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February 1, 2019

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Via Electronic Mail and 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's 2017 General Rate Application

Further to the above, enclosed please find the original and thirteen (13) copies of the Island Industrial Customers Group written Submissions dated February 1, 2019.

We trust this is in order.

Yours truly,

Stewart McKelvey

Paul L. Coxworthy

PLC/tas

Enclosures

c: Shirley Walsh, Senior Legal Council- Regulatory, Newfoundland & Labrador Hydro
Dennis M. Brown, Q.C., Consumer Advocate
Gerard Hayes, Newfoundland Power
Dean A. Porter, Poole Althouse
Denis J. Fleming, Cox & Palmer
Van Alexopoulos, Iron Ore Company of Canada
Senwung Luk, Labrador Interconnected Group

IN THE MATTER OF the *Electrical Power Control Act*, 1994, SNL 1994, Chapter E-5.1 (the "EPCA") and the *Public Utilities Act*, RSNL 1990, Chapter P-47 (the "Act"); and

IN THE MATTER OF a General Rate Application file by Newfoundland and Labrador Hydro to establish customer electricity rates for 2018 and 2019

WRITTEN SUBMISSIONS ON THE NEWFOUNDLAND AND LABRADOR HYDRO 2017 GENERAL RATE APPLICATION OF THE ISLAND INDUSTRIAL CUSTOMERS GROUP

1 These are the submissions of the Island Industrial Customers Group, Corner Brook Pulp and
2 Paper Limited (CBPPL), NARL Refining Limited Partnership (NARL) and Vale Newfoundland
3 and Labrador Limited (Vale), hereinafter referred to as the IIC Group, in relation to Hydro's 2017
4 General Rate Application ("2017 GRA").

5 **Introduction – Overview of the interests of the IIC Group as Hydro customers**

6 Together the members of the IIC Group represent over 90% of industrial customer load on
7 Hydro's Island System. CBPPL and NARL (and its predecessors) are long-time Hydro industrial
8 customers. Vale, a relatively more recent Hydro customer, has become in that time the largest
9 Hydro industrial customer in terms of demand.

10 While the composition of the IIC Group has changed over time, the Group has been active
11 participants in every Hydro general rate application, and, it is respectfully submitted, have
12 brought a necessary and distinct perspective to bear on this regulatory process.

13 Each member of the IIC Group is in the business of producing and selling commodities in very
14 competitive international markets. They are substantial employers in, and substantial
15 contributors to the overall economic welfare of, the communities and regions in which they are
16 located, and in and of the Province as a whole.

1 Reasonable, predictable and market-competitive rates for electrical power, and reliable supply
2 of that power, are all integrally important to the viability of these industrial enterprises, as
3 important contributors to the economic well-being of the Province.

4 This 2017 GRA comes at a critical time in the evolution of what has been the Hydro Isolated
5 Island System. This Application is the appropriate process to address certain legacy or
6 historical issues associated with the Isolated Island System, and to make real progress towards
7 preparing for a very near future where the preponderance of power consumed by Hydro's Island
8 Customers will come from off-island sources.

9 The IIC Group's objective in this Application has been, and remains, to present their distinct
10 perspectives in a manner that contributes to the efficiency of the process, and which as far as
11 possible avoids or mitigates an overly adversarial approach on issues where parties have
12 different views or interests. We respectfully submit that the fact that the IIC Group has been able
13 to present its evidence and submissions in this Application as a group, and not as individual
14 industrial customers, is a significant contribution to the efficiency of the regulatory process.

15 We note that that these Submissions are limited to Island Interconnected issues, and all
16 references in these Submissions, including to "industrial customers", "settlement agreements"
17 and "load forecasts", should be understood to be limited to that context.

18 **Settlement Agreements**

19 Following the RFI process and Written Expert Submissions, the parties entered into negotiations
20 to determine whether settlement was achievable on any of the issues raised by the 2017 GRA.
21 These negotiations resulted in a settlement agreement and a supplemental settlement
22 agreement, each of which address issues with significant impacts on the members of the IIC
23 Group (as well as on other Hydro customers).

1 **Settlement Agreement dated April 11, 2018**

2 The following matters addressed in the April 11, 2018 Settlement Agreement are of particular
3 importance to the IIC Group:

4 ***Depreciation Methodology:***

5 • IIC Group submitted the expert evidence on depreciation from Patrick Bowman
6 (InterGroup) and Patricia Lee. The IIC Group note that this was the only expert evidence
7 on depreciation filed in this Application by any of the intervenors. The IIC Group
8 respectfully submit that the expert evidence of Bowman/Lee, and the participation of
9 Patrick Bowman in the negotiations, contributed very substantially to the negotiated
10 settlement of the depreciation methodology issue. The settled depreciation issues could
11 have proved to have been contentious, and very time consuming, if they had been
12 subjected to a full hearing process. In that regard, the IIC Group wish to acknowledge
13 the willingness and efforts of Hydro's representatives to engage constructively with
14 Patrick Bowman to resolve issues which could have become contentious.

15 • The expert evidence of Bowman/Lee supported the transition to group accounting as
16 proposed by Hydro. This is not explicitly addressed in the settlement agreement, but is
17 implicitly assumed in the settlement provisions regarding how asset groups will be
18 depreciated. The transition to group accounting was driven in part by directions of the
19 Board in Order No. P.U. 40(2012), and the IIC Group respectfully submit that it should
20 be approved.

21 • With reference to the April 11, 2018 Settlement Agreement:

22 ○ Paragraph 9 (a) proposes that Hydro will continue to use the Average Service
23 Life Group methodology applied on a deemed cost basis for assets put into

1 service in 2015 and earlier and a whole life basis for assets put in service after
2 2015 to calculate depreciation expense in the Test Years. The IIC Group submit
3 that this represents a reasonable continuation of existing procedures (ASL), but
4 with the updated cost basis reflecting a transition to a more standard utility
5 practice (whole life).

6 ○ Paragraph 9 (b) proposes that the proposed updated estimates of service lives of
7 assets included in the 2017 GRA, including the revised truncation date for the
8 Holyrood Plant, are appropriate and should be used in the calculation of
9 depreciation expense in the Test Years. This represents acceptance of Hydro's
10 proposals for service lives, based on analysis conducted by Concentric Advisors
11 Canada regarding the expected useful lives of Hydro's assets, and also
12 incorporates a truncation date for the Holyrood Plant, to ensure the Plant is
13 largely depreciated by the time of expected retirements.

14 ○ Paragraph 9 (c) part 1 proposes that net salvage costs and asset removal costs,
15 where the applicable assets are not replaced in the same location, should be
16 included in depreciation rates. This settlement provision accepts Hydro's
17 proposal, and results in current ratepayers ensuring appropriate funding is
18 included in rates today for future terminal retirements (asset removals where no
19 new replacement asset will be constructed). This approach was also supported
20 by Bowman/Lee¹.

21 ○ Paragraph 9 (c) part 2 proposes the calculation of the appropriate asset removal
22 costs to be included in depreciation rates. The units of property listed in Schedule
23 A, attached to the Settlement Agreement, should not be included (ie accruals for

¹ Pre-Filed Evidence of Bowman/Lee, page 3, lines 17-19.

1 asset removal should be zero because there is no foreseeable, serious prospect
2 of terminal removal of these assets). The removal costs to be included in
3 depreciation expense associated with the units of property listed in Schedule B,
4 attached to the Settlement Agreement, should be at the rate of - 5%, due to there
5 being an extremely limited prospect of terminal retirements and costs are
6 expected to be small. This proposal adjusts the removal cost accrual from that
7 proposed by Hydro, to reflect that hydraulic stations and, to a lesser degree,
8 major transmission lines, are not expected to be retired from service with the site
9 returned to non-utility service. This approach is also supported by the evidence of
10 Bowman/Lee². While the Bowman/Lee evidence was that a zero (0) % rate for
11 both hydraulic and transmission assets was appropriate, the negative five (-5) %
12 negotiated for transmission assets is a directionally consistent move to that
13 recommended by Bowman/Lee.

14 In summary, the IIC Group submit that the depreciation proposals of the April 11, 2018
15 Settlement Agreement are in each case supported by expert evidence from either
16 Concentric, or Bowman/Lee, or both.

² Ibid.

1

2 ***Vacancies:***

- 3 • Paragraph 10 proposes that the number of vacancies in full time equivalent positions
4 to be used in the calculation of operating labour costs in the Test Years shall be 55
5 and not 40 as proposed in the 2017 GRA. It is noted, in support of this settlement
6 proposal, that Undertaking 18 clarifies that at the end of 2017, actual vacancies were
7 60.

8 ***Business Transformation:***

- 9 • Paragraph 11 proposes that all costs and expenses related to the Business Systems
10 Transformation Project described in the 2017 GRA, which are forecast to be \$2.54
11 million in 2018 and \$3.04 million in 2019 shall be removed from the Revenue
12 Requirements in the Test Years and set aside in a deferral account, for later review and
13 testing of reasonableness and prudence. The IIC Group note that this review process is
14 ongoing.

15 ***Debt Guarantee and Interest:***

- 16 • Paragraph 12(i) proposes that Hydro shall reduce the amounts included in the Test
17 Years related to the debt guarantee fee paid to the Government of Newfoundland
18 and Labrador. The IIC Group submits that this proposal is an approach, in respect of
19 long-term borrowings, consistent with the findings of the Board in the 2013 Amended
20 GRA.³

³ P.U. 49 (2016), pgs. 59 (line 33) to 60 (line 9).

- 1 • Paragraph 12(ii) proposes that interest costs should be reduced to reflect savings
2 associated with borrowing from Government and not in the capital markets. The IIC
3 Group submits that this proposal appropriately benefits ratepayers through reflecting
4 updated information (savings) arising from Hydro's test year borrowing from
5 Government rather than Capital Markets.

6 ***Specifically Assigned Assets:***

7 Paragraph 15 proposes the adoption of the revised assignment of assets as common or
8 specifically assigned, as per Hydro's report dated December 21, 2017. The report presents, and
9 this proposal reflects, updated information not available at the time of Hydro's original filed the
10 2017 GRA, which information was uncontested.

11 **Supplemental Settlement Agreement dated July 16, 2018**

12 The Supplemental Settlement Agreement addresses matters relating to cost of service, rate
13 design, deferral accounts, and revenue requirement.

14 The Supplemental Settlement Agreement represents substantial trade-offs that reflect lengthy
15 and detailed efforts by the parties to arrive at reasoned compromises. Of note, the GRA
16 proceeding has been conducted on the assumption that it is (respectfully) anticipated that the
17 Supplemental Settlement Agreement will be able to be accepted without further evidence (for
18 example, paragraph 23 indicated Patrick Bowman, C. Douglas Bowman, Bruce Chapman and
19 John T. Browne would not need to appear before the Board to address their pre-filed testimony).

20 The following matters addressed in the Supplementary Settlement Agreement are of particular
21 importance to the IIC Group:

22

1 **Cost of Service Issues**

2 It is submitted that the proposals made by paragraph 7 on Cost of Service and paragraph 8 on
3 the Pilot Agreement with CBPPL appropriately reflect the methodological aspects of Hydro's
4 most recent (at least for the purposes of this GRA) Cost of Service study⁴ and removal of certain
5 charges tied to CBPP hydro plant operation⁵. Further Cost of Service revisions required to
6 reflect the interconnection with Labrador, are the subject of the pending Cost of Service review.

7 **Rate design**

8 Paragraph 9 addresses Newfoundland Power (NP) rate design, and how the costs allocated to
9 NP are recovered from NP. While in theory this should have no direct effects on other Hydro
10 customers, in practice the rate charged to NP affects the price signals observed by NP, and
11 affects variables that are material to the RSP. As such the IIC Group has an interest in the NP
12 rate design as agreed upon in paragraph 9.

13 **Deferral Accounts**

14 Paragraphs 12 and 13 address the allocation and recovery of deferral accounts. These
15 agreements provides useful guidance in resolving rate (rider) setting processes that will occur in
16 future, and as such are valuable to resolve uncertainties for customers.

17

⁴ 2018 and 2019 Hydro COS Study, provided by Hydro's response to IC-NLH-195. See also Section 6 of the Pre-Filed Evidence of P. Bowman with respect to the CBBPL Pilot Agreement.

⁵ Removed from Hydro COS Study pursuant to the Board's approval by P.U. 26 (2018) of the sale of the frequency converter to CBBPL

1 **Revenue requirement**

2 Paragraphs 14 through 16 establish the principles on which Cost of Service analyses have been
3 conducted since the finalization of the Supplementary Settlement Agreement. In particular, this
4 section establishes that the Cost of Service (and, in effect, revenue requirement) for Hydro must
5 reflect the "Expected Supply Scenario". All general rate application exchanges since this time
6 have been based on the assumption that this scenario will be adopted for setting 2017 GRA
7 Test Year approved rate levels. The IIC Group submits that this assumption is fundamental to
8 all rate impacts and customer information shared since July 2018, and to the process that has
9 brought this 2017 GRA to (or near) completion.

10 **Matters not addressed by the settlement agreements**

11 There are some issues, not addressed by the settlement agreements, which the IIC Group
12 submit call for resolution by the Board's final order.

13 **NP load forecast**

14 The settlement agreements do not address the appropriate load forecast to use for establishing
15 the Revenue Requirement and rates. Hydro submitted its original load forecast as part of the
16 2017 GRA filing (Schedule 3-1), based on its March 2017 load forecast. This load forecast used
17 input data dated between May 2016 and October 2016⁶. It is submitted that as this forecast is
18 almost 2 years old, and is based on data that is over 2 years old, due consideration needs to be
19 given as to whether there is more recent load forecast information that should be used to
20 establish Revenue Requirement and rates. .

⁶ Hydro's responses to PUB-NLH-034 and IC-NLH-078.

1 It appears that, in all respects except for that discussed further below, the March 2017 load
2 forecast remains reasonable. Evidence of the reasonableness of the March 2017 load forecast
3 is found in

4 - Hydro's response to PUB-NLH-034, filed on October 17, 2017, which indicated that
5 Hydro did not consider any load information updates or changes that had occurred since
6 the load forecast was prepared to be material.
7

8 - Hydro's hearing testimony evidence indicating that Island industrial customer loads were
9 "fairly constant", with only Vale being "slightly down". Overall system loads, as updated
10 on June 2018, were described as being "a slight decrease in the load forecast of
11 approximately one percent"⁷
12

13 However, there is evidence that Hydro's March 2017 load forecast for NP purchases from Hydro
14 is no longer materially accurate. NP has updated its load forecast and filed this load forecast for
15 regulatory approval as part of its 2019/2020 general rate application ("NP GRA"). That NP load
16 forecast has been included in the NP GRA Settlement⁸. The NP GRA load forecast, excerpted
17 from the NP GRA filing, was presented to Hydro witnesses as an information exhibit on July 18,
18 2018.⁹ It was also addressed by Mr. Kevin Fagan in his August 7, 2018 testimony, when he
19 noted that NP's GRA forecast for 2019 had a capacity level that was "the same as in the
20 previous forecast" but showed "a slight reduction in their energy requirement for 2019, 33
21 gigawatt hours"¹⁰.

22 Further cross-examination of Mr. Fagan also highlighted that such reductions in NP loads in
23 2019 are also consistent with NP customer response to price expectations, as follows (August
24 7, 2018 transcript page 35-36):

⁷ Testimony of Ron Leblanc, July 18, 2018, page 60 (line 20) to page 61 (line 13).

⁸ NP 2019-2020 GRA, Consent #1, Item 6.

⁹ Information 13.

¹⁰ Testimony of Kevin Fagan, August 7, 2019, pgs. 30-31.

1 *Now, one of the struggles I have with the elasticity, my own personal opinion, is the*
2 *uncertainty with regard to where the price is going and how high it's going may cause –*
3 *and the fear of it going to 22 cents could cause people to act earlier than what you may*
4 *see in Undertaking 79.¹¹*
5

6 Based on the further evidence identified above, the IIC Group note the following:

7 1) The 2019 NP load to be purchased from Hydro per Hydro's original 2017 GRA filing was
8 5,833.6 GWh (per Hydro GRA, Schedule 3-1). The NP GRA revises this value
9 downwards to 5,794.2 GWh (per Appendix C to the NP GRA, as provided in Information
10 13 to this proceeding), a reduction of 39.4 GWh.

11
12 2) Not only is a reduction to the level of 5,794.2 GWh consistent with NP's GRA, it is also
13 consistent with the above excerpt from Mr. Fagan's 2017 GRA testimony that NP
14 customer loads may be seeing a price response to reasonable expectation of rate
15 increases in the coming years.

16
17 3) In the submission of the IIC Group, a change to NP's load forecast of 39.4 GWh is
18 material and requires incorporation into final 2017 GRA revenue requirement
19 calculations. For context, this scale of load swing is larger than the entire Hydro-served
20 load of CBPP (2019 forecast at 34.1 GW.h).

21
22 The IIC Group note the evidence of Hydro that the NP load showed only a "slight reduction" per
23 Mr. Fagan's testimony. A conclusion that a 39.4 GWh reduction in the forecast is slight may be
24 valid in the context of Hydro, where the utility is protected from any financial impacts arising
25 from energy load swings via the RSP. It is not, however, slight in the context of revenue
26 requirement estimation where this reduction in load would impact on Holyrood usage estimates,

¹¹ Testimony of Kevin Fagan, August 7, 2019, pgs. 35-36.

1 nor is it slight in the context of Cost of Service allocation where the loads for each customer
2 class determine the share of fixed costs to be allocated to each class.

3 It is also notable that the two utility GRAs, NP and Hydro, covering the same year (2019) are
4 presently proposed to be based on different and inconsistent load forecasts. It is respectfully
5 submitted that allowing this inconsistency to stand would lead to regulatory inconsistency and
6 unfairness to customers and customer classes impacted by that inconsistency.

7 For this reason, the IIC Group submit that the Hydro load forecast in respect of NP for 2019, for
8 the purposes of establishing Revenue Requirement and rates in Hydro's GRA, should be
9 adjusted to 5794.2 GWh for NP purchases, consistent with NP's latest regulatory forecast of
10 their purchases from Hydro.

11 ***Corner Brook Frequency Converter***

12 As will be noted from Hydro's 2017 GRA, Hydro had initially sought the approval of a specifically
13 assigned charge for CBPPL, relating almost exclusively to the assignment of the Corner Brook
14 Frequency Converter, in the amount of \$673,722/year¹², and effective January 1st, 2019, a
15 specifically assigned charge for CBBPL of \$798,763/year¹³

16 As noted at section 7 on the Supplemental Settlement Agreement filed as Consent Exhibit #3 on
17 July 16, 2018, the parties agreed on the Cost of Service Methodologies in Exhibit 14 (2018 Test
18 Year Cost of Service) and Exhibit 15 (2019 Test Year Cost of Service) including, *inter alia*, the
19 specific assignment of the Corner Brook Frequency Converter to CBPPL.

20 Subsequent discussions between CBPPL and Hydro led to Hydro's June 18th, 2018 application
21 seeking the approval of the sale of Corner Brook Frequency Converter to CBPPL, which

¹² 2017 GRA, Chapter 5, page 5.28, line 21

¹³ 2017 GRA, Chapter 5, page 5.29, line 10

1 application was approved by the Board in Order No. P.U. 26 (2018) on August 9th, 2018.
2 Further to that approval, the sale of the Frequency Converter has been completed, essentially
3 rendering the parties' agreement in the Supplemental Settlement Agreement to specifically
4 assign the Frequency Converter to CBPPL moot.

5 As a result of the sale of the Frequency Converter, CBPPL's specifically assigned charge,
6 effective January 1st, 2019, was reduced to \$11,458 (on an interim basis) in Board Order No.
7 P.U. 48 (2018) which order arose from Hydro's application seeking approval, on an interim
8 basis, of changes to Industrial Customer rates.

9 Simply for clarity, the IIC Group submit that final rates for 2019 should reflect the sale of the
10 Frequency Converter to CBPPL (namely a specifically assigned charge of \$11,458 for CBPPL
11 for the 2019 year).

12 ***Hydro's communications with industrial customers***

13 In Board Order P.U.49 (2016), the Board noted that the IIC Group, Vale and Liberty all raised
14 concerns about Hydro's communication with its industrial customers in the 2013 Amended
15 General Rate Application "2013 GRA"). In finding that the concerns raised were legitimate and
16 in need of redress, the Board held:

17
18 In the Board's opinion the establishment of a key account representative for each
19 industrial customer is an important step, along with the other actions identified in
20 the Account Management Framework. It is not clear from the record as to the
21 final timeline for the implementation by Hydro of its Account Management
22 Framework and the Board has no information as to whether the framework has
23 been implemented to date. The Board will request from Hydro an update as to
24 the status and timelines of this initiative.

25
26 Hydro will be required to provide a report by January 13, 2017 as to the status of
27 the implementation of its Account Management Framework, including the
28 designation of key account representatives for industrial customers.
29

1 Coincident with the 2013 GRA and in response to the concerns raised, Hydro established the
2 position of Manager of Key Accounts¹⁴ and this position was filled in the second quarter of 2016.
3 While Hydro Vice President, Regulatory Affairs and Customer Service testified during the
4 hearing that the “vast majority of the focus of [the Manager of Key Accounts] is on industrial
5 customers”,¹⁵ further testimony established that the Manager of Key Accounts is also
6 responsible for:

- 7 • Rambler Mines;
- 8 • Anaconda Mines;
- 9 • DND in Labrador;
- 10 • The Labrador data mining centers, an emerging and significant concern for
11 Hydro in Labrador;
- 12 • certain administrative responsibilities with respect to Newfoundland Power; and
- 13 • managing the industrial customer billing administrator.

14
15 In its Customer Service Road Map Update July 2017,¹⁶ Hydro noted that the Key Accounts
16 Manager was expected to be an “advocate” for the industrial customers. While the IIC Group is
17 pleased that there has been progress on industrial customer communications since 2016, the
18 Industrial Customer Group take the position that Hydro must actively monitor and set
19 appropriate key performance indicators to ensure that the Key Accounts Manger’s job duties
20 permit him or her to spend the time necessary to attend to the industrial customer
21 communication concerns identified by Liberty, Vale and the IIC Group (as it then was) in the
22 2013 GRA and the Board intended to be addressed with Order P.U. 49 (2016).

23

¹⁴ Page 2.5 of Hydro's GRA Evidence.

¹⁵ Testimony of Dawn Dalley, April 26, 2018, pg. 76, lines 8-10.

¹⁶ Exhibit 3.

1 In addition to monitoring the Key Account Manager's list of responsibilities, Hydro also needs to
2 ensure that those within Hydro with responsibility over matters affecting industrial customers
3 know the Key Account Manager's mandate and include him or her in all discussions that
4 materially affect one or more industrial customers. During oral testimony, Hydro's Vice
5 President, Regulatory Affairs and Customer Service acknowledged the importance of this
6 issue¹⁷ and Hydro provided evidence that managers in some departments were told to engage
7 the Manager of Key Accounts in discussions affecting industrial customers.¹⁸ However, it was
8 also acknowledged that the Manager of Key Accounts has not always been involved in
9 discussions involving industrial customers.¹⁹ An example of a failure by Hydro to include the
10 Key Accounts Manager on matters of significant importance to industrial customers is evident by
11 the failure of Hydro to notify NARL when an asset that was previously assigned as common was
12 being specifically assigned to NARL.²⁰

13
14 The only way the Key Accounts Manager can "advocate" for industrial customers is if he or she
15 has the time to focus on industrial customer issues and is made aware of those issues before
16 decisions are made. The IIC Group submits that Hydro must continue to monitor the issues that
17 led to the Board's findings in P.U. 49 (2016) to ensure that the Key Accounts Manager's day to
18 day duties and the awareness of the position inside of Hydro achieves the objectives that led to
19 the creation of the position in the first place. The IIC Group submits that, in its final order on the
20 2017 GRA, the Board should direct Hydro to monitor the Key Account Manager's ability to
21 effectively communicate with Industrial Customers in a timely manner in light of the position's

¹⁷ Testimony of Dawn Dalley, April 26, 2018, pgs. 100-104.

¹⁸ Undertaking-38.

¹⁹ Testimony of Dawn Dalley, April 26, 2018, pg. 104.

²⁰ IC-NLH-170 to IC-NLH-176.

1 other duties and to take steps to ensure that all Hydro departments are instructed to include the
2 Key Accounts Manager in discussions on matters of significance to industrial customers.

3

4 **Processes and filings to be completed before next GRA**

5 The IIC Group respectively submit that the Board's final order in this Application should address
6 certain processes and filings which should be completed before Hydro files its next general rate
7 application. These include completion of:

8 a) **the Cost of Service methodology review;**

9 b) **Hydro's Marginal Cost study;**

10 c) **an appropriate investigation and analysis by Hydro for direct allocation and**
11 **charging of the actually incurred O&M to the respective specifically assigned**
12 **charges (SAC) of the industrial customers:**

13 i. The Supplementary Settlement Agreement provides an initial directionally
14 appropriate solution to an immediate issue of fairness with regard to SAC (July
15 16th 2018 agreement, section 7(c)). However, this interim measure still fails to
16 reflect the actual efforts (or lack thereof) and costs that are required to be
17 expended by Hydro to maintain the SAC facilities.

18 ii. The Board, in its Decision PU 49 (2016) noted "The Board's concern is to ensure
19 that all customers pay only those costs they are responsible for, and that these
20 costs are transparent and understood by customers."²¹

²¹ PU 49 (2016), page 98.

- 1 iii. Mr. Patrick Bowman, in his Pre-Filed Evidence, stated: "The most substantial
2 weakness of the existing methodology is that it is an excessively rote calculation
3 that leaves an image of precision even though there is little empirical support for
4 the allocation. Hydro retained CA Energy Consulting to do a review of
5 comparable utilities (22 US and 5 Canadian) and found only three that appear to
6 use a method similar to Hydro's approach. Most of the others use approaches
7 that avoid the issue of lack of empirical support, such as only charging for actual
8 O&M as incurred or, more commonly, not tracking or charging the customer for
9 ongoing O&M at all on specifically assigned assets."²²
- 10 iv. The new approach agreed upon in the Supplemental Settlement Agreement is an
11 improvement, but is still lacking. Mr. P. Bowman states in his Pre-Filed Evidence:
12 "Further, it should be understood that even the Handy Whitman indexed
13 approach cannot be understood to concretely demonstrate that the allocation is
14 fair. There can be cases where this approach still leads to allocation of O&M that
15 is demonstrably unfair and it should be understood that in these individual cases
16 the O&M approach could be revised. One example noted at the previous hearing
17 was the O&M expense for Corner Brook's frequency converter more than
18 doubling due to new investment, but that new investment was in part designed to
19 reduce ongoing O&M in practice through such changes as improved off-site
20 monitoring and less need for Hydro's staff to do on-site checks."²³
- 21 v. It is submitted that Hydro should be directed to continue to investigate the
22 potential of directly charging customers for O&M activities performed on SAC
23 asset when they occur, and not using the coarse allocation of O&M through the

²² Bowman/Lee Pre-Filed Evidence, page 35.

²³ Bowman/Lee Pre-Filed Evidence, page 36.

1 COS study, and to make the results of its investigation available for adjudication
2 of this issue in the next general rate application (or potentially, in the ongoing
3 COS review).

4 **d) measures to promote future rate mitigation and greater transparency regarding**
5 **Muskrat Falls Project O&M:**

6 The IIC Group acknowledges that the Board has been given a mandate to conduct a rate
7 mitigation review, in the context of the rate increases that are projected for Hydro's Island
8 customers, including its Island industrial customers, once the Island system is receiving
9 Muskrat Falls power. The IIC Group also acknowledges that the Board's jurisdiction, in
10 relation to its regulatory function in this GRA, is constrained by various Government
11 directives.

12 However, there were issues canvassed in the 2017 GRA hearing which bear on what Hydro
13 is doing, and can do, as a regulated utility and notwithstanding the constraints imposed by
14 existing Government directives, to respond to the prospect of the rate increases facing its
15 customers. The IIC Group is concerned that, between the constraints of the existing
16 Government directives and the sheer magnitude of the costs of Muskrat Falls power, Hydro
17 management is at risk of falling into an attitude that nothing Hydro can do within the
18 regulated sphere will "move the needle" significantly on projected rate increases and, as a
19 result, Hydro is at risk of not devoting sufficient resources and ingenuity to implementing
20 measures that would:

21 (i) introduce transparency into the Muskrat Falls Project (MFP) costs, inclusive of Labrador
22 Transmission (LTA) costs and Labrador Island Link (LIL) costs, which Hydro will eventually
23 seek to recover from Hydro's customers; and

1 (ii) serve to mitigate those utility costs that are still within the fully-regulated sphere of
2 Hydro's operations.

3 ***MFP (LTA and LIL) O&M Costs***

4 Order-in-Council OC2018-214, issued following completion of the hearing portion of the
5 GRA, has directed the deferral of all costs associated with the Interim Transmission Funding
6 Agreements, with disposition of "the deferral account" to be addressed by a further
7 application by Hydro to the Board. This Order-in-Council appears to have rendered moot, for
8 the purposes of the present GRA, whether the conditions have been met for commencing to
9 include in Island customer rates LTA and LIL O&M costs. However, it would appear that at
10 some point in the future Hydro will be applying to this Board for recovery of the deferred
11 costs.

12 Through the 2017 GRA process and hearing, the intervenors sought to understand whether
13 and how Hydro would be reviewing the reasonableness of the LTA and LIL O&M costs
14 submitted to Hydro by the applicable Nalcor entities.

15 Mr. James Haynes, President of Newfoundland and Labrador Hydro, affirmed in his 2017
16 GRA hearing testimony, in respect of LTA and LIL O&M costs submitted to Hydro, that "We
17 [Hydro] will challenge the cost as we would expect to be challenged on the cost."²⁴ It is
18 reasonable to understand this to mean, in the context of the whole of Mr. Haynes' testimony
19 on this point²⁵, that Hydro intends to seek the same level and detail of information from the
20 relevant Nalcor entities with respect to the submitted LIL and LTA O&M costs as Hydro
21 would expect to have to present to the Board if these were Hydro O&M costs requiring
22 Board approval.

²⁴ Testimony of James Haynes, April 16, 2018, page 171, lines 14-15.

²⁵ *Ibid.*, pgs. 164-175

1 The 2017 GRA hearing testimony does not inspire a high level of confidence that, to this
2 point, a robust and transparent system has been implemented to (a) confirm that the
3 purported LTA and LIL O&M costs to be submitted to Hydro will represent actual O&M costs
4 incurred and (b) otherwise assess, as Hydro has committed to do, the reasonableness of
5 those submitted costs.

6 The 2017 GRA evidence indicates that LTA and LIL O&M costs submitted to Hydro may be
7 calculated on a percentage of capital (Gross Asset Value) basis.²⁶ The 2017 GRA evidence
8 also discloses that this percentage of capital approach is not approved of by Hydro's own
9 expert consultant, Christensen Associates Energy Consulting, and that Christensen's
10 recommended approach is to use benchmarking based on other utilities' O&M costs for
11 transmission.²⁷

12 There has been disclosed, through Undertaking 99, a Memorandum prepared by
13 Christensen, dated April 12, 2018. This Memorandum explores transmission O&M costs for
14 (a) Hydro's own Transmission AC Network, (b) the LTA facilities and (c) the LIL HVDC
15 facilities.²⁸ The IIC Group respectfully submit that the Memorandum represents a good
16 beginning, but only a beginning, for establishing appropriate benchmarking for LTA and LIL
17 O&M costs. It is submitted that there are already reasons for concern about the nature and
18 reasonableness of the O&M cost estimates presented to date. The estimated MFP base
19 O&M costs estimate has already dramatically escalated from a 2012 estimate of \$34 million

²⁶ Undertaking 54, page 12; Testimony of Kevin Fagan, August 7, 2018, pgs. 95 (line 14) to 99 (line 21).

²⁷ Testimony of Kevin Fagan, August 7, 2018, pgs. 99 (line 23) to 102 (line 19).

²⁸ Undertaking 99, page 2.

1 annually (at that time projected to start in 2018) to a 2017 estimate of \$109 million annually
2 (starting in 2020).²⁹

3 The IIC Group submit that Hydro should be directed to further investigate and analyze, itself
4 and with the assistance of its consultants, appropriate benchmarking for MFP O&M costs,
5 including the LTA and LIL O&M costs, and to report on same to the Board prior to or as part
6 of its next general rate application filing. The IIC Group acknowledge that these issues may
7 be investigated and analyzed in the Rate Mitigation Review, but submit that Hydro's next
8 general rate application filing should include such reporting, regardless of whether the next
9 general rate application filing is made before or after Hydro has had the opportunity to take
10 into account any recommendations on this issue arising out of the Rate Mitigation Review.

11 ***Innovation and Productivity Team Execution Plan***

12 It was the evidence of Hydro's 2017 GRA witnesses that Hydro intends to take an aggressive
13 approach to cost control, and that one of the initiatives to implement this approach was the
14 establishment of an Innovation and Productivity Team.³⁰

15 The IIC Group welcome this initiative by Hydro, but believe that it is important to establish a
16 reporting framework which sets measurable dollar goals for cost control, and which will allow for
17 assessment, in the next GRA, of whether those goals were met. The IIC Group submit that the
18 reasonableness of the cost control goals set and achieved should be measured by the degree
19 of impact these measures have in mitigation of customer rates.

²⁹ IC-NLH-122, page 15 of 26; Testimony of Kevin Fagan, August 7, 2018, pgs. 92 (line 16) to 102 (line 19)

³⁰ Eg., Testimony of Terry Gardiner, Ron Leblanc and Jennifer Williams, July 16, 2018, pgs. 97 (line 5) to 106 (line 12). See also Undertakings 65 and 66.

1 It is suggested that Hydro be directed to make an annual reporting to the Board, starting at the
2 end of 2019, on the cost control goals set for and by the Innovation and Productivity Team for
3 the previous year (starting with 2019), measuring the degree of success (dollar value) in
4 achieving those goals in that previous year, and setting cost control goals for the coming year
5 (2020).

6 **Award of Costs**

7 ***Level of participation***

8 The IIC Group has customarily participated in all proceedings before the Board which would or
9 could have a significant impact on the rates charged by Hydro to its customers, including its
10 industrial customers.

11 Through the 2017 GRA process and hearing, the IIC Group were represented by co-counsel,
12 each being members of separate law firms.

13 The IIC Group submit that their representation by co-counsel serves to promote efficiency of
14 proceedings in a manner consistent with fairness for the individual industrial customers
15 represented by the Group.

16 The interests of the IIC Group, as amongst themselves, are not always wholly aligned, on all
17 issues. This could arguably justify each industrial customer having its own, separate legal
18 representation in proceedings before the Board.³¹ Indeed, in a very small minority of matters
19 before the Board, both in 2017 GRA process and in other proceedings, industrial customers
20 have been separately represented to advocate on issues unique to (or of particular concern to)
21 that industrial customer, or where the industrial customers are not in agreement. However, the
22 members of the IIC Group, historically and taking the long view, have felt that representation as

³¹ As is indeed the case with IOC.

1 a group, by co-counsel, has struck the right balance between ensuring that the distinct interests
2 and concerns of each industrial customer are understood and considered and promoting the
3 presentation to the Board and the other parties of a single, common position on the issues
4 whenever possible (which, as we believe the Board will be able to recognize from this and past
5 proceedings, has been the case on the vast majority of issues, including some where individual
6 industrial customers could have had divergent positions).

7 The ability, in the vast majority of cases, of the IIC Group to present a single, common position
8 has promoted efficiency of the Board's processes. However, it is not a result that could be
9 achieved without the active participation of IIC Group co-counsel in all significant proceedings
10 before the Board. IIC Group representation by co-counsel has allowed for, when necessary, the
11 giving of advice to individual members of the IIC Group on issues where their respective
12 interests may be divergent. This would not be possible if the IIC Group were represented by a
13 single counsel in proceedings before the Board; non-participating counsel could not be
14 reasonably expected to "jump in" and give fully informed and time-efficient advice to an
15 individual industrial customer just on those occasions where a potentially divergent interest has
16 been identified. The giving of fully informed and time-efficient advice on issues of potentially
17 divergent interest, and just as importantly identifying how those divergent interests may be able
18 to be reconciled, can only be reasonably achieved through representation of the IIC Group by
19 co-counsel in Board processes.

20 ***Distinct interests of the IIC Group***

21 The IIC Group would acknowledge that there were many issues in the 2017 GRA where the
22 island industrial customers had a commonality of interest with Newfoundland Power and the
23 Consumer Advocate. However, even on those issues of commonality of interest, the IIC Group
24 consultant, Mr. Patrick Bowman of InterGroup (assisted by Ms. Patricia Lee), was able to bring

1 distinct, well-informed and constructive analysis and perspectives on these issues. Indeed, as
2 has been already noted, on the key 2017 GRA issue of appropriate application of the
3 depreciation methodology, only the IIC Group presented expert evidence to test Hydro's
4 proposals, and it is respectfully submitted that the IIC Group's filing of expert evidence on
5 depreciation, and the participation of Mr. P. Bowman in the settlement negotiations, contributed
6 significantly to the settlement of these issues in an effective and equitable manner (and thereby
7 avoiding the considerable costs to all parties of adjudication of the depreciation in the 2017 GRA
8 hearing).

9 Moreover, the format of a general rate application hearing does not, by and large, lend itself to
10 the IIC Group being able to comfortably determine when it can "sit out" from hearing
11 proceedings. When able to make such determination, such as in the course of sections of
12 hearing exclusively dedicated to issues of interest to other intervenors (such as the Labrador
13 and Rural Deficit issues), the IIC Group did limit its participation.

14 There were a number of issues where IIC Group interests were distinct and adverse to positions
15 taken in the course of the hearing by other parties. Some of these issues were able to be
16 resolved in the settlement process, such as the SAC O&M methodology. However, the
17 resolution of that issue and other issues by the settlement process required vigorous, vigilant
18 and well-informed participation by the IIC Group (through the work of the IIC Group's experts
19 and by the collective experience of IIC Group co-counsel with the regulatory process and how it
20 distinctively interfaces with each IIC Group member).

21 The IIC Group would respectfully submit that their participation in the 2017 GRA process, as
22 actually manifested in that process, was justified, necessary and constructive.

23 The IIC Group notes that the Board has previously identified the appropriate factors to be
24 considered in making cost awards to the intervenors in the finding expressed in P.U. 49 (2016)

1 that the Board "will make its determination on any claim for costs based on the intervenor's
2 contribution to this proceeding and the resulting impact on the Board's ability to discharge its
3 legislative responsibilities in considering the Amended Application. The Board will also consider
4 whether there was a distinct interest in the application proposals that justified the intervention
5 and costs."

6 The IIC Group respectfully submit that, based on the above relevant factors as identified by the
7 Board, the IIC Group should be awarded costs, in respect of the participation of their counsel
8 and their experts in the 2017 GRA process and hearing.

9 **ALL OF WHICH IS RESPECTFULLY SUBMITTED BY THE ISLAND INDUSTRIAL**
10 **CUSTOMERS GROUP.**

11

12 **DATED** at St. John's, in the Province of Newfoundland and Labrador, this 1st day of February,
13 2019.

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POOL ALTHOUSE

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Per: 

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Dean A. Porter

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STEWART MCKELVEY

19

Per: 

20

Paul L. Coxworthy

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2
3
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COX & PALMER

Per: Paul J. Gensethy
for Denis J. Fleming

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