote 19.

⁶ In fact, the Framework explicitly recognizes the Board's responsibilities under the provincial regulatory legislative framework in describing the Board's role as "As regulator of the utilities, the PUB is responsible for reviewing the utilities' proposals and approving net metering programs to ensure the rules developed by the utilities are consistent with the *Public Utilities Act* and the *Electrical Power Control Act*."

Post Framework Consultations

Prior to developing the Net Metering Service Option, this Application and the Company evidence in support of this Application, representatives of Newfoundland Power met with officials of the Department of Natural Resources.⁷

At this meeting, Newfoundland Power indicated that, in light of the outlook for the Island Interconnected system, it was not in a position to file an application with the Board seeking approval of a net metering service option which provided for annual settlement of energy credits based upon retail rates. The basis of this position was essentially that Newfoundland Power did not believe that, following the interconnection of Muskrat Falls, annual settlement of energy credits based upon retail rates would be consistent with the requirements of Section 3 of the *Electrical Power Control Act, 1994*.

Newfoundland Power did indicate that it believed annual settlement of energy credits based upon Newfoundland and Labrador Hydro's Utility Rate (the "2nd Block Energy Charge") would be consistent with the *Electrical Power Control Act, 1994*. This approach would result in (i) the least cost, reliable delivery of service to customers, (ii) reasonable and not unjustly discriminatory customer rates, and (iii) conformity with generally accepted sound public utility practice for the foreseeable future. Accordingly, the Company informed the officials of the Department of Natural Resources that it intended to develop a net metering service option which provided for annual settlement of energy credits based upon the 2nd Block Energy Charge. At the conclusion of the meeting, Newfoundland Power undertook to keep the Department of Natural Resources informed of the status of the Company's Net Metering Service Option Application.

On December 19, 2016, Newfoundland Power filed its Net Metering Service Option Application with the Board. At that time, it provided the Department of Natural Resources with a copy of the Application.

On February 3, 2017, Newfoundland Power updated the Department of Natural Resources on the status of the Company's Net Metering Service Option Application. At this time, the representatives of the Department of Natural Resources indicated continuing support for the Company's Application.

3. Regulatory Practice

Canada

There is little in the way of considered Canadian regulatory decisions evaluating alternatives for the valuation of excess credits at annual settlement. The most fulsome regulatory consideration of this issue was undertaken by the British Columbia Utilities Commission ("BCUC") in its consideration of British Columbia

⁷ The meeting took place on November 15, 2016.

1 Hydro's ("BC Hydro") adoption of a net metering program in 2003.

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3 In 2002, the British Columbia government, as part of its *Energy Policy*, directed
4 utilities to develop net metering policies. BC Hydro originally proposed that at the
5 anniversary date of a net metering customer's choice, any excess energy credits
6 would be granted to the utility with no compensation, or \$0 value, to the net metering
7 customer.

8
9 The BCUC rejected BC Hydro's proposal to \$0 value excess credits at annual
10 settlement. In considering the provincial policy relating to net metering, the BCUC
11 took a more balanced view of implementation of net metering:

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13 "...given that a small amount of energy will likely be involved, the
14 Commission's support for a net metering tariff is conditional on
15 development and implementation that does not incur any substantial
16 cost on the utility, and that does not impose any inordinate barrier to
17 ratepayers seeking to net meter."⁸

18
19 On the issue of the value of excess credits, the BCUC decided:

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21 "The Commission agrees with BC Hydro that at a pre-determined
22 anniversary date net excess generation should be transferred to BC
23 Hydro, but it is not convinced, even in light of the lower quality energy
24 likely available from net metering in B.C., that this transfer of energy
25 should come at zero cost to BC Hydro."⁹

26
27 In response to this BCUC determination on the value of excess credits, BC Hydro
28 proposed a net metering tariff which valued excess credits at annual settlement based
29 upon avoided cost. BC Hydro's submission to the BCUC on the issue of excess
30 credits indicated that:

31
32 "BC Hydro recommends the avoided cost approach. The retail rate
33 approach is not recommended, as residential and commercial customers
34 would be paid different prices, which would raise fairness concerns.
35 Further, there is no guarantee that retail rates will reflect avoided costs in
36 the future, and paying retail rates could cause cost-shifts to non-
37 participating customers."¹⁰

⁸ See BCUC Letter No. L-37-03, July 22, 2003, *British Columbia Hydro and Power Authority Net Metering Tariff*, page 2.

⁹ See BCUC Letter No. L-37-03, July 22, 2003, *British Columbia Hydro and Power Authority Net Metering Tariff*, page 3.

¹⁰ See British Columbia Hydro and Power Authority Submission to the British Columbia Utilities Commission, *Application for Net Metering Tariff Rate Schedule 1289*, November 2003, page A-7, lines 11-15.

1 In approving BC Hydro’s proposed methodology to calculate an energy price for
2 purchase of annual net excess generation, the BCUC found:

3
4 “The Commission Panel considers this to be a fair and reasonable
5 approach for valuing the excess generation from qualifying net metering
6 facilities under BC Hydro’s eligibility criteria, *from the perspective of*
7 *both participating and non-participating customers.*”¹¹ (emphasis added)
8

9 ***Newfoundland and Labrador***

10 The Board is required to implement the provincial regulatory legislative scheme.
11 This includes the *Electrical Power Control Act, 1994*. Section 3 of the *Electrical*
12 *Power Control Act, 1994* specifically provides that customer rates should be
13 reasonable and not unjustly discriminatory. Bonbright’s *Principles of Public Utility*
14 *Rates* (“Bonbright”) also identifies these attributes as part of a sound rate structure.¹²
15

16 The BCUC reasoning and desire to achieve balance is consistent with the
17 approach taken by the Board with respect to the application of regulatory
18 principles. For example, in describing its application of regulatory principles
19 in the context of Section 4 of the *Electrical Power Control Act, 1994*, the
20 Board stated that:

21
22 “Sound regulatory practices encompass fundamental principles which
23 are used by regulators as a guide or roadmap to rational decision-
24 making. As stated in the Bonbright J.C., Daniels A.L., Kamerschen
25 D.R. *Principles of Public Utility Rates* (Arlington: Public Utilities
26 Reports, Inc., 1998): ‘*We are simply trying to identify the desirable*
27 *characteristics of utility performance that regulators should seek to*
28 *compel through edict*’. These are commonly referred to as Bonbright’s
29 Principles.
30

31 Section 4 of the EPCA directs the Board to apply tests that are consistent
32 with generally accepted sound public utility practice. The Board sets the
33 following principles for purposes of its regulatory framework: (i) fair
34 return; (ii) cost of service; (iii) fair cost apportionment; (iv) efficiencies;
35 (v) rate stability and predictability; (vi) end result; and (vii) practical
36 attributes....
37

38While setting out these principles may be useful to ensure full
39 consideration of all the issues, the Board notes that at times they may
40 contain ambiguities, conflict with legislation, be inconsistent and/or hold

¹¹ See BCUC Order No. G-26-04, March 10, 2004, Appendix A: Reasons for Decision, Page 7 of 15.

¹² Bonbright also considers features such as fairness in apportioning costs amongst different ratepayer groups, predictability, certainty and freedom from interpretative controversy as attributes of a sound rate structure. See *Principles of Public Utility Rates (2nd ed.)*, Bonbright, Daniels and Kamerschen, Public Utilities Reports Inc., March 1988, page 382, *et. seq.*

1 different priorities. The real challenge for the Board, in keeping with its
2 legislative mandate, is to balance oftentimes competing objectives within
3 the regulatory environment to ensure a set of sound and reasoned
4 decisions serving the interests of both consumer and utility alike.”¹³
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6 For the reasons outlined in the response to Request for Information PUB-NP-009,
7 Newfoundland Power considers use of the 2nd Block Energy Charge for the annual
8 settlement of credits in the Net Metering Service Option to be a balanced approach
9 which is consistent with (i) the least cost principle, (ii) reasonable and non-
10 discriminatory rates, and (iii) accepted regulatory principles.
11

12 **4. Conclusion**

13
14 The Net Metering Service Option proposed in the Application includes an approach
15 to annual settlement that is consistent with the provincial power policy as set out in
16 Sections 3 and 4 of the *Electrical Power Control Act, 1994*. Based upon this, the
17 Board should approve the Application.
18

19 Newfoundland Power also believes that Net Metering Service Option proposed in the
20 Application broadly conforms to the Framework.¹⁴ The fact that the Net Metering
21 Service Option proposed does not follow the guidance contained in the Framework
22 on one isolated element does not, in the circumstances, present any impediment to
23 Board approval of the Application.

¹³ See Order No. P.U. 14 (2004), page 22, *et. seq.*

¹⁴ See Company Evidence, page 1, lines 21-22.