POOLE ALTHOUSE
BARRISTERS AND SOLICITORS

Jamie Merrigan, Q.C.
Dean A. Porter
J. Annette Bennett

Margaret C. Hepditch
Robby D. Ash
Glen G. Seaborn

Melissa May
Jonathan M. Andrews
Giselle Jones

Toll Free: 1 877 634-3136
E-Mail: info@poolealthouse.ca
www.poolealthouse.ca

■ **CORNER BROOK**
Telephone: 709 634 -3136
Fax: 709 634 8247/9815
Western Trust Building
49-51 Park Street
Corner Brook, NL
Canada A2H 2X1

☐ Happy Valley-Goose Bay
Telephone: 709 896-8777
Fax: 709 896-8779
49A Grenfell Street
PO Box 1450, Station B
Happy Valley-Goose Bay, NL
Canada A0P 1E0

Edward P. Poole, Q.C., Retired
D. Paul Althouse, Q.C., Retired

April 10, 2017

Via Electronic Mail & Courier
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: Newfoundland and Labrador Hydro – Amended 2013 General Rate Application – Compliance Application – Order No. P.U. 49 (2016) - Comments of Island Industrial Customers

At this time we write on behalf of the Island Industrial Customers Group (the "IIC's"), being Corner Brook Pulp and Paper Limited ("CBPPL") and NARL Refining LP ("NARL") , in response to the above noted Compliance Application filed by Hydro on January 7th, 2017.

The Schedule of Rates, Rules and Regulations which Hydro has sought to have approved in the Compliance Application effective April 1st, 2017 has been closely reviewed and considered by the IIC's as they will effect an overall rate impact to CBPPL of 22.8% (increase) and to NARL of 2.5% (increase). With this in mind, the following represent the comments of the IIC Group in accordance with the Board's request of March 16th, 2017.

The submissions of the IIC Group will focus on six issues, namely:

i) Whether the 2014 deficiency should be included in 2014 rate base?
ii) What balance should be used for the 2014 deficiency in calculating the rate base for 2015 and beyond?
iii) Correction of an error related to the calculation of the 2017 Revenue Deficiency

Dean A. Porter
E-Mail: dporter@poolealthouse.ca Direct Line: (709) 637-6454

iv) Which USD/CAD exchange rate should be used in calculating the go-forward RSP fuel rider?
v) Should an adjustment to 2016 regulatory costs (as compared to the 2015 test year approved levels) be included in rates?
vi) What is the appropriate approach to collecting revenue deficiencies related to industrial specifically assigned charges?

1. 2014 Revenue Deficiency Inclusion in 2014 Rate Base for Revenue Deficiency Calculation.

Hydro is proposing that the 2014 revenue deficiency be included in rate base (i.e., earn a return, as a form of notional interest) for periods from when the deficiency arises, through when the deficiency is collected. In practice, Hydro has implemented this by way of including the deficiency in rate base for mid-year 2014 (Exhibit, 2 page 11), as well as later periods for 2015 (Exhibit 2, page 33), 2016 (Exhibit 2, page 39) and even in practice for parts of 2017. The issue arises with respect to Hydro's entitlement to what is in effect carrying costs or interest (in the form of return on rate base) on the 2014 deficiency balance within calendar year 2014. The net effect of Hydro's proposal is to include the deficiency in mid-year 2014 balances, such that Hydro receives what is akin to interest on this 2014 deficiency balance during effectively half of calendar year 2014.

Hydro's original proposal for collection of the 2014 deficiency (as it was then estimated) was included in an application dated November 28th, 2014, which noted that the calculated deficiency sum should be transferred to Hydro from the RSP as at December 31, 2014 (2014 Cost Recovery Application, page 3, Item 12). The effect of that proposal, had it been approved by the Board, would have seen Hydro receive recovery of the deficiency as at December 31, 2014 without any interest related to the 2014 calendar year. The Board did not approve that approach, and as a result the collection of the deficiency (funds to Hydro) will occur later than December 31, 2014. It does not appear appropriate to the IIC's that a decision of the Board to delay the collection from December 31, 2014 as proposed (which would have occurred without interest), to a later date should somehow entitle Hydro to a half year of interest costs for calendar year 2014 on the uncollected 2014 deficiency. It is as if Hydro has proposed that had the amounts been paid or transferred as at December 31, 2014, there would have been no interest charged, but since this did not occur, interest should start to accrue as at July 1, 2014.

To be clear, rate shortfalls routinely arise within a test year, at various times throughout the year, and are collected within the year at various times, but there is effectively no attempt to impute interest to such intra-year revenue requirement vs rate collection timing for the purpose of calculating deficiencies. In the submission of the IIC's, Hydro's filing inappropriately seeks to charge interest to these amounts within the same test year when they arise and this should be rejected by the Board. Simply put, the 2014 revenue deficiency should not be included in either opening or closing 2014 rate base.

2. 2014 deficiency balance

Hydro has used the Compliance filing to update and adjust the calculated 2014 deficiency from the originally proposed value of $45.9 million to a revised value of $38.1 million (see NP-NLH-4). However, for the purposes of calculating the rate base asset related to the uncollected 2014 revenue deficiency (e.g., for 2015 and 2016), it appears Hydro has used a larger 2014 deficiency value ($44.2 million per, for example, Exhibit 2, page 33). This does not appear appropriate as Hydro's deficiency is only $38.1 million (the now calculated shortfall, prior to any adjustments coming out of the current process), not the $44.1 million value (the shortfall largely from Board Order No. P.U.58(2014), where the Board approved the creation of a deferral account in the amount of $45.9 million, with only limited changes to reflect Order No. P.U.49(2016), in relation to the 2013 Amended GRA, and Order No. P.U.13(2016), in relation to Prudence Review).

3. 2017 revenue deficiency

Grant Thornton, in its report of March 15th, 2017 (the "Grant Thornton Report"), has highlighted an error in Hydro's calculation of the 2017 revenue deficiency, related to the use of incorrect rates. This is highlighted at Table 32 of the Grant Thornton Report (page 41). The noted error should be corrected, together with all necessary revisions which would flow from that correction, in Hydro's final filing.

4. USD/CAD exchange rate for RSP rate setting

Grant Thornton has also noted an issue (pages 61-62 of the Grant Thornton Report) regarding the USD exchange rate to be used to calculate the go-forward fuel rider to be in place for 2017. Hydro's filing is reported to have used the USD exchange rate from September 1, 2015 (1.3267) while the September 2, 2016 value (1.3109) would lead to a different fuel rider calculated value. Hydro appears to have relied upon the wording of the RSP rules to consider this USD exchange rate a "test year value" and therefore locked in and updated in calculating the new fuel rider. Grant Thornton indicates this may not be a correct interpretation (page 62, line 4, of the Report).

Regardless as the precise words of the RSP rate schedule, which do not appear to be determinative in this case, the current situation is a unique experience working to implement just and reasonable rates in an environment of extreme delays and outstanding balances, which may not have been fully within the minds of the parties when the RSP rules were penned. Regardless, the clear intent of the RSP fuel rider is to provide customers with an up to date fuel price forecast such that rates and riders within the year match the best information regarding the costs of fuel, and lead to prices that will most closely match the expected cost of fuel so as to minimize the RSP balances that must be collected or refunded following the end of the year. This general objective would appear to be best achieved by way of using the latest exchange rate value (September 2016) rather than a more dated value (September 2015).

5. 2016 regulatory costs

The GRA process for setting the 2015 revenue requirement incorporated factors known to be in effect for 2015, and specifically did not include factors that were expected to be cost drivers in either direction (increases or decreases to revenue requirement) for 2016. This included decisions by the Board to reject proposals regarding 2016 productivity factors (Board Order P.U. 49(2016), pages 52-53), 2016 loads (Board Order P.U. 49(2016), pages 26-28), and 2016 interest cost savings (Board Order P.U. 49(2016), page 60). In each case, the 2015 test year values were considered to be appropriate for setting rates that would apply to 2016 shortfalls and 2017 go-forward rates.

Hydro has introduced one exception to this principle in the Compliance Application; it is seeking to have the 2015 approved "regulatory studies and filings" budget increased by $1 million for setting 2016 and 2017 shortfalls and rates. Hydro submits that the 2015 values were reduced by $1 million related to the disallowance of the costs of the Outages Investigation, but that this 2015 adjustment was in effect non-repeating and that it should not be applied to the 2016 and go-forward regulatory budgets. Hydro also submits that this was part of Hydro's submissions as part of the Prudence Compliance filing which was accepted by the Board.

The IIC's submit that Hydro's proposal on this issue in the Compliance Application should not be approved. Regulatory costs are similar to all of Hydro's costs, where 2016 will have different costs and pressures than the 2015 test year, some positive and some negative. No other cost item is singled out for a line item adjustment between 2015 test year and 2016 for rate setting, including items that should serve to benefit Hydro's net income (e.g. productivity, interest cost savings). Further, it is apparent from IC-NLH-002 that Hydro significantly overstates the degree to which the Prudence Compliance filing should be understood to have pre-approved this 2016 line item adjustment – the only conclusions regarding the Prudence Compliance filing noted as being approved by the Board (Board Order P.U. 29(2016), page 19) relate to 2014 and 2015 revenue requirement; no mention is made of material conclusions regarding impacts on any conceptual 2016 revenue requirement adjustment (to the extent this is even a meaningful concept given 2016 is not a test year). As a result, the IIC's submit it is both inconsistent with the remainder of the filing, and hence inconsistent, for Hydro to propose a $1 million upward adjustment in costs for 2016, and this item should be rejected.

6. What is the appropriate approach to collecting revenue deficiencies related to industrial specifically assigned charges?

As noted at Sections 4.0 and 5.0 of Exhibit 3 of the Compliance Application, Hydro proposes to use $1,631 million of the remaining (approximately) $3.1 million of the load variation component credit balance allocated to the Island Industrial Customers to offset 2014-2017 revenue deficiencies.

In the analysis of the IIC Group, the use of the above noted $1.631 million, as proposed, raises practical considerations upon which CBPPL and NARL have divergent views.

In this regard, both CBPPL and NARL will independently file submissions on this issue (through the undersigned for the former, and Paul Coxworthy for the latter) later today.

Costs

Given the breath of issues raised by and addressed through the IIC Group, and the perspective and evidence brought to bear upon the various issues at play before the Board, we confirm that the IIC Group will be filing a claim for Costs in respect of the 2013 General Rate Application, the 2013 Amended General Application (including the Prudence Review portion thereof) and the within Compliance Application.

We trust you find the foregoing satisfactory.

Yours very truly,

POOLE ALTHOUSE

Dean A. Porter

DAP/lp
J:\Clients\4648-13\Blundon ltr 14.doc

cc: Tracey Pennell, Newfoundland and Labrador Hydro
Gerard Hayes, Newfoundland Power
Paul Coxworthy, Stewart McKelvey
Thomas J. O'Reilly, Q.C., Cox & Palmer
Senwung Luk , Olthuis, Kleer, Townshend LLP
Yvonne Jones, MP, Labrador
Dennis Browne, Q.C., Browne Fitzgerald Morgan & Avis
Genevieve Dawson, Benson Buffett
Larry Bartlett, Tech Resources Ltd.