

**NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

AN ORDER OF THE BOARD

NO. P.U. 1(2015)

1 **IN THE MATTER OF** the *Electrical Power*
2 *Control Act, 1994*, SNL 1994, Chapter E-5.1 (the
3 "*EPCA*") and the *Public Utilities Act*, RSNL 1990,
4 Chapter P-47 (the "*Act*"), as amended, and regulations
5 thereunder; and
6

7 **IN THE MATTER OF** a general rate application
8 filed by Newfoundland and Labrador Hydro on
9 July 30, 2013; and
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11 **IN THE MATTER OF** an amended general rate
12 application filed by Newfoundland and Labrador Hydro
13 on November 10, 2014; and
14

15 **IN THE MATTER OF** an application filed by Innu
16 Nation for interim costs in the Newfoundland and
17 Labrador Hydro general rate proceeding.
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19

20 **The Application**
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22 On August 8, 2014 Innu Nation filed an application for interim costs in relation to the
23 Newfoundland and Labrador Hydro ("Hydro") general rate application process.
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25 The Application states that Innu Nation's interest in the general rate application includes
26 ensuring that the rates charged to Labrador customers are just and reasonable. The Application
27 explains that the members of Innu Nation reside mainly in Natuashish and Sheshatshui,
28 Labrador. Members in Natuashish are customers of Hydro on an isolated diesel system and
29 members in Sheshatshui are customers on the Labrador Interconnected system. The Application
30 further explains that many Innu Nation members live in poverty and much of the housing in
31 these communities is poorly insulated which contributes to high electricity consumption.
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33 Innu Nation submits that its intervention and participation thus far has been responsible and
34 reasonably necessary and warrants an award of interim costs. Innu Nation submits that it has
35 contributed to the process to the benefit of other parties in that it helped to identify certain issues
36 with the proposed treatment of the rural deficit allocation, which led to Hydro amending CA-
37 NLH-166 proposing a new and more just treatment of the rural deficit allocation.

1 Innu Nation notes that the general rate application originally proposed a 2013 test year but that
2 Hydro advised on June 6, 2014 that it intended to amend its filing proposing a 2015 test year.
3 They further note that settlement discussions were scheduled to begin on June 9, 2014 and the
4 hearing was scheduled to start on July 9, 2014. Innu Nation states that preparations for the
5 general rate application were at an advanced stage when Hydro advised of its intention to amend
6 the filing. Further, they submit that because the test year will be different in the amended filing it
7 is safe to say that the analysis of the filing will need to be substantially redone which renders the
8 work completed in relation to the original filing of little or no utility.

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10 The Application states that Innu Nation does not have sources of revenues for participating in
11 regulatory hearings and that it was anticipated that there would be an opportunity to seek costs
12 shortly after the costs were incurred. As a result of Hydro amending its filing, Innu Nation
13 suggests it is reasonable to assume that the general rate application will be delayed for a year or
14 more.

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16 The Application sets out a detailed claim for costs in the amount of \$132,525.64, including legal
17 costs of \$81,775.64 and expert costs of \$50,750.00. The Application explains that the total
18 amount of legal fees incurred was \$104,156.64, which was discounted by \$7,950 to account for
19 the shift of work to a new lawyer and by a further 15% to account for the fact that its legal
20 counsel was new to the general rate application process. The Application acknowledges that the
21 total legal costs may be higher than the legal costs incurred by other parties but much of the cost
22 is attributable to research into the complicated facts behind arrangements for funding for the
23 provision of electricity in Natuashish.

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25 On August 15, 2014 the Board sent the Application to Hydro and the intervenors in Hydro's
26 general rate application: Newfoundland Power Inc. ("Newfoundland Power"); the Consumer
27 Advocate, Mr. Thomas Johnson; Corner Brook Pulp and Paper Limited, North Atlantic Refining
28 Limited and Teck Resources Limited; Vale Newfoundland and Labrador Limited; the Towns of
29 Labrador City, Wabush, Happy Valley-Goose Bay, and North West River; and Yvonne Jones,
30 MP Labrador. Newfoundland Power filed comments on August 25, 2014 and Hydro filed
31 comments on August 27, 2014. The Board did not receive any other comments in relation to the
32 Application.

33 34 **Submissions**

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36 Newfoundland Power does not object to Innu Nation recovering costs incurred subject to the
37 Board being satisfied that its participation in the process has been helpful and has contributed to
38 the Board's understanding of the issues. Newfoundland Power further submits that, given
39 Hydro's conduct to date in the general rate application process, it reserves the right to make
40 further submissions regarding Hydro's entitlement to recovery of its costs, in particular recovery
41 from customers of Newfoundland Power.

42
43 Hydro acknowledges that this proceeding has been extended over a longer period of time than is
44 usual and understands that its amended filing could require some intervenors to incur additional
45 expert and legal expenses. Hydro notes that matters as to hearing costs are within the Board's
46 discretion pursuant to s. 90 of the *Public Utilities Act* and points out that, in exercising its

1 discretion, the Board has in the past stated that factors to be considered include: the length and
2 complexity of the proceeding, the intervenor's ability to pay, whether other intervenors could
3 properly represent the applicants interest and the degree to which the intervenor contributed.
4 Hydro states:

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6 *The Innu Nation has asked a number of Requests for Information in this proceeding but*
7 *Hydro observes that the Board may not have yet had an ample opportunity to assess the*
8 *degree to which its intervention has assisted the Board and the process. For this reason,*
9 *Hydro submits that the Board may deem that it is premature at present to make any*
10 *award of intervenor costs in this matter.*

11 12 **Board Findings**

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14 Costs are normally awarded at the end of a proceeding in the discretion of the Board after due
15 consideration of all of the circumstances including the length and complexity of the proceeding,
16 financial circumstances of the party, the contribution made and whether there are other parties
17 that could properly have represented the interests of the party. The Board is in the best position
18 to make a determination with respect to these issues at the end of a proceeding and therefore it
19 would be extraordinary for the Board to exercise its discretion in relation to the issue of costs
20 before a matter has concluded. Nevertheless the Board believes that the circumstances of this
21 proceeding are exceptional and merit consideration of the request for an interim award of costs.

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23 As a result of the filing of the amended general rate application on November 10, 2014 it is
24 likely that the proceeding, which began with the filing of the original general rate application on
25 July 30, 2013, will not conclude until late 2015 at the earliest. While it is common for general
26 rate application proceedings to extend over the course of many months the Board believes that
27 the protracted nature of this proceeding can be attributed largely to matters within Hydro's
28 control. In particular Hydro filed the original general rate application using a 2013 test year but
29 did not file the application until the second half of the year. In June of 2014, a month before the
30 scheduled start of the hearing, Hydro advised that it was necessary to amend the general rate
31 application to update the financial information to provide a more current and relevant basis for
32 rate setting. In addition the Board notes that Hydro was not timely in providing responses to
33 requests for information throughout the proceeding. The Board accepts that substantial costs
34 were incurred by the parties up to the time Hydro provided notice of its intention to amend the
35 general rate application.

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37 The amended general rate application is significantly different than the original filing. Notably
38 Hydro no longer proposes a 2013 test year revenue requirement and instead proposes both a
39 2014 and 2015 test year revenue requirement. In addition Hydro has filed both a 2014 and 2015
40 cost of service which set out significant methodological changes from the original filing. In light
41 of these changes it appears likely that there will be little value in the work completed prior to the
42 amended filing.

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44 The Board finds that Innu Nation has been an active participant throughout this process. It issued
45 requests for information and filed a comprehensive expert report, addressing a number of
46 important issues, some of which have a unique impact on members of Innu Nation. The
47 provision of service in the community of Natuashish is one such issue. Innu Nation argues that

1 Hydro should take over the provision of service which is currently provided by Mushua Innu
2 First Nation. Innu Nation argues that Natuashish should not have to pay higher costs for the
3 provision of service than any other isolated community, raising issues in relation to the operation
4 of the Northern Strategic Plan rebate and the allocation of the rural deficit. Innu Nation notes that
5 Hydro now appears to have changed its proposals in relation to the rural deficit, substantially
6 impacting the proposed rates on the Labrador Interconnected system. Other issues of interest to
7 Innu Nation include the costs of the Labrador City Distribution upgrade and the proposed
8 significant increases in operations, maintenance and administration expenses on the Labrador
9 Interconnected system. The Innu Nation also raises concerns for customers on the Labrador
10 Interconnected system in connection with the Muskrat Falls project and the Labrador West
11 Transmission project.

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13 The Board accepts that Innu Nation has a unique interest in Hydro's general rate application and
14 that it has represented this interest responsibly and has contributed in a significant and
15 meaningful manner in this proceeding. The Board finds that Innu Nation has limited ability to
16 fund its participation in this proceeding which has now extended over the course of multiple
17 years, largely as a result of matters within Hydro's control. While the Board is reluctant to award
18 costs in advance of the conclusion of a matter, the Board finds that the circumstances in this case
19 are extraordinary and an award of costs to Innu Nation is appropriate at this time.

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21 In relation to the issue of the quantum of costs, the Board notes that Hydro does not comment on
22 the total amount claimed of \$132,525.64. The Board has reviewed the documentation filed by
23 Innu Nation in support of the amount claimed. The Board notes that the claim for legal costs was
24 reduced by almost 20% to account for unfamiliarity with the general rate application process and
25 a change in legal staff. Based on a review of the supporting documentation the Board is satisfied
26 that the amount claimed is directly related and necessary to the responsible participation of Innu
27 Nation and is in keeping with reasonable expectations as to costs in this proceeding, given the
28 issues involved and the way in which the matter has progressed. The Board finds that an award
29 of costs in the amount of \$132,525.64 for costs incurred by Innu Nation up to June 30, 2014 is
30 fair and reasonable in the circumstances.

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33 **IT IS THEREFORE ORDERED THAT:**

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35 1. Innu Nation is entitled to an award of costs for costs incurred up to June 30, 2014.

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37 2. Hydro shall within thirty days pay costs in the amount of \$132,525.64 to Innu Nation.

DATED at St. John's, Newfoundland and Labrador this 9th day of January 2015.

Andy Wells
Chair & Chief Executive Officer

Darlene Whalen, P.Eng.
Vice-Chair

Dwanda Newman, LL.B.
Commissioner

James Oxford
Commissioner

Cheryl Blundon
Board Secretary