

DELIVERED BY HAND

March 14, 2014

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

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

Ladies and Gentlemen:

Re: Newfoundland and Labrador Hydro – Amended Application for approval of customer electricity rates for 2014 on an interim basis, or in the alternative, for a deferral and recovery mechanism.

A. Background

On July 30, 2013, Newfoundland and Labrador Hydro (“Hydro”) filed its General Rate Application (the “GRA”) with a 2013 Test Year to adjust rates on January 1, 2014. The GRA Application is still outstanding.

On November 18, 2013 Hydro filed an Interim Rates Application with the Board for approval of either (i) a schedule of proposed rates, tolls and charges on an interim basis for certain customers effective January 1, 2014, including changes to rules related to the rate stabilization plan (“RSP”), or (ii) a deferral and recovery mechanism whereby, commencing January 1, 2014, Hydro would defer any revenue shortfall that results from delayed implementation of rates proposed in the GRA.

On February 11, 2014, Hydro filed an amended Interim Rates Application (the “Amended Application”) seeking, in effect, approval of (i) interim rates for customers of Hydro whose rates are not already interim; (ii) proposed interim base rates for Hydro’s Island Industrial Customers (the “Industrial Customers”); (iii) revised interim RSP rules; and (iv) a deferral and recovery mechanism to recover a forecast 2014 revenue shortfall resulting from delayed implementation of rates proposed in the GRA Application. The Amended Application effectively defers consideration of rate changes for other customers of Hydro to the GRA.

This letter contains Newfoundland Power’s submissions with respect to the Amended Application.



B. Legislative Framework

Section 80 of the *Public Utilities Act* provides that a public utility is entitled to earn annually a just and reasonable return on its rate base.

Section 75 of the *Public Utilities Act* effectively permits the Board to approve electricity rates on a temporary, or interim, basis until a final order is made. Once the Board makes a final order, it is treated as if it were in effect from the time of the interim order.¹

C. General

Newfoundland Power does not have a direct interest in the proposed Industrial Customer rate changes, which are aimed at complying with directions in the various Orders in Council, and does not have any specific comment on the proposed rates. However, those rate change proposals also involve changes to the RSP rules.

There are inconsistencies on the record of the Amended Application, including the responses to Requests for Information, and a lack of clarity as to how the RSP will operate following the proposed changes. For that reason, Newfoundland Power cannot support the proposed changes to the RSP based on the record of the Amended Application.

With respect to the proposed deferral mechanism, it is Newfoundland Power's submission that Hydro's request for such a mechanism is premature and should not be approved at this time.

D. Proposed Rate and RSP Rule Changes

The Amended Application proposes that the rates of Hydro's Rural Customers be made interim, effective January 1, 2014. These are the only rates charged by Hydro that have not been declared interim by the Board.² Newfoundland Power does not take issue with this proposal.

The Amended Application requests approval of certain changes in the rates and RSP rules applicable to the Industrial Customers to comply with directions contained in Orders in Council issued by the Provincial Government in 2013 respecting rates for those customers. The proposed changes to the RSP rules include a proposal that the operation of the RSP be based, on an interim basis, on 2013 Test Year values.³

¹ Interim orders were specifically considered in paragraphs 128 *et seq.* of the June 19, 2012 Court of Appeal decision in the Industrial RSP Surplus Case (2012 NLCA 38).

² Interim rates are currently in effect for Hydro's Industrial Customer rates, and Newfoundland Power wholesale utility rates.

³ Hydro states that this will enable the operation of the RSP in complex circumstances where both interim rates and a deferral and recovery mechanism are employed. See Hydro Evidence, February 2014, page 8.



It is uncertain, based on the record of this proceeding, how the July 1, 2014 Newfoundland Power RSP adjustment will be determined. According to the RSP rules set out in the Amended Application, the Newfoundland Power fuel rider to be used for the July 1, 2014 RSP adjustment will be based on the difference between the 2014 forecast fuel price and the average 2013 proposed test year fuel price.⁴ However, in response to Request for Information IR-NP-NLH-041, Hydro appears to calculate the fuel rider based on the difference between the 2014 forecast fuel price and the average 2007 test year fuel price.⁵ The difference in rate impact between these two possible approaches to calculating the fuel rider is approximately 1.6 cents per kilowatt-hour.⁶

Further, in response to Request for Information IR-NP-NLH-040, Hydro states that “final RSP rate changes for July 1, 2014 will be determined in April 2014 in accordance with the existing RSP rules.”⁷ This appears inconsistent with the proposal in the Amended Application to revise the RSP rules effective January 1, 2014 so that the RSP operates using 2013 Test Year values.⁸

In Newfoundland Power’s submission, the proposals in the Amended Application to revise the RSP rules should be denied due to a lack of clarity and evidence regarding customer impacts, and only considered when Hydro provides a clear explanation of the manner in which the RSP is proposed to operate.

E. Revenue Deferral and Recovery

Apart from compliance with the Orders in Council regarding Industrial Customer rates, the Amended Application is principally concerned with a proposed deferral mechanism to address any revenue shortfall for 2014 that may result from delayed implementation of 2014 final customer rates.

To address such a revenue shortfall, Hydro has proposed that the Board approve a deferral mechanism now, to permit recovery of any 2014 revenue shortfall between existing and proposed rates over a period to be determined by the Board.

Interim rate orders are relatively common in the context of general rate proceedings. Typically, a general rate application filed in the latter half of a year will not be ruled upon by the Board until sometime in the ensuing year. In these cases, a primary consideration is for the Board to retain the practical ability to ensure that the utility’s costs and revenues are appropriately balanced.

⁴ See **2. Newfoundland Power Fuel Price Projection**, Amended Application, Schedule B, page 5 of 10.

⁵ See Note 4 in response to Request for Information IR-NP-NLH-041, Attachment 1, page 1 of 1.

⁶ Response to Request for Information IR-NP-NLH-041 indicates a fuel rider of 1.281 cents per kilowatt-hour. Response to Request for Information IR-NP-NLH-042 indicates a fuel rider of (0.359) cents per kilowatt-hour. $1.281 - (0.359) = 1.64$.

⁷ See response to Request for Information IR-NP-NLH-040, footnote 1.

⁸ Amended Application, paragraph 14(a)(v).



Regulatory deferral accounts effectively permit the Board to defer consideration of, or recovery of, particular costs. These accounts are regarded as “accepted regulatory tools” to be operated as part of the Board’s rate-setting powers.⁹ Like interim orders, deferral accounts provide the Board with considerable flexibility in matching utility revenues and costs.

The Board has historically permitted relief by way of deferred cost recovery to permit a utility to earn a just and reasonable return under Section 80 of the *Public Utilities Act* when it has been satisfied that the circumstances warranted deferred recovery.

In Newfoundland Power’s 2013/2014 General Rate Application, the Board, *following a review of the Company’s costs and revenues*, permitted the deferred recovery of \$3.965 million related to a 2013 revenue shortfall resulting from implementation of 2013 customer rates on July 1, 2013.¹⁰

Current regulatory practice has practically required clear evidence of a revenue shortfall before the Board has granted relief to permit a utility to earn a just and reasonable return within the meaning of Section 80 of the *Public Utilities Act*.¹¹ In Newfoundland Power’s 2013/2014 GRA, the Board approved the deferred recovery *only after* it had tested the Company’s 2013 and 2014 costs and revenues in early 2013.¹² Hydro’s proposal seeks approval of deferred recovery *in advance of* a review of costs and revenues. This is not necessary, nor is it in accordance with current regulatory practice.

It is Newfoundland Power’s submission that current regulatory practice supports Hydro being afforded the same treatment by the Board in respect of its capability to earn its 2014 return on rate base as was afforded Newfoundland Power in respect of its capability to earn its 2013 return on rate base. The Board should deny approval of the proposed deferral mechanism at this time, and consider it following review of Hydro’s costs and revenues.

F. Disposition of the Amended Application

Newfoundland Power submits that the Board should deny the Amended Application.

G. Concluding

We trust the foregoing is found to be in order. However, if you have any questions, please feel free to contact us.

⁹ Deferral accounts were specifically considered in paragraphs 114 et seq. of the June 19, 2012 Court of Appeal decision in the Industrial RSP Surplus Case (2012 NLCA 38).

¹⁰ This was specifically requested in Newfoundland Power’s 2013/2014 GRA, filed in September 2012, on the basis that it was required to enable the Company to earn a just and reasonable return pursuant to Section 80 in 2013.

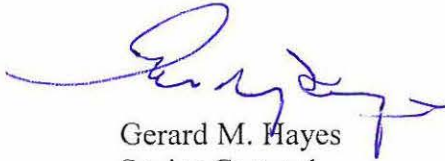
¹¹ General Rate Applications are the typical means by which the Board gathers this clear evidence.

¹² Order No. P.U. 13 (2013).



Copies of this correspondence have been forwarded directly to the parties indicated below.

Respectfully Submitted,



Gerard M. Hayes
Senior Counsel

Enclosures

c. Geoffrey Young
Newfoundland and Labrador Hydro

Paul Coxworthy
Stewart McKelvey

Ed Hearn, QC
Miller & Hearn

Nancy Kleer
Olthuis, Kleer, Townshend LLP

Thomas Johnson
O'Dea Earle Law Offices

Thomas O'Reilly, QC
Vale Newfoundland and Labrador Limited

Yvonne Jones, MP
Labrador

