

September 22, 2021

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Via Electronic Mail

Newfoundland and Labrador Board of Commissioners of Public Utilities
120 Torbay Road
P.O. Box 21040
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**Attention: Ms. G. Cheryl Blundon, Director of Corporate Services
and Board Secretary**

Dear Ms. Blundon:

**Re: Newfoundland and Labrador Hydro- Approvals Required to Execute Programming
Identified in the Electrification, Conservation and Demand Management Plan 2021-
2025 Application**

We write on behalf of the Island Industrial Customer (IIC) Group further to the Board's correspondence of September 17, 2021 requesting the comments from the non-utility parties on the following issues:

- (i) whether the Board has jurisdiction to order that the costs of the EV charging stations will be borne by ratepayers;
- (ii) whether the 2021 capital expenditures proposed by Hydro and Newfoundland Power for public EV charging stations (DCFC and Level 2) should be approved by the Board; and
- (iii) whether there should be recovery of the associated costs from rate payers.

The Board's September 17, 2021 correspondence indicated that the comments on issue (iii) should be limited to whether the costs should be recovered from ratepayers but not which proposal (ie. include the cost of capital assets in rate base or placed in a deferral account) would be appropriate.

Whether the Board has jurisdiction to order that the costs of the EV charging stations be borne by ratepayers

The IIC Group acknowledge that the Board has jurisdiction to order that the costs of the EV charging stations be borne by ratepayers. To be clear however, that jurisdiction does not presuppose what part, if any, of those costs should be ordered to be borne by ratepayers, or if the Board does find that some part of those costs should be borne by ratepayers, then it does not presuppose the appropriate manner of recovery of those costs from ratepayers.

On June 26, 2020, Hydro filed an application for an Order that the provision of EV charging services is not subject to the legislative authority of the province and does not require an approved rate, toll or charge (the "June 26, 2020 Application"). In the June 26, 2020 Application, Hydro stated as follows, at page 4, paragraph 16:

... the general industry viewpoint is that the provision of EV charging services does not attract the usual concerns of a monopoly that form the basis for utility regulation. Additionally, EV charging services are not considered to be distribution and sale of electricity to customers and are not regulated in the normal course. The Act and the EPCA govern the production, transmission, and distribution of power in the province of Newfoundland and Labrador and the services necessary to provide adequate power to consumers in the province at the lowest possible cost consistent with reliable service. The legislation is not concerned with the use of that power by the consumer (i.e., the activities beyond the meter). [underlining added]

In P.U. 27 (2020), at page 2, lines 39-43, the Board referenced that Newfoundland Power had noted that Hydro confirmed that the revenues and operating costs associated with the supplemental capital budget project for the EV charging network would not be included in its test year revenue requirement determinations but that it would seek recovery from customers of operating and maintenance costs related to the provision of EV charging services in the future if the services provided by these facilities were determined to contribute to the provision of least-cost reliable service.

In P.U. 27 (2020), the Board found as follows (at page 5, lines 24-28):

The Board does not believe that in the circumstances EV charging services are public utility services which should be subject to the requirements set out in the Act. The Board does not make a finding as to whether EV charging services are subject to the legislative authority of the province but finds the Board's approval of a rate, toll or charge for EV charging services at this time is not required.

The Board in P.U. 27 (2020) expressly provided that its findings were applicable to the specific circumstances that needed to be addressed in the June 26, 2020 Application, and limited its consequential finding to the Board's approval of a rate, toll or charge for EV charging services not being required "at this time". P.U. 27 (2020) did not represent a comprehensive or final determination of the Board's jurisdiction with respect to EV charging services.

Hydro has asserted, in its response to PUB-NLH-030 in the present Application, that the costs of public EV charging assets are akin to CDM-related non-utility costs such as insulation, thermostat, and high-efficiency lighting costs, and while acknowledging that such costs are not directly attributable to Hydro's core business of "the production, generation, storage, transmission, delivery or provision of electric power", has asserted that the incurring of such

costs are “consistent” with Hydro’s mandate to deliver service at the lowest possible cost consistent with reliable service and should, therefore, be recoverable from ratepayers.¹

Hydro in its response to CA-NLH-035 has cited provisions of the *Public Utilities Act, RSNL 1990* which provides the Board with jurisdiction to consider this Application. In light of section 118 of that Act, which holds that the Act shall be interpreted and construed liberally to accomplish its purposes, that IIC Group acknowledge that the Board has the jurisdiction to consider whether the costs of EV charging systems will be borne by ratepayers. Following such consideration, the Board has the jurisdiction to order that Hydro have the opportunity to recover some or all of those costs from the ratepayers, subject to such timeframe and further supporting evidence for the utility’s exercise of such opportunity for recovery as the Board may order.

Whether the 2021 capital expenditures proposed by Hydro and Newfoundland Power for public EV charging stations (DCFC and Level 2) should be approved by the Board

The IIC Group’s comments in respect of this issue are limited to the 2021 capital expenditures proposed by Hydro.

The IIC Group acknowledge that, pursuant to subsection 41(3) of the *Public Utilities Act*, Hydro is obliged to seek Board approval for these proposed capital expenditures. In the submission of the IIC Group, such obligation exists regardless of whether or not Hydro intends (or is allowed) to recover some or all of these expenditures from ratepayers, and their approval under section 41(3) does not presuppose the separate question of whether the Board will approve recovery from ratepayers. Subsections 41(1) and (5) makes clear that there is a distinction made in the legislative scheme between the approval of capital expenditures and the separate consideration of the utility’s intention to demand a “contribution” towards those expenditures from ratepayers.

The informational imbalance between the utility and the ratepayers (as highlighted in the ongoing Capital Budget Application Guidelines Review) does not make it reasonable or practical for ratepayers to challenge the Hydro’s assertions that there are no viable lower cost alternatives to establishing an EV charging network (such as, for example, through greater reliance on private sector investment in the establishment of such a network). This is especially the case in the context of the present Application where the utilities face tight time constraints for available federal funding to defray some of the costs. Hydro’s responses to requests for information in this Application indicate that there is a great deal of uncertainty as to whether the proposed expenditures will effect the desired rate mitigation, arising from questions outstanding with respect to the reliability of the Labrador-Island Link and associated system capacity (CA-NLH-033, CA-NLH-025(d)) and with respect to the approach that will be taken by government to rate mitigation (PUB-NLH-020, CA-NLH-025(d)). Hydro also acknowledges that the cost-effectiveness of electrification programs is an “emerging area” (PUB-NLH-021).

In the foregoing circumstances, the ratepayers are placed in an impossible position, if their decision to not challenge the expenditures is automatically deemed to be a concession that they should be wholly recovered from ratepayers. It is respectfully submitted that ratepayers should not be automatically deemed to have accepted all of the risk (and costs) if approved electrification programs do not achieve meaningful rate mitigation.

¹ PUB-NLH-030, page 2, lines 9-15.

Whether there should be recovery of the associated costs from ratepayers

As we anticipate will be apparent from the comments above, the IIC Group respectfully submit that it is premature to answer this question in the present Application, even as bifurcated and given limited scope by the Board. The IIC Group respectfully submit that, at most, the Board should only order at this time that the proposed EV charging station expenses, if approved, should be recorded in a deferral account, with the question of recovery from ratepayers to be addressed in a separate, broader proceeding which will allow for sufficient time, evidence and consideration of all issues relating to cost recovery.

The IIC submit that the following is a non-exhaustive list of factors to be duly considered on the question of cost recovery from rate payers:

1. The greater predictability that previous CDM programming, based on the high marginal cost of No. 6 fuel, would have least-cost service outcomes², as compared to electrification in the Muskrat Falls context, and whether past treatment of CDM costs recovery is a reasonable guide to electrification cost recovery from ratepayers.
2. Previous CDM programming did not include proposals for Hydro to construct, own or operate infrastructure.³
3. Existing EV incentive programs in Canada are supported by government funding, and the recovery of costs from utility customers has not, at least to date, been sought.⁴
4. Hydro was prepared to absorb at least part of the cost of the 1st phase of the public fast charging network, and acknowledges that it must “demonstrate” that the capital investment is in the best interests of all customers on the Island Interconnected System before seeking recovery of costs from them.⁵
5. Hydro has decided to set “current rates” for EV charger use without full cost recovery in mind.⁶ Hydro acknowledges that the positive business case for third-party investment in EV charger infrastructure may become “more feasible” after the “near-term”.⁷

We trust these comments will be found to be in order.

² PUB-NLH-020, lines 19-20.

³ CA-NLH-008, page 4.

⁴ PUB-NLH-013, page 2, lines 12-13.

⁵ CA-NLH-020, page 2, lines 12-18.

⁶ IIC-NLH-004, page 2, lines 3-10.

⁷ CA-NLH-009,

Yours truly,

Stewart McKelvey



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