

May 11, 2017

Paul L. Coxworthy  
Direct Dial: 709.570.8830  
[pcoxworthy@stewartmckelvey.com](mailto:pcoxworthy@stewartmckelvey.com)

**Via Electronic Mail and Courier**

**“REVISED”**

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

**Attention: Ms. G. Cheryl Blundon, Director of Corporate Services  
and Board Secretary**

Dear Ms. Blundon:

**Re: Hydro Amended 2013 General Rate Application – Compliance Application**

- 1 This submission is on behalf of NARL Refining Limited Partnership ("NARL") only.
- 2 This submission is made in respect of the separate process the Board has established, to  
3 address the concerns raised by NARL regarding Hydro's proposal that the GRA revenue  
4 deficiency attributable, in aggregate, to the island industrial customers be offset from the IIC  
5 allocation of the segregated RSP load variation balance.
- 6 To reiterate, NARL accepts that the revenue deficiency can be offset from the IC allocation of  
7 the segregated RSP load variation balance. NARL's concerns arise from the manner in which  
8 this offset is proposed to be imposed, and in particular the lack of recognition by Hydro of the  
9 grossly unbalanced manner in which Hydro's proposal addresses the SAC-driven component of  
10 the revenue deficiency, and the adamant refusal of Hydro to even provide information that  
11 would allow the Board and the parties to consider any alternatives to Hydro's approach.
- 12 It bears emphasizing that the core of the issue raised by NARL is the treatment of specifically  
13 assigned charges as part of the revenue deficiency. It is abundantly clear that, on a go-forward  
14 basis, SAC is not allocated or collected on a class basis or using a class-based mechanism – it  
15 is specifically collected by Hydro from each customer to which the SAC has been assigned.  
16 How can it reasonably be said that this expected means of collection of SAC has no bearing on  
17 how it should be offset when the SAC was specifically assigned but not collected for a period of  
18 time?
- 19 Hydro's responses to NARL-NLH-002 and NARL-NLH-003 are incomplete and unhelpfully  
20 ambiguous. Hydro was substantively unresponsive to NARL-NLH-004, NARL-NLH-005, NARL-  
21 NLH-006, and NARL-NLH-007.
- 22 With respect to NARL-NLH-002, Hydro has simply referred to Hydro's boilerplate justification  
23 (PUB-NLH-002) for its proposals. NARL understands that Hydro does not dispute InterGroup's

calculations. What Hydro has not answered is whether it considers “the SAC Revenue Deficiency identified for each IIC ...to be due from that IIC”? A clear and unambiguous answer is capable of being given to this question. The reiteration by Hydro of its position that the SAC Revenue Deficiency amounts should be offset by Load Variation surplus is not an answer to this question.

With respect to NARL-NLH-003, Hydro’s response is of the “gotcha” variety – that NARL by concurring, as part of the IIC Group, in the context of interim rates and pending GRA proceedings, that Hydro’s proposed SAC increases should not be implemented, has foreclosed its right to question how these SAC-driven increases would have been collected, if matters had unfolded differently. This ignores the intent of interim rates – that they are not to be to the prejudice of any of the parties (including Hydro) with respect to the issues to be addressed in the finalization of rates. Hydro’s response, if accepted, encourages the litigation of every issue (and potentially separate submissions from each IIC if ultimate interests in the final result may be disparate), at the interim rates stage, defeating the purpose of interim rates. Again, this question is capable of a clear and unambiguous answer from Hydro – how would Hydro have proposed to collect SAC for the years 2016 and 2017 if Hydro had received approval for final rates arising out of its (original) 2013 General Rate Application, if the rates had been effective from January 1, 2016, instead of (as is now proposed) from July 1, 2017?

With respect to NARL-NLH-004, NARL-NLH-005, NARL-NLH-006, and NARL-NLH-007 Hydro has simply referred to its boilerplate justification as a purported response. The analysis of estimate rate impacts provided by Hydro in response to IC-NLH-017 and IC-NLH-18 is eminently capable of being provided by Hydro in respect of the circumstances posited by NARL-NLH-006 and NARL-NLH-007

In effect, Hydro’s stance is that its proposal is the only approach that can be considered by the Board, and that it will not provide the parties and the Board with the information that would allow for the assessment of rate impacts if the alternatives posited by NARL-NLH-004, NARL-NLH-005, NARL-NLH-006, and NARL-NLH-007 were to be considered. Hydro’s failure to respond, in a substantive and unambiguous way, to the NARL RFIs flies in the face of the Board’s unfettered discretion, confirmed by the Court of Appeal<sup>1</sup>, in the context of interim rates and deferral accounts to consider all options to arrive at rates that are just and reasonable. With respect, if the Board were to proceed to a decision in the separate process it has established, without requiring Hydro to respond, in a substantive and unambiguous way, to the NARL RFIs, this abbreviation (indeed nullification) of due process would not fulfill the Board’s mandate, as confirmed by the Court of Appeal, to consider all options to arrive at rates that are just and reasonable.

NARL respectfully submits that the Hydro should be ordered to make further responses to NARL’s RFIs to address the concerns identified above. NARL respectfully submits that a schedule for final submissions in the separate process should be established once Hydro has made further responses to NARL’s RFIs to address the concerns identified above. Although we submit that, in these circumstances, the Board has the inherent jurisdiction, as governor of its own procedural processes, to order Hydro to make further responses to NARL’s RFI’s, should

---

<sup>1</sup> Newfoundland and Labrador Hydro v. Newfoundland and Labrador (Board of Commissioners of Public Utilities), 2012 NLCA 38

May 11, 2017

Page 3

65 the Board decline to exercise that jurisdiction, then NARL requests leave to bring a formal  
66 motion before the Board to apply for such an order.

67 Having said this, NARL remains prepared to engage with Hydro to attempt to identify any  
68 consensus that may be able to be achieved, in terms of process and ultimate result. In this  
69 regard, NARL notes that the participation of the IIC Group consultant, InterGroup, has already  
70 been provided to Hydro to assist in this separate process, and that NARL anticipates that  
71 InterGroup's assistance will continue to be able to be provided.

72 We trust this is in order.

Yours truly,

Stewart McKelvey



Paul L. Coxworthy

PLC/kmcd

- c. Tracey L. Pennell, Senior Counsel, Regulatory, Newfoundland and Labrador Hydro  
Dennis Browne, Q.C. Consumer Advocate  
Gerard Hayes, Newfoundland Power  
Denis Fleming, Cox & Palmer  
Dean A. Porter, Poole Althouse  
Sheryl Nisenbaum, Praxair Canada Inc.  
Larry Bartlett, Teck Resources Limited