



NEWFOUNDLAND AND LABRADOR  
**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**  
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2021-10-28

Dennis Browne, Q.C.  
Browne Fitzgerald Morgan & Avis  
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P.O. Box 23135  
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Dear Mr. Browne:

**Re: Newfoundland Power Inc. – 2022-2023 General Rate Application – Response to Consumer Advocate's Request to File a Revised Witness List**

On October 19, 2021 the Consumer Advocate filed a Revised Witness List adding another expert witness, John Todd, of Elenchus Research Associates Inc. ("Elenchus"). The schedule for the proceeding set out in Order No. P.U. 26(2021) required that expert reports and pre-filed evidence be filed by September 28, 2021 and that requests for information on this evidence be filed by October 12, 2021 so that responses could be filed by October 25, 2021. The Board wrote the Consumer Advocate on October 20, 2021 to advise that a request would have to be filed for an amendment to the schedule to allow the evidence to be filed. In its correspondence the Board explained that the request should outline the nature of the evidence to be provided by the proposed witness, its relevance to the general rate application and an explanation for the evidence not being filed in accordance with the established schedule.

In response to the Board's direction the Consumer Advocate filed a request on October 22, 2021 to call Mr. Todd as a witness and to file, as evidence, a report co-authored by Mr. Todd. This report, *Comments on Newfoundland Power's 2022 Capital Budget Application* (the "Elenchus Report") was filed by the Consumer Advocate in Newfoundland Power's 2022 Capital Budget Application proceeding. The Consumer Advocate submitted that the Board had made the Elenchus Report relevant to the general rate application by its request for information to the Consumer Advocate's cost of capital witness Dr. Laurence Booth, PUB-CA-011. The Consumer Advocate argued that it would be "manifestly unfair" to request the Consumer Advocate's witness to comment on the issue by referring to a document which is not on the record and without allowing a full examination of the report itself and its author. In relation to the explanation for the evidence not being filed in accordance with the schedule the Consumer Advocate noted that PUB-CA-011 was filed on October 8, 2021 after the scheduled date for pre-filing evidence. The Consumer Advocate submitted that there is no prejudice to the parties in allowing the amendment of the witness list to add Mr. Todd and in allowing the Elenchus Report to be filed as pre-filed evidence in this proceeding since it was imported by reference into this proceeding and all parties are quite familiar with its contents.

On October 26, 2021 Newfoundland Power submitted that the Elenchus Report is specific to Newfoundland Power's 2022 Capital Budget Application and the comments are not relevant to this proceeding. In Newfoundland Power's view the report has been fully interrogated and considered as part of a separate proceeding before the Board and it would not serve to advance the understanding of the issues identified by the parties in this proceeding. Newfoundland Power submitted that PUB-CA-011 does not require the

Consumer Advocate's expert, Dr. Booth, to familiarize himself with the Elenchus Report and, further, that Dr. Booth's familiarity with the report, or lack thereof, does not require Mr. Todd to appear as a witness in the general rate application. Newfoundland Power disagreed with the Consumer Advocate's submission that the parties would not be prejudiced by the filing of the Elenchus Report and stated that it is unreasonable to assume that information interrogated in one proceeding would be common knowledge to all parties in a separate proceeding.

Newfoundland and Labrador Hydro did not file any comments on the Consumer Advocate's request.

The Board notes that parties are required to advise, in advance of a hearing, as to the witnesses they will be calling and to provide pre-filed evidence setting out the nature and substance of the issues to be addressed by these witnesses. This process ensures that the Board and the parties have notice as to the evidence which will be provided and an opportunity to interrogate this evidence through the filing of requests for information and informed cross-examination at the hearing. The Consumer Advocate has advised that he now wishes to call Mr. Todd and file the Elenchus Report as evidence in this matter. The Elenchus Report was prepared and filed as part of Newfoundland Power's 2022 Capital Budget Application proceeding, a separate ongoing matter before this Board and it will be considered by the Board as a part of that matter. There is no reference in this report to Newfoundland Power's 2022/2023 General Rate Application. The purpose of the Elenchus Report was specific to Newfoundland Power's 2022 Capital Budget Application, as evidenced by the title, *Comments on Newfoundland Power's 2022 Capital Budget Application* and the fact that the stated purpose of the report was to assess Newfoundland Power's 2022 capital budget. The information provided in the report relates to Newfoundland Power's 2022 Capital Budget Application and does not set out the evidence which would be provided by Mr. Todd in relation to the issues to be addressed in Newfoundland Power's 2022/2023 General Rate Application.

The Board also does not agree with the Consumer Advocate's position that the reference to the Elenchus Report in PUB-CA-011 requires that this report be filed as an expert report and that Mr. Todd be called as a witness. It is not unusual for requests for information to reference reports and documents on the record in other matters before the Board and this does not require that the author of the reports be called as a witness in the proceeding. Further, the response filed to PUB-CA-011 confirms that the Elenchus Report does not impact the testimony provided by the Consumer Advocate's witness, Dr. Booth.

The Consumer Advocate's request to file the Elenchus Report as evidence in this proceeding and to call Mr. Todd as a witness is denied.

If you have any questions, please do not hesitate to contact the Board's Legal Counsel, Ms. Jacqui Glynn, by email, [jglynn@pub.nl.ca](mailto:jglynn@pub.nl.ca) or telephone (709) 726-6781.

Sincerely,



Cheryl Blundon  
Board Secretary

CB/cj  
ecc

**Newfoundland Power Inc.**

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