

January 14, 2016

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

**Attention: Ms. Cheryl Blundon**  
**Director Corporate Services & Board Secretary**

Dear Ms. Blundon:

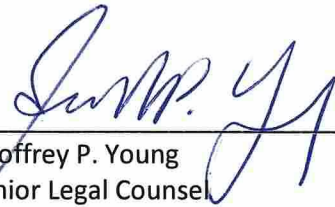
**Re: Newfoundland and Labrador Hydro – 2013 General Rate Application  
Rebuttal**

Enclosed please find the original plus 12 copies of Newfoundland and Labrador Hydro's Rebuttal in relation to the above-noted matter.

Should you have any questions, please contact the undersigned.

Yours truly,

**NEWFOUNDLAND AND LABRADOR HYDRO**

  
\_\_\_\_\_  
Geoffrey P. Young  
Senior Legal Counsel

GPY/bs

cc: Gerard Hayes – Newfoundland Power  
Paul Coxworthy - Stewart McKelvey Stirling Scales  
Thomas J. O'Reilly, Q.C. - Cox & Palmer  
Dennis Browne, Q.C. – Browne Fitzgerald Morgan & Avis

Thomas Johnson, Q.C. - Consumer Advocate  
Yvonne Jones, MP Labrador  
Senwung Luk – Olthuis, Kleer, Townshend LLP  
Genevieve M. Dawson – Benson Buffett

IN THE MATTER OF the *Electrical Power Control Act*, 1994, SNL 1994, Chapter E-5.3 (the “*EPCA*”) and the *Public Utilities Act*, RSNL, 1990, Chapter P-47 (the “*Act*”), as amended, and Regulations thereunder; and

IN THE MATTER OF a general rate application filed by Newfoundland and Labrador Hydro on July 30, 2013; and

IN THE MATTER OF an amended general rate Application filed by Newfoundland and Labrador Hydro on November 10, 2014; and

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Newfoundland and Labrador Hydro

2013 General Rate Application  
Rebuttal

January 14, 2016

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Appendix A – Alberta Utilities Commission – Rule 022

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## 1. INTRODUCTION

Newfoundland and Labrador Hydro (“Hydro”) is in receipt of the written submissions of the Parties to its General Rate Application (GRA), dated December 23, 2015. This Rebuttal specifically addresses comments made by Newfoundland Power (NP), the Consumer Advocate (CA), Vale Newfoundland & Labrador Inc. (Vale), and the Industrial Customers (IC). Hydro is providing this Rebuttal to address key issues arising from the above noted submissions and any failure to specifically rebut a statement made by any Party to the GRA should not be taken as Hydro’s concurrence with such statement.

## 2. BALANCING COSTS AND RELIABILITY

The Intervenors, both individually and as a whole, have made submissions on Hydro’s expenditures that cannot sensibly be reconciled with other aspects of their submissions where they seek better reliability and enhanced information and reporting.

As Hydro has experienced and has explained in multiple places and on numerous occasions in this proceeding, improving the reliability of Hydro’s equipment and systems requires the expenditure of operating and maintenance funds. As Hydro’s assets age, the pace of these expenditures will inevitably increase. The intervenors have stated that Hydro’s reliability performance requires improvement; in particular, the CA has indicated that deferring preventative maintenance is unacceptable.<sup>1</sup> At the same time, the intervenors have argued that Hydro’s level of operating and maintenance spending is too high (see for example, NP’s submission at page B-7 and the CA’s submission at page 21). It is difficult, if not impossible, to reconcile these positions. Increased maintenance has an unavoidable cost and reducing revenues with a view to cutting these costs will require decisions and choices to be made that are inconsistent with improving reliability. Simply put: the intervenors cannot have it both ways.

A similar incongruity exists with respect to the intervenors’ pleas for increased reporting and externally validated studies and their complaint as to increases in professional and consulting services (see the CA’s submission at pages 21, 24, 46 and 47). It is impossible to meet these requests without a corresponding increase in expenditures.

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<sup>1</sup> Consumer Advocate Final Written Submissions, page 44

1 **3. RATE OF RETURN ON EQUITY AS DIRECTED BY THE ORDER IN COUNCIL**

2 **Does OC2009-063 only apply to forecast future test years or to all test years employed in a GRA?**

3 Under OC2009-063, the Board has been directed use the last, Board determined, rate of return on  
4 equity (ROE) for NP to calculate Hydro’s return on rate base (RORB) “for all future General Rate  
5 Applications by Newfoundland and Labrador Hydro, commencing with the first General Rate Application  
6 by Newfoundland and Labrador Hydro after January 1, 2009.” That directive was made by the  
7 Lieutenant Governor in Council under the power given under subsection 5.1(1) of the EPCA, which  
8 reads:

9  
10 Direction to board

11 *5.1 (1) Notwithstanding sections 3 and 4 of the Act and the provisions of the Public*  
12 *Utilities Act, the Lieutenant-Governor in Council may direct the public utilities board with*  
13 *respect to the policies and procedures to be implemented by the board with respect to*  
14 *the determination of rate structures of public utilities under the Public Utilities Act and,*  
15 *without limiting the generality of the foregoing, including direction on the setting and*  
16 *subsidization of rural rates, the setting of industrial rates in Labrador, the fixing of a*  
17 *debt-equity ratio for Hydro, and the phase in, over a period of years from the date of*  
18 *coming into force of this section, of a rate of return determination for Hydro, and the*  
19 *board shall implement those policies and procedures.*

20  
21 Sections 3 and 4 of the EPCA set out the Province’s power policy and the means by which the Board is to  
22 carry it out. The relevant portions of section 3 to this issue read:

23  
24 Power policy

25 *3. It is declared to be the policy of the province that*  
26 *(a) the rates to be charged, either generally or under specific contracts, for the supply of*  
27 *power within the province*  
28 *(i) should be reasonable and not unjustly discriminatory,*  
29 *(ii) should be established, wherever practicable, based on forecast costs for that supply*  
30 *of power for 1 or more years,*  
31 *(iii) should provide sufficient revenue to the producer or retailer of the power to enable it*  
32 *to earn a just and reasonable return as construed under the Public Utilities Act so that it*

1           *is able to achieve and maintain a sound credit rating in the financial markets of the*  
2           *world,*

3  
4 OC2009-063 gives a specific direction to the Board as to a specific policy: the rate of return of Hydro.  
5 Where a directive is made under subsection 5.1(1) which requires the Board to apply a directed policy  
6 that may be contrary to that provided for in section 3, the Board is required to carry out the policy set  
7 out in the directive. Where a directive does not replace a policy existing under section 3 but rather  
8 provides for a specific additional policy to be followed, the Board should apply the policy set out in  
9 section 3 to the extent that it is consistent with the directive.

10  
11 The relevant portion of OC2009-063 reads:

12  
13           *Under the authority of section 5.1 of the Electrical Power Control Act, 1994, the*  
14           *Lieutenant Governor in Council is pleased to direct the Board of Commissioners of Public*  
15           *Utilities to adopt policies as follows for all future General Rate Applications by*  
16           *Newfoundland and Labrador Hydro, commencing with the first General Rate Application*  
17           *by Newfoundland and Labrador Hydro after January 1, 2009:*

18  
19                   *i) in calculating the return on rate base for Newfoundland and Labrador Hydro,*  
20                   *to set the same target return on equity as was most recently set for*  
21                   *Newfoundland Power through a General Rate Application or calculated through*  
22                   *the Newfoundland Power Automatic Adjustment Mechanism;*

23  
24 In carrying out the intention of OC2009-063, the Board is not required to wholly substitute the policy  
25 found in the directive for that found in section 3 because there is no conflict or contradiction arising  
26 from applying these policies. Rather, the directive provides a supplementary policy to those contained  
27 in section 3. Hydro submits that the Board is required to read the legislation and the directive together.

28  
29 The Order in Council contains the words: “. . . to adopt policies as follows **for all future General Rate**  
30 **Applications** by Newfoundland and Labrador Hydro . . . **after January 1, 2009.**” (emphasis added) In  
31 accordance with the plain words of the directive, the new ROE applies “commencing with” the first GRA  
32 filed after January 1, 2009. Hydro first filed for rates in the present proceeding in 2013 using a 2013 test

1 year to become effective January 1, 2014; as it was directed to do under Orders in Council.<sup>2</sup> Due to  
2 changes in circumstances, costs and the passage of time, which are outlined in Hydro’s response to  
3 Request for Information (RFI) NP-NLH-369, Hydro amended its application in November 2014 and filed  
4 for new customer rates to be effective January 1, 2015, based on a 2015 test year, and for the Board to  
5 approve recovery of Hydro’s 2014 Revenue Deficiency, caused by delayed implementation of rate  
6 changes for 2015. Hydro’s request for new rates and recovery of its 2014 Revenue Deficiency both  
7 arose out of, and within, Hydro’s GRA.

8

9 The purpose of the directive is to set the cost of capital to be used in Hydro’s GRAs. It does not contain  
10 any basis upon which the Board can choose to apply the ROE to one test year but not to another. It is  
11 silent on the matter of test years. Therefore, of course, it does not make any distinctions between those  
12 test year filings which are partially forecast years and those which are completely forecast years.

13 Moreover, subparagraph 3(a)(ii) of the EPCA does not prohibit the Board from using any particular type  
14 of test year—they could be partially forecast or completely historical, if either is judged by the Board to  
15 be more practicable than using a completely forecast test year.

16

17 The CA is suggesting that the Board reject Hydro’s Application for recovery of the directed rate of return  
18 for 2014 because it uses a test year that was filed based on (in part) historical costs, contrary to  
19 regulatory practice. In doing so, the CA is inviting the Board to flagrantly disregard the clear words of  
20 the directive in favour of an ostensibly rigid regulatory practice as to future test years. The CA’s  
21 proposed rigidity for the use of future test years is contrary to the clear wording of subparagraph 3(a)(ii)  
22 of the EPCA which establishes that the regulatory practice of future test years is by no means absolute  
23 but is instead qualified in that it requires that practice to be followed “wherever practicable”. With due  
24 respect to the CA, his position on this matter (found at lines 29-32 of page 10 of his final submission)  
25 evinces an unwillingness to accept that the Board has been directed on the matter of Hydro’s ROE for  
26 the purposes of setting rates in a GRA. To that end, he is striving to draw a distinction between fully  
27 forecast test years and partially forecast test years such that different regulatory treatment would arise.  
28 From the perspective of the EPCA and the directive, this is a distinction without a difference.

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<sup>2</sup> OC2013-089, OC2013-0990 and OC-2013-091.

**1 Disallowing costs for the purpose of reducing the ROE is contrary to OC2009-063**

2 The Board should be wary of any proposal to disallow Hydro’s costs or to impose an allowance as a  
3 means of effectively reducing Hydro’s ROE. Similarly, it should reject any suggestion that it would be  
4 proper to adjust Hydro’s cost structures so as to reset its risk profile. Doing so would be contrary to the  
5 spirit and intent of OC2009-063 and would constitute an error of law. Nonetheless, Hydro submits that  
6 this is precisely what the CA is proposing at page 10 of his submission (lines 29-32):

7  
8 *Although Hydro’s ROE is set by government to be equal to NP’s risk adjusted*  
9 *ROE, it would be inconsistent for the Board to accept a methodology that*  
10 *determines the revenue requirement in a manner that mitigates Hydro’s risk*  
11 *when it cannot adjust the ROE to maintain a reasonable risk versus equity*  
12 *balance.*

13  
14 Hydro submits that under the EPCA and the Act, Hydro is entitled to recover its reasonable costs. In this  
15 GRA, the rates policy provisions of these statutes are supplemented by Orders in Council such that  
16 Hydro is also entitled, not as a matter of regulatory directive but by the operation of the Board’s  
17 governing statutes, to the opportunity to earn the specific margin of profit that is determined based on  
18 the return on equity as last determined for NP.

19  
20 Hydro acknowledges that, generally, a public utility’s risk and its allowed return are understood to be  
21 related. However, Hydro submits that in the matter before the Board, there is no basis in the legislation,  
22 the present directive, or in regulatory practice, to comply with the CA’s proposal which amounts to a  
23 suggestion that the Board “game” Hydro’s recovery of its costs based upon an assessment of Hydro’s  
24 test year or risk factors. The proposal that the Board tailor the methodology of determining Hydro’s  
25 revenue requirement to enable it to effect a reduced ROE, is an invitation to do violence to the spirit of  
26 the directive.

**27  
28 Applicability of the OPG Case in the Context of the ROE Directive**

29 Hydro also takes issue with the assertion of NP, which relies upon a recent Supreme Court of Canada  
30 case (*Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44), that the Board should  
31 order generalized cost disallowances against Hydro or adjustments to Hydro’s proposed revenue



1 requirements. Hydro submits that this recent decision is distinguishable from the present matter in two  
2 very important respects.

3  
4 At issue in the OPG case were salaries and wages paid above the industry standard. The cost  
5 disallowance made by the OEB was targeted to those salary and wages costs which were specifically  
6 found to have been unreasonable. Clearly, if a specific cost of Hydro is not a reasonable and prudent  
7 cost of providing service, the Board may exercise its discretion with respect to that cost and determine  
8 that it will not be permitted to be recovered. That cost can properly be deducted from allowed revenue  
9 requirement. However, it is quite another thing to suggest, as NP has done at lines 6-10 of page B-13 of  
10 its argument, that a generalized reduction in revenue (short term or otherwise) is permissible in the  
11 present matter. This would constitute a colourable reduction of Hydro's ROE which is not authorized by  
12 the directive and, in fact, would eviscerate its clear policy intention. The Board's discretion to do as NP  
13 suggests in its argument has been fettered by the directive.

14  
15 For the purposes of this discussion, it is important to understand the specific context of the analysis  
16 used by the Supreme Court of Canada for this issue in the OPG case. The Court recognized that the OEB  
17 is under a general duty to safeguard a utility's financial well-being by allowing it to recover its cost of  
18 capital in the long run. Hydro observes that this is an acknowledgment of a longstanding and well  
19 understood tenet of utility regulation in this and many other jurisdictions. The Court goes further to  
20 state that impairing OPG's earnings in the short term, by assessing a cost disallowance which did not  
21 impair the long run financial health, was consistent with the Board's governing legislation.

22  
23 Hydro submits that the OPG case is distinguishable from the present matter as there is no indication in  
24 the OPG case of the presence of a directive to the Board to establish a particular return on equity. The  
25 OEB was therefore unfettered as to a short term decision that would impact OPG as to its recovery of its  
26 cost of capital. Hydro's case before this Board is different. In the present case, a rates ruling that would  
27 impair Hydro's short run recovery of its cost of capital is not contemplated in OC2009-063. Doing so  
28 would effectively render an allowed return on equity which is below that set for NP. Quite simply, the  
29 Board cannot render such a decision without violating the directive.

30

### 31 **OPG Case – Distinguishable on its Facts**

32 Hydro submits that the OPG case is also distinguishable on its facts.

1 Relying upon the OPG decision, NP at page B-13 of its submission states:

2

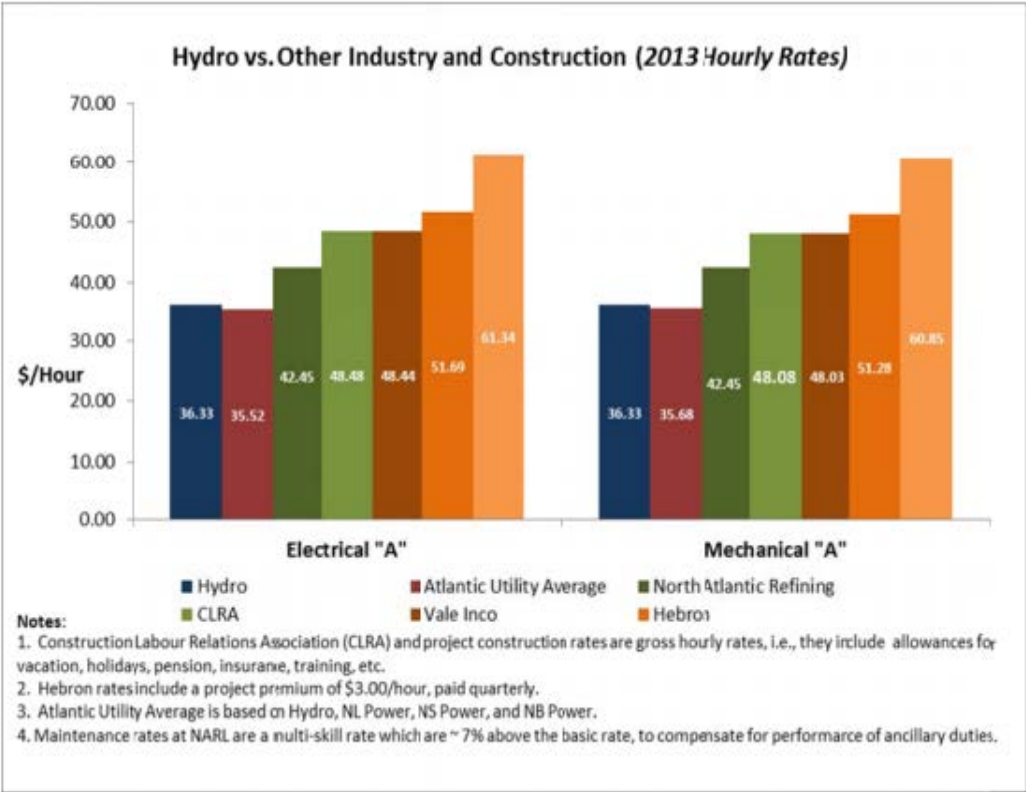
3 *On the basis of the Supreme Court of Canada’s recent statement of the law, it is within*  
4 *the Board’s authority to order cost disallowances or adjustments to proposed revenue*  
5 *requirements that could have an adverse impact on Hydro’s ability to earn its allowed*  
6 *rate of return in the short term if such disallowance or adjustment, in the Board’s*  
7 *opinion, constitutes an appropriate signal that Hydro must take responsibility for*  
8 *improving its performance. [emphasis added]*

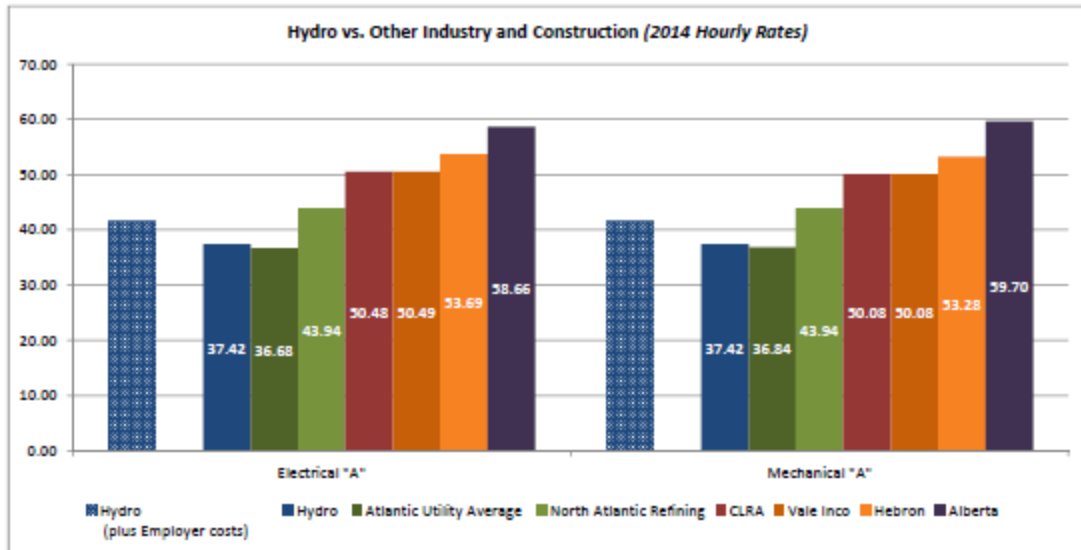
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10 The Supreme Court of Canada observed that the Board’s disallowance of costs flowed from a specific  
11 finding as to OPG’s wage and salary costs. Hydro notes that it has completed such an analysis of market  
12 comparisons for salary levels included in the 2015 Test Year. Undertaking 13, filed with the Board on  
13 November 13, 2015, includes a report by Nalcor’s Energy consultant, Mercer, which recommended  
14 appropriate salary levels for Hydro based on similar comparator businesses. Further, Chart 2.3 of page  
15 2.29 of Hydro’s Amended Application which was updated in Undertaking 19 using 2014 and 2015 hourly  
16 rates, showed Hydro’s hourly rates in comparison to its comparator group:

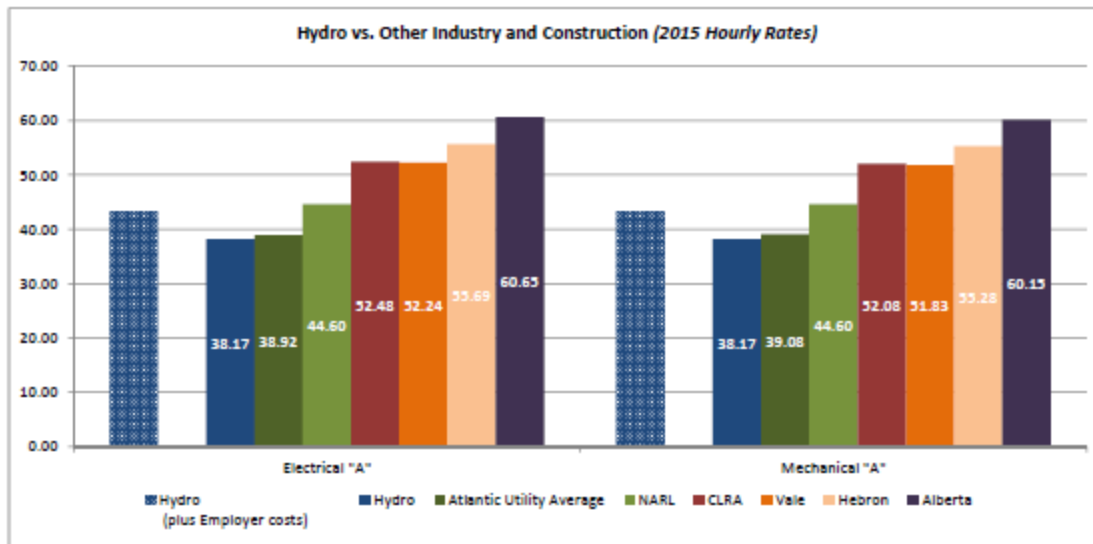
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Chart 2.3





1. Construction Labour Relations Association (CLRA) and project construction rates are gross hourly rates, i.e. they include allowances for vacation, holidays, pension, insurance, training, etc.
2. Hebron rates include a project premium of \$3.00/hour, paid quarterly.
3. Atlantic Utility Average is based on Hydro, NL Power, NS Power and NB Power.
4. Maintenance rates at NARL are a multi-skill rate which are ~7% above the basic rate, to compensate for performance of ancillary duties.
5. Chart 2.3 is revised to include a representation for Hydro of employer contribution of \$4.19 toward pension and group insurances in order to provide a more direct comparison with construction hourly wage rates.
6. Hydro is not able to provide the same reflection (build up) for other industry (Atlantic Utility Average and NARL). As a result, these rates are not directly comparable.



1. Construction Labour Relations Association (CLRA) and project construction rates are gross hourly rates, i.e. they include allowances for vacation, holidays, pension, insurance, training, etc.
2. Hebron rates include a project premium of \$3.00/hour, paid quarterly.
3. Atlantic Utility Average is based on base hourly wage rates for Hydro, NL Power, NS Power and NB Power.
4. Maintenance rates at NARL are a multi-skill rate which are ~7% above the basic rate, to compensate for performance of ancillary duties.
5. Chart 2.3 is revised to include a representation for Hydro of employer contribution of \$5.19 toward pension and group insurances in order to provide a more direct comparison with construction hourly wage rates.
6. Hydro is not able to provide the same reflection (build up) for other industry (Atlantic Utility Average and NARL). As a result, these rates are not directly comparable.

1 Hydro notes that its hourly rates are the lowest of the comparator group for 2014 and 2015. This is in  
2 stark contrast to OPG’s “excessive” compensation, as was the basis for the Supreme Court Decision  
3 quoted by NP.

4  
5 Further, Hydro submits that NP’s suggestion that this decision supports a general disallowance to  
6 “improve performance” is also incorrect. The OEB’s decision to disallow costs was on the basis that  
7 compensation costs were shown by evidence to be higher than the market<sup>3</sup>. It is for these reasons that  
8 Hydro submits that the OPG case is distinguishable and cannot be applied in the present case in the  
9 manner presented and suggested by NP.

10

#### 11 **4. RECOVERY OF 2014 REVENUE DEFICIENCY**

12 While the GRA has been pending before the Board, the rates established in Hydro’s 2007 GRA continued  
13 in effect. The resulting mismatch of revenues and costs caused Hydro to experience a 2014 revenue  
14 deficiency of \$45.9 million, measured as the difference between Hydro’s 2014 Test Year revenue  
15 requirement and 2014 Test Year revenues based on the current, 2007 GRA rates.

16

17 The CA and NP contend that the Board should deny recovery of Hydro’s 2014 revenue deficiency. The  
18 CA claims recovery should not be allowed because the 2014 revenue deficiency is not based on a future  
19 test year.<sup>4</sup> NP questions whether using a test year to recover a revenue deficiency is an acceptable  
20 regulatory practice<sup>5</sup> and characterizes revenue deficiency recovery as a retroactive adjustment to the  
21 actions of management outside the board’s regulative and corrective powers.<sup>6</sup> In rebuttal, Hydro  
22 submits that, consistent with a public utility’s entitlement to the opportunity to earn annually a just and  
23 reasonable return on its rate base, a public utility is entitled to recover revenue deficiencies caused by  
24 delayed implementation of rate changes that have been applied for by the utility.

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<sup>3</sup> *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, para 33

<sup>4</sup> In the words of the Consumer Advocate, “a defensible forecast of costs that is made in advance of the test year.”  
Consumer Advocate’s Final Written Submissions, page 8 lines 31 to 32.

<sup>5</sup> Written Submissions of Newfoundland Power, page D-6, lines 7 to 9. More specifically, NP faults Hydro for not  
presenting evidence demonstrating that this use of a test year is an acceptable regulatory practice or a practice  
used in other jurisdictions. In other parts of its final submission, NP suggests departures from generally accepted  
regulatory practice must be supported by expert testimony. *Id.*, page C-4, lines 22 to 23. NP offers no citations for  
this alleged requirement and Hydro submits this requirement does not exist.

<sup>6</sup> Written Submissions of Newfoundland Power, page D-6, line 19 to page D-7, line 2 (citing phrases from the *Stated  
Case*, paragraph 32). Vale raises a nearly identical point in its submission. Final Submissions of Vale Newfoundland  
& Labrador Limited, page 20.

1 Hydro’s Final Submission details the early history of the GRA. Hydro applied for rate changes to take  
2 effect January 1, 2014; Hydro warned that delayed implementation of its requested rate changes would  
3 result in a material revenue shortfall; Hydro requested interim rates more than once to address the  
4 2014 revenue deficiency; and more than once Hydro’s request was denied. Hydro ultimately amended  
5 its GRA to seek rates that would take effect in 2015 based on a 2015 test year, but the shortfall resulting  
6 from delayed implementation of rates for 2014 was so great that, absent revenue deficiency recovery,  
7 Hydro’s RORB would be 4.41% (when the bottom of the approved RORB range was 7.29%).<sup>7</sup>

8  
9 As recognized in the *Stated Case*, the Board has wide discretion to act “as appropriate and necessary” to  
10 effect its statutory mandate and the policies of the province. Hydro submits that denying recovery of  
11 the 2014 Revenue Deficiency is tantamount to denying Hydro its statutory entitlement to the  
12 opportunity to earn annually a just and reasonable return on its rate base.<sup>8</sup> Consistent with the  
13 performance of its statutory duties, it is incumbent upon the Board to use its discretion to act as  
14 necessary and appropriate to effect recovery of Hydro’s 2014 Revenue Deficiency, consistent with  
15 ensuring Hydro’s customers “obtain adequate service at reasonable rates.”

16  
17 Comments by the CA notwithstanding, Hydro submits that the 2014 Revenue Deficiency is based on a  
18 test year, not actual expenses. It is clear from the record that Hydro’s 2014 Test Year costs have been  
19 thoroughly tested as part of the GRA. Hydro agrees the 2014 Test Year is not fully forecasted, but a fully  
20 forecasted future test year is neither required by statute nor necessary to serve the purposes at hand.  
21 Section 3(a)(i) of the EPCA specifies that rates should be established wherever practicable on forecast  
22 costs. As Hydro filed its Amended GRA in November 2014, a future test year of the purity suggested by  
23 CA was not feasible for recovering the 2014 Revenue Deficit.

24  
25 More importantly, the policy favouring forecast test years concerns rate setting. Hydro has not applied  
26 for a 2014 Revenue deficiency rate; rather, Hydro has applied for the Board to test Hydro’s 2014 Test  
27 Year, derive the resulting 2014 Revenue Deficiency, and approve Hydro’s recovery of its 2014 Revenue  
28 Deficiency through the means proposed by Hydro or some other cost recovery mechanism. NP asserts,  
29 “A revenue deficiency is not a cost.”<sup>9</sup> To the contrary, a revenue deficiency very much is a cost;  
30 specifically, it is the cost borne by the utility as a result of delayed implementation of requested changes

---

<sup>7</sup> Amended Application, page 3.10, lines 7 to 11.

<sup>8</sup> *Public Utilities Act*, s. 80(1).

<sup>9</sup> Written Submissions of Newfoundland Power, page D-6, line 16.

1 in rates. Like any cost, a revenue deficiency can be tested for prudence, and Hydro’s 2014 Revenue  
2 Deficiency certainly has been tested in the GRA.

3

#### 4 **5. INTER-COMPANY CHARGES**

5 NP has argued that Hydro’s revenue requirement should be reduced by \$996,000 related to  
6 intercompany charges as a result of two factors. The first factor is whether costs included in the admin  
7 fee are fully burdened, the impact of which on the 2015 Test Year is \$114,000 as outlined in Undertaking  
8 151. Hydro acknowledges this deficiency. The second factor relates to the manner in which Hydro’s  
9 core shared service costs are allocated and whether it adheres with least cost principles, the impact of  
10 which is outlined in Hydro’s response to NP-NLH-204 for the 2013 Test Year.

11

#### 12 **Shared Service and Least Cost**

13 NP argues that the process that Hydro uses to allocate shared services does not adhere to the principle  
14 of least cost. This assessment is based on Hydro’s response to RFI NP-NLH-204 which shows the impact  
15 of changing the home base of the allocators using the 2013 Test Year numbers. Scenario (ii) bases all  
16 drivers associated with common services in the parent company regardless of where they are actually  
17 located and Scenario (iii) excludes the drivers associated with common service business units from the  
18 total. This RFI was not updated for the 2015 Test Year. In its reliance on Hydro’s response to NP-NLH-  
19 204, NP has identified the scenario with the largest variance of \$882,000 without considering the intent  
20 of allocating the costs among the lines of business. NP, by identifying the option with the largest  
21 variance, is not considering whether the approach is fair or reasonable but has selected the option with  
22 highest recovery. NP does not disagree that FTE or average user is reasonable, given their  
23 recommendation is to maintain the allocators, but suggests that the most reasonable place for these  
24 staff to be located is the parent company, regardless of their location and the nature of services  
25 provided. This approach does not address the fundamental intent of the allocation process which is to  
26 share costs in a reasonable and fair manner. Hydro submits that the fundamental process and  
27 objectives of allocating the admin fee must be taken into consideration in selecting the method chosen.

28

29 It is Hydro’s position that there are many options for establishing a process to recover costs through the  
30 Admin fee. The process that Hydro has implemented and described in evidence is outlined in Exhibit 8,  
31 Intercompany Transaction Costing Guidelines, page 3 and in numerous RFI’s that outline the costs, the  
32 allocation basis, the rationale for the allocators chosen, and the explanations for any anomalies. Two

1 alternate options are outlined in Hydro’s response to RFI NP-NLH-204. Hydro submits that its proposal is  
2 fair and reasonable. In fact, the independent review conducted by Deloitte and Touche on the  
3 methodology used by Nalcor to allocate shared services and filed with the Board in Hydro’s response to  
4 RFI NP-NLH-024, states at page 2 of the report that “. . . the methodologies and practices adopted by  
5 Nalcor are fair and reasonable and in line with other utilities . . .”.

6  
7 Further, the Board’s own consultant, Mr. Rolph, in his report filed with the Board dated June 1, 2015,  
8 stated on page 1, lines 19-22, that allocating the human resources and safety and health related costs  
9 and IS costs to be recovered using FTEs and average users as the allocator is reasonable. While NP  
10 might not agree with the proposal put forward by Hydro, NP did admit at page C-23, lines 9-10 of its  
11 final submission that:

12  
13 *...The Board’s transfer pricing expert, Mr. Rolphe, reviewed Hydro’s intercompany*  
14 *transaction policies and found them to be more or less reasonable with some exceptions.*

15  
16 Hydro submits that while there are alternatives that could have been used, Hydro chose and  
17 implemented an approach that was identified as an acceptable and reasonable one. The method that  
18 Hydro chose has been reviewed by two independent consultants, (Deloitte and Touche and Mr. Brad  
19 Rolph) and both consultants agreed that Hydro’s process is reasonable.

## 20 21 **6. TOTAL COMPENSATION**

22 In his final submission, the CA has requested that "the Board order Hydro in its next general rate  
23 application to file an expert analysis of its total compensation package compared to Atlantic Canada  
24 Utilities, taking into consideration, *inter alia*, Hydro's deferred benefit pension and retirement allowance  
25 benefits." Hydro has filed in evidence both expert and internal analysis which demonstrate that Hydro's  
26 employee compensation package is competitive and consistent with Atlantic Canadian Utilities in each  
27 of the major salary and benefit categories including; salaries and benefits,<sup>10</sup> group insurance<sup>11</sup> and  
28 retirement benefits.<sup>12</sup> Hydro submits that there is no added benefit to completing another study to  
29 summarize and group the information already obtained and presented. In the event that the Board  
30 orders that a study should be completed as requested by the CA, Hydro submits that the additional costs

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<sup>10</sup> CA-NLH-266

<sup>11</sup> PUB-NLH-038

<sup>12</sup> CA-NLH-249



1 associated with the study should be deferred so that they may be included in the next rate hearing as an  
2 amount to be recovered from customers.

3

#### 4 **7. TEST YEAR CAPITAL EXPENDITURES – CAPITAL ASSETS IN SERVICE**

5 NP claims that Hydro has not established that the historical trend for overestimating capital  
6 expenditures by 15% annually will not be repeated in 2015. Hydro submits that there is no basis for  
7 using a historical trend and that the forecast for the cumulated 2014 and 2015 test year is an  
8 underspending of less than 1%,<sup>13</sup> which is the most relevant and up-to-date information.

9

10 Further, only 50% of additions to plant in service in the 2015 Test Year are included in rate base because  
11 it is assumed they are in service for a half year. For rate setting purposes in 2016, only 50% of these  
12 assets continue to be included in rate base even though they will be in service for a full year in 2016 and  
13 were tested during the rate hearing. Including only 50% of the 2015 capital additions in Hydro's 2016  
14 rate base, together with the planned growth in Hydro's capital program, results in a forecast 2016 return  
15 on rate base that is below the lower end of the range of return.<sup>14</sup> NP's submission that Hydro's 2015  
16 capital assets in service should be reduced would further limit Hydro's opportunity to earn a reasonable  
17 return in 2016.

18

#### 19 **8. INTEREST DURING CONSTRUCTION AND WORK IN PROGRESS**

20 NP submits that the Interest During Construction (IDC) associated with the proposed Western Labrador  
21 transmission system was included in "work in progress" for 2015 and as a result should not be included  
22 in rate base. Hydro has excluded total "work in progress" and the corresponding IDC on "work in  
23 progress" assets from rate base and for rate setting purposes.<sup>15</sup> As a result, there is no adjustment  
24 necessary to Hydro's 2015 rate base and revenue requirement.

---

<sup>13</sup> Undertaking 158

<sup>14</sup> NP-NLH-020

<sup>15</sup> Amended Application, Finance Section 3, Schedule 1, Page 5 of 11, Line 5

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1 **9. DEFERRAL ACCOUNTS**

2 **Holyrood Conversion Factor**

3 At page 16 of its written submission, NP argues that there is no evidence to support a change to the  
4 Holyrood conversion factor. However, NP has not provided support for holding the conversion factor  
5 constant other than its inclusion in the 2007 Test Year.

6  
7 NP acknowledges Hydro’s regression analysis resulting in 607 kWh/bbl, the IC’s calculation of 622  
8 kWh/bbl, and the potential impact of varying BTU content in No. 6 fuel. Hydro’s 2015 forecast annual  
9 conversion factor is 597 kWh/bbl.<sup>16</sup> The average conversion rate for the period 2007- 2014 has been  
10 602 kWh/bbl. Contrary to NP’s submission, the information before the Board in the current proceeding  
11 provides minimal, if any, evidence to support the continued use of 630 kWh/bbl as the conversion factor  
12 in the 2015 Test Year.

13  
14 Hydro acknowledges that the determination of the conversion factor to be included in base rates in  
15 contentious and varies widely amongst Hydro and the Intervenors. For that reason, Hydro submits that  
16 approval of the Holyrood Conversion Factor Deferral provides a reasonable balance of the interests of  
17 the utility and the ratepayer. This deferral account would ensure that regardless of the conversion  
18 factor that is ultimately included in base rates, a true-up against actual results would occur so that  
19 neither customers nor the utility are unfairly advantaged or disadvantaged.

20  
21 Approval of this proposed deferral would also provide Hydro with the appropriate financial incentive to  
22 operate Holyrood on a least cost basis. Either the purchase of higher BTU content fuel at an  
23 uneconomic premium, or operating at higher than optimal unit loading, could result in a higher  
24 conversion factor. However, both would also result in higher fuel costs being incurred by ratepayers  
25 through the Rate Stabilization Plan (RSP), eliminating any potential conversion factor savings. Hydro  
26 submits that approval of the Holyrood Conversion Factor Deferral provides a reasonable balance of the  
27 interests of the utility and the ratepayer and is consistent with the provision of least cost service.

---

<sup>16</sup> Amended 2015 Cost Deferral, Schedule 3, Appendix D, Page 1 of 1.

**1 Energy Supply Cost Variance Deferral Account**

2 The ICs oppose the creation of this account and recommend that the proposed account should be  
3 addressed in the RSP review scheduled for 2016.<sup>17</sup>

4 As long as the Island Interconnected system remains isolated from the North American Grid, the  
5 incremental cost to serve load variances comes from Holyrood. This assumption is reflected in the  
6 operation of the RSP and the proposed Energy Supply Cost Variance Deferral Account. During periods  
7 when Holyrood is not in operation, variances in Exploits production can be offset through increased  
8 Hydraulic production. Over the longer term this reduces storage in Hydro's reservoirs, resulting in  
9 increased production from Holyrood. As noted in Hydro's response to Undertaking 171, the Energy  
10 Supply Deferral has specifically been designed to ensure harmonization with the RSP.

11  
12 Hydro submits that approval of the Energy Supply Cost Variance Deferral would provide Hydro with  
13 appropriate financial incentives to operate its system on a reliable, least cost basis. Approval of the  
14 proposed deferral account effective January 1, 2015 will also ensure Hydro is not financially  
15 disadvantaged for optimizing the system for the benefit of customers. Completion of the RSP review  
16 prior to considering implementation of the proposed deferral account would not provide Hydro a  
17 reasonable opportunity to recover the material increase in prudently incurred Combustion Turbine (CT)  
18 fuel costs that have been, and that continue to be, incurred by Hydro to provide reliable service to its  
19 customers.

20  
21 Vale also opposes the creation of the proposed Energy Supply Deferral Account on the basis that it did  
22 not have sufficient time to review Hydro's proposal, originally filed in November 2014. Vale states on  
23 page 23 of their submission:

24  
25 *While Hydro has presented evidence in response to Undertakings 170 and 171 that the*  
26 *current wording of the deferral account protects customers, the provision of these*  
27 *calculations following the conclusion of the GRA makes it impossible for the parties to*  
28 *test them through cross examination or RFIs. As such, unless the Board establishes that*  
29 *Hydro has indubitably demonstrated that the current wording of the Energy Supply Costs*  
30 *Deferral Account protects customers in all potential scenarios, Vale submits that the*  
31 *Board should refuse Hydro's request for an Energy Supply Costs Deferral Account.*

---

<sup>17</sup> See page 10 of the IC Group submission.

1 Hydro submits that this is not a valid reason to oppose this deferral account and notes that Vale was  
2 provided with the opportunity to submit RFIs on this subject. Vale also had access to the RFI responses  
3 provided to other parties, particularly Hydro’s response to NP-NLH-351, filed with the Board on March  
4 25, 2015, which illustrated the mechanics of the proposed deferral account. Finally, Vale had ample  
5 opportunity during the three month period over which the oral hearing took place to pose any  
6 remaining questions on the proposed deferral account to Hydro’s witnesses.

7

8 Hydro submits that Vale’s lack of understanding of this proposal is not sufficient grounds to deny  
9 Hydro’s request. Hydro also notes that the proposed account definition requires an application to the  
10 Board prior to the disposition of any balance, thus providing additional opportunity for the Board and  
11 intervenors to review the basis for the costs reflected in the account.

12

13 Hydro notes that NP supports the Energy Supply Cost Variance Deferral Account with respect to the  
14 operation of the Holyrood CT.<sup>18</sup>As indicated by NP in its final submission, the Holyrood CT is critical to  
15 the Island Interconnected System. Hydro should not be deterred from using it in a prudent manner to  
16 ensure system reliability and should not be negatively impacted for such actions.

17

## 18 **10. VACANCY ALLOWANCE**

19 At page C-22 of its submission, NP states that “Hydro’s suggestion that lower Human Resources costs  
20 due to higher vacancies would be offset by increased overtime and consultant costs was not proven by  
21 evidence.”

22

23 This statement by NP is false. As noted in Hydro’s response to Undertaking 146, NP’s own undertaking  
24 request, vacancy savings are more than offset by increased overtime and consulting costs. Therefore,  
25 Hydro submits that NP’s suggestion that revenue requirement be reduced by \$2.1 million to reflect 25  
26 additional vacancies is in fact not supported by the evidence. As clearly shown in Hydro’s response to  
27 Undertaking 146, Hydro is forecast to incur \$2.6 million in excess of its revenue requirement as a result  
28 of these increased vacancies.

---

<sup>18</sup> Written Submissions of Newfoundland Power, page E-3, lines 2-4

1 **11. CAPACITY ASSISTANCE AGREEMENTS**

2 The CA, on pages 28 and 29 of his written submission, opined that the capacity assistance agreements  
3 with Vale and Corner Brook Pulp and Paper (CBPP) were no longer necessary:

4

5 *The Board must consider the impact of this new information on customers. In particular,*  
6 *are the capacity assistance agreements with Vale and Corner Brook Pulp & Paper still*  
7 *needed? The capacity assistance agreement with Vale was driven in large part by its own*  
8 *erroneous forecast.*

9 . . .

10 *It is also questionable that the Supplemental Capacity Assistance Agreement with CBPP*  
11 *is needed.*

12 . . .

13 *The Consumer Advocate submits that Hydro should not be allowed future cost recovery*  
14 *for the Vale and CBPP Supplemental capacity assistance agreements.*

15

16 Hydro submits that the assertions of the CA noted above are both incorrect and inconsistent with the  
17 evidence and with the provision of reliable service to customers. Hydro submits that these capacity  
18 assistance agreements allow for greater reliability of service and are in fact, quite necessary. Hydro  
19 made a total of three requests for capacity assistance during the 2014-2015 Winter Period. On March 4,  
20 2015 up to 70.8 MW of capacity assistance was provided by CBPP and Vale which helped to maintain the  
21 generation reserves on the system and lessen the impact to customers as a result of a voltage collapse.

22

23 Hydro's assertion that capacity assistance increases system reliability was echoed by Liberty Consulting  
24 on page 20 of their Prudence Review report dated July 6, 2015:

25

26 *Accordingly, the interruptible load made a major contribution to system reliability in this*  
27 *challenging period. There is therefore no reason for Liberty to challenge the prudence of*  
28 *that agreement.*

29

30 Hydro submits that contrary to the assertions of the CA, the capacity assistance costs were prudently  
31 incurred, are required, and should remain in place to ensure reliable service customers.

1 **12. RECOVERY OF THE HOLYROOD CT COSTS IN RATES**

2 Hydro proposes that the 2015 Test Year rate base should include the Holyrood CT for rate setting  
3 purposes. The CA and NP object, claiming a lack of supporting expert evidence and implying such  
4 evidence is necessary because including the Holyrood CT in the 2015 Test Year rate base as proposed by  
5 Hydro contravenes sound regulatory practice.<sup>19</sup>

6  
7 Hydro submits that including the Holyrood CT as proposed accords with Board-recognized ratemaking  
8 principles and sound utility practice. Excluding the CT would deprive Hydro of its statutory entitlement  
9 of the opportunity to earn a just and reasonable return, inviting duplicative and inefficient regulatory  
10 proceedings.

11  
12 According to the Board’s Regulatory Framework, “Sound regulatory practices encompass fundamental  
13 principles which are used by regulators as a guide or roadmap to rational decision-making.”<sup>20</sup> Under the  
14 Cost of Service principle, rate recovery is available for costs that are prudent, that are used and useful in  
15 providing utility service, and that are incurred and recovered in the same period (so as to avoid  
16 intergenerational inequity).<sup>21</sup>

17  
18 Including the Holyrood CT in the 2015 Test Year rate base meets each of these rate setting criteria. The  
19 prudence of the Holyrood CT has been actively examined and argued in the GRA,<sup>22</sup> and the GRA record  
20 is replete with evidence establishing that the Holyrood CT is being used to provide utility service and will  
21 continue to do so while the rates emerging from the GRA are in effect.<sup>23</sup> As a matter of  
22 intergenerational equity, Hydro’s 2016 customers will be receiving service from the Holyrood CT, so  
23 rates taking effect in 2016 as a result of the GRA should compensate Hydro for the Holyrood CT’s capital  
24 costs.

25  
26 In contrast, if the Holyrood CT is not included in the 2015 Test Year rate base for rate setting purposes,  
27 Hydro would be deprived of its statutory entitlement to the opportunity to earn a just and reasonable

---

<sup>19</sup> Consumer Advocate’s Final Written Submissions page 30-31; Written Submissions of Newfoundland Power pages C-4 to C-5. Vale seeks exclusion of the Holyrood CT, also. Final Submissions of Vale Newfoundland and Labrador, Limited, page 15.

<sup>20</sup> Order P.U. 8(2007), Appendix A, page 6.

<sup>21</sup> Order P.U. 8(2007), Appendix A, page 7.

<sup>22</sup> For example, refer to September 14 transcript, pages 25-97.

<sup>23</sup> For example, refer to November 16 transcript, pages 8-9.

1 return for 2016.<sup>24</sup> Hydro’s revenue requirement would decrease by \$5.1 million. Returns of and on the  
 2 Holyrood CT would have to be funded from Hydro’s net earnings, causing Hydro’s 2016 return on rate  
 3 base (RORB) to fall by 57 basis points.<sup>25</sup> The decrease would be well below Hydro’s allowable RORB  
 4 range agreed to in settlement,<sup>26</sup> and the resulting RORB would fall to a point below the lower end of the  
 5 forecast range of return.<sup>27</sup>

6  
 7 A reduction of this magnitude would leave Hydro constrained to initiate further Board proceedings  
 8 simply to obtain what Section 80(1) ensures. The CA evidently would have Hydro file a new GRA  
 9 immediately on the heels of this one,<sup>28</sup> a path Hydro has been trying to avoid as a matter of regulatory  
 10 efficiency,<sup>29</sup> even as Hydro has already committed to filing its next GRA less than 15 months from now.<sup>30</sup>  
 11 As cogently observed by the majority of the Province’s Court of Appeal in the Stated Case, per Green,  
 12 J.A.:

13  
 14 *The Board has broad discretion, a hence a large jurisdiction, in its choice of the*  
 15 *methodologies and approaches to be adopted to achieve the purposes of the legislation*  
 16 *and to implement provincial power policy.*<sup>31</sup>

17  
 18 The Board should exercise its discretion and flexibility here. In setting rates, the Board safeguards the  
 19 utility’s Section 80(1) entitlement by making its best prospective estimate, based on a consideration of  
 20 all the evidence.<sup>32</sup> The Holyrood CT’s usefulness in providing utility service in 2016 and beyond has been  
 21 litigated in the GRA, along with the prudence of the Holyrood CT’s capital costs. The alternative is to file  
 22 and process another GRA to again hear and consider the prudence, usefulness and intergenerational  
 23 equity issues that are before the Board now. In NP’s 2013 GRA, as evidenced in Order P.U. 13 (2013),  
 24 the Board has exercised flexibility in ensuring that a utility is provided with the opportunity to earn a

<sup>24</sup> *Public Utilities Act*, s. 80(1) [hereinafter “Section 80(1)”].

<sup>25</sup> PUB-NLH-487, page 1. The fall would be from a forecast 2016 RORB of 6.75% to 6.18%.

<sup>26</sup> Settlement, Consent 1, page 2, paragraph 7.

<sup>27</sup> PUB-NLH-487, page 2.

<sup>28</sup> “Consumer Advocate’s Final Written Submissions” page 30.

<sup>29</sup> NP-NLH-324, lines 14 to 16 (One of the factors that caused Hydro to file the amended GRA was “Obtaining an order based upon the 2013 Test Year filing would likely have required Hydro to file another GRA in a very short timeframe that would not facilitate regulatory efficiency.”).

<sup>30</sup> Settlement, Consent 1, page 5, paragraphs 23(d) and 24.

<sup>31</sup> *Newfoundland (Board of Commissioners of Public Utilities)(Re)(1998)*, 164 NFLD & PIE R.60 (NFLD.C.A.)(commonly referred to as the “Stated Case”), at paragraph 36.

<sup>32</sup> *Stated Case*, paragraph 36.

1 reasonable rate of return outside a test year by permitting the consideration of additional asset  
 2 investment by the utility outside a test year. This would have permitted a rate-change filing based upon  
 3 certain changes in financial data but short of a traditional full GRA.

4  
 5 *The Board has accepted a return on equity for ratemaking purposes for 2015 of 8.8%.*  
 6 *Newfoundland Power will be required to file, on or before November 17, 2014, an application for*  
 7 *approval of a 2015 forecast average rate base and rate of return on rate base and **may file for***  
 8 ***approval of a revised Schedule of Rates, Tolls and Charges to reflect these revisions.*** (emphasis  
 9 added)<sup>33</sup>

### 11 **13. INAPPROPRIATE REQUEST TO USE THE RURAL DEFICIT TO REDUCE HYDRO’S ROE**

12 At page 55 of his written submission, the CA has requested that the Board “state a case to the Court of  
 13 Appeal for the Court’s opinion as to whether or not the Board has the necessary jurisdiction, for rate  
 14 setting purposes, to direct a portion of the prescribed return on equity towards the rural deficit”. In  
 15 Hydro’s view, this proposition is completely without merit from a regulatory policy perspective and is  
 16 not a permitted outcome within the governing legislation and directives to the Board.

17  
 18 In support of his argument, the CA quoted a long passage from Board Order No. P.U. 7(2002-2003)  
 19 dated June 2, 2002. In that passage the Board was discussing the various policy options contained in  
 20 submissions it had received including a perspective that the rural deficit was a matter of social policy  
 21 that ought to be funded by taxpayers. The Board declined to adjust Hydro’s ROE to impose the rural  
 22 deficit upon the taxpayers and indicated that it wished to see an evidentiary record of future discussions  
 23 between Hydro and Government on the matter.

24  
 25 Approximately one year later, on July 8, 2003 the Lieutenant Governor in Council issued OC2003-347  
 26 (filed in this matter as CA-NLH-024 Attachment 1), which included the following directive to the Board,  
 27 to:

28  
 29 *v) continue to fund the financial deficit resulting from providing electrical service to*  
 30 *Newfoundland and Labrador Hydro's rural customers through the electricity rates*  
 31 *charged to Newfoundland and Labrador Hydro's other electricity customers, including its*

<sup>33</sup> Order No. P.U. 13(2013) at page 57.



1           *Labrador interconnected, retail customers and Newfoundland Power, but excluding the*  
2           *industrial customers;*

3  
4 As stated above, OC2009-063, which directs the Board with respect to the setting of Hydro’s rate of  
5 return, also dealt with an aspect of the recovery of rural costs and directed the Board as follows:

6  
7           *ii) that Newfoundland and Labrador Hydro is entitled to earn annually, a rate of return*  
8           *equal to the weighted average cost of capital, as ordered from time to time, on the*  
9           *entire rate base as fixed and determined by the Board of Commissioners of Public*  
10           *Utilities, **including amounts used solely for the provision of service to its rural***  
11           ***customers; (emphasis added)***

12  
13 The policy of Government inherent in these directives to the Board is clear and unambiguous. Hydro is  
14 to collect its costs, including those amounts identified as the rural deficit and a return on the associated  
15 rural assets, from its customers. An order requiring Hydro to reduce its return on equity to alleviate  
16 rural deficit impacts would be clearly contrary to these directives. There is no serious question of law or  
17 jurisdiction to be stated to the Court of Appeal here. The matter is answered in full by referring to these  
18 directives. A reduction of Hydro’s return as a means of reducing the rural deficit allocation to Hydro’s  
19 customers is clearly contrary to the directives to the Board set out in OC2003-347 and OC2009-063.

#### 20 21 **14. COSTS**

22 Pursuant to subsection 90(1) of the *Public Utilities Act*, the Board has a broad discretion whether to  
23 award costs, and if so, to determine the amount of costs. There is no right to costs. The Board has  
24 sometimes awarded costs to an Intervenor in a GRA where the Intervenor’s participation was useful and  
25 provided meaningful assistance to the Board in the context of the GRA process. However, even in those  
26 circumstances, an award of costs is discretionary and is not mandatory or automatic.<sup>34</sup>

27  
28 With respect to any order of costs that the Board may award in this proceeding to any of the  
29 Intervenor, Hydro submits that the Board should not award full costs, as a matter of principle, that only  
30 reasonable costs should be awarded. As occurs in other jurisdictions, the Board should consider the

---

<sup>34</sup> Order No. P.U. 14 (2004)

1 nature of the customers the intervenors represent,<sup>35</sup> and that Hydro should be permitted to recover  
2 those costs from customers. Hydro respectfully submits that interventions should be conducted in a  
3 least cost manner to ensure efficient and effective regulatory proceedings and any award of costs  
4 should be reflective of those principles. In determining the degree to which costs should be awarded,  
5 guidance from other jurisdictions might be useful to the Board.

## 7 **15. CONCLUSION**

8 Hydro respectfully submits that it seeks approval of rates which are consistent with regulatory practice,  
9 legislation and government directives. As stated by NP at page B-12 of their final submission:

10  
11 *...the financial integrity of Hydro benefits customers. For that reason, Hydro's*  
12 *entitlement to an opportunity to earn a just and reasonable return should always be a*  
13 *fundamental consideration for the Board. The Board's decisions in this proceeding must*  
14 *balance that consideration against the customers' interest in receiving an efficiently*  
15 *provided service.*

16  
17 Hydro's initial filing of its 2013 GRA proposed recovery of prudently incurred costs for 2014 including an  
18 appropriate return. The amending of Hydro's application including 2014 and 2015 test years does not  
19 eliminate the requirement for Hydro to have the opportunity to recover its 2014 costs. The Board  
20 should be cautious in accepting recommendations of intervenors that are not supported by the evidence  
21 on the record or are not consistent with statutory obligations of the Board.

22  
23 Many intervenors, particularly NP, proposed material cost disallowances that cannot be sensibly  
24 reconciled with other aspects of their submissions in which they seek improved reliability and enhanced  
25 regulatory scrutiny and reporting. The Board must balance the provision of reliable service with the cost  
26 to provide that service. The record of the current proceeding does not indicate that the forecast costs in  
27 the 2015 Test Year for the purpose of rate setting are in excess of the cost that Hydro will incur in  
28 providing reliable service to customers.

29  
30 Hydro should be provided a reasonable opportunity to recover supply costs consistent with regulatory  
31 practice in other Canadian jurisdictions. Such approval would provide Hydro with appropriate financial

---

<sup>35</sup> Alberta Utility Commission, Rule 022: Rules on Intervener Costs in Utility Rate Proceedings.

- 1 incentives to operate its system on a reliable, least cost basis and ensure Hydro is not financially
- 2 disadvantaged for optimizing the system for the benefit of customers.
- 3
- 4 ALL OF WHICH IS RESPECTFULLY SUBMITTED.



# Rule 022

## Rules on Intervener Costs in Utility Rate Proceedings

The Alberta Utilities Commission (AUC/Commission) has approved this revised rule on September 30, 2008.

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### Definitions

1 In these rules:

- (a) “Act” means the *Alberta Utilities Commission Act*;
- (b) “Commission” means the Alberta Utilities Commission;
- (c) “costs order” means an order of the Commission awarding costs on a claim for costs to a participant under section 21 of the Act;
- (d) “participant” means an applicant or intervener in a hearing or proceeding for a rate application or related to a rate application;
- (e) “scale of costs” means the scale of costs set out in Appendix A.

### Application

2 These rules apply to hearings or proceedings for rate applications of utilities under the jurisdiction of the Commission or related to rate applications.

### Cost Eligibility

3(1) The Commission may award costs to an intervener who has, or represents a group of utility customers that have, a substantial interest in the subject matter of a hearing or other proceeding and who does not have the means to raise sufficient financial resources to enable the intervener to present its interest adequately in the hearing or other proceeding.

- (2) An intervener may request an advance ruling on its eligibility for costs.
- (3) An applicant is eligible to claim costs.

### Ineligible Interveners

4 Unless the Commission orders otherwise, the following types or classes of interveners are ineligible to claim costs

- (a) an out-of-province utility;
- (b) electric generators, including associations representing electric generators;
- (c) a utility intervening in another utility's application;
- (d) business, commercial, institutional, or industrial entities including associations of these entities;
- (e) municipalities including associations of municipalities;
- (f) rural electrification associations including associations of rural electrification associations; and
- (g) rural gas co-ops including associations of rural gas co-ops.

### **Review and Variance Costs**

5 (1) When an applicant for review and variance under Rule 016, *Review and Variance of Commission Decisions*, is a utility and the application is dismissed on the preliminary question, the utility must bear its own costs and the costs incurred by the cost eligible participants, and these costs shall be borne by the shareholders of the applicant utility and may not be included in or form the basis of any forecast used to apply for rate increases.

(2) When an applicant for review and variance under Rule 016, *Review and Variance of Commission Decisions*, is an intervener and the application is dismissed on the preliminary question, the applicant must bear its own costs and the utility's costs may be assigned to its hearing costs reserve account.

(3) (3) When the Commission has decided that a review and variance applicant has satisfied the preliminary question and has decided to hold a hearing or other proceeding to determine the review issue(s), parties who are eligible to claim costs under this Rule may do so for the review proceeding and may also include the costs incurred for the preliminary question stage.

### **Budget to be Filed**

6(1) Unless otherwise directed by the Commission, only those participants who are eligible to claim costs must file a budget in accordance with Appendix B.

(2) A budget must provide the following

- (a) a detailed budget outlining the reasonable fees and disbursements the participant anticipates it will incur in association with its involvement in the proceeding;
- (b) a summary of the issues the party intends to address and why those issues are material to that party or its organization;
- (c) a detailed proposal outlining the professional assistance such as experts, consultants, lawyers, the participant intends to engage, including:

- (i) the qualification of each professional;
- (ii) the issues that each professional will address; and
- (iii) the nature and scope of the work that each professional will carry out to address the identified issues.

### **Advance of Funds Request**

**7(1)** An eligible intervener in a hearing or other proceeding may, at any time before or during the hearing or other proceeding, make a request to the Commission for an advance of funds.

**(2)** An application for advance funding must include a budget in accordance with section (4) and include information substantiating the need for the advance of funds.

**(3)** If the Commission awards an advance of funds to an eligible intervener under this section, the Commission may issue an order directing the applicant to advance funds to the eligible intervener and set out the terms for repayment of the advance to the applicant by the eligible intervener if the Commission varies or denies costs on the claim for costs filed by the eligible intervener at the close of the hearing or other proceeding.

### **Interim Awards**

**8(1)** An eligible intervener may apply to the Commission for an award of interim costs incurred in a hearing or other proceeding by filing an interim costs claim.

**(2)** An application for interim funding must include a budget in accordance with Appendix B.

**(3)** An eligible intervener may only claim interim costs in accordance with the scale of costs.

**(4)** The Commission may award interim costs to an eligible intervener if the Commission is of the opinion that

- (a) the costs are reasonable and directly and necessarily related to the hearing or other proceeding,
- (b) the hearing or other proceeding in which interim costs are claimed is lengthy, and
- (c) the eligible intervener has demonstrated a need for financial assistance to continue to address relevant issues in the hearing or other proceeding.

**(5)** If the Commission awards interim costs to an eligible intervener under this section, the Commission may issue an order directing the applicant to pay the interim costs to the eligible intervener and set the terms for repayment of the interim costs to the applicant by the eligible intervener, if the Commission varies or denies costs on the claim for costs filed by the eligible intervener at the close of the hearing or other proceeding.

## Costs Claim

- 9(1) An eligible participant may apply to the Commission for an award of costs incurred in a hearing or other proceeding by filing a costs claim in accordance with Appendix C.
- (2) An eligible participant may only claim costs in accordance with the scale of costs.
- (3) Unless otherwise directed by the Commission, an eligible participant shall
  - (a) file a claim for costs within 30 days after the hearing or other proceeding is closed, and
  - (b) serve a copy of the claim on the other participants.
- (4) For a negotiated settlement, an eligible participant shall submit a cost claim within 30 days of
  - (a) the date upon which the settlement is approved by the Commission, or
  - (b) the date upon which the settlement is abandoned and these costs are not to be combined with any hearing or other proceeding arising out of a settlement being abandoned.
- (5) For a review and variance application, an eligible participant shall submit a cost claim within 30 days
  - (a) of the date the Commission dismissed the application on the preliminary question under Rule 016, *Review and Variance of Commission Decisions*; or
  - (b) following final argument in the review hearing or other proceeding conducted in the case where the Commission granted the application on the preliminary question under Rule 016, *Review and Variance of Commission Decisions*;
- (6) An applicant may submit, as part of the applicant's claim for costs, a request to the Commission to record in the applicant's hearing costs reserve account except for an application for review and variance made by a utility which was dismissed on the preliminary question, costs that are reasonable and directly and necessarily related to the hearing or other proceeding.
- (7) After receipt of a claim for costs, the Commission may direct the eligible participant who filed the costs claim to file additional information or documents with respect to the costs claimed.
- (8) All cost claims will be placed in the AUC's IAR System for viewing by participants and the public.

## Comments on Costs Claims

- 10(1) Unless otherwise specified by the Commission, in a hearing or other proceeding

- (a) within 14 days of the receipt of a summary of costs prepared by the Commission from the costs claims submitted by one or more of the eligible participants, each participant shall file and serve on the other participants a submission detailing any questions and comments on the summary of costs, and
- (b) within 14 days of the receipt of the comments from one or more participants under clause (a), each eligible participant shall file and serve on the other participants a reply respecting those comments.

### Costs Award

**11(1)** The Commission may award costs, in accordance with the scale of costs, to an eligible participant if the Commission is of the opinion that

- (a) the costs are reasonable and directly and necessarily related to the hearing or other proceeding, and
- (b) the eligible participant acted responsibly in the hearing or other proceeding and contributed to a better understanding of the issues before the Commission.

**(2)** In determining the amount of costs to be awarded to an eligible participant, the Commission may consider whether the eligible participant did one or more of the following:

- (a) asked questions on cross-examination that were unduly repetitive of questions previously asked by another participant and answered by the relevant witness;
- (b) made reasonable efforts to ensure that its evidence was not unduly repetitive of evidence presented by another participant;
- (c) made reasonable efforts to cooperate with other parties to reduce the duplication of evidence and questions or to combine its submission with that of similarly interested participants;
- (d) presented in oral evidence significant new evidence that was available to it at the time it filed documentary evidence but was not filed at that time;
- (e) failed to comply with a direction of the Commission, including a direction on the filing of evidence;
- (f) submitted evidence and argument on issues that was not relevant ;
- (g) needed legal or technical assistance to take part in the hearing or other proceeding;
- (h) engaged in conduct that unnecessarily lengthened the duration of the hearing or other proceeding or resulted in unnecessary costs to the applicant or other participants;
- (i) failed to comply with these rules or Rule 001, *Rules of Practice*.



## Liability for Costs

**12** Unless the Commission otherwise directs

- (a) in a hearing or other proceeding that relates to an application of a utility, the utility shall pay the costs awarded to an eligible intervener, and
- (b) in a hearing or other proceeding that relates to policies or concerns respecting utilities, the Commission may pay the costs awarded to an eligible participant or require that payment of the costs award be shared by one or more utilities .

## Costs Order

**13(1)** Where the Commission has awarded costs in a hearing or other proceeding, the Commission shall issue a cost order setting out the amount awarded and to whom and by whom the payment must be made.

**(2)** The Commission shall serve a copy of the cost order on the eligible intervener making the claim and on the applicant.

**(3)** An applicant named in a cost order shall pay the amount awarded to the eligible intervener within 30 days of being served with a copy of the cost order.

**(4)** A cost order may state whether an applicant named in the order is authorized to record the costs in its hearing costs reserve account.

## Coming into force

**14** This rule comes into force on October 1, 2008 and applies to all rate applications filed after this date.

## Appendix A Scale of Costs

This scale of costs represents a fair and reasonable tariff to provide any eligible interested party with adequate, competent, and professional assistance in making an effective submission before the Commission. In a case where an eligible participant can advance persuasive argument that the scale is inadequate given the complexity of the case, the Commission may award an amount greater than stated in this scale to address such unique circumstances.

### 1. Professional Fees

This scale of costs provides a sliding scale for professional fees; as the professional's experience increases, so will his or her value and wage. The Commission emphasizes that the maximum allowable hourly rates will not be awarded as a matter of course. Rather, the Commission will assess each claim upon its individual merits and will only approve the maximum fee when it has been demonstrated that such a charge is warranted by the work performed. **The Commission allows professionals only half of their hourly rate for travel time.**

**Claims for professional fees must be accompanied by a statement of account.**

Statements of account must include the following:

- the date of activity undertaken;
- a description of the activity undertaken with sufficient detail to allow the Commission to understand the nature of the activity and how it relates to the issues being advanced by the eligible participant ; and
- the time incurred with respect to each described service.

### Legal Fees

Articling students \$140.00/hour  
1-4 years at the bar \$240.00/hour  
5-7 years at the bar \$280.00/hour  
8-12 years at the bar \$320.00/hour  
More than 12 years at the bar \$350.00/hour

Legal fees are deemed to include all overhead charges implicit in the normal operation of a law firm. The Commission will not award legal fees for secretarial/support staff work. The fees for this work must be claimed as secretarial/staff support fees.

## **Fees of Consultants, Analysts, and Experts**

1-4 years' experience \$120.00/hour  
5-7 years' experience \$160.00/hour  
8-12 years' experience \$230.00/hour  
More than 12 years' experience \$270.00/hour

The Commission recognizes that the above professionals may not include the costs of secretarial work in their fees and thus may recognize a claim for secretarial or clerical services. However, the Commission will not recognize claims for overhead based upon percentages of the fees or disbursements claimed.

## **Fees for Secretarial/Support Staff**

Secretarial/support staff \$45.00/hour

## **2. Disbursements**

The Commission will not consider expense claims that are based upon percentages of the fees claimed. All receipts relating to a claim for disbursements must be legible and clearly identify the date upon which the receipt was issued. **The Commission will not request clarification for receipts that do not satisfy these requirements, and the related claim may not be approved.**

### **Office Disbursements**

The Commission will consider claims for the following office disbursements incurred throughout the eligible participant's involvement in the hearing or proceeding.

- courier charges
- long-distance telephone calls
- photocopies (\$0.10/page)
- fax (\$1.00/page)
- computer charges
- postage
- transcripts (must be accompanied by a receipt)

The Commission does not require eligible claimants to submit receipts for the above disbursements (other than transcripts) with their initial cost claims. Eligible claimants should, however, retain receipts for such disbursements, as the Commission will require their submission if the claim is selected for audit. Office disbursements other than those listed above may be listed as miscellaneous, with a short explanation of the expenses claimed attached.

### **Personal Disbursements**

The Commission will consider claims for the following personal disbursements that are incurred during an oral hearing.

### ***Meals***

Maximum allowable claim for meals is \$40.00 per day (\$10.00 for breakfast, \$15.00 for lunch and dinner each). Claims for meals are restricted to the duration of an oral hearing. Tips are not claimable.

Receipts are required for all meals claimed, with the date of the meal marked on the receipt.

### ***Accommodation***

Maximum allowable claim for accommodation is \$140.00 per day maximum. Claims for accommodation are restricted to the duration of an oral hearing.

Receipts must accompany all claims for accommodation.

### ***Travel***

The Commission's mileage rate for automobile travel is \$0.46/km (including GST). This portion of a claim is restricted to intercity travel distances of 50 km or greater.

The Commission will recognize claims for airfare at economy rates or less. Claims for airfare are restricted to an oral hearing.

Receipts are required and must clearly identify the date of departure and arrival.

### ***Taxi***

Taxi claims are restricted to an oral hearing. Taxi receipts need not accompany the claim. Tips are not claimable. However, an eligible claimant should retain such receipts in the event that the Commission directs an audit of the claim.

### ***Parking***

Parking claims are restricted to an oral hearing. Parking receipts need not accompany the claim. However, an eligible claimant should retain such receipts in the event that the Commission directs an audit of the claim.

## **Appendix B**

### **Budget Submission**

Date of Budget Submission:

Name of hearing:

Application number(s):

Name of participant group:

Identify the issues you will be exploring and/or challenging:

Issue 1 –

Issue 2 –

Issue 3 –

Issue 4 –

Issue 5 –

For each issue identified, complete the following Budget Submission:

#### **General**

Name of issue/area to be explored and/or challenged:

Why is this area an issue for this participant group?

To pursue this issue, what resources do you expect to employ?

#### **External Legal Counsel**

Name of law firm being retained

What specific activities will senior counsel be performing?

What specific activities will junior counsel be performing?

What specific activities will articling students be performing?

Anticipated legal fees: \$ \_\_\_\_\_

**Expert Consultant**

Name of expert consultant being retained

What specific areas of this issue is the expert consultant responsible for?

Describe the specific activities the expert consultant will be performing by way of the following categories:

- Prehearing review and consultation
- Filing affidavit evidence
- Sitting on a panel or testifying at the oral hearing and number of days
- Monitoring proceeding in person or by way of transcripts
- Final argument and reply submissions

Anticipated expert fees: \$ \_\_\_\_\_

**General Consultant**

Name of general consultant being retained

What specific areas of this issue is the general consultant responsible for?

Describe the specific activities the general consultant will be performing by way of the following categories:

- Prehearing review and consultation
- Filing affidavit evidence
- Sitting on a panel or testifying at the oral hearing and number of days
- Monitoring proceeding in person or by way of transcripts
- Final argument and reply submissions

Anticipated consulting fees: \$ \_\_\_\_\_

## Appendix C Cost Claims

- 1** All eligible claimants must acknowledge that all documents filed in respect of the cost claim must be placed on the public record, including that all documents will be accessible on the AUC's IAR system which is available via the Internet.
- 2** If a hearing or other proceeding is convened to consider multiple applications by different applicants, eligible participants must file a separate package of utility cost forms for each application, otherwise, cost claims are returned.
- 3(1)** An eligible claimant must submit the following.
  - (a) Submission of Justification. Eligible participants are required to explain:
    - (i) what interests they represent
    - (ii) what tasks they have undertaken
    - (iii) why they appeared before the Commission
    - (iv) what efforts were expended to avoid duplication as between participants or as between counsel, experts, and consultants
    - (v) why the costs submitted are reasonable.
  - (b) Form U1 – Summary of Total Costs Claimed
  - (c) Form U2 – Summary of Professional Fees Claimed
  - (d) Form U3 – Summary of Disbursements Claimed
  - (e) Form U4 – Affidavit of Fees and Disbursements Claim which may be signed by the participant or counsel for the participant
  - (f) Statement(s) of account reflecting the professional fees being claimed
  - (g) Legible receipts for certain expenses where required
- (2)** The onus is on the eligible claimant to provide sufficient information for the Commission to effectively assess its claim and must address the specifics of the proceeding.
- (3)** All cost claim forms are available on the Commission website.
- (4)** A cost claim must be filed electronically as a single PDF document by e-mail to [utilitycosts@auc.ab.ca](mailto:utilitycosts@auc.ab.ca). A paper copy is not required.