

**THE CONSUMER ADVOCATE**

**ACTIVITY REPORT**

**2010-2011**

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## Message from the Consumer Advocate:

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I am pleased to present the 2010-11 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.



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

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## **Introduction/Overview**

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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 August 12, 2010 the Lieutenant Governor in Council appointed Tom Johnson as the 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. This also included 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. The August 12, 2010 appointment was a renewal of a previous similar appointment made in June of 2009.

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.

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## **Mandate**

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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.

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## **Vision**

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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.

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## **Highlights and Accomplishments**

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### 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 this province. The following section highlights certain areas/issues in which the Consumer Advocate was engaged.

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

This matter was reported upon in the 2009-2010 report as well and continued into this reporting period. In May of 2010, the Board gave notice to interested parties that it would hold a preliminary hearing into its jurisdiction and authority respecting the issues raised in Hydro's Application. A hearing was held on the jurisdictional issues on June 14, 2010 and the Board issued its jurisdictional decision in Order No. P.U. 25 (2010) on August 26, 2010.

Both the Consumer Advocate and Hydro appealed the Board's Order to the Newfoundland and Labrador Supreme Court, Court of Appeal. Newfoundland Power Inc. also supported the appeals of both appellants. The Court of Appeal heard the appeals in December, 2010 and presently has the matter under reserve at the time of writing.

## (2) Retail Customer Rate Review

The Consumer Advocate also had ongoing participation in the Retail Customer Rate Review carried out by Newfoundland Power Inc. The Consumer Advocate is pleased to report that the review has now concluded and has resulted in Board approval of an Optional Seasonal rate for residential electricity customers effective July 1, 2011. This marks the first time that electricity consumers have been afforded a rate option in this province. The Consumer Advocate regards the introduction of the Optional Seasonal Rate for customers who may wish to avail of it as a positive consumer development in the province. Also positive is Newfoundland Power's undertaking of a Time of Day Rate Study over a two-year period beginning December 1, 2011. The experience gained from this study will provide data and, no doubt, insights that should prove to be useful in considering any future implementation of Time of Day rates on a larger scale.

## (3) Newfoundland Power's proposed sale of Joint Use Support Structures to Bell Aliant

On February 4, 2011 Newfoundland Power applied to the Board for approval of a sale of 40 percent of its Joint Use Structure to Bell Aliant. The Consumer Advocate intervened in this application and determined upon a review of the evidence and the application that the sale should not be approved.

## (4) Newfoundland Power Inc. - Other Post Employment Benefits (OPEBs) Proposal

Following Newfoundland Power's last General Rate Application, the Board in Order No. P.U. 43 (2009) ordered that Newfoundland Power file with the Board a comprehensive proposal for adoption of the accrual method of accounting for other post employment benefits costs as of January 1, 2011. Newfoundland Power applied to the Board in relation to this matter on June 30, 2010 and the Consumer Advocate intervened in relation to the same. On December 10, 2010 the Board filed its Order No. P.U. 31 (2010) approving, amongst other things, the adoption of the accrual method of accounting for other post employment benefits costs and the amortization of a transitional balance estimated to be \$52,400,000 over a 15-year period.

## (5) Capital Budget Applications

Each year, Newfoundland Power Inc. and Newfoundland and Labrador Hydro apply to the Board seeking approval of their respective proposed capital budgets. This past year, as has generally been the case over several years, the Consumer Advocate intervened in the application process with a view to exercising an oversight and due diligence role on behalf of consumers. This role was 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.

## 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

<b>Measure</b>	Consumer Interests represented
<b>Indicators</b>	<b>Results</b>
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 two Capital Budget Applications (Newfoundland Power Inc. and Newfoundland and Labrador Hydro), the Application of Newfoundland and Labrador Hydro regarding Industrial Customer rates and Rate Stabilization Plan, the Joint Use Support Structures Application, and the Other Post Employment Benefits Application of Newfoundland Power Inc.
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 relation to the Application of Newfoundland and Labrador Hydro regarding Industrial Customer rates and Rate Stabilization Plan, the Newfoundland Power Joint Use Support Structures and the Other Post Employment Benefits Applications. In addition, the Consumer Advocate also participated in Newfoundland Power's ongoing Retail Rate Review.

<p>Prepared and delivered submissions as directed by the Board of Commissioners of Public Utilities to represent the interests of consumers.</p>	<p>Extensive submissions were made to the Public Utilities Board, both orally and in writing in relation to the Newfoundland and Labrador Hydro Application regarding Industrial Customer Rates and Rate Stabilization Plan as well as the proposed sale of Joint Use Support Structures to Bell Aliant. Written submissions were filed to represent the interests of consumers in relation to two Capital Budget Applications (Newfoundland Power and Newfoundland and Labrador Hydro), and the Application of Newfoundland Power regarding the Other Post Employment Benefits matter.</p>
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## **Discussion of Results**

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The Hydro Application pertaining to Industrial Customer Rates and the Rate Stabilization Plan and the subsequent appeal to the Province's Court of Appeal remains outstanding therefore results cannot be discussed. However, the intervention of the Consumer Advocate in the Application before the Board and the decision to appeal the Board's order to the Court of Appeal is of particular importance. At stake is the scope of the Board's jurisdiction to allocate very significant balances accrued under the Rate Stabilization Plan rules while Industrial Customer rates were interim to other customer classes.

The Consumer Advocate's Intervention in the Capital Budget Application of the utilities, the Other Post Employment Benefits and the Proposed Sale of Joint Support Structures applications helped to ensure that the proposals are properly tested and scrutinized.

The Consumer Advocate's ongoing participation in the Retail Rate Review process contributed to the implementation of an optional rate offering for electricity customers in the province for the first time.

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## **Opportunities and Challenges Ahead**

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Electricity consumers have faced significant increases in the cost of electricity of the past several years. Customers 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.

In addition, there is the ongoing challenge associated with the General Rate Applications which generally seek to recover more revenue from customers, whether for reasons of operating costs increases, rate of return requests or other causes. By the end of 2011, Hydro has been directed by Government to file a General Rate



Application. Presently, Newfoundland Power is expected to file a General Rate Application on or before June 30, 2012.

As regards opportunities, the Consumer Advocate will continue to seek out opportunities in matters before the board to ensure that the service provided to customers is at the least cost consistent with reliable service. The Consumer Advocate will also be interested in assessing the effects of the optional rate offering as well as the utilities' joint effort in encouraging increased energy conservation and efficiency.

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## **Financial Statements**

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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 Public Utilities Board involvement, the same process is followed. However, on occasion the Consumer Advocate will be appointed to intervene or participate in a non-Public Utilities Board 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 Public Utilities Board 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**

Insurance Review – Voluntary Sector Insurance Committee

*Invoices dated May 12, 2010 and February 7, 2011*

(i)	Professional Fees of the Consumer Advocate	\$7,116.00
(ii)	Disbursements	\$ 9.50
(iii)	H.S.T. on fees and disbursements	\$ 926.32
	Total	\$8,051.82

## **Electricity Consumer Representation**

### A. Newfoundland and Labrador Hydro Application of 30 June 09 – Rate Stabilization Plan Component of Industrial Customer Rates

*Invoices dated October 29, 2010 (for services from July 2, 2009 to October 22, 2010) and December 31, 2010 (for services from October 26, 2010 to December 13, 2010)*

(i)	Professional Fees of the Consumer Advocate	\$149,360.00
(ii)	Professional Fees of Legal Counsel to the Consumer Advocate	\$ 2,086.00
(iii)	Disbursements (including expert consultant costs)	\$ 16,000.04
(iv)	H.S.T. on fees and disbursements	\$ 21,767.98
	Total	\$189,304.02

### B. Newfoundland Power – Retail Rate Study

*Invoice dated June 30, 2010 (for services from December 5, 2007 to July 1, 2009)*

(i)	Professional Fees of the Consumer Advocate	\$19,840.00
(ii)	Disbursements	\$ 27.50
(iii)	H.S.T. on fees and disbursements,	\$ 2,582.78
	Total	\$22,450.28

### C. Newfoundland Power – General Rate Application

*Invoice dated April 30, 2010 (for services from November 13, 2009 to April 25, 2010)*

(i)	Professional Fees of the Consumer Advocate	\$13,550.00
(ii)	Professional Fees of Legal Counsel to the Consumer Advocate	\$ 2,250.00
(iii)	Disbursements	\$ 14.25
(iv)	H.S.T on fees and disbursements	\$ 2,055.85
	Total	\$17,870.10

### D. Newfoundland Power – Formal Affiliate Code of Conduct

*Invoice dated February 15, 2011 (for services from March 25, 2009 to November 9, 2010)*

(i)	Professional Fees of the Consumer Advocate	\$2,810.00
(ii)	Disbursements	\$ 29.75
(iii)	H.S.T on fees and disbursements	\$ 369.17
	Total	\$3,208.92

E. Newfoundland Power – 2011 Capital Budget Application

*Invoice dated March 31, 2010 (for services from July 16, 2010 to November 19, 2010)*

(i)	Professional Fees of the Consumer Advocate	\$19,850.00
(ii)	Disbursements	\$ 147.60
(iii)	H.S.T on fees and disbursements	\$ 2,599.69
	Total	\$22,597.29

F. OPEB's – Matters arising from Newfoundland Power's General Rate Application

*Invoice dated February 17, 2011 (for services from May 12, 2010 to January 14, 2011)*

(i)	Professional Fees of the Consumer Advocate	\$14,750.00
(ii)	Professional Fees of Legal Counsel to the Consumer Advocate	\$ 710.00
(ii)	Disbursements (including expert consultant costs)	\$ 5,800.80
(iii)	H.S.T on fees and disbursements	\$ 2,763.90
	Total	\$24,024.70

G. Newfoundland Power – 2011 Cost Recovery Deferral Application

*Invoice dated March 31, 2011 (for services from September 2, 2010 to November 29, 2010)*

(i)	Professional Fees of the Consumer Advocate	\$2,600.00
(ii)	Disbursements	\$ 14.25
(iii)	H.S.T on fees and disbursements	\$ 339.85
	Total	\$2,954.10

H. Newfoundland and Labrador Hydro – Capital Budget Application

*Invoice dated March 31, 2011 (for services from August 2, 2010 to January 3, 2011)*

(i)	Professional Fees of the Consumer Advocate	\$29,020.00
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(ii)	Disbursements	\$ 137.50
(iii)	H.S.T on fees and disbursements	\$ 3,790.48
Total		\$32,947.98

I. Newfoundland and Labrador Hydro – Pipe Blinds

*Invoice dated March 31, 2011 (for services from November 3, 2010 to January 4, 2011)*

(i)	Professional Fees of the Consumer Advocate	\$2,570.00
(ii)	Disbursements (including expert consultant costs)	\$ 77.90
(iii)	H.S.T on fees and disbursements	\$ 344.23
Total		\$2,992.13

**Other**

Consumer Advocate Activity Plan

*Invoice dated June 10, 2010 (for services from May 13, 2010 to May 25, 2010)*

(i)	Professional Fees of the Consumer Advocate	\$3,530.00
(ii)	Disbursements	\$ 4.75
(iii)	H.S.T on fees and disbursements	\$ 459.52
Total		\$3,994.27