

**NEWFOUNDLAND AND LABRADOR  
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

**AN ORDER OF THE BOARD**

**NO. P.U. 9(2013)**

1 **IN THE MATTER OF** the *Electrical Power*  
2 *Control Act, 1994* SNL 1994, Chapter E-5.1 (the  
3 “*EPCA*”) and the *Public Utilities Act, RSNL 1990*,  
4 Chapter P-47 (the “*Act*”), as amended, and regulations  
5 thereunder;

6  
7 **AND**

8  
9 **IN THE MATTER OF** an application by  
10 Newfoundland and Labrador Hydro for approval  
11 of certain rules, regulations and rates pertaining  
12 to the supply of electrical power and energy to a  
13 new Industrial Customer, Praxair Canada Inc.,  
14 pursuant to Sections 71 and 75 of the *Act*.

15  
16  
17 **The Application**

18  
19 Newfoundland and Labrador Hydro (“Hydro”) filed an application on March 6, 2013 seeking  
20 approval of a service agreement and rates to be charged to a new Industrial Customer, Praxair  
21 Canada Inc. (“Praxair”), on an interim basis, pursuant to Sections 71 and 75 of the *Act* (the  
22 “Application”).

23  
24 In the Application Hydro requested an Order:

- 25  
26 “a. *...approving the proposed and attached service agreement as negotiated between Hydro*  
27 *and its proposed Island Industrial Customer, Praxair Canada Inc.; and*  
28 b. *“...approving on an interim basis that the rates that apply to the provision of electrical*  
29 *service by Hydro to Praxair Canada Inc. be the same as those which apply as of this date*  
30 *to its other Island Industrial Customers, save and except Teck Resources Limited and*  
31 *Vale Newfoundland and Labrador Limited, and that have been approved by the Board,*  
32 *pending a final order to be made by the Board varying or confirming that rates*  
33 *determination.”*  
34

35 The Application was copied to Newfoundland Power Inc. (“Newfoundland Power”), the  
36 Consumer Advocate, Mr. Thomas Johnson, Mr. Dean Porter and Mr. Paul Coxworthy  
37 representing Corner Brook Pulp and Paper Limited, North Atlantic Refining Limited and Teck

1 Resources Limited (the "Industrial Customers"), Mr. Mark Sheppard representing Vale  
2 Newfoundland & Labrador Limited ("Vale"), and Ms. Sheryl Nisenbaum, representing Praxair.

3  
4 On March 11, 2013 the Board set the schedule for the consideration of the Application, including  
5 the distribution and response of Requests for Information ("RFIs") and the filing of submissions  
6 and comments from parties. Due to the time-sensitive nature of the Application the Board  
7 requested the record be completed no later than March 25, 2013. At the request of the Consumer  
8 Advocate this date was extended to March 27, 2013.

9  
10 Information Requests were issued to Hydro by the Board, the Consumer Advocate and  
11 Newfoundland Power on March 13, 2013. The Industrial Customers advised by letter on March  
12 13, 2013 that they did not have RFIs at that time but reserved the right to request further  
13 information upon receipt of Hydro's responses to RFIs. Hydro responded to the RFIs on March  
14 19, 2013.

15  
16 Comments on the Application were received from the Industrial Customers, Newfoundland  
17 Power and the Consumer Advocate on March 27, 2013 and from Vale on March 28, 2013.

## 18 19 **Background**

20  
21 In Order No. P.U. 7(2002-2003) the Board approved, *inter alia*, the "Service Agreements" for  
22 each of its Island Industrial Customers, which constitute the rules and regulations under which  
23 Hydro provides service to them. These Service Agreements were subsequently amended by the  
24 Board in Order Nos. P.U. 11(2002-2003), P.U. 12(2002-2003), P.U. 6(2003), P.U. 18(2007),  
25 P.U. 17(2009), P.U. 6(2011), P.U. 15(2011) and P.U. 4(2012).

26  
27 In Order No. P.U. 1(2006) the Board approved rates for Aur Resources Inc. (now "Teck  
28 Resources") on an interim basis. In the application Hydro had requested rates that exempted Aur  
29 Resources Inc. from any obligation of paying the Historical Plan Balance of the Rate  
30 Stabilization Plan ("RSP") that is payable by the other Island Industrial Customers. In Order No.  
31 P.U. 1(2007) the Board approved the Service Agreement, the exemption from any obligation for  
32 the Historical Plan Balance of the RSP, and finalized rates for 2006 for this Industrial Customer.

33  
34 Order No. P.U. 34(2007), effective January 1, 2008, continued the existing 2007 rates for all  
35 Hydro's Island Industrial Customers, on an interim basis. These rates have been in effect since  
36 that Order.

37  
38 A decision from the Court of Appeal on the Board's jurisdiction to deal with the balance in the  
39 Industrial Customer RSP was issued June 19, 2012. The Board has been directed by Government  
40 that it can only deal with Industrial Customers' rates in the context of a general rate application  
41 from Hydro, which Government has now directed Hydro to file by April 15, 2013.

42  
43 In Order No. P.U. 6(2012) the Board ordered that a new Industrial Customer, Vale, pay the same  
44 rates as Teck Resources (formerly Aur Resources Inc.). In its application Hydro had requested  
45 that Vale pay the same rates as the Industrial Customers, except Teck Resources.

## 1 Submissions

2  
3 Newfoundland Power notes that Hydro is requesting approval of an interim rate for Praxair  
4 which is the interim rate currently charged to Corner Brook Pulp and Paper and North Atlantic  
5 Refining, and not the interim rate approved by the Board for Teck Resources and Vale.  
6 Newfoundland Power submits that electricity rates to be charged to Praxair should reasonably  
7 reflect the cost of service. Newfoundland Power also acknowledges that neither rate reasonably  
8 reflects Hydro's current costs of serving Industrial Customers. According to Newfoundland  
9 Power there is a hazard that, to the extent that the rate approved for Praxair does not reasonably  
10 reflect the cost of service, the shortfall may be recovered from other customers, including  
11 Newfoundland Power. Newfoundland Power states:

12  
13 *"While Newfoundland Power would prefer that a cost-based rate be established for*  
14 *Praxair from the outset, we are mindful that the Application requests approval of*  
15 *Praxair's rate on an interim basis, and that the filing of a Hydro general rate*  
16 *application is expected shortly. For those reasons Newfoundland Power takes no*  
17 *objection to the interim rate proposed in the Application."*  
18

19 The Consumer Advocate states that, similar to Hydro's last application filed for a new Industrial  
20 Customer, Vale, this Application has significant repercussions for electricity consumers of the  
21 Province. He states that the rate proposed by Hydro for Praxair is well below the marginal cost of  
22 supply, collecting only about 45% of the forecast fuel costs at Holyrood in 2013 and about 34%  
23 in 2014, resulting in a \$698,496 revenue shortfall in 2013 and a \$2,466,564 revenue shortfall in  
24 2014. The Consumer Advocate also notes that Hydro has yet to file a general rate application and  
25 that, at present, neither of the existing interim industrial rates recovers the cost of providing  
26 service.

27  
28 The Consumer Advocate supports Hydro's request that the Board reconsider its policy as set out  
29 in Order No. P.U. 6(2012) wherein the Board found that the existing Teck Resources rate would  
30 be most representative of the conditions under which Hydro will be providing service to Vale, as  
31 this rate was established under similar circumstances. The Consumer Advocate argues that,  
32 although citing s. 73 of the *Act*, in Order No. P.U. 6(2012) the Board did not approve a rate for  
33 Vale that was currently being charged other customers in substantially similar circumstances  
34 since the annual demand ratchet for Vale was waived during start-up of the industrial process.

35  
36 The Consumer Advocate also submits that s. 73 of the *Act* represents a single aspect of  
37 ratemaking and that the proposed rate for Praxair should be considered from the perspective of  
38 the three most prominent and commonly accepted rate design objectives:

- 39
- 40 • Effectiveness in yielding the total revenue requirement under the fair-return standard;
  - 41 • Efficiency in discouraging wasteful use of service and promoting economic use of  
42 service; and
  - 43 • Fairness in apportioning the total cost of service among customer classes and avoiding  
44 undue discrimination.

45 According to the Consumer Advocate, while the rate proposed by Hydro for Praxair fails to meet  
46 any of these design objectives, the Teck Resources rate would represent even a further departure  
47 from these objectives.

1 The Industrial Customers submit that the circumstances of Praxair as a new Industrial Customer  
 2 are not substantively different to those addressed by the Board in Order No. P.U. 6(2012) in  
 3 respect of the Vale Service Agreement. Similarly, with respect to the interim rates proposed by  
 4 Hydro for Praxair as a new Industrial Customer, the Industrial Customers refer to their previous  
 5 submissions in response to Hydro's application for Vale's Service Agreement and rates. In that  
 6 submission the Industrial Customers argued that the Board's Order should only address the  
 7 matter of an interim rate for a new Industrial Customer and should not have any effect on issues  
 8 of cost of service or rate making which would affect all Industrial Customers.

9  
 10 In their submission on the current Application the Industrial Customers raise concern with  
 11 certain statements made by Hydro in the Application and RFI responses:

- 12
- 13 • *“Hydro’s characterization of the interim rate paid by Corner Brook Pulp & Paper Limited and*  
 14 *North Atlantic Refining Limited as the “standard industrial rate”, in Hydro’s March 6, 2013*  
 15 *correspondence filing the Application and Hydro’s response to PUB-NLH-1.*
- 16 • *Hydro’s characterization of the RSP adjustment to the interim rate paid by Corner Brook Pulp &*  
 17 *Paper Limited and North Atlantic Refining Limited as the “standard RSP adjustment” for the*  
 18 *Industrial Customer class, in Hydro’s responses to PUB-NLH-2 and PUB-NLH-3.*
- 19 • *Hydro’s characterization of the (2,000) cents/kWh RSP adjustment applicable to the interim rate*  
 20 *paid by Teck and Vale as “the exceptional adjustment” for the Industrial Customer class, in*  
 21 *Hydro’s responses to PUB-NLH-2 and PUB-NLH-3.*
- 22 • *The invoking of the end of the Historic RSP, as contemplated by Section E of the RSP rules, as*  
 23 *somehow a pre-determinant of whether and how the Board can consider the Historic RSP charge*  
 24 *component of the rates paid by Corner Brook Pulp & Paper Limited and North Atlantic Refining*  
 25 *Limited, which is the only presupposition upon which Hydro’s responses to PUB-NLH-2 and*  
 26 *PUB-NLH-3 can be understood.*
- 27 • *The assertion that the “correct” RSP adjustment to be charged to Industrial Customers is to be*  
 28 *only derived from changes in fuel costs, in Hydro’s response to PUB-NLH-1.”*

29  
 30 According to the Industrial Customers these statements by Hydro presuppose specific Board  
 31 findings in the finalization of interim Industrial Customers rates. The Industrial Customers point  
 32 out that Hydro's presuppositions are not the only results that can flow from either the Board's  
 33 previous orders or from the June 2012 Court of Appeal decision, and involve matters that are still  
 34 to be decided by the Board in a general rate application. The Industrial Customers submit that the  
 35 Board should make an order in this Application consistent with Order No. P.U. 6(2012). The  
 36 Industrial Customers further state that Hydro's characterization of rates or components of rates  
 37 as either "standard" or "exceptional" are of no assistance to the Board in the context of this  
 38 Application, and the making of a decision based upon any acceptance of those characterizations  
 39 as meaningful would be contrary to the current interim status of all Industrial Customers' rates  
 40 and would constitute a pre-deciding by the Board of issues that are not properly before it in this  
 41 Application.

42  
 43 In its submission Vale states that, given the fundamental and direct link between the Praxair and  
 44 Vale operations, Praxair should receive the same interim rate as that charged to Vale as set out in  
 45 Order No. P.U. 6(2012). Vale further submits that any other rate would be demonstrably unfair  
 46 and, under present circumstances, unjustly discriminatory.

1 **Discussion**

2  
3 Hydro is requesting approval of a service agreement and approval of interim rates to be charged  
4 to Praxair. The Board will deal with each separately.

5  
6 Service Agreement

7  
8 The service agreement proposed by Hydro is essentially the same as that in place for other  
9 Industrial Customers. Hydro notes that there are some specific differences arising from a need to  
10 avoid operational constraints or unexpected demand charges for Praxair during its  
11 commissioning and ramp-up stages for its processes. Praxair, in consultations with Hydro,  
12 requested that there be a variance in the power contract for firm power billing from the standard  
13 annual ratcheted demand, to be replaced during the ramp-up period by a monthly demand  
14 determinant. According to Hydro this will allow Praxair to use a new process at a high capacity  
15 and to back off that new process in a following month while physical or process adjustments or  
16 changes are made, without incurring a high demand charge in that following month based on an  
17 earlier month's maximum demand. Similar provisions were requested and approved by the  
18 Board in Order No. P.U. 1(2006) with respect to Aur Resources (now Teck Resources) and in  
19 Order No. P.U. 6(2012) for Vale. No issues were raised by any parties with respect to the  
20 proposed service agreement for Praxair.

21  
22 The Board is satisfied that the service agreement for Praxair should be approved as proposed.  
23 Other than the temporary suspension of the annual demand charge during startup, which is  
24 reasonable in the view of the Board given the startup nature of the operations of this new  
25 customer, the service agreement is consistent with those in place for other Industrial Customers.

26  
27 Rates

28  
29 Section 73 of the *Act* states that all customers under substantially similar circumstances and  
30 conditions should be charged equal rates. The Board has established that the Island Industrial  
31 customers are a class of customers, which means that the rates for this customer class are  
32 designed to recover the costs that rate class imposes on the system as a group. In the normal  
33 course this means that all customers in that rate class would pay the cost-based rate.

34  
35 Rates for Industrial Customers were made interim by the Board in Order No. P.U. 34(2007).  
36 These rates were originally based on cost-of-service and, as such, were designed to recover the  
37 appropriately allocated costs of providing service to the Industrial Customer class, including  
38 amounts related to the RSP. These rates continue to be interim.

39  
40 All parties, including Hydro, acknowledge that the present rates for all Industrial Customers,  
41 including Teck Resources and Vale, do not recover the costs of providing service. While  
42 acknowledging the Board's position in Order No. P.U. 6(2012) that there was no basis before it  
43 to set a cost-of-service based rate, Hydro submits that the rate charged to Corner Brook Pulp and  
44 Paper Limited and North Atlantic Refining Limited more closely aligns with costs than the rate  
45 currently charged to Teck Resources and Vale. Newfoundland Power and the Consumer  
46 Advocate support this approach.

1 The Board agrees that rates should be designed, wherever possible, on a cost-of-service  
2 approach. However, in the current circumstances there is no basis for the Board to determine the  
3 appropriate cost-based rate for Praxair and, at present, neither of the existing interim Industrial  
4 rates recovers the cost of providing service. The Board is satisfied that the interim rate approved  
5 for Teck Resources and Vale is most representative of the conditions under which Hydro will be  
6 providing service to Praxair, as this rate was established under similar circumstances. This is the  
7 third application since 2006 for approval of rates for a new Industrial Customer. In the absence  
8 of a general rate application in the interim, there is nothing new before the Board in this  
9 Application to justify a reconsideration of this policy.

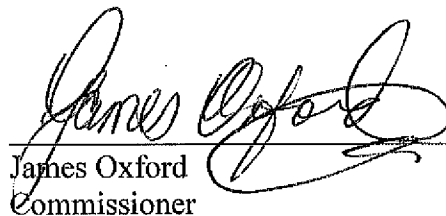
1 **IT IS THEREFORE ORDERED THAT:**  
2

- 3 1. The Service Agreement for Praxair Canada Inc. is approved, as filed.  
4  
5 2. The rates that apply as of this date to Teck Resources Limited and Vale Newfoundland  
6 and Labrador, pending a final Order to be made by the Board varying or confirming that  
7 rates determination, shall apply to electrical service provided by Hydro to Praxair Canada  
8 Inc., effective from the date that Praxair Canada Inc. first begins receiving power under  
9 the approved Service Agreement.  
10  
11 3. Hydro shall file an executed Service Agreement and an interim rate schedule reflecting  
12 the rates approved in this Order and indicating the effective date.  
13  
14 4. Hydro shall pay all expenses of the Board arising from this Application.

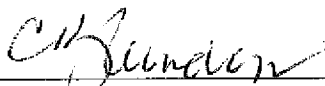
**DATED** at St. John's, Newfoundland and Labrador, this 3<sup>rd</sup> day of April, 2013.



\_\_\_\_\_  
Darlene Whalen, P.Eng.  
Vice-Chair



\_\_\_\_\_  
James Oxford  
Commissioner



\_\_\_\_\_  
Cheryl Blundon  
Board Secretary