

Office of the Consumer Advocate

PO Box 23135
Terrace on the Square
St. John's, NL Canada
A1B 4J9

Tel: 709-724-3800
Fax: 709-754-3800

January 4, 2018

Via Courier

Board of Commissions of Public Utilities
120 Torbay Road, P.O. Box 2140
St. John's, NL A1A 5B2

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

Dear Ms. Blundon:

RE: Newfoundland and Labrador Hydro - 2017 General Rate Application

Further to the above-captioned, enclosed please find enclosed the original and thirteen (13) copies of the Consumer Advocate's Application to delay the commencement of Hydro's scheduled General Rate Application, including settlement discussions, negotiations, the filing of issues lists and witness lists, the motions day, and the commencement of public hearings, until this additional information is provided to the parties in the usual form.

Yours truly,



Dennis Browne, Q.C.

Encl.
/bb

cc **Newfoundland & Labrador Hydro**
Geoff Young (gyoung@nlh.nl.ca)
Tracey Pennell (traceypennell@nlh.nl.ca)
Alex Templeton (alex.templeton@mcinnescooper.com)
NLH Regulatory (NLHRegulatory@nlh.nl.ca)
Newfoundland Power Inc.
NP Regulatory (regulatory@newfoundlandpower.com)
Gerard Hayes (ghayes@newfoundlandpower.com)
Liam O'Brien (lobrien@curtisdawe.nf.ca)
Board of Commissioners of Public Utilities
Cheryl Blundon (cblundon@pub.nl.ca)
Jacqui Glynn (jglynn@pub.nl.ca)
Maureen Greene (mgreene@pub.nl.ca)
PUB Official Email (ito@pub.nl.ca)

Island Industrial Customers Group
Paul Coxworthy (pcoxworthy@stewartmckelvey.com)
Dean Porter (dporter@poolealthouse.ca)
Denis Fleming (dlleming@coxandpalmer.com)
Iron Ore Company of Canada
Van Alexopoulos (Van.Alexopoulos@ironore.ca)
Benoit Pepin (benoit.pepin@riotinto.com)
**Communities of Sheshatshiu, Happy Valley-Goose Bay
Wabush and Labrador City**
Senwung Luk (sluk@oktlaw.com)

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”), as amended; and

IN THE MATTER OF a General Rate
Application by Newfoundland and Labrador
Hydro to establish customer electricity rates
for 2018 and 2019 filed on July 28, 2017, and
subsequently revised on September 15, 2017,
October 15, 2017, October 27, 2017 and
November 27, 2017 (the “GRA”)

TO: The Board of Commissioners of Public Utilities (the “PUB”)

The Application of the Consumer Advocate states:

1. The Consumer Advocate has been appointed under the authority of Section 117 of the *Public Utilities Act* to represent the interest of domestic and general service consumers and, as such, is an Intervenor in the above-noted GRA.
2. The Consumer Advocate maintains that the settlement discussions scheduled to begin on January 10 would be premature and unproductive. The record is far from complete, making it impossible for customers, the parties and the PUB to make an informed judgment and a reasonable decision on the appropriateness of the proposed cost of service study and off-island purchases deferral account.
3. The Application herein is for an Order that the Public Utilities Board (the “PUB”) delay the schedule for the GRA until Hydro files with the parties certain relevant information.

4. The Consumer Advocate has numerous concerns with Hydro's proposed cost of service study and off-island purchases deferral account, based in the following:
 - (a) Hydro suggests that its proposed Off-Island Purchases Deferral Account is a rate mitigation plan. It is not. It is a proposal to over-charge customers by basing rates on a cost of service study that Hydro forecasts will significantly over-collect revenues. A portion of the funds collected, represented as the difference between energy supply costs under the proposed cost of service study and actual energy supply costs, would be made available to the PUB to decide if, when and how, the funds might be used to mitigate upcoming, but as yet unknown and unapproved, rate increases. If, when and how the funds are to be allocated to customers in the future is a critical component of any rate mitigation plan for which there is currently no information on the record.
 - (b) The Off-Island Purchases Deferral Account lacks transparency as Hydro has not submitted a procurement plan for off-island purchases.
 - (c) The deferral account lacks a definition, appears open-ended and there is no certain information to found Hydro's claim of the potential to accumulate hundreds of millions of dollars. The estimate of the account balance by August 31, 2020 is \$174.3 million (NP-NLH-115, rev 1). However, this is understated as costs for use of the LIL/LTA assets appear to be exorbitant, without any stated justification, and it is not clear under current legal documentation if Hydro can collect these costs prior to the commissioning of the Muskrat Falls Project. Further, the proposed deferral account does not include purchases over the ML.
 - (d) The proposed deferral account does not include reliability benefits. As stated in Expert Evidence submitted by JT Browne Consulting (page 4): "The net

benefits prior to full commissioning of the MFGF would also include improved reliability of the IIS. It would be difficult to estimate the value of this increased reliability and Hydro has not attempted to estimate it.” It is not clear why reliability benefits are so difficult to estimate. For example, the new transmission facilities may lead to savings arising from: 1) avoiding, or delaying, construction of new generation facilities, 2) relegating Holyrood Units 1 and 2 to standby status, and Unit 3 to synchronous condenser operation, 3) cancellation of capacity assistance agreements, 4) allowing purchases of non-firm economy energy rather than firm energy purchases with an implied capacity charge, and/or 5) freeing up capacity on the Island that might be sold in the Northeastern United States. Hydro is proposing to set Island customer rates at levels reflecting the continued operation of Holyrood for both capacity and energy purposes including capital, O&M and fuel, without returning to customers the costs it avoids from the reliability benefits derived from the LIL/LTA and ML transmission. This is inconsistent with the Cost of Service Standard that the utility may be assured of an opportunity to earn a fair return because the “opportunity” is weighted in Hydro’s favour.

- (e) The deferral account allows for the costs of off-island purchases including the cost of transmission, and the O&M costs associated with using LIL/LTA, but does not appear to allow for potential offsets for the costs of transmission that Island customers are already paying through the cost of service study. Without knowing what might be included for the costs of transmission under the open access regime that Hydro proposes to file by the end of the first quarter of 2018, it is difficult to know how customers will be charged for transmission. Regardless, the transmission costs for off-island purchases should allow for offsets that Island customers are already paying. Otherwise, it is inconsistent with the Cost of Service Standard that the utility may be

assured of an opportunity to earn a fair return because the “opportunity” is weighted in Hydro’s favour.

- (f) It does not specify how funds from the deferral account will be allocated to Island customer classes, so it is not clear how allowance will be made for the fact that Island customer classes have not been paying according to rates that reflect the costs they impose on the system; i.e., the proposed cost of service study does not incorporate off-island purchases. It appears the only practical way to allocate funds fairly would be to run after-the-fact cost of service studies reflecting the actual cost of supply to each customer class, which could be described as retroactive ratemaking.
5. Based on the foregoing, in the interests of regulatory efficiency and procedural fairness, the following information should be filed prior to any settlement negotiations (the “additional information”):
- i) A 2019 test year cost of service study based on the expected supply scenario with off-island purchases over the Labrador-Island Link (LIL) and the Maritime Link (ML).
 - ii) A cost of service study based on the expected supply scenario would render Hydro’s proposed Off-Island Purchases Deferral Account obsolete. Hydro would be exposed to uncertainties brought on by off-island purchases, so should propose a supply cost adjustment mechanism to complement the cost of service study and protect it from such uncertainties.
 - iii) Hydro’s power procurement plan for off-island purchases over the LIL and ML.

- iv) Hydro's plan for sales of power over the LIL and ML.
 - v) A vetting program for both sales and purchases over the LIL and ML that will enable the parties and the PUB to determine if customers are receiving optimum value.
 - vi) An open access transmission tariff, including an explanation of the facilities included in the tariff and an explanation as to how the open access regime will work, and how open access can be leveraged to provide optimum value to Island customers. This should include LIL/LTA transmissions, O & M costs that Hydro references in CA-NLH-177 and a legal position documenting why Hydro believes it is allowed to recover these costs prior to commissioning the Muskrat Falls project.
 - vii) A wholesale power rate for Newfoundland Power that better reflects forecast marginal costs.
6. Without the additional information the GRA would proceed without fundamental evidentiary components, with the result of the PUB being left without a proper foundation upon which to base its decision. On balance, the Consumer Advocate submits that it is clearly not reasonable for the PUB and the other parties to be required to allocate their resources further at this point and undertake the significant expenditures required of a GRA hearing, without the provision of the additional information that remains outstanding.
7. All parties are entitled to have accurate forecasts of Hydro's revenue requirements, cost allocations and balances that might accumulate in any account set up for rate mitigation purposes.

8. There is no precedent in this jurisdiction for the rate mitigation initiative proposed by Hydro and the PUB could not endorse any such “plan” based on the information thus far provided by Hydro.

9. Here, the PUB is required in law to apply the policies established under the *Electrical Power Control Act, 1994* (the “EPCA”) and, in particular, to ensure that the GRA will result in power being delivered to consumers at the lowest possible cost consistent with reliable service.

10. Section 3(b) of the *Electrical Power Control Act, 1994* SNL 1994, c. E-5.1 (the “EPCA”) states:

Power policy

3. It is declared to be the policy of the province that
 - ...
 - (b) all sources and facilities for the production, transmission and distribution of power in the province should be managed and operated in a manner
 - (i) that would result in the most efficient production, transmission and distribution of power,
 - (ii) that would result in consumers in the province having equitable access to an adequate supply of power,
 - (iii) that would result in power being delivered to consumers in the province at the lowest possible cost consistent with reliable service,
 - ...

and, where necessary, all power, sources and facilities of the province are to be assessed and allocated and re-allocated in the manner that is necessary to give effect to this policy;

11. There is precedent across Canadian jurisdictions for Public Utilities Boards to require utilities to file additional information. Some of that precedent (*albeit* on other issues) is referenced in the evidence of Mr. Patrick Bowman as encapsulated in PUB-IC-008. Also, the PUB has jurisdiction under its own legislation in reference to these matters.

12. In conclusion, without the additional information required herein, the PUB could not reasonably comply with the above-referenced provisions of the *Electrical Power Control Act, 1994*. The GRA lacks certainty, is vague and has been described by our own expert as “fictitious”. It is difficult to appreciate how the PUB could be alive to the issues based on generalities and without specific evidence. In terms of outcomes, there can be no reasonable outcome given the lack of transparency. Based on the foregoing, we are requesting that the Public Utilities Board order a delay of any further proceedings, including settlement discussions, negotiations, the filing of issues lists and witness lists, the motions day, and the commencement of public hearings, until this additional information is provided to the parties in the usual form.

DATED AT St. John’s, in the Province of Newfoundland and Labrador this 4th day of January, 2018.

Per:



Dennis Browne, Q.C.

Consumer Advocate

Terrace on the Square, Level 2, P.O. Box 23135
St. John’s, Newfoundland & Labrador A1B 4J9

Telephone: (709) 724-3800

Telecopier: (709) 754-3800

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AFFIDAVIT

I, Dennis Browne, Q.C., of St. John’s, in the Province of Newfoundland and Labrador,
make oath and say as follows:

1. That I am the Consumer Advocate, the Application named in the attached Application.
2. I have read and understand the foregoing Application.
3. I have personal knowledge of the facts contained therein, except where otherwise indicated, and they are true to the best of my knowledge, information and belief.

SWORN TO at St. John’s, in the
Province of Newfoundland and
Labrador, this 4th day of January,
2018, before me:



STEPHEN FITZGERALD
Barrister



DENNIS BROWNE, Q.C.