

March 14, 2014

VIA COURIER and ELECTRONIC MAIL

Board of Commissioners of Public Utilities
120 Torbay Road
P.O. Box 21040
St. John's, NL A1A 5B2

Attention: **Ms. G. Cheryl Blundon**
Board Secretary

Dear Ms. Blundon:

RE: **Interim General Rate Application of Newfoundland and Labrador Hydro**

Enclosed are the original and twelve (12) copies of the Written Submissions of Vale Newfoundland & Labrador Limited in respect of the above-noted Application.

We have provided a copy of this correspondence together with enclosures to all concerned parties.

We trust you will find the enclosed satisfactory.

Yours faithfully,



Thomas J. O'Reilly, Q.C.

TJOR/js
Encl.

c.c. **Newfoundland & Labrador Hydro**
P. O. Box 12400
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Attention: **Geoffrey P. Young**
Senior Legal Counsel

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Attention: Edward M. Hearn, Q.C.

Olthuis, Leer, Townshend LLP
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Attention: Stephanie Kearns

House of Commons
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Room 682
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Attention: Yvonne Jones, MP Labrador

IN THE MATTER OF the *Electrical Power Control Act, 1994*, R.S.N.L. 1994, Chapter E-5.1 (the EPCA) and the *Public Utilities Act, R.S.N.L. 1990*, Chapter P-47 (the Act) and regulations thereunder;

AND IN THE MATTER OF an application by Newfoundland and Labrador Hydro, pursuant to Sections 70 and 75 of the Act, for the approval of customer electricity rates for 2014 on an interim basis or, in the alternative, for a deferral and recovery mechanism.

TO: The Board of Commissioners of Public Utilities ('the Board')

1 WRITTEN SUBMISSIONS OF VALE NEWFOUNDLAND & LABRADOR LIMITED

2 The following are the submissions of Vale Newfoundland and Labrador Limited ("Vale")
3 in relation to Newfoundland and Labrador Hydro's ("Hydro") Application before the
4 Board seeking an Order for interim rates or, in the alternative, a deferral and recovery
5 mechanism.

6

7 While Vale is prepared to accept the interim rates requested by Hydro subject to Hydro
8 repaying to customers the difference between interim rates and rates set by the Board
9 following Hydro's General Rate Application filed on July 30, 2013 (the "GRA"), Vale is
10 concerned that an Order for interim rates has the potential to cause further delays on
11 the GRA. By setting interim rates that are equal to the rates requested on the GRA,

1 Vale is concerned that a sense of urgency to proceed expeditiously with the GRA will be
2 lost.

3

4 In the first schedule for the GRA, it was contemplated that all of Hydro's RFI's would be
5 asked and answered by November 22, 2013 and public hearings would have begun
6 on February 11, 2014. Instead, answers to RFIs were not provided until January 31,
7 2014 (almost three months past the originally scheduled date) and public hearings are
8 now not set to begin until July 9, 2014 (almost five months past the originally
9 scheduled date). Further, with Hydro required to provide updated financial information
10 on or before March 14, 2014 and several procedural steps left before public hearings
11 on the GRA can begin (including further RFIs on expert reports), Vale harbours a
12 significant concern that the most recent schedule will not be met. It was the fact that
13 these delays were occurring and were going to have a negative effect on Hydro's rate
14 of return that led Hydro to file its Application seeking interim rates that are equal to the
15 rates being requested on the GRA. There is something counterproductive in this
16 process.

17

18 Hydro has defended the delays on the GRA (see IR-NP-NLH012 and IR-NP-NLH013) as
19 being beyond Hydro's control. While that may be partially correct, the fact is that
20 seven years between general rate applications, which is four years longer than sound
21 utility practice requires (see PUB-NLH-75), is too long. The issuance of a number of
22 additional applications at or around the same time as the GRA, including the RSP
23 Application filed on July 30, 2014 and its 2014 Capital Budget Application filed on
24 August 5, 2013, have also contributed to the delays on the GRA. Lastly, the within

1 Application, which was ironically necessitated by the delays in the GRA, has itself
2 caused further delays in the GRA. By not filing its GRA before July 30, 2013, Hydro left
3 insufficient time to complete the GRA in time for new rates to become effective on
4 January 1, 2014. As a result, on November 14, 2013, Hydro filed the within
5 Application, which itself has been amended on more than one occasion and has led to
6 three rounds of RFIs. With the parties focusing on the within Application, their focus
7 has been diverted from the GRA for the past four months.

8

9 Vale is also concerned that the interim rates being sought are based on information
10 and assumptions that have not been thoroughly tested at this stage of the GRA. While
11 Hydro refers to the 2013 test year values as being “tested by the parties” (see IR-NP-
12 NLH-008), Vale submits that two rounds of RFIs do not amount to adequate testing of
13 the information before the Board on the GRA. Further, the Board has recently
14 requested that Hydro update the GRA to “reflect the actual financial experience of
15 Hydro for 2013”.¹ Therefore, the information and assumptions on which the interim
16 rates are being sought is similarly untested.

17

18 While Vale is concerned with the potential for further delays in the GRA and the fact
19 that the interim rates are being set on the basis of untested data, Vale is nevertheless
20 prepared to accept interim rates set at the schedule of rates set out in Schedule A to
21 the within Application, as amended. Vale is also prepared to accept, on an interim
22 basis only, the RSP Rules set out in Schedule B to the within Application, as amended.

¹ Letter from the Board to Hydro dated February 28, 2014

1 Vale's submissions are limited to the issues of (i) the duration of the interim Order, (ii)
2 the use of a deferral mechanism and (iii) costs.

3

4 Issue 1: Length of the Interim Rates Order

5 Vale submits that any Order setting interim rates should be in effect only until August
6 31, 2014. If the GRA is not completed by August 31, 2014, Hydro should be required
7 to reapply for a further order for interim rates or else have rates revert to pre-interim
8 rate Application levels, including the freeze on RSP rules imposed in Board Order PU
9 40 (2013). This limitation is necessary to ensure that the balance remaining in the
10 \$49 million credit to the Industrial Customer RSP Surplus is sufficient to provide for
11 the phase in of rates as required by Orders in Council OC2013-089 (as amended) and
12 OC2013-090 (as amended).

13

14 Hydro has repeatedly stated that the \$49 million credit to the Industrial Customer RSP
15 Surplus was based on (i) the phase in commencing on January 1, 2014 and (ii) was
16 the "estimated amount necessary" to phase in industrial customer rates as directed by
17 the Orders in Council OC2013-089 (as amended) and OC2013-090 (as amended) (see
18 IR-CA-NLH-7). Hydro has also repeatedly stated that the \$49 million credit is meant to
19 fund a "three year phase in period ending on September 1, 2015" (see IR-V-NLH-015).

20 Consistent with this, in the GRA, Hydro proposes a phase in schedule for industrial
21 customers that would see industrial customers' rates remain consistent from
22 September 1, 2013 to September 1, 2014, increase on September 1, 2014 and
23 increase to the full GRA approved rates on September 1, 2015. Even with this
24 schedule, Hydro is forecasting that there will be a \$1,117,580 balance owing from the

1 Industrial Customers at the end of the phase in period due to there being insufficient
2 funds in the Industrial Customer RSP Surplus to fund 100% of the proposed phase in
3 (see V-NLH-0037).

4

5 The phase in rates that Hydro is seeking in the interim rates Application are the same
6 phase in rates Hydro is seeking in the GRA for the period from January 1, 2014 to
7 August 31, 2014 (See Rate Schedule to the GRA, page 16 of 47; and the July 2013
8 Rate Stabilization Plan Evidence on the RSP Application filed July 30, 2013, Table 3 on
9 page 11). With hearings set to begin on July 9, Vale is concerned that that the GRA will
10 not be concluded by September 1, 2014.

11

12 It is Vale's reading of the Application that, if Hydro were to obtain the Order requested,
13 the interim rates would continue to apply until the Board sets final rates at the
14 conclusion of the GRA. However, should this occur, the rates charged after August 31,
15 2014 would be lower than the phase in rates determined by Hydro to be necessary to
16 ensure that the balance in the Industrial Customer RSP Surplus is sufficient to phase
17 in rates over a three year period. According to Hydro's proposed phase in plan, on
18 September 1, 2014, the (i) demand charge interim rate should increase from \$6.68
19 per month per kW of billing demand to \$7.92 per month per kW of billing demand and
20 (ii) base interim rate should increase from 3.676¢ kWh to 4.356¢ kWh (See Rate
21 Schedule to the GRA, page 16 of 47; July 2013 Rate Stabilization Plan Evidence on the
22 RSP Application filed July 30, 2013, Table 3 on page 11). If the rates charged on
23 September 1, 2014 are lower than the proposed phase in rates, the balance owing by
24 Industrial Customers at the end of the phase in period will be higher than the current

1 estimated deficit of \$1,117,580 (see V-NLH-0037). As explained below, this has the
2 potential to create unequal results for Vale and Praxair.

3

4 Therefore, Vale requests the Board Order that the interim rates requested by Hydro
5 remain in effect only until August 31, 2014 and, in the absence of a new Application
6 by Hydro for interim rates effective after that date, Industrial Customer rates revert to
7 pre-interim rate Application levels, including the freeze on RSP rules imposed in Board
8 Order PU 40 (2013).

9

10 In the alternative, Vale requests the Board Order that Schedule "A" to the within
11 Application be amended to include the following provision:

12

13 From September 1, 2014 to August 31, 2015, the Phase-In Industrial Rates to
14 be used in this calculation are:

15

16 Demand Charge: \$7.92 per month per kilowatt of billing demand
17 Firm Energy Charge: Base Rate 4.356 ¢ per kWh

18

Specifically Assigned Charges:	Annual Amount
Corner Brook Pulp and Paper Limited	\$ 411,393
<u>North Atlantic Refining Limited</u>	<u>\$ 178,907</u>
Total	\$ 590,300

22

23

24 Issue 2: Suggestion of a Deferral Account

25 In IR-PUB-NLH-047, the Board raised the possibility of establishing a deferral account
26 for accumulating the differences between current rates and the proposed interim rates
27 as opposed to drawing the difference from the Industrial Customer RSP Surplus. Vale
28 submits that such an alternative could have unfair and unintended consequences for
29 individual members of the Industrial Customer group.

1 As confirmed in IR-V-NLH-013, Hydro has taken the position that the recovery of any
2 deferred amounts would be taken from the Industrial Customer RSP Surplus. As was
3 the case in issue 1 above, if the GRA is not completed by August 31, 2014, drawing
4 down the balance in the deferral account from the Industrial Customer RSP Surplus
5 would result in the Industrial Customer RSP Surplus being exhausted prematurely.
6 Therefore, Vale submits that such a mechanism for the recovery of any balance in a
7 deferral account is inconsistent with the requirement in Order in Council OC2013-89
8 (as amended) that “increases for island industrial customers” to “be phased in over a
9 three year period”.

10

11 Vale further submits that a recovery mechanism whereby the balance in any deferral
12 account would be repaid over time following the GRA would be potentially unfair as a
13 result of changing dynamics within the Industrial Customer Group. In particular, during
14 the period in which interim rates would be in effect, and a balance would be accruing
15 within a deferral account, Vale and Praxair would be using the smallest amount of
16 energy within the Industrial Customer Group. However, Vale would be the largest
17 industrial customer and Praxair’s usage would be increasing dramatically during the
18 period when any balance in the deferral account would have to be paid back. As the
19 balance in the deferral account would be repaid at the customer class level as
20 opposed to the individual customer level (see IR-V-NLH-013), while Vale and Praxair
21 would be responsible for the smallest percentage of the deferral account balance, they
22 would be responsible for repaying the largest percentage of that same balance.

23

1 Based on the above, Vale submits that the use of a deferral account is not an
2 equitable alternative to the order requested by Hydro on the interim rate Application.

3

4 **Issue 3: Costs**

5 Vale requests that the Board award Vale costs on the within Application on the same
6 basis as any award of costs made in favor of the Consumer Advocate and/or the
7 Industrial Customer Group. An award of costs in favor of Vale is justified based on the
8 fact that:

9 1. Vale's energy consumption is steadily increasing with time and, when
10 Vale's Long Harbour processing facility begins production, Vale will be the
11 single largest industrial customer of Hydro. As such, Vale had a significant
12 interest in participating in the within Application; and

13 2. Vale's interests in the within Application are discreet from the interests
14 of the Industrial Customer Group. In particular, Vale and the Industrial
15 Customer group may not be aligned on whether, *inter alia*, the phase-in rates
16 requested in the within Application should continue past September 1, 2014.

17

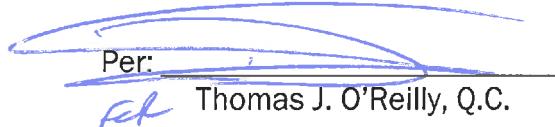
18 As set out above, the within Application was made necessary by the complexity of and
19 delays in the GRA as a result of the fact that Hydro went seven years between GRAs.
20 For this reason, Vale submits that all or a significant percentage of the costs of the

- 1 within Application should be borne by Hydro and should not form part of Hydro's rate
- 2 base.

DATED at St. John's, in the Province of Newfoundland and Labrador, this  day of March, 2014.

17/3/14

COX & PALMER


Per:  Thomas J. O'Reilly, Q.C.

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