

**IN THE MATTER OF** the *Electrical Power Control Act, 1994* (the “EPCA”) and the *Public Utilities Act, R.S.N. 1990, Chapter P-47* (the “Act”) and their subordinate regulations; and

**IN THE MATTER OF** an Application by Newfoundland and Labrador Hydro (“Hydro”) for approvals of: (1) Under Section 70 of the Act, changes in the rates to be charged for the Supply of power and energy to its Retail Customer, Newfoundland Power, its Rural Customers and its Industrial Customers; (2) Under Section 71 of the Act, its Rules and Regulations applicable to the supply of electricity to its Rural Customers; (3) Under Section 71 of the Act, the contracts setting out the terms and conditions applicable to the supply of electricity to its Industrial Customers; and (4) Under Section 41 of the Act, its 2002 Capital Budget.

**APPLICATION AFFECTING INFORMATION REQUESTS  
IC-1, IC-18(Rev.), IC-86 and IC-103**

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**TO:**

The Board of Commissioners of Public Utilities (the “Board”)

**THE APPLICATION** of Abitibi Consolidated Inc. (Grand Falls), Abitibi Consolidated Inc. (Stephenville), Corner Brook Pulp & Paper Limited and North Atlantic Refining Limited says:

1. The Applicant Intervenors seek an order that the Applicant in the principal proceeding, Newfoundland and Labrador Hydro, (“Hydro”) provide a full and adequate response to Information Requests IC-1, IC-18 (Rev.), IC-86 and IC-103 pursuant to Section 15(1)(a) of the *Board of Commissioners of Public Utilities Regulations, 1996*.
2. The Answers to the Information Requests which are subject to this Application are annexed hereto as “A”, “B”, “C” and “D”.

3. The Applicant Intervenors say that the Responses to the Requests annexed hereto are not full and adequate as required by Section 15(1)(a) and seek an order for further and better responses in each case, and, in the case of IC-86, an order, in the alternative, that the following sentence which appears at line 28 on p. 52 of the Pre-Filed Evidence of K.C. McShane be stricken:

“By comparison, the average allowed return on equity for US electric utilities, with which Canadian utilities compete for capital in global markets, was 11.4% in 2000 rising to over 12% in the fourth quarter (“Major Rate Case Decisions, January 1990-December 2000, Regulatory Research Associates, Inc. *Regulatory Focus*, January 2001”).”

4. The grounds for this Application are as follows, in respect of each of the Requests as indicated:

#### **IC-1**

(a) This Request was for the Forecast and Actual Cost of Service for each of the years from 1992 through 2000. Hydro provided Forecast Cost of Service studies for 1992 (using both the 1992 and 1993 methodology), as well as 1993, 1994 and 1995. Hydro further provided Actual Cost of Service studies for 1992, 1993, 1994, 1995 and 1999. Hydro asserts that the Actual Cost of Service for 1996 is not available and is not meaningful due to the St. Anthony/Roddickton Interconnection having occurred in that year. Hydro further asserts that Cost of Service studies for 1997, 2000 and 2001 are not currently available but are in progress. Additionally, Hydro asserts that the Cost of Service for 1998 is not available due to a reorganization of the corporation during that year rendering it impractical to perform the analysis required.

(b) The Applicant Intervenors say that the ability to make comparisons with the latest Actual Cost of Service and the Forecast Cost of Service for the year immediately prior to the test year is vital to any reasoned response to a request for an increase in rates. Comparisons between the 2002 test year and the latest actual available study, 1999, have to span such a significant period of time as to negate, largely, the validity of any conclusions that may be drawn.

(c) The progression of actual costs and assignment of costs year over year is another vital element in the examination of Hydro's case, and particularly necessary to establish the effect of regulatory changes such as the requirement that Industrial Customers not contribute to the Rural Deficit. That effect is only shown in the 2000 Actual Cost of Service and, hence, the Applicant Intervenors are left with no valid basis of comparison for Hydro's proposal for 2002.

(d) It should further be noted that the period of 8 to 10 weeks which is apparently required to complete the Cost of Service studies could mean that these studies would not be available until well after the hearing commenced. It is not possible for the Applicant Intervenors to respond properly to the Application unless this data is available in sufficient time prior to the commencement of the hearing to allow analysis by experts and formulation of appropriate responses.

### IC-18 (Rev.)

(e) This Request seeks information allowing the Applicant Intervenors to assess the impact of the change in the Cost of Service Methodology approved by the Board in 1993. Hydro asserts that the requested information is not relevant in that it is hypothetical, it does not reflect historical reality and no meaningful conclusions could be drawn therefrom. Hydro further asserts that determination of margin is based on circumstances at the time a forecast is made, that rates were last set for Industrial Customers in 1995 at a time when Industrial Customers were not regulated and that the requested information is not determinable.

(f) Given the complexity of the Cost of Service study generally, it is not possible to isolate specific effects of the new methodology without having comparable figures, and such figures were requested in this Request. The Request is for data related to past years, all of which is known to Hydro. The fact that the information to be provided would not reflect historic reality is, in itself, irrelevant, the question to be addressed is the comparison between the results of one methodology and the results of the other. Obviously, only one of the methodologies was actually used and the comparison must be with a *pro forma* presentation. At minimum, Hydro should be in a position to produce the requested information in respect of each year for which a Forecast Cost of Service study is available. Hydro has not identified specific inputs that are not calculable and Hydro knows what it was forecasting at the time that each of the Forecast Cost of Service studies was produced. The fact that Island Industrial Customers were not regulated in 1995 is, again, not relevant. The requested information will, nonetheless, be meaningful and useful in allowing the Applicant Intervenors and the Board to see what the effect of the change in the Cost of Service methodology is.

(g) The fact that 7 years of data now need to be considered is entirely the result of Hydro's decision not to apply to the Board earlier to fix rates and does not represent an adequate excuse for Hydro not providing the requested information.

**IC-86**

(h) In IC-86, Item 6, Hydro was requested to produce a copy of the Major Rate Case Decisions January 1990-December 2000 which is cited as a source of information by K.C. McShane in her evidence at p. 52-53. The response indicated that the requested publication was proprietary and the summary pages relied on were attached.

(i) The attachment has a heading for each of "Electric Utilities", "Gas Utilities", and "Telephone Utilities", each followed by the words "Summary Table". The various years are listed in each Table and the headings "Period", "ROR", "ROE", "Eq. as % Cap Struc." and "Amt. \$ Mill.".

(j) There is no explanation of the actual definition of the terms used, no indication of what utilities are included in any of the Tables and no way of relating the information included on this one page to the situation of Hydro.

(k) The most fundamental principle of any hearing in the tradition of English common law, whether judicial or administrative, is the right to know the case which one must meet. The Board may certainly consider reports of the type referred to by Ms. McShane and no objection on the grounds of hearsay is appropriate in such circumstances. However, material of this nature relied upon for a conclusion by a witness must be subject to complete scrutiny by the other participants in the hearing, including Board counsel. Neither the Board nor the parties have any way of evaluating the validity of Ms. McShane's conclusion without seeing the sole source which is cited in support of that conclusion. This must clearly have been an issue which the witness would be aware of at the time the evidence was prepared, and it is clearly improper to cite material in this way knowing full well that the material cannot be produced. Unless this complete report with sufficient explanatory material to allow analysis and criticism are provided, it is clear that Ms. McShane's assertion, quoted in paragraph 3 above, must be stricken from the record.

**IC-103**

(l) This Request seeks actual costs on the Island Interconnected System for each of the years 1992 through 2000 plus the 2001 estimate in the same format as Schedule 1 of J.C. Roberts's evidence. Hydro asserts that the costs can only be derived using the Cost of Service study and that the Study uses data in a more summarized fashion than that shown in Schedule 1 of Mr. Roberts's evidence. It concludes, therefore, that the requested information is not available.

(m) The Applicant Intervenors say that the requested information should be able to be derived by Hydro from the existing Cost of Service studies since the studies do isolate the Island Interconnected System and provide a functional classification of revenue requirement in respect of that system. Appropriate proportions of the costs identified on Schedule 1 should be assignable in a manner consistent with the Cost of Service study so as to produce a meaningful document which can provide appropriate comparisons between the Island Interconnected System and the other systems, as well as comparisons affecting the Island Interconnected System year over year. Given that the regulatory regime focuses the attention of the Industrial Customers exclusively on the Island Interconnected System, this is appropriate data for consideration by the Applicant Intervenors in making their case before the Board.

5. The Applicant Intervenors request a direction pursuant to Section 15(3) of the *Regulations* as to the manner of settling the responses to these Information Requests. The Applicant Intervenors say that they will be prepared to present their oral argument in support of the Application on Wednesday, August 29<sup>th</sup>, 2001, should the Board direct that this Application be heard on that Motions Day.

Dated at Corner Brook, Newfoundland, this 15<sup>th</sup> day of August A.D., 2001.

(sgd) J. Hutchings  
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