

THE CONSUMER ADVOCATE

ACTIVITY REPORT

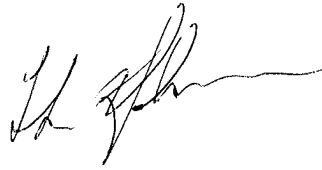
2009-10

Message from the Consumer Advocate:

I am pleased to present the 2009-10 Activity Report of the Consumer Advocate.

Given that my role as Consumer Advocate encompasses both insurance matters and matters pertaining to the representation of general and domestic electricity consumers of the Province, I shall deal with each separately in this Activity Report.

As the Consumer Advocate, I am accountable for the preparation of this report and the actual results achieved and reported.

A handwritten signature in black ink, appearing to read 'T. Johnson', with a long horizontal flourish extending to the right.

Thomas Johnson, B.A., LL.B.
Consumer Advocate

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Introduction/Overview

In accordance with section 117 of the *Public Utilities Act, RSNL 1990, Chapter P-47*, the Lieutenant Governor in Council may appoint a Consumer Advocate to represent the interests of domestic and general service customers in response to applications from public utilities. In accordance with section 61 of the *Automobile Insurance Act, RSNL 1990, Chapter A-22* the Lieutenant Governor in Council may appoint a consumer advocate for the purposes of a matter before the Board of Commissioners of Public Utilities. Finally, in accordance with section 3.1(8) of the *Insurance Companies Act, RSNL 1990, Chapter I-10*, the Lieutenant Governor in Council may appoint a consumer advocate for the purposes of a review by the Board of Commissioners of Public Utilities. Section 3.1(1) of the *Act* provides that the Lieutenant Governor in Council may by order direct the board to conduct a review of any aspect of insurance in the province on the terms and conditions that may be specified.

In relation to Electricity matters, on June 6, 2009 the Lieutenant Governor in Council appointed me as Consumer Advocate for a one-year term to represent the interests of domestic and general service consumers on terms acceptable to the Minister of Justice, in addition to any other appointment the Consumer Advocate may receive to participate in specific hearings before the Public Utilities Board and with the Minister of Justice to determine terms and conditions consistent with the existing practice of requiring the Consumer Advocate to file a budget on specific matters and an annual budget for routine on-going matters.

In relation to Insurance Matters, on June 8, 2007 the Lieutenant Governor in Council extended my appointment as Consumer Advocate. Pursuant to the terms of the extension, specific project assignments for which the Consumer Advocate will be paid will be approved in advance by the Minister of Government Services.

In performing his or her duties the Consumer Advocate may retain such experts and consultants as may be reasonably required. The costs of the Consumer Advocate are initially borne by the Board of Commissioners of Public Utilities and subsequently charged to the public utility or insurer(s) making the application or involved in the review as the case may be.

Mandate

In accordance with the rules as may be prescribed by the Public Utilities Board for the particular matter before it, the scope of participation may extend in appropriate cases to participating in all pre-hearing procedures, reviewing the application and evidence filed in support thereof, preparing requests for information, retaining and instructing necessary experts, cross-examining witnesses, calling witnesses on behalf of the interests of consumers and making final submissions to the Public Utilities Board.

Vision

A regulatory environment in which consumers are well-served and are afforded fair and reasonable treatment in accordance with the legislation and provincial policy pertaining thereto and sound public utility practices, as appropriate.

Highlights and Accomplishments

Insurance

During the past year, the Consumer Advocate continued his role as a member of the Voluntary/Non-Profit Sector Insurance Committee which was established following Government's consideration of the Public Utilities Board Insurance Review. The mandate of this Committee, which has received ministerial approval, is to identify risk and insurance issues of relevance in the voluntary/non-profit sectors and to propose solutions to address these issues.

There were no hearings or reviews for which the Consumer Advocate was appointed in the last year.

Electricity Consumer Representation

The past year was an active one as regards the Consumer Advocate's representation of electricity consumers in the province.

(1) Newfoundland Power Inc. - General Rate Application

Certainly, the most intensive activity in this regard was in relation to the representation of consumers in Newfoundland Power's General Rate Application (GRA) which was filed on May 28, 2009 at the Public Utilities Board. The Consumer Advocate filed a detailed report with the Minister of Justice arising out of the GRA. That led the GRA to a hearing before the Public Utilities Board and a resultant Order of the Public Utilities Board setting new customer rates effective January 1, 2010. The rate increase ultimately approved was slightly less than one-half of the increase which the utility requested. It bears noting that customers' rates decreased on July 1, 2009 by an overall average of 6.6% due to an annual Rate Stabilization Account adjustment. Accordingly, with the 3.5% overall increase approved as of January 1, 2010, rates in January, 2010 were approximately 3.1% lower on an overall average basis than they were in January of 2009.

(2) Capital Budget Applications

Each year, Newfoundland Power Inc. and Newfoundland and Labrador Hydro apply to the Public Utilities Board seeking approval of their respective proposed capital budgets. This past year, as has generally been the case over the past few years, the Consumer

Advocate intervened in the application process with a view to exercising an oversight and due diligence role in connection with these applications on behalf of consumers of the utilities in an effort to ensure that the utilities' proposals were reasonably necessary in order to provide safe, reliable service at the least cost to consumers, in keeping with the province's stated energy policy.

(3) Retail Customer Rate Review

The Consumer Advocate also had ongoing participation in the Retail Customer Rate Review being carried out by Newfoundland Power Inc. emanating from its 2008 General Rate Application. The purpose of the review is:

1. to review existing retail rate designs;
2. to review potential rate designs;
3. to consider whether rate designs should be mandatory or optional;
4. to develop a time bound action plan for implementation of the rate design recommendations.

While work continued on this initiative over the past year, the intervening Newfoundland Power GRA filed on May 28, 2009 practically made it impossible to adhere to the previously envisioned schedule. Accordingly, the parties have recently filed a revised schedule with the Public Utilities Board and are presently working on its fulfillment. A Technical Conference is presently scheduled to take place at the Public Utilities Board in June, 2010.

(4) Newfoundland and Labrador Hydro's Application regarding Rate Stabilization Plan (RSP) components of the rates to be charged to Industrial Customers

On June 30, 2009, Newfoundland and Labrador Hydro filed an application with the Public Utilities Board seeking the approval of interim rates for the Island Industrial Customers (ICs). Industrial Customers' rates were made interim by Board Order on December 21, 2007 at the application of Hydro. Hydro maintained that allowing the RSP component of the Industrial Customers' rates to be set based upon the then established RSP rules would cause significant rate volatility in light of significant load decreases in the IC class. Hydro, Newfoundland Power Inc., the Consumer Advocate and the Island Industrial Customers have intervened in this application. The matter was scheduled to be heard commencing on 17 May, 2010 but the matter has been postponed by the Public Utilities Board pending further Board direction pertaining to the application.

Other Matters

Pursuant to the Consumer Advocate's general appointment of June, 2009 referred to previously, I also participated in the following specific matters:

- An Application of NLH pertaining to the Stephenville Gas Turbine Refurbishment

- International Financial Reporting Standards (IFRS) as they pertain to the utilities
- Net Metering
- Application pertaining to Rate Changes to Labrador Interconnected rates

Activities

Issue 1: Representation of Consumer Interests

The representation of consumer interests when applications from public utilities are received is largely determined by the nature of the application. Applications may request, for example, a rate increase, a pricing restructuring, or an increase in return on investment for capital expenditure. The development of any response to an application requires that the Consumer Advocate solicit advice from consultants with respect to the information required to make an informed argument. Consultants with an expertise in energy supply, regulatory practice and principles and cost of capital/finance are invaluable when assessing the necessity for changes sought by electrical utilities. In matters of insurance, consultants with experts in actuarial science and cost of capital/finance are typically required.

Objective: Upon appointment, the Consumer Advocate will represent the interests of consumers of electrical utilities and insurance companies in the province of Newfoundland and Labrador

Measure	Consumer Interests represented
Indicators	Results
Obtained evidence for hearings in support of the consumer position at regulatory processes	The Consumer Advocate obtained evidence, as appropriate, in support of the consumers' position in relation to a General Rate Application (NP), two Capital Budget Applications (NP and NLH), and the Application of NLH regarding IC rates and RSP.
Attended pre-hearing conferences and meetings and public hearings held by the Board of Commissioners of Public Utilities	The Consumer Advocate attended pre-hearing conferences, meetings and public hearings in connection with the General Rate Application (NP) filed May 29, 2009 and in relation to the Application of NLH regarding IC rates and RSP and the utilities' International Financial Reporting Standards (IFRS) plans. In addition, the Consumer Advocate also participated in NP's ongoing Retail Rate Review.
Prepared and delivered submissions as directed by the Board of Commissioners of	Extensive submissions were made to the Public Utilities Board, both orally and in

Public Utilities to represent the interests of consumers.	writing in relation to the General Rate Application (NP). Written submissions were filed to represent the interests of consumers in relation to two Capital Budget Applications (NP and NLH), the Application of NLH regarding IC rates and RSP, and NLH's Application for approval for the refurbishment of a gas turbine gas generator engine.
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As stated in the 2008-11 Activity Plan of the Consumer Advocate, the Consumer Advocate will report on this objective and indicators again in 2010-11.

Discussion of Results

The Newfoundland Power GRA was a very significant one for consumers. The company's application as amended shortly before the commencement of the hearing sought an increase in revenue from customer rates of \$36.7 million. Compared to previous rate requests in 1999, 2004 and 2007 (\$5.2 million, \$4.1 million and \$27.4 million respectively) this was a very significant proposed increase [Reference: Requests for Information – CA NP 70 – 1st Revision]. Following the Public Utilities Board's consideration of the evidence and submissions presented at the hearing, the Public Utilities Board approved a 3.5% rate increase to rates then in effect commencing January 1, 2010 – which represented an aggregate forecast increase in revenue from rates of approximately \$18.2 million, as opposed to the \$36.7 million requested [Compliance Application of December 16, 2009]. As stated earlier, the end result was that the rates effective January 1, 2010 were approximately 3.1% lower than on an overall average basis than they were in January of 2009.

Reference can be made to the Public Utilities Board's Reasons for Decision: Order No. P.U. 43 (2009) which addresses the matters determined in the hearing.

The Consumer Advocate's intervention in the Capital Budget Applications of the utilities helped to ensure that the capital expenditures proposed were properly tested and scrutinized.

Opportunities and Challenges Ahead

The Consumer Advocate's assessment of the opportunities and challenges ahead does not differ from the assessment provided in last year's report.

The Consumer Advocate expects that in the foreseeable future there will be both challenges and opportunities facing consumers, particularly in the electrical sector.

Electricity consumers have faced significant increases in the cost of electricity over the past several years. Those consumers whose rates are influenced by the cost of oil burned at the Holyrood Generating Station, in particular, will continue to be susceptible to rate impacts.

Holyrood presents a significant challenge. The operating costs associated with the aging facility as well as any increases in oil prices combine to exert rate pressure. In addition, Holyrood poses significant environmental challenges. In the Energy Plan, the Provincial Government has stated its intention to replace Holyrood generation with electricity from the Lower Churchill through a transmission link to the island. However, should the Lower Churchill Project not proceed as anticipated, scrubbers and precipitators will be installed at Holyrood. This will involve considerable cost.

On August 12, 2008, Newfoundland and Labrador Hydro filed its 20-Year Capital Plan with the PUB. The Plan presently anticipates that capital expenditures to maintain the existing systems will rise to an average of \$54 million over the next five years and to an average of \$58 million, expressed in 2008 dollars, over the next 20 years. It is important to note that the 20 Year Capital Plan does not include additional capacity to address future energy requirements. Newfoundland Power's 2009 Capital Budget Application sites that the company plans to spend approximately \$343 million in plant and equipment through 2013 with nearly 60% of planned expenditures to focus on the replacement of deteriorated, defective or obsolete electrical equipment.

In addition, there is the ongoing challenge associated with General Rate Applications which generally seek to recover more revenue from consumers, whether for reasons of operating cost increases, rate of return requirements or other causes. These requests for rate increases place considerable pressure on those consumers already struggling to pay their electricity bills.

With these and other challenges, there are also opportunities. Both utilities have embarked upon respective reviews of wholesale and retail rate designs. In Order. No. P.U. 32 (2007) the Public Utilities Board, as previously noted, expressed its interest in assessing the ability of new rate designs to encourage increased energy conservation and efficiency. This will be a focus of the Consumer Advocate. In addition, the utilities' recent joint effort as it relates to the June, 2008 filing of a Five-Year Energy Conservation Plan: 2008-2013 represents an opportunity for further advancement.

Financial Statements

Upon appointment as Consumer Advocate, the Consumer Advocate prepares a budget for the approval of the Minister of Justice in matters pertaining to electricity. For matters pertaining to Insurance, the Minister of Government Services has budget approval authority. Once the budget has been approved, the Consumer Advocate, in matters of electricity, renders detailed statements of account to the Public Utilities Board which

pays the account. For matters of insurance involving a public hearing or PUB involvement, the same process is followed. However, on occasion the Consumer Advocate will be appointed to intervene or participate in a non-PUB insurance related matter, in which case the Department of Government Services both approves the budget and pays the account. Separate audited financial statements are not required of the Consumer Advocate. Expenses paid through the PUB are included as a separate line item in its budget, which is audited by a private auditor. Expenses paid through the Department of Government Services are included in the Professional Services section of its budget and audited financial statements are a requirement at the government level and are made public through the Public Accounts process.

As the Consumer Advocate's role encompasses both insurance matters and matters pertaining to the representation of general and domestic electricity consumer of the Province, it is appropriate to treat each separately in this section.

Insurance

Consumer Advocate's Participation in Relation to the Voluntary-Non-Profit Sector Insurance Committee

(i)	Professional Fees	\$1,116.00
(ii)	Disbursement (copies, couriers)	\$9.50
(iii)	H.S.T. on Fees and Disbursements	\$146.32
	Total	\$1,271.82

Electricity Consumer Representation

A. Newfoundland Power Inc. – General Rate Application filed 28 May, 2009

For the period from 28 May 2009 to and including 25 April, 2010, the Consumer Advocate invoiced as follows:

(i)	Professional Fees of the CA	\$217,870.00
(ii)	Professional Fees of Legal Counsel to the CA	\$97,770.00
(iii)	Disbursements (including expert consultant costs)	\$148,820.88
(iv)	H.S.T.	\$60,379.91
	Total	\$524,840.79

B. Hydro's Capital Budget Application

For the period from 7 August, 2009 to and including 26 January, 2010, the Consumer Advocate invoiced as follows:

(i)	Professional Fees of the CA	\$16,160.00
(ii)	Professional Fees of Legal Counsel to the CA	\$7,562.50
(iii)	Disbursements	\$73.11
(iv)	H.S.T.	\$3,093.43
	Total	\$26,889.04

C. Newfoundland Power's Capital Budget Application

For the period from 22 June, 2009 to and including 6 November, 2009, the Consumer Advocate invoiced as follows:

(i)	Professional Fees of the CA	\$14,500.00
(ii)	Professional Fees of Legal Counsel to the CA	\$4,625.00
(iii)	Disbursements	\$342.52
(iv)	H.S.T	\$2,530.78
	Total	\$21,998.30