

July 11, 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: Second 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/jl
Enclosure

c.c. Newfoundland & Labrador Hydro
P. O. Box 12400
500 Columbus Drive
St. John's, NL A1B 4K7
Attention: Geoffrey P. Young
Senior Legal Counsel

Thomas J. O'Reilly, Q.C. | Partner

Direct 709 570 5320 Main 709 738 7800 Fax 709 726 3070 Email toreilly@coxandpalmer.com
Suite 1000 Scotia Centre 235 Water Street St. John's NL A1C 1B6

July 11, 2014

Newfoundland Power
P. O. Box 8910
55 Kenmount Road
St. John's, NL A1B 3P6
Attention: Gerard Hayes, Senior Legal Counsel

Thomas J. Johnson, Consumer Advocate
O'Dea, Earle
323 Duckworth Street
P. O. Box 5955, Stn. C
St. John's, NL A1C 5X4

Corner Brook Pulp and Paper Limited,
North Atlantic Refining Limited
and Teck Resources Limited
Stewart McKelvey
PO Box 5038
11th Floor, Cabot Place
100 New Gower Street
St. John's, NL A1C 5V3
Attention: Paul Coxworthy

Miller & Hearn
450 Avalon Drive
P.O. Box 129
Labrador City, NL A2V 2K3
Attention: Edward M. Hearn, Q.C.

Olthuis, Leer, Townshend LLP
229 College Street
Suite 312
Toronto, ON M5T 1R4
Attention: Stephanie Kearns

House of Commons
Confederation Building
Room 682
Ottawa, ON K1A 0A6
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 a second application by Newfoundland and Labrador Hydro, pursuant to Sections 70 and 75 of the *Act*, for the interim approval of customer electricity rates for 2014 pursuant to Order No. P.U. 13(2014) (the “Application”).

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”) Second Application before
4 the Board seeking an Order for interim rates or, in the alternative, a deferral and
5 recovery mechanism.

6

7 While Vale is prepared to accept that Hydro may require some form of interim relief
8 subject to Hydro demonstrating through evidence filed as part of Hydro’s General Rate
9 Application to be filed before the end of October 2014 (the “2014 GRA”) that its 2014
10 expenses justify the revenue sought, Vale is concerned that an Order for interim relief
11 has the potential to cause further delays in the general rate application process. By
12 providing Hydro with interim relief, Vale is concerned that a sense of urgency to file the

1 2014 GRA before the end of October 2014 and to proceed expeditiously with the
2 2014 GRA will be lost.

3

4 In the first schedule set by the Board for Hydro's 2013 General Rate Application (the
5 "2013 GRA"), it was contemplated that public hearings would have begun on February
6 11, 2014. Instead, at the beginning of June 2014, with the negotiation period set to
7 commence and public hearings still a month away, Hydro informed the Board that it
8 was not proceeding with the 2013 GRA. Rather, Hydro informed the Board and the
9 interested parties that Hydro would file a revised general rate application in October
10 2014 seeking rates based on a 2015 test year for cost of service. Hydro has advised
11 that it will also file a 2014 test year with the Board seeking to recover Hydro's revenue
12 shortfall during the calendar year 2014. Given the delays on the 2013 GRA, it is not
13 reasonable to expect that a Board Order setting rates following the 2014 GRA will be
14 filed before the middle of 2015 (i.e. two years after the Order in Council that directed
15 Hydro to proceed with a general rate application).

16

17 Regardless of the reasons for the delays in the general rate application process, the
18 fact is that eight years between general rate applications, which is five years longer
19 than sound utility practice requires (see IR-PUB-NLH-75), is too long. Vale notes that
20 the industrial customer rates have been interim since January 1, 2008 (P.U. 34(2007)).
21 Interim rates should be the exception rather than the rule yet, in the present
22 Application, Hydro is seeking interim rates that will likely be in place for a year and
23 could again have the effect of reducing the urgency to have the 2014 GRA concluded.

24

1 Delays in the general rate application process have had a significant impact on Hydro's
2 rate of return, which has led to Hydro filing the within Application seeking interim relief.
3 While Hydro is able to mitigate the effects of delays in the rate making process through
4 applications for interim relief, the continued use of interim rates negatively effects
5 industrial customers such as Vale as such rates create uncertainty in budgeting and
6 revenue forecasting. Further, the process of engaging in general rate and interim rate
7 applications requires industrial customers to divert resources (time and money) away
8 from their primary business focus. As such, the Board should be very cautious in
9 granting any relief that may have the effect of delaying the general rate making
10 process.

11

12 These submissions will address:

13 1. The proposed transfer of \$29.4 million dollars from the rate stabilization
14 plan's (the "RSP") hydraulic component balance to Hydro revenue;
15 2. The removal of the freeze on the Industrial Customer RSP; and
16 3. Costs.

17

18 Interim Transfer of \$29.4 Million from the RSP

19

20 The first part of the relief sought by Hydro is an interim transfer of \$29.4 million dollars
21 from the RSP's hydraulic component balance to Hydro revenue. Vale has concerns
22 with respect to:

1 (i) whether the requested interim transfer from the RSP is good regulatory
2 practice as the precedents cited by Hydro in support of its arguments
3 are qualitatively different from the current relief requested;

4 (ii) whether the requested interim transfer from the RSP achieves the
5 stated goal for Hydro as the interim nature of the transfer provides no
6 certainty that Board will ultimately accept that the amount requested
7 accurately reflects Hydro's recoverable revenue shortfall;

8 (iii) the fact that the revenue shortfall is comprised of a shortfall from all of
9 Hydro's customer groups yet the transfer is being made from a fund
10 owed to only a subset of Hydro's customer groups; and

11 (iv) whether the amount requested actually reflects Hydro's revenue
12 shortfall to date as Hydro has not provided any evidence to support the
13 amounts claimed.

14

15 While Vale harbors the above referenced concerns, as the relief is temporary, Vale
16 does not contest the interim transfer requested on the condition that Hydro will have
17 to prove its actual revenue shortfall as part of or coincident with the 2014 GRA. Once
18 the revenue shortfall is determined, the parties should then have an opportunity to
19 make submissions with respect to what percentage of that shortfall should be
20 recoverable, what percentage of the shortfall should be recovered from each customer
21 group and how the shortfall should be recovered (i.e. by making the transfer from the
22 hydraulic component of the RSP permanent or through another means).

23

1 To ensure that the relief provided by the interim transfer does not result in a delay in
2 Hydro filing the evidence necessary to establish its actual 2014 revenue shortfall, Vale
3 suggests that any permitting of the interim transfer should be conditional on Hydro
4 filing the evidence necessary to establish its shortfall on or before October 15, 2014.
5 If the necessary evidence is not filed on or before that date, or should the evidence be
6 filed but Hydro subsequently fail to meet the procedural timelines imposed by the
7 Board for determining Hydro's actual 2014 revenue shortfall, the transfer should be
8 automatically reversed. In addition, as the transfer of the funds from the RSP to
9 Hydro's revenue is tantamount to a loan, Hydro should be required to pay interest on
10 the transferred funds at the same interest rate that would apply to the funds if they
11 remained in the RSP as a balance owning to customers.

12

13 Issue 2: Interim Rates for Industrial Customers

14 The second part of the interim relief being sought by Hydro is an interim recovery
15 adjustment for Industrial Customers and the removal of the freeze on Industrial
16 Customer RSP rules imposed in Board Order PU 40 (2013). In particular, Hydro is
17 proposing that a Current Balance Rider of 0.168¢ per kWh be applied to industrial
18 customer rates as of July 1 and a fuel rider of 1.490¢ per kWh be applied retroactively
19 to January 1, 2014. The fuel rider would be in place until the completion of the 2014
20 GRA. To reduce the rate shock to Industrial Customers that led to the Board issuing
21 Order PU 40 (2013), Hydro proposes using the balance in the RSP Surplus to phase in
22 the RSP fuel rider of 1.490¢ per kWh.

23

1 Vale's primary concern with the interim Industrial Customer rates being sought by
2 Hydro is that Hydro's proposal involves a fundamental shift in the manner in which the
3 Industrial Customer's RSP Surplus is drawn down to phase in rates. As set out in Table
4 3 on page 11 of the RSP Application filed by Hydro on July 30, 2013, in order to ensure
5 an equitable phase in for each Industrial Customer, the RSP Surplus was to be applied
6 to a combination of the energy charges, demand charges and specifically assigned
7 charges being sought in the 2013 GRA. Hydro has repeatedly defended this
8 drawdown schedule for the RSP Surplus as being the schedule contemplated by the
9 Government of Newfoundland when it directed \$49 million of the total Industrial
10 Customer RSP Surplus be used for the phasing in of Industrial Customer rates. [See
11 Orders in Council OC2013-089 (as amended) and OC2013-090 (as amended, IR-CA-
12 NLH-7)]

13

14 Under the scenario set out in the current Application, Hydro is seeking to use the RSP
15 Surplus only to provide a rebate on the fuel rider charged to industrial customers. This
16 fundamental change in the manner in which the RSP Surplus is to be used has the
17 potential to negatively impact one or more of the Industrial Customers. While Vale is
18 not contesting that Hydro should be granted interim rates for a defined period of time,
19 any Order for interim rates should include a provision that the change in the scheduled
20 drawdown of the RSP Surplus will not discriminate against any single Industrial
21 Customer.

22

23 As interim rates could reduce the urgency of proceeding with the 2014 GRA, Vale also
24 takes the position that the interim rates should only be in effect until July 1, 2015. If

1 the 2014 GRA is not completed by July 1, 2015, Hydro should be required to reapply
2 for a further order for interim rates or else have rates revert to pre-interim rate
3 Application levels, including the freeze on RSP rules imposed in Board Order PU 40
4 (2013).

5

6 **Issue 3: Costs**

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

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

15 2. Vale's interests in the within Application are discreet from the interests
16 of the Industrial Customer Group. In particular, Vale and the Industrial
17 Customer group may not be aligned on the manner of, *inter alia*, the drawdown
18 of the Industrial Customer RSP Surplus.

19

20 The within Application was made necessary by the complexity of and delays in the
21 general rate application process as a result of the fact that Hydro elected to allow
22 seven years between GRAs. For this reason, Vale submits that all or a significant

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

DATED at St. John's, in the Province of Newfoundland and Labrador, this 11th day of July, 2014.

COX & PALMER

Per:

Thomas J. O'Reilly, Q.C.

TO: The Board of Commissioners of Public Utilities
Suite E210, Prince Charles Building
120 Torbay Road
P. O. Box 21040
St. John's, NL A1A 5B2
Attention: Board Secretary

TO: Newfoundland & Labrador Hydro
P. O. Box 12400
500 Columbus Drive
St. John's, NL A1B 4K7
Attention: Geoffrey P. Young
Senior Legal Counsel

TO: Newfoundland Power
P. O. Box 8910
55 Kenmount Road
St. John's, NL A1B 3P6
Attention: Gerard Hayes
Senior Legal Counsel

TO: Thomas J. Johnson, Consumer Advocate
O'Dea, Earle
323 Duckworth Street
P. O. Box 5955, Stn. C
St. John's, NL A1C 5X4

TO: Corner Brook Pulp and Paper Limited,
North Atlantic Refining Limited
and Teck Resources Limited
Stewart McKelvey
PO Box 5038
11th Floor, Cabot Place
100 New Gower Street
St. John's, NL A1C 5V3
Attention: Paul Coxworthy

TO: Miller & Hearn
450 Avalon Drive
P.O. Box 129
Labrador City, NL A2V 2K3
Attention: Edward M. Hearn, Q.C.

TO: Olthuis, Leer, Townshend LLP
229 College Street
Suite 312
Toronto, ON M5T 1R4
Attention: Stephanie Kearns

TO: House of Commons
Confederation Building
Room 682
Ottawa, ON K1A 0A6
Attention: Yvonne Jones, MP Labrador