

March 14, 2014

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 & Board Secretary

Ladies & Gentlemen:

Re: An amended application by Newfoundland and Labrador Hydro pursuant to Section 70 and 75 of the Public Utilities Act for the approval of customer electricity rates for 2014 on an interim basis or, in the alternative, for a deferral and recovery mechanism

On November 18, 2013 Hydro submitted an Application to the Board requesting an interim order pursuant to Sections 70 and 75 of the *Public Utilities Act* (the "Act") approving the schedule of rates, tolls and charges as set out in the Application to be effective on and after January 1, 2014 until superseded by a final order of the Board in a matter of the General Rate Application. On January 17, 2014 Hydro submitted a Supplemental Interim Rates Application that was subsequently withdrawn, and replaced on February 11, 2014 with an Amended Application for Interim Rates. In the cover letter Hydro states:

"The evidence related to Hydro's Amended Interim Rates Application found in Tab 2 is new with this filing and is to be read as additional to the evidence filed with the November 18 2013 Application and supports the changes that are found in the Amended Application."

A. The Application

In the Amended Application, Hydro requests the following:

- *"that present rates for all Hydro Rural Customers be approved on an interim basis;*
- *the approval of a deferral mechanism for the difference between the revenues received by Hydro from January 1, 2014 (or such later date that rates are made interim for the respective class) until such time that final rates are approved;*
- *changes to the Rate Stabilization Plan (RSP) Rules to use the proposed 2013 Test Year for RSP purposes; and*

- *approval that amounts collected by Hydro through NP's current Fuel Price Projection rider of 1.634 cents/kWh be segregated within the RSP until a further order of the Board on the matter." (Cover letter to February 11, 2014 Amended Application, page 2)*

Hydro states that it is "requesting interim rates for Island Interconnected Industrial Customers and a deferral and recovery mechanism for its remaining customers", believing this approach would enable the following:

- *"Implementation of IC rates in a manner that achieves the result that was contemplated in the Government directives;*
- *Deferral of rate implementation for other customers until rate design and cost of service issues are addressed;*
- *Provision to Hydro of the opportunity to earn a return on rate base that is closer to that which results from the Government directed Return on Equity (ROE) for the 2013 Test Year; and*
- *Improvement of Hydro's financial position in anticipation of a return to the capital markets in 2014 to fund the infrastructure renewal and new assets construction program estimated at \$763 million over the 2014 to 2017 period." (Evidence relating to February 11, 2014 Amended Application, page 2, lines 7 to 16)*

The Consumer Advocate's interpretation is that Hydro believes Board approval of the Amended Interim Rates Application is needed to:

- 1) Provide Hydro the opportunity to earn a return on rate base in 2014 that is closer to that directed by Government; and
- 2) Implement IC rates in a manner that achieves the result contemplated in Government directives.

The Consumer Advocate respectfully submits that Board approval of this Amended Interim Rates Application is not needed to accomplish either of these outcomes.

B. The Opportunity to Earn a Return in 2014 Closer to that Directed by Government

With respect to the need for approval of this Application to enable Hydro the opportunity to earn a return in 2014 that is closer to that directed by Government, the Consumer Advocate submits:

1. Hydro cites Order in Council OC2009-063 directing that its target return on equity be the same as set for NP as justification for what it views as a fair return. However, a Government Order in Council even though legally binding does not necessarily reflect what constitutes a fair return. The process that determines what is a just and reasonable return is a full review by the Board of evidence filed by all stakeholders under a GRA. More specifically, the Order in Council states:

... commencing with the first General Rate Application by Newfoundland and Labrador Hydro after January 1, 2009:
 i) *in calculating the return on rate base for Newfoundland and Labrador Hydro, to set the same target return on equity as was most recently set for*

Newfoundland Power through a General Rate Application or calculated through the Newfoundland Power Automatic Adjustment Mechanism (CA-NLH-24, Attachment 4, page 1 of 1, NLH 2013 GRA)

The Order-in-Council does not state that Hydro must earn the same target return as NP in the 2014 calendar year or any specific year for that matter as witnessed by the fact that Hydro did not file an application for the higher return in 2009, 2010, 2011, 2012 or 2013 following issuance of OC2009-063.

2. In IR-NP-NLH-035, Hydro is asked if upon conclusion of the GRA, Board approval of: 1) a deferral account to permit recovery of a 2014 revenue shortfall resulting from delayed implementation of customer rates; and 2) the recovery of the balance in the 2014 revenue shortfall deferral account over a three-year period commencing once final rates are effective would provide it the opportunity to earn a return on rate base closer to that resulting from the Government directive. In its response, Hydro indicates its agreement, but further elaborates that it requires Board approval of the Amended Interim Rates Application in order that improved financial results can be reported throughout 2014, and provide an *"immediate positive impact on its reported 2014 forecast financial performance"*. Hydro has not quantified this benefit, and it is not clear that this benefit will be realized at all given that a Board decision on this Amended Interim Rates Application is unlikely to take effect prior to April 2014.

In summary, the Consumer Advocate submits that a Board Order approving the Amended Interim Rates Application is not needed. The Board can, if it finds it reasonable to do so, issue an Order following a full review of the issues in the GRA that allows Hydro to earn a return in 2014 that is closer to that directed by Government.

C. *The Need to Implement IC Rates Consistent with Government Directives*

With respect to the need for interim rates to enable implementation of IC rates consistent with Government directives, the Consumer Advocate would refer to the following:

1. The Board ordered in P.U. 40 (2013) the addition of the following clause to the IC RSP rules:

Notwithstanding paragraph 1, as of December 31, 2013 the adjustment rate for industrial customers commencing January 1, 2014 will continue, on an interim basis, to be the rate per kWh which was approved by the board in Order No. P.U. 29(2013). This rate will remain effective until a further Order of the board.

2. As stated in Board Order P.U. 40 (2013) (page 3, lines 24 to 29):

The evidence filed as part of the Interim Rates Application suggests that this RSP adjustment would result in a rate increase for the Industrial Customers of 36.2%. The

proposed amendment to the RSP rules would avoid this rate increase and would otherwise allow the normal operation of the RSP. That is, all other credits and debits within the RSP would proceed in the ordinary course. This approach would allow an appropriate RSP adjustment for the Industrial Customers to be implemented later. (underlining added)

3. As stated in Board Order P.U. 40 (2013) (page 3, lines 46 to 48, and page 4, line 1):

The Board is not persuaded by the Consumer Advocate's argument that the proposed amendment is inconsistent with the Government Direction because it interferes with the normal operation of the RSP, especially given that the RSP adjustment has not operated normally for the Industrial Customers since 2008.

4. The Government directive relating to the IC RSP in OC2013-089 states as follows:

5) Notwithstanding Items 1) through 4) above, effective January 1, 2014, the Island industrial customers will be subject to Rate Stabilization Plan changes in accordance with the Board of Commissioners of Public Utilities-approved methodology. (underlining added)

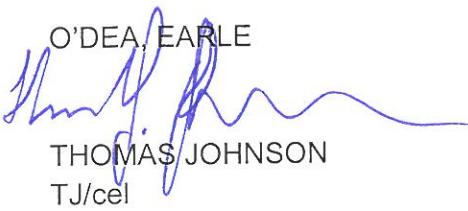
In light of the foregoing, the Consumer Advocate submits that a Board Order approving the Amended Interim Rates Application is not required for the purposes of implementing IC rates consistent with Government directives. Three months ago the Board issued Order P.U. 40(2013) which it determined provides an interim "fix" for the IC RSP, enabling the Board at a later date to go back and adjust IC rates consistent with Government directives. There has been no evidence filed subsequent to Order P.U. 40(2013) that justifies issuing an Order prior to the conduct of a complete review of the issues in the GRA. Following the GRA, the Board will approve an RSP methodology based on the evidence filed, and will have the opportunity to adjust IC RSP amounts consistent with the Government directives. In addition to this Application not being needed, the Consumer Advocate submits that owing to the complexities of the issues involved, it is best to simplify the approach and review the issues within the overall context of the GRA.

D. Recommendation

In conclusion, the Consumer Advocate recommends that the Board deny Hydro's Amended Interim Rates Application in whole as it is not needed to meet the stated purposes. The issues raised in the Amended Interim Rates Application are better addressed within the context and timing of the GRA, enabling a comprehensive review of the issues and a more efficient use of the limited time available.

Please feel free to contact the undersigned if you have any questions.

Yours very truly,


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