

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

AN ORDER OF THE BOARD

NO. P.U. 35(2016)

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

7 **IN THE MATTER OF** a proposal by Newfoundland
8 Power Inc. for the refund to its customers of a surplus
9 balance in Newfoundland and Labrador Hydro's Rate
10 Stabilization Plan.
11

12
13 **WHEREAS** Newfoundland Power Inc. ("Newfoundland Power") and Newfoundland and
14 Labrador Hydro ("Hydro") are corporations duly organized and existing under the laws of the
15 province of Newfoundland and Labrador, are public utilities within the meaning of the *Act*, and
16 are subject to the provisions of the *EPCA*; and
17

18 **WHEREAS** Hydro's Rate Stabilization Plan (the "RSP") is a mechanism that limits volatility in
19 customer rates related to variations in several factors, one of them being the cost of fuel used at
20 the Holyrood Thermal Generating Station; and
21

22 **WHEREAS** between January 1, 2007 and August 31, 2013 a surplus balance accumulated in the
23 load variation account of the RSP as a result of a reduction in the load of certain industrial
24 customers on the Island Interconnected system (the "RSP Surplus"); and
25

26 **WHEREAS** by Orders in Council OC2013-089, OC2013-091, OC2013-207 and OC2013-208
27 (the "Orders in Council") the Government of Newfoundland and Labrador directed the Board
28 and Hydro's Board of Directors regarding, among others things, the disposition of a portion of
29 the RSP Surplus by means of a direct payment or rebate to ratepayers; and
30

31 **WHEREAS** in Order No. P.U. 9(2014) the Board found that refunds of the RSP Surplus should
32 be made as a direct payment to Newfoundland Power customers and customers on each of
33 Hydro's systems, except the Industrial Customers; and
34

35 **WHEREAS** upon appeal of Order No. P.U. 9(2014) by the Consumer Advocate and Hydro, the
36 Newfoundland and Labrador Court of Appeal determined that the refund is to be made to

1 Newfoundland Power's customers and to Hydro's Island grid customers, and referred the matter
2 back to the Board; and

3
4 **WHEREAS** on June 30, 2016 Newfoundland Power filed an application for approval of a plan
5 (the "Newfoundland Power Customer Refund Plan") to refund to its customers a portion of the
6 RSP Surplus (the "Application"); and

7
8 **WHEREAS** the Newfoundland Power Customer Refund Plan provides for: i) calculation and
9 payment of refunds of a portion of the RSP Surplus to eligible Newfoundland Power customers;
10 ii) transfers of funds from the RSP to permit Newfoundland Power to provide the refunds to
11 customers; and iii) recovery from the RSP of Newfoundland Power's reasonable costs of
12 administering the refunds to customers; and

13
14 **WHEREAS** under the Newfoundland Power Customer Refund Plan each customer of
15 Newfoundland Power who received, and paid for, electrical service between January 1, 2007 and
16 August 31, 2013 is entitled to a refund, and the calculation and payment of the refund to each
17 eligible customer will be based on the customer's electricity usage during that period and the
18 refund rate to be determined based on the utility surplus balance (the "RSP Surplus Refund");
19 and

20
21 **WHEREAS** Newfoundland Power has also set out a detailed customer communications plan to
22 provide notice and information regarding the RSP Surplus Refund to existing and former
23 customers; and

24
25 **WHEREAS** Newfoundland Power states that, following Board approval of the Newfoundland
26 Power Customer Refund Plan, it will seek formal confirmation from Canada Revenue Agency
27 (the "CRA") of the applicability of the HST to refunds and from the Government of
28 Newfoundland and Labrador of the applicability of the residential energy rebate for the period
29 October 1, 2011 through August 31, 2013 in determining refunds; and

30
31 **WHEREAS** the Board published notice of the Application on July 6, 2016 and requested that
32 any comments be filed with the Board by July 20, 2016; and

33
34 **WHEREAS** by letter dated July 12, 2016 the Board requested clarification from Newfoundland
35 Power on certain aspects of the Application, to which Newfoundland Power provided a response
36 on July 13, 2016; and

37
38 **WHEREAS** the Board received a number of comments from interested persons, primarily
39 expressing concern with the refund process and the proposed recovery by Newfoundland Power
40 of the administration costs associated with issuing the refunds to customers; and

41
42 **WHEREAS** by letter dated August 15, 2016 the Board requested the Consumer Advocate and
43 Hydro to advise in writing whether they support the Application; and

44
45 **WHEREAS** by letter dated August 15, 2016 the Consumer Advocate advised that he supports
46 approval of the Application with the request that Newfoundland Power take all necessary steps to

1 expedite its receipt of formal confirmation from CRA of the applicability of the HST to refunds
2 so that payments to customers are not delayed; and
3

4 **WHEREAS** by letter dated August 19, 2016 Hydro advised that it supports the Consumer
5 Advocate's comments and his request that Newfoundland Power take all reasonable steps to
6 expedite the confirmation process with CRA; and
7

8 **WHEREAS** the Board is satisfied that Newfoundland Power should have recovery of reasonable
9 costs associated with issuing the refunds which were directed by the Government of
10 Newfoundland and Labrador; and
11

12 **WHEREAS** the Board is satisfied that the proposed Newfoundland Power Customer Refund
13 Plan is reasonable in the circumstances and should be approved as filed; and
14

15 **WHEREAS** Newfoundland Power will be required to file with the Board: i) copies of
16 correspondence with CRA with respect to confirmation of the applicability of the HST to the
17 refunds; ii) copies of correspondence with the Government of Newfoundland and Labrador with
18 respect to confirmation of the applicability of the residential energy rebate in determining the
19 refunds; iii) a report on the status of the refunds in its quarterly reporting to the Board throughout
20 the refund process; and iv) a final report once all refunds have been issued in accordance with
21 the Newfoundland Power Customer Refund Plan.
22
23

24 **IT IS THEREFORE ORDERED THAT:**
25

- 26 1. The Newfoundland Power Customer Refund Plan as set out in Schedule A to this Order is
27 approved.
28
- 29 2. Newfoundland Power shall file with the Board:
30 a. copies of correspondence with Canadian Revenue Agency with respect to the
31 applicability of the Harmonized Sales Tax (HST) to the refunds;
32 b. copies of correspondence with the Government of Newfoundland and Labrador with
33 respect to the applicability of the residential energy rebate in determining the refunds;
34 c. a report on the status of the refunds in its quarterly reporting to the Board throughout
35 the refund process; and
36 d. a final report once all refunds have been issued in accordance with the Newfoundland
37 Power Customer Refund Plan.
38
- 39 3. Newfoundland Power shall pay the expenses of the Board incurred in connection with this
40 Application.

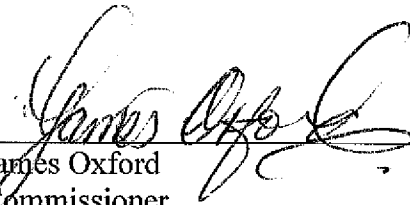
DATED at St. John's, Newfoundland and Labrador, this 2nd day of September, 2016.



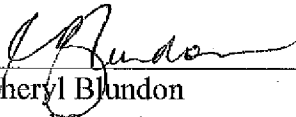
Andy Wells
Chair & Chief Executive Officer



Dwanda Newman, LL.B.
Commissioner



James Oxford
Commissioner



Cheryl Blundon
Board Secretary

NEWFOUNDLAND POWER CUSTOMER REFUND PLAN

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SECTION 1 INTERPRETATION

1.1 Definitions

In this Newfoundland Power Customer Refund Plan, the following definitions shall apply:

- (a) "Act" means The Public Utilities Act, RSNL 1990, Ch. P-47, as amended from time to time.
- (b) "Basic Refund Amount" means an amount calculated in accordance with Section 2.2 and Schedule 1.
- (c) "Board" means the Board of Commissioners of Public Utilities of Newfoundland and Labrador.
- (d) "Company" means Newfoundland Power Inc.
- (e) "Customer" means any person, corporation, or organization that accepted or agreed to accept Service and actually received Service from the Company in the period from January 1, 2007 to August 31, 2013.
- (f) "Designated Account" means an account of the Company maintained at a Bank in the City of St. John's for the purposes of providing Refunds to Customers under the Plan.
- (g) "HST" means harmonized sales tax levied under the *Excise Tax Act (Canada)*.
- (h) "Hydro" means The Newfoundland and Labrador Hydro-Electric Corporation continued pursuant to the *Hydro Corporation Act*, SNL 2007, CL H-17 as amended.
- (i) "Payment Date" means a day agreed by the Company and Hydro upon which Refunds are to be paid by the Company to Customers.
- (j) "Plan" means this Newfoundland Power Customer Refund Plan.
- (k) "Refund" means an amount payable to a Customer pursuant to the Plan and includes the Basic Refund Amount and Taxes.
- (l) "RER Program" means the Residential Energy Rebate program established by *Newfoundland and Labrador Regulation 47/12*.
- (m) "RSP" means Hydro's Rate Stabilization Plan as approved by the Board.

- (n) "Service" means electrical service provided by the Company in the period from January 1, 2007 to August 31, 2013 under rules and regulations approved by the Board pursuant to the Act.
- (o) "Taxes" means HST, less any rebate under the RER Program, paid by a Customer in respect of Service.

1.2 Interpretation

- (a) Unless the context clearly requires otherwise, this Plan shall be interpreted such that:
 - (i) words importing persons include corporations and organizations; and
 - (ii) words importing the singular include the plural and *vice versa*.
- (b) The Plan shall be interpreted in a manner consistent with the Rules and Regulations governing the Company's provision of electrical service as approved by the Board.
- (c) Any dispute concerning the interpretation of this Plan shall be determined:
 - (i) in the first instance, by the Company, acting reasonably; and
 - (ii) if required, by the Board whose decision shall be considered final.

SECTION 2 CUSTOMER REFUND ELIGIBILITY

2.1 Customers Entitled to Refund

Each Customer that (i) received Service during the period from January 1, 2007 to August 31, 2013, and (ii) paid for that Service is entitled to a Refund under the terms of the Plan.

2.2 Determining the Basic Refund Amount

The Basic Refund Amount to which a Customer is entitled under the Plan shall be calculated in accordance with Schedule 1 to the Plan.

2.3 Taxes to be Included in Refund

Taxes on the Basic Refund Amount that were paid by a Customer for Service will be included in that Customer's Refund.

2.4 Informing Customers of the Plan

- (a) The Company shall take reasonable steps to inform Customers of the terms of the Plan and their entitlement to receive Refunds thereunder.
- (b) For Customers who are no longer receiving electrical service from the Company, reasonable notice of the terms of the Plan may include amongst other things, public advertisements throughout Canada.

2.5 Proof of Eligibility

- (a) The Company shall be entitled to request a Customer provide reasonable proof of that Customer's eligibility to receive a Refund under the Plan.
- (b) Should a Customer be delayed in the provision of reasonable proof of that Customer's eligibility to receive a refund under the Plan, that Customer shall not be entitled to (i) receive a Refund during the period of delay, or (ii) receive interest on a Refund for the period of delay.

2.6 Special Cases

For Customers entitled to a Refund under the terms of the Plan that have died, have become legally incapacitated, or are bankrupt, the Company shall be entitled to pay the Refund to the Customer's estate, legal representative or trustee as appropriate. Payment of the Refund to such an estate, legal representative, or trustee, as the case may be, shall be conclusively considered to be payment of the Refund to the Customer.

SECTION 3 PAYMENT OF CUSTOMER REFUNDS

3.1 Determination of Payment Date

The Company and Hydro shall agree from time to time on a Payment Date or Payment Dates for payment of Refunds to Customers entitled to Refunds under the Plan.

3.2 Credit to Existing Balance

The Company will be entitled to credit a Refund to which a Customer is entitled under the Plan against an existing outstanding balance owed by that Customer to the Company.

3.3 Payments by Cheque

Any Refund, or portion of a Refund, following credit against an outstanding balance under Section 3.2 hereof, will be paid by cheque issued within 3 days of the Payment Date to the Customer entitled thereto.

3.4 Other Forms of Payment

The Company may agree with its Customers to other forms of payment of a Refund.

SECTION 4 TRANSFERS FROM RSP

4.1 Requests for Transfers from the RSP

No later than 10 business days prior to a Payment Date, the Company shall request Hydro to transfer immediately available funds from the RSP to the Designated Account to permit the Company to provide Refunds to Customers on the Payment Date.

4.2 Taxes on Fund Transfer

Transfers of funds from the RSP to the Designated Account made under Section 4.1, shall include appropriate Taxes.

4.3 Timing of Funds Transfer

Upon receipt of a request made under Section 4.1, Hydro shall transfer immediately available funds from the RSP to the Designated Account no later than 2 business days before the Payment Date.

SECTION 5 PLAN ADMINISTRATION

5.1 Plan Costs

The Plan has been created to disburse amounts due to Customers as requested by Orders in Council *O.C. 2013-089 and O.C. 2013-207*. Both Refunds payable to Customers under the Plan and the costs incurred to administer the Plan shall be funded by amounts in the RSP.

5.2 Recovery of Plan Administration Costs

- (a) The Company shall be entitled to recover its reasonable costs of administering the Plan from the RSP.
- (b) The Company shall provide Hydro with quarterly accounts indicating the costs incurred in administering the Plan.
- (c) Hydro shall reimburse the Company for costs of administering the Plan within 30 days of receipt of an account indicating the Company costs of administering the Plan for a quarter.

5.3 Liability

The Company shall not be liable to any party for any reason whatsoever associated with the administration of the Plan associated with the good faith administration of the Plan.

5.4 Directions

The Company may, by application to the Board, seek directions on any matter related to the administration of the Plan, amendments to the Plan, or any matter related to the provision of Refunds to Customers under the Plan.

SCHEDULE 1 CALCULATION OF BASIC REFUND AMOUNT

1. The Basic Refund Amount for each Customer will be based on that Customer's kilowatt hour ("kWh") energy consumption. For each Customer, the Basic Refund Amount will be calculated by multiplying (i) the kWh Refund Rate by (ii) the Customer's kWh Usage.
2. The kWh Refund Rate (expressed in cents per kWh and calculated to the nearest 0.001) shall be calculated as follows:

$$(A-B) / C = D$$

Where:

A = the estimated balance of the Utility RSP Surplus in the Rate Stabilization Plan (in dollars) at the end of the month prior to the first Payment Date.

B = the estimated costs for the Utilities to administer and provide the Refund to each Customer.

C = the total energy usage (in kWhs) billed to all Newfoundland Power Customers and Hydro's Customers on the Island Interconnected System for the period of January 1, 2007 to August 31, 2013.

D = the kWh Refund Rate.

3. A Customer's kWh Usage shall be calculated as the sum of the kWh energy usage reflected on that Customer's electric bills (or, in the case of Street and Area Lighting Service, calculated in accordance with Section II (3) of the Company's Rate Stabilization Clause in effect) for the period of January 1, 2007 to August 31, 2013.
4. The Basic Refund Amount for each Customer (expressed in dollars to nearest \$0.01) shall be calculated as follows:

$$D \times E = F$$

Where:

D = the kWh Refund Rate.

E = the Customer's kWh Usage.

F = the Basic Refund Amount