

# Office of the Consumer Advocate

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October 12, 2017

## Via Courier

Board of Commissions of Public Utilities  
120 Torbay Road, P.O. Box 2140  
St. John's, NL A1A 5B2

Attention: **G. Cheryl Blundon, Director of  
Corporate Services / Board Secretary**

Dear Ms. Blundon:

## RE: Newfoundland and Labrador Hydro - 2018 Capital Budget Application

Further to the above-captioned, enclosed please find enclosed the original and twelve (12) copies of the Consumer Advocate Intervenor Submission.

A copy of this letter, together with enclosure, has been forwarded directly to the parties listed below.

Yours truly,



**Dennis Browne, Q.C.**

Encl.  
/bb

cc **Newfoundland & Labrador Hydro**  
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**IN THE MATTER OF** the  
*Electrical Power Control Act, 1994*  
SNL 1994, Chapter E-5.1 (the “EPCA”)  
and the *Public Utilities Act, RSNL 1990*,  
Chapter P-47 (the “Act”), as amended; and

**IN THE MATTER OF** an Application by  
Newfoundland and Labrador Hydro (“NLH”)  
for an Order approving: (1) its 2018 capital  
budget pursuant to s. 41(1) of the Act; (2) its  
2018 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 2018 pursuant to s. 41(5) of  
the Act.

## **CONSUMER ADVOCATE INTERVENOR SUBMISSION**

### **Overview**

1. In this 2018 NLH Capital Budget Application, the Prudence Review by the Board of Certain Projects and Expenditures of Newfoundland and Labrador Hydro (Order No. P.U. 13 (2016)) remains significant. The Prudence Review standard stated:

The regulatory standard for prudence used in this review requires that utility management act prudently in making decisions and taking (or deciding not to take) actions that involve or affect assets, personnel and operation related to the provision of safe, adequate, reliable and least-cost service to customers. The factors considered in assessing prudence include:

1. information that was known or ought to have been known at the time of the decision or action (or inaction)
  2. **whether a utility applied reasonable foresight; perfect foresight is not required**
  3. whether the solution selected was within a range of reasonable alternatives.
2. The PUB in their Prudence Review made findings, including:

- Hydro's decision to defer scheduled preventative maintenance in the circumstances at the time of the decision was imprudent.
- Hydro's imprudence in deferring preventative maintenance caused transformer and air-blast circuit breaker failures at the Sunnyside and Western Avalon Terminals Stations in January 2014 and resulted in significant costs to repair and replace the damaged equipment.
- Hydro's imprudence in deferring preventative maintenance resulted in the need for extraordinary transfer and breaker maintenance in 2014 and 2015, and additional costs.

3. Here, NLH has proposed a \$206.2 million 2018 Capital Budget. The submissions of Newfoundland Power and that of the Industrial Customers have been considered. No exception is taken to either submission. The Prudence Review standard and the prudence findings have no doubt impacted the Applicant utility in these 2018 Capital Budget expenditure proposals straying toward **perfect foresight** rather than **reasonable foresight**. The Board must ascertain if the projects, maintenance, and expenditures are reasonable given the environment in which the application has been made.
4. NLH's Application comes at a time of transition. The Muskrat Falls Project is incomplete. The Muskrat Falls Power House remains under construction. It is difficult in these circumstances to determine what is reasonable in a Capital Budget, which projects into the future.
5. Problematic are the Capital Budget expenditures relating to the Holyrood Thermal Generating Station ("Holyrood"). The Applicant anticipates the closure of Holyrood (although the Board has not given any approval for such a closure). Nevertheless, the Applicant's proposed Holyrood expenditures are significant. There are no certain answers provided as to sources of supply if the back-up capability of Holyrood is no longer available. The failure of the applicant to adequately address issues of supply while advocating the closure of Holyrood is not helpful. It is incumbent upon the Board therefore to continue to assess the adequacy and reliability of supply now, prior to and

after the integration of the Island Interconnected System. The Board's engagement of Liberty to assist in this determination is acknowledged.

6. The Board remains subject to the Muskrat Falls Project Exemption Order which exempts NLH from various expenditures, payments, obligations, and activities as stated in the Exemption Order. The Board is also subject to OC-2013-343 which confirms what expenditures, payments, or compensation apply to the Muskrat Falls Project Exemption Order. The effect of the Muskrat Falls Project Exemption Order and OC-2013-343 constrains the Board in carrying out its duties and in planning and preparing to ensure affordable rates for consumers. NLH maintains that the Muskrat Falls / Happy Valley Interconnection Project is not affected by OC-2013-343 and the Exemption Order. However, it falls upon the Board to ensure that this is not the case.

### THE ACT

7. Section 37 of the *Public Utilities Act*, RSNL 1990, c. P-47 (the "Act") sets out:

#### **Adequate service to be provided by public utility**

- 37(1) A public utility shall provide service and facilities which are reasonably safe and adequate and just and reasonable.
- (2) The board may either with or without notice to a public utility make an order appointing a person to make examinations, investigations or tests for the purpose of ascertaining whether service reasonably safe and adequate and just and reasonable is being supplied by the public utility and may in the order make provision as to the remuneration and expenses the person is to be paid by the public utility where the board certifies that they are payable.

8. Section 41 of the Act states:

#### **Capital budget of public utility**

- 41.(1) A public utility shall submit an annual capital budget of proposed improvements or additions to its property to the board for its approval not

later than December 15 in each year for the next calendar year, and the budget shall include an estimate of contributions toward the cost of improvements or additions to its property the public utility intends to demand from its customers.

- (2) The budget shall contain an estimate of future required expenditures on improvements or additions to the property of the public utility that will not be completed in the next calendar year.

9. Section 3(b) of the *Electrical Power Control Act, 1994* SNL 1994, c. E-5.1 (the “EPCA”) states:

**Power policy**

3. It is declared to be the policy of the province that

...

- (b) all sources and facilities for the production, transmission and distribution of power in the province should be managed and operated in a manner

(i) that would result in the most efficient production, transmission and distribution of power,

(ii) that would result in consumers in the province having equitable access to an adequate supply of power,

(iii) that would result in power being delivered to consumers in the province at the lowest possible cost consistent with reliable service,

...

and, where necessary, all power, sources and facilities of the province are to be assessed and allocated and re-allocated in the manner that is necessary to give effect to this policy;

**CONCLUSION**

10. Here, the Applicant is seeking approval of capital expenditures in the amount of \$206.2 million. Newfoundland Power has sought prior approval of a 2018 Capital Budget of \$83,876,000. These Capital Budget expenditures come at a time when rate pressure and

affordability are topical. Each and every expenditure requires rigorous examination by the Board staff and ultimately the Board.

11. As noted in the Submission on Newfoundland Power's 2018 Capital Budget Application, a quotation from the Consumer Advocate in Newfoundland Power's 2015 Capital Budget Application applies:

The Consumer Advocate has previously expressed concern over escalating amounts sought by utilities for capital projects, as the amounts spent on the same by each of the utilities need to be financed as either debt or equity. It is the consumer who ultimately will pay the interest on the debt and the return on equity as well as the costs of depreciation on the acquired assets. **In Board Order No. P.U. 26 (2011), the Board stated that it shared the Consumer Advocate's concern about the increasing levels of planned capital for both utilities in the province.**

(Emphasis added)

12. Finally, with a declining and aging population and with the introduction of the costs associated with Muskrat Falls, affordable electricity is the issue. Annual Capital Budget expenditures by both Newfoundland Power and NLH are at levels which are not sustainable. These Capital Budget expenditure applications are therefore outmoded. The rate base system does not fit into the Muskrat Falls equation. New systems have to be devised following hearings and public consultations. Legislative changes will be required. That will be our focus going forward to ensure affordable electricity.

**DATED** at St. John's, Newfoundland and Labrador, this 12<sup>th</sup> day of October, 2017.



**Dennis Browne, Q.C.**  
**Consumer Advocate**

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