

P.U. 26 (2002-2003)

IN THE MATTER OF the
PUBLIC UTILITIES ACT,
R.S.N. 1990, c. P-47, as amended
("the *Act*")

AND

IN THE MATTER OF an
Application by Newfoundland and
Labrador Hydro ("NLH") pursuant
to Section 38 of the *Act* for consent
to decommission its diesel generating
station and to abandon its service of
the electrical distribution system
situate at Great Harbour Deep (the
"Application").

DECISION

Application

NLH owns and operates a diesel generating station and electrical distribution system to supply electrical power and energy to its residential and general service customers in the Town of Great Harbour Deep (the "Town"). On August 9, 2002 NLH filed an Application with the Board of Commissioners of Public Utilities (the "Board"), pursuant to section 38 of the *Act*, seeking consent for the abandonment and decommissioning of the diesel generating station and distribution system serving the Town. The reason for the Application arises from the announced abandonment of the Town as a result of an agreement reached between the Town Council, its permanent residents and the Government.

The Application states, among other things, that:

- 1) the permanent residents of the Town will be relocating under the terms and conditions set out in the agreement and that termination of services provided by the Government of Newfoundland and Labrador, its Crown corporations and agencies will occur on or after October 31, 2002; and
- 2) under the terms of the agreement the permanent residents of the Town have conveyed all their right, title and interest in their residential property to the Crown in Right of the Province and have agreed to vacate those dwellings and the Town on or before October 31, 2002; and
- 3) after October 31, 2002 the Town will be occupied on a seasonal basis only and individuals wishing to attain the right to reside in the Town on a seasonal basis will be required to obtain permits under the *Evacuated Communities Act*, RSN 1990, c. E-15.

As part of the supporting documentation NLH filed a sample of the agreement document signed by the parties.

Concurrent with the filing of the Application with the Board on August 9, 2002 NLH provided a copy of the Application to the Town Council, informing the Town that, immediately following the vacating of the Town by its residents, NLH intends to terminate the provision of service in the Town and to decommission its diesel generating station and its electrical distribution system.

Board Authority and Process

Section 38 of the *Act* requires written consent of the Board before a public utility can abandon part of a line or works after they have been operated, or to discontinue a service, which consent shall only be given after notice is provided to an incorporated municipal body interested and only after there has been an inquiry.

The Board provided notice of the Application to the Town requesting confirmation that: 1) the Town was advised of NLH's intention to terminate provision of service in the Town and to decommission its diesel generating station and its electrical distribution system, and 2) that the Town's permanent residents have agreed to vacate the Town by October 31, 2002. On September 23, 2002 the Town Council, under signature of the Town Clerk, Ms. Sharon Elgar, confirmed the above.

As part of its inquiry the Board also issued Requests for Information to NLH on September 19 & 25, 2002. Based on the responses to the information requests by NLH the Board decided to proceed by way of a written inquiry.

On October 7, 2002 the Board published notice of the Application, inviting written submissions from interested persons. The Board received submissions from the following persons:

- 1) Brian Higdon of Corner Brook, NL
- 2) Winston and Rachel Ropson of Deer Lake, NL
- 3) Glenn Cassell and Karen Hewitt of Westport, NL
- 4) Edgar Randell and Gaye Randell of Deer Lake, NL

- 5) Norman Cassell of Deer Lake, NL
- 6) Melvin and Phoebe Pittman of Hampden, NL
- 7) Leighton Ropson of Great Harbour Deep, NL

NLH filed responses dated October 22, 2002 and October 23, 2002 to the above submissions.

On October 29, 2002 the Board issued to NLH further Requests for Information to which NLH responded on October 30, 2002.

The Board has based its decision on the information and evidence before it as a result of the above inquiry.

Board Decision

In making its decision on this matter the Board has to be guided by its mandate under both the *Electrical Power Control Act* and the *Public Utilities Act*. The Board has been asked by NLH to permit the utility to abandon the provision of electrical service in the Town based on the fact that the Town will cease to exist after October 31, 2002. The Board has received a sample copy of the agreement between the Town Council, its permanent residents and the Government, which sets out the terms and conditions upon which the Town will be abandoned. While signed and executed copies of the agreements were not provided for confidentiality reasons, NLH did file an affidavit from Keith Mullet of the Department of Municipal Affairs which attested to the contents of the sample agreement provided and stated that 52 of the 53 permanent residents of the Town have

executed agreements in the same form as filed and that negotiations are continuing between the Government and one of these permanent residents.

Subsequent information filed by NLH on October 4, 2002 indicates that, of NLH's 82 customers in the Town, 44 customers have been disconnected as of the end of September and that a further 10 customers have requested disconnection. NLH has since confirmed that, as of October 29, 2002 there are currently 6 permanent customers and 9 seasonal customers still connected in the Town. The 6 permanent customers comprise 5 general service customers and 1 domestic customer. The 5 general service customers include the Danny Corcoran Lodge, the municipal water treatment plant, Persona (cable television operator), Newtel and the school. NLH has advised that Newtel and Persona intend to decommission their facilities in the Town at the same time as NLH. NLH also expects the water treatment plant and the school to be disconnected soon. Once these disconnections are effected, the home of the owner of the Lodge will be the only remaining domestic customer who is a permanent resident of the Town, along with the 9 seasonal customers identified by NLH. NLH has advised that the owner of the Lodge has purchased a small generator to provide the Lodge with electricity. NLH has also advised that it has been informed that the owner intends to begin running the Lodge and his home from that generator if and when NLH terminates service from its diesel generator.

The Board is satisfied that NLH effectively has no permanent customers remaining in the Town and that the Town will essentially be abandoned as of October 31, 2002.

The seven written submissions received by the Board all take issue with the process of relocation of the community. All 7 of the respondents to the Board's request for written submissions are also parties to an action in the Supreme Court in which they seek, among other things, an Order in the nature of Certiori quashing the decision of the Minister of Municipal and Provincial Affairs to compensate some of the property owners in the Town and not others. A significant issue in the action appears to be the definition of a "non-resident" and the fact that the parties to the action have been classified as non-residents. The Board will not comment on the merits or substance of the action before the Supreme Court and will only address those points in the written submissions that are relevant to the Application and within its jurisdiction to consider.

The submission of Mr. Brian Higdon asks the Board to disallow the Application and to allow for the continued supply of electricity to those who still choose to maintain properties in the Town. The affidavit attached to the submission, which was filed with the action in Supreme Court, indicates that Mr. Higdon lived in the Town until August 1999, and that he currently lives in Corner Brook. He currently owns property in the Town and is still connected to NLH for electrical service.

The submission of Rachel and Winston Ropson of Deer Lake requests that services continue to be provided to the Town until a settlement has been reached on the issue of compensation. Affidavits filed with the court and provided by NLH indicate that these persons left the Town in 1999.

The submission of Glenn Cassell and Karen Hewitt indicates that they currently live in Westport, NL but that they plan to maintain their property in the Town and would still like a continued supply

of electrical service to their home. Affidavits filed with the court and provided by NLH indicate that these persons left the Town in 2000.

The submission of Gaye and Edgar Randell of Deer Lake indicates that they currently own a house in the Town and that they wish to keep the contract to provide electricity intact. The submission also states that "...we may not be there 12 months of the year but a large part of our time is spent there".

The submission of Norman Cassell of Deer Lake indicates that he plans to keep his property in Harbour Deep and would like to have a continued supply of electrical service. An Affidavit filed with the court and provided by NLH indicates he left the Town in 1999.

The submission of Melvin and Phoebe Pittman of Hampden indicates that they wish to have services maintained at their home in the Town. Affidavits filed with the court and provided by NLH indicate that these persons currently stay in a mobile home near the TCH where Phoebe Pittman operates a gas bar and restaurant and that Melvin Pittman still fishes out of the Town each year and that the family returns to the Town for holidays.

The submission of Leighton Ropson of Great Harbour Deep refers to the action in the Supreme Court, stating that the Government has "been unfair and arbitrary in its compensation to me to relocate my property". The submission requests continuation of the provision of electrical service until "we get a fair hearing, justice and then, time to pack up and move."

It appears from the submissions that one of the primary issues for these persons is the adequacy of the compensation offered by government for their property. The decisions on various compensation levels were made by Government and the other parties to the relocation agreements and are independent of the decision to be made by this Board. At issue for the Board is whether the Board should require NLH to continue the provision of electrical service to those persons and properties who have requested that the services continue.

NLH's Contribution in Aid of Construction (CIAC) Policy defines a seasonal customer as "a customer whose premises is a self-contained domestic unit, occupied intermittently or seasonally during the year, which is not the customer's primary or permanent residence" (CIAC Policy, Section 02. Interpretation). Seasonal customers would have corresponding lower electricity consumption. Based on the evidence the Board finds that, with the exception of Mr. Leighton Ropson, the other persons above would be considered seasonal customers of NLH. The Board notes that the provision of electrical power and energy on isolated diesel systems is very costly and that these costs are only partially recovered from rates charged for the service. The deficit that NLH currently incurs from providing electrical service to consumers from isolated diesel systems comprises a significant portion of the rural deficit that NLH recovers from Newfoundland Power and from NLH's customers on the Labrador Interconnected system. It is for this reason that NLH does not have any other communities where it provides electrical services from a diesel system to a group of customers all of whom are seasonal.

NLH provided information on the costs and financial implications of providing service beyond October 31, 2002. NLH has stated that it would require \$600,000 of capital expenditures and that it would incur annual operating costs of \$130,000 to continue to provide electrical service. The revenues from the remaining customers on the system would be minimal. It would be unreasonable and unfair to other electrical consumers in the province for the Board to order the continued provision of electrical service to those property owners who have requested it. It is the Board's view that, should these persons require electricity supply for their properties, there are other alternatives available (such as generators) which will not impose costs on the system as a whole and which will meet their needs. The Board will not require NLH to continue to provide service in the Town beyond October 31, 2002. The Board will however require NLH to provide notice to those persons who requested continuation of electrical service of the date after which service will no longer be available.

ORDER

IT IS THEREFORE ORDERED THAT:

- 1) Pursuant to Section 38 of the Act, the Board consents to and approves the abandonment and decommissioning by NLH of its diesel generating station and electrical distribution system in the Town of Great Harbour Deep, and the termination of the provision of electrical service, on or after October 31, 2002.

2) NLH shall provide notice to those persons named above who made written submission to the Board of the date after which electrical service will no longer be provided.

3) NLH shall pay all costs and expenses of the Board incurred in connection with this Application.

DATED at St. John's, Newfoundland and Labrador, this 30th day of October 2002.

Robert Noseworthy,
Chair & Chief Executive Officer

Darlene Whalen, P. Eng.,
Vice-Chairperson.

G. Cheryl Blundon,
Board Secretary.