

DELIVERED BY HAND

July 11, 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
and Board Secretary

Ladies and Gentlemen:

Re: Newfoundland and Labrador Hydro – Second Application for the interim approval of customer electricity rates for 2014 pursuant to Order No. P.U. 13 (2014) – Written Submission of Newfoundland Power.

A. Background

On July 30, 2013, Newfoundland and Labrador Hydro (“Hydro”) filed its General Rate Application (the “GRA”) with a 2013 Test Year to adjust rates on January 1, 2014. On June 6, 2014, Hydro informed the Board of its intention to file an amended GRA in the fall of 2014, subject to amendment of the relevant Order in Council being issued by the Government of the Province. As of this writing, no amendment to the Order in Council has been issued.

On November 18, 2013, Hydro filed an application (the “Interim Rate Application”) seeking approval of either (i) a schedule of proposed rates, tolls and charges on an interim basis for certain customers effective January 1, 2014, including changes to rules related to the rate stabilization plan (“RSP”), or (ii) a deferral and recovery mechanism whereby, commencing January 1, 2014, Hydro would defer any revenue shortfall that results from delayed implementation of rates proposed in the GRA.

On February 11, 2014, Hydro filed an amended Interim Rates Application (the “Amended Application”) seeking, in effect, approval of (i) interim rates for customers of Hydro whose rates are not already interim; (ii) proposed interim base rates for Hydro’s Island Industrial Customers (the “Industrial Customers”); (iii) revised interim RSP rules; and (iv) a deferral and recovery mechanism to recover a forecast 2014 revenue shortfall resulting from delayed implementation of rates proposed in the GRA. The Amended Application effectively deferred consideration of rate changes for other customers of Hydro to the GRA.

On April 25, 2014, the Board issued Order No. P.U. 13(2014) dismissing the Amended Application, and indicating that it was “open for Hydro to file another application which contains

clear and unambiguous proposals supported with comprehensive and consistent evidence.”

On May 12, 2014, Hydro filed a Second Interim Rate Application (the “Application”) with the Board seeking approval on an interim basis of (i) a transfer of \$29.4 million from an existing credit balance in the Hydraulic Production Variation component of the RSP to be recognized by Hydro as revenue in 2014, (ii) an Industrial Customer fuel rider effective January 1, 2014, (iii) an Industrial Customer recovery adjustment rider effective July 1, 2014, (iv) revised RSP rules relative to the Industrial Customer RSP surplus, and (v) the phase-in of Industrial Customer rates.

This letter contains Newfoundland Power’s submissions with respect to the Application.

B. Legislative Framework

Section 80 of the *Public Utilities Act* (the “Act”) provides that a public utility is entitled to earn annually a just and reasonable return on its rate base.

C. General

Newfoundland Power does not have a direct interest in the proposed Industrial Customer rate changes, which are aimed at complying with directions in various Orders in Council issued by the Government of the Province, and does not have any specific comment on the proposed rate changes for Industrial Customers.

With respect to the proposed transfer of an amount from the RSP to be recognized by Hydro as revenue in 2014, the Board must be satisfied that the record of the Application provides comprehensive and consistent evidence upon which the Board can determine the appropriateness of the requested relief. In Newfoundland Power’s submission, the Board should consider: (i) the sufficiency of Hydro’s evidence in the proceeding, and (ii) the regulatory practice of the Board.

D. Proposed 2014 RSP Transfer to Hydro Revenue

The Evidence

The Application proposes that the Board approve, on an interim basis, a transfer of \$29.4 million from an existing credit balance in the Hydraulic Production Variation component of the RSP to be recognized by Hydro as revenue in 2014. The purpose of the transfer is to provide an opportunity for Hydro to earn a reasonable return on rate base in 2014.¹

The *Evidence on Second Application for Interim Rates* (the “Hydro Evidence”) indicates that Hydro is forecasting a net income shortfall for 2014 of approximately \$29.4 million under

¹ Application, paragraph 10 (i).

existing rates as compared to the 2013 test year rates proposed in the GRA. The Hydro Evidence indicates that the forecast 2014 net income under existing rates of \$3.8 million corresponds to a forecast 1.1% return on equity for 2014.²

The evidence of Hydro's forecast 2014 net income shortfall consists solely of a forecast statement of income for 2014.³ The Hydro Evidence does not contain detailed information regarding the reasons for the 2014 forecast net income shortfall, or its relation to the costs currently recovered in Hydro's rates. Nor does it contain information indicating whether the 2014 net income shortfall is related to costs that were necessary to provide service during 2014.

Furthermore, the amount of the proposed transfer of \$29.4 million is based on Hydro's proposed 2013 test year.⁴ In light of current regulatory uncertainty regarding Hydro's GRA, and the likelihood that Hydro's 2013 costs will not be tested, the Board must consider whether this is a reasonable evidentiary basis for the amount of the proposed transfer.

The Hydro Evidence anticipated that the actual 2014 revenue shortfall would be determined upon the establishment of final 2014 rates by the Board in the GRA, with the method of recovery to be determined by the Board.⁵ A more current proposal regarding finalization of Hydro's 2014 rates and the recovery of the 2014 net income shortfall is contained in a response to a Request for Information ("RFI") filed subsequent to Hydro's recent decision to file an amended GRA.⁶

According to its RFI response, Hydro is now proposing that its "actual net income shortfall" for 2014 will be determined based upon the Board testing Hydro's 2014 test year revenue requirement following submission of the amended GRA.⁷ Hydro's RFI response indicated that its amended GRA will request that the rates in effect for 2014 be made final, and indicated that the difference between the actual and the forecast \$29.4 million net income shortfall for 2014 will be recognized as a revenue adjustment in 2015 or over some other time period subject to an order of the Board.⁸

Based on these more recent statements regarding the recognition of the \$29.4 million in revenue in 2014, it is not clear to Newfoundland Power what the interim nature of the transfer implies.⁹

² Hydro Evidence, Page 2, lines 12 – 18.

³ Hydro Evidence, Appendix A.

⁴ The forecast 2014 net income shortfall shown in Appendix A to the Hydro Evidence is based on the difference between Hydro's forecast net income under existing rates and under 2013 test year rates.

⁵ Hydro Evidence, Page 7, lines 17 – 21.

⁶ The Hydro Evidence was filed prior to Hydro's recent decision to withdraw the current GRA filing pending filing of an amended GRA in the fall of this year.

⁷ Hydro's Notice of Amended Filing dated June 6, 2014 stated that the amended filing "will provide forecast information for 2014 and a 2015 test year for the Board's consideration in establishing customer rates."

⁸ Response to Request for Information SIR-PUB-NLH-014.

⁹ For Newfoundland Power's detailed observations on this aspect of the matter, see the response to Request for Information SIR-NLH-NP-006.

Regulatory Practice of the Board

The Board has historically permitted relief by way of deferred cost recovery to permit a utility to earn a just and reasonable return under Section 80 of the Act when it has been satisfied that the circumstances warranted deferred recovery.

Current regulatory practice has practically required clear evidence of a revenue shortfall before the Board has granted relief to permit a utility to earn a just and reasonable return within the meaning of Section 80 of the Act. This evidence may be provided as part of a general rate application, or in a standalone deferred recovery application.

When the Board has provided either interim rate relief pursuant to Section 75 of the Act or approval of deferred recovery of costs, it has relied to the extent possible on tested costs.¹⁰

The Board has not yet approved a cost or revenue deferral on anything other than a final basis. Moreover, it is not clear, as a matter of law, whether the Board has authority to approve a cost or revenue deferral on an interim basis.¹¹

There is no regulatory precedent in this jurisdiction for the proposed transfer on an interim basis of \$29.4 million from the RSP to Hydro revenue.¹²

F. Disposition of the Amended Application

Newfoundland Power is not making any submission with respect to the changes to Industrial Customer rates proposed in the Application.

With respect to the proposed transfer of \$29.4 million from the credit balance in the Hydraulic Production Variation component of the RSP to be recognized by Hydro as revenue in 2014, the Board must satisfy itself that the evidence in the proceeding is sufficiently comprehensive and consistent to support approval of the transfer.

In this regard, it is Newfoundland Power's submission that Hydro's evidence with respect to a forecast net income shortfall in 2014 is not comprehensive, as it does not include evidence that Hydro's forecast 2014 revenue shortfall relates to costs that should be recovered from customers.

¹⁰ For detailed information regarding previous Board approvals of deferred cost recovery for Newfoundland Power, see the responses to Requests for Information SIR-NLH-NP-001, SIR-NLH-NP-002, SIR-NLH-NP-003, and SIR-NLH-NP-010.

¹¹ While there is a provision in the *Public Utilities Act* for interim orders governing rates (Section 75), there is no provision for interim orders approving transfers from deferral accounts. For Newfoundland Power's detailed observations regarding the Board's authority in this matter, see the response to Request for Information SIR-NLH-NP-007.

¹² In its response to Request for Information SIR-PUB-NLH-006, Hydro indicated it was not aware of any regulatory precedent for its proposal.

Hydro's evidence in support of the proposed transfer from the RSP does not provide an evidentiary basis that is consistent with the Board's previous practice in relation to cost or revenue deferrals.

It is Newfoundland Power's submission that the evidence in support of the Application is neither comprehensive nor consistent, and provides no greater evidentiary basis for approval of Hydro's proposals than the evidence filed in support of the Amended Application. Accordingly, the Board should not approve the proposed transfer from the RSP to Hydro's 2014 revenue.

G. Concluding

We trust the foregoing is found to be in order. However, if you have any questions, please feel free to contact us.

Copies of this correspondence have been forwarded directly to the parties indicated below.

Respectfully Submitted,



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Senior Counsel

Enclosures

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