

IN THE MATTER OF the Electrical
Power Control Act, 1994 and the
Public Utilities Act

AND IN THE MATTER OF an Application
by Newfoundland and Labrador Hydro

STATEMENT OF COUNSEL - II

Counsel for the Industrial Customers has raised a concern over the intention of Board Counsel to file, simultaneously with the Intervenor, a final written submission and subsequently participate in the oral presentations scheduled for later this month. Counsel's concern is as expressed at page 19 of the Transcript from January 9, 2002.

First, it is noted that all Counsel were given prior notice of my intention to participate in this part of the process. During discussions held with all Counsel to finalize the schedule for the remainder of the hearing, including the setting of dates and times for final submissions, it was agreed that an equal allotment of time would be provided to each of us for oral presentations. I do not recall specifically whether there was discussion concerning the filing of written submissions other than the fact that such submissions would be filed simultaneously.

It is impossible to provide specific information about what is contained in my written submission – due to the fact that it is yet to be written. Nonetheless, I will attempt to provide some indication as to the nature of the submission that I expect to file as Board Counsel. In order to do so, it is necessary to once again canvass the role of counsel to an Administrative Board such as this one – and I say this one, because a Board charged with the regulation of utilities is in a different position than say an Administrative Tribunal responsible for carrying out functions more disciplinary in nature.

Prior to the commencement of this hearing, I provided a statement on the role of the Board, its staff and its experts. I noted in my statement that “In keeping with [its] statutory obligation, the PUB maintains staff and, where needed, retains experts. Together, these individuals are responsible for carrying out the Board's duty to provide the ongoing supervisory role of the utility. “

As was also noted in my earlier statement, the Court of Appeal in the stated case, confirmed as follows, and I quote “...in addition to its periodic adjudicative role, which itself involves a large measure of policy implementation in arriving at its decisions, the Board has, because of its duty of “general supervision of all public utilities”, an ongoing supervisory role of the activities of the utility between hearings as well, which is facilitated by statutory requirements for periodic reporting of financial information to the Board.”

STATEMENT OF COUNSEL – II cont'd

The duty to provide ongoing supervision of the activities of regulated utilities is carried out by the Board's experts, such as Grant Thornton acting as Financial Advisors, and Board staff. The Board's staff and its experts, as directed by Management, are responsible for ensuring regulatory compliance, and overseeing the supervision of the utility consistent with the Acts.

As has been noted previously, during the hearing of an Application, the Panel has no further contact, discussions, or communication with any of the staff of the Board concerning any matter raised in the Application. Neither does the Panel have any direct contact with any of the experts or other witnesses hired by the Board to provide evidence during the hearing.

It is Board Counsel who is entrusted with working with staff and the Board's experts to co-ordinate their analysis of the Application, and ensure that all issues are fully explored during the hearing, that all evidentiary matters which staff require be explored – are explored – and that generally, the Board receives – during, and in the hearing - all the information that it needs to make a full decision on the issues raised by the Hydro Application. This includes issues that may have an impact on the ability and effectiveness of the Board's staff and experts when discharging their statutory duty to provide ongoing supervision of the utility.

As also previously discussed, my other role is to provide advice to the Board on procedural matters and issues involving the law.

Accordingly, there are three areas on which I will focus in drafting my written submission and subsequent oral presentation. These are:

1. providing commentary on, and recommendations concerning matters of process that could be employed when conducting a general rate application;
2. providing legal advice on issues involving the admissibility and weight of evidence and procedural matters;
3. commentary on issues arising during the hearing which may impact on the ability and effectiveness of the Board's staff and experts when undertaking the ongoing supervision of the activities of regulated utilities.

I trust this helps address the concerns as expressed by Counsel for the Industrial Customers.

End

