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HAND DELIVERED

November 3, 2020

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

Dear Ms. Blundon:

**Re: Newfoundland Power's 2021 Capital Budget Application – Response to Consumer Advocate's Correspondence of October 30, 2020**

The Board has requested Newfoundland Power provide any comments on the Consumer Advocate's letter of October 30, 2020 by November 3, 2020. This letter outlines Newfoundland Power's comments.

### **General**

The function of a technical conference is outlined in the Board's Capital Budget Application Guidelines (the "Guidelines"). The Guidelines clearly establish that a *“technical conference will be used in concert with the RFI process to gain a full understanding of the scope and nature of the proposed projects.”*

Section 3(c) of the Guidelines states that *“...the technical conference will generally not be recorded and the information provided will not be part of the record.”*

Technical conferences have been convened in the past to permit the Board and the participating parties to obtain additional technical detail on specific capital projects. As contemplated by the Guidelines, past technical conferences have been relatively informal and have typically not been attended by Commissioners. The discussions have never been transcribed.

In departure from past practice, the Consumer Advocate has requested that the technical conference scheduled for November 10, 2020 be attended by Commissioners and the public, and that the discussions be transcribed and placed on the record of the proceeding.

### **Newfoundland Power Inc.**

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## **Request for Transcription**

In support of the request to have the technical conference transcribed and placed on the record of the proceeding, the Consumer Advocate submits that the Guidelines are inconsistent with s. 97 of the *Public Utilities Act* (the “Act”).

The Consumer Advocate suggests that the legislature mandated transcription of the technical conference based on s. 97 of the Act which states:

*97. A full and complete record shall be kept of all proceedings held before the board on formal investigation and all testimonies shall be recorded in the manner ordered by the board.*

Newfoundland Power submits that there is no inconsistency between the legislation and the Guidelines. Section 97 applies to formal investigations and sworn testimonies obtained during those investigations. Section 97 is not relevant to a technical conference as contemplated by the Guidelines, where sworn testimony is not given, and Commissioners may or may not be present. On that basis, s. 3(c) of the *Guidelines*, and not Section 97 of the Act, should guide the process.

## **Commissioner Participation**

Newfoundland Power notes that while Commissioners have not typically attended capital budget technical conferences, administrative tribunals are considered to be masters of their own process. Participation in a technical conference is within the discretion of the Commissioners and this is reiterated in the Guidelines.

## **Public Attendance**

The Consumer Advocate has requested that the technical conference be open to the general public. This is not consistent with the purpose of a technical conference, which is to provide active participants in the capital budget application process an opportunity to obtain detailed information on specific aspects of the project, and facilitate further interrogation of the proposal.

## **Concluding**

The Consumer Advocate’s request to have Commissioners attend the technical conference, to have the discussions transcribed, and to open the conference to the public is, in essence, a request for a public hearing. At this stage of Newfoundland Power’s *2021 Capital Budget Application* process, the Board has decided that a technical conference should be held. The Board has not yet determined whether a public hearing is required. As such, the arrangements requested by the Consumer Advocate are premature.

### **Newfoundland Power Inc.**

Board of Commissioners  
of Public Utilities  
November 3, 2020  
Page 3 of 3

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

Yours truly,



Kelly Hopkins  
Corporate Counsel

c. Shirley Walsh  
Newfoundland and Labrador Hydro

Dennis Browne, Q.C.  
Browne Fitzgerald Morgan & Avis

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