

IN THE MATTER OF THE *Public Utilities Act*, (R.S.N. 1990),
Chapter P-47 (the "Act")

AND

IN THE MATTER OF an Application by Newfoundland and Labrador Hydro for approvals of: (1) Under Section 70 of the Act changed in the rates to be charged for the supply of power and energy to its Retail Customer, Newfoundland Power, 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

**SUBMISSION
OF
5 WING GOOSE BAY,
DEPARTMENT OF NATIONAL DEFENCE**

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The Wing and its Importance to the Economy

1. 5 Wing Goose Bay (the “Wing”) is a unit of the Canadian Forces, Department of National Defence, operating from real property situated at Happy Valley-Goose Bay, in the Province of Newfoundland and Labrador.
2. The Wing is a customer of Newfoundland and Labrador Hydro (“Hydro”) for both firm power pursuant to proposed rate number 2.4H (the “Firm Power”) as set out on page 17 of Schedule A to Hydro’s Application filed herein (the “Application”) and secondary energy pursuant to proposed rate No. 3.1H (the “Secondary Energy”) as set out on pages 18 and 19 of Schedule A to the Application.
3. The Wing is Hydro’s largest customer in the Lake Melville area with annual total power purchases in the range of \$5.5 Million. (Evidence of Colonel P. McCabe, Transcript for 19 October 2001 at page 5, lines 98 to 100). Hydro’s own forecast of revenue to be generated from supply of Secondary Energy alone to the Wing in 2002 is almost \$3.0 Million (See Schedule 1.2 of Exhibit JAB 1).
4. The business of the Wing is tactical flying training and it constantly competes with similar facilities around the world to maintain its level of business (Evidence of Colonel P. McCabe, Transcript for 19 October 2001 at page 5, lines 37 to 40). The Wing is the primary industry in the Lake Melville area and has been for the past 50 years (Evidence of Colonel P. McCabe, Transcript for 19 October 2001 at page 5, lines 30 to 31). The Wing directly employs 124 military and civilian employees while its private sector service provider, Serco, employs another 330 to 360 persons (Evidence of Colonel P. McCabe, Transcript for 19 October 2001 at page 6, lines 66 to 69). According to Mr. D. Peck, the Wing is responsible for 1200 direct, indirect and induced jobs and in addition, in 2001, 16,000 persons rotated through the Wing during the summer flying season (Evidence of D. Peck, Transcript for 18 October 2002 at page 17, lines 102 to 105 and page 18, lines 1 to 8).
5. The tactical flying training carried out by Allied forces at Goose Bay results in between \$70 Million and \$90 Million of foreign money invested annually into the provincial economy and \$28 Million annually to provincial government revenues (Evidence of Colonel P. McCabe, Transcript for 19 October 2001 at page 5, lines 33 to 36 and Evidence of Stanley Oliver, Transcript for 18 October 2002 at lines 7 to 9). In his evidence, Mr. Stanley referred to the Wing as the economic engine of the Lake Melville area (Transcript for 18 October 2002 at lines 9 to 10) and, in addition, spoke of the long lasting effects that additional expenses could have on the future of the Wing’s business (Transcript for 18 October 2002 at lines 3 to 6). He stated that any reductions in rates would add to a positive effort to market the tactical flying training in Labrador (Transcript for 18 October 2002 at lines 11 to 13).

6. Mr. Dennis Peck, in giving evidence on behalf of the Town of Happy Valley – Goose Bay, stated that the Wing was the economic basis for his community and stated that lower electricity rates were critically important to the Wing (Evidence of D. Peck, Transcript for 18 October 2002 at page 17, lines 65 to 71). The critical importance of lower electricity rates for continuing military training at Goose Bay was also stated by Mr. Oliver in his evidence (Transcript for 18 October 2002 at page 14 lines 96 to 102) wherein he also stated that Allied forces were under pressure to be cost effective. Mr. Peck made the point in his evidence that “Military budgets are hypersensitive to cost.” (Transcript for 18 October 2002 at page 17, lines 91 to 97). Mr. Peck’s evidence also supports that of Colonel McCabe and Mr. Oliver in stating that the Wing competes on a global basis for business (Evidence of D. Peck, Transcript for 18 October 2002 at page 17, lines 83 to 85).

Nature and Purpose of Energy Supplied to the Wing

7. Many of the buildings at the Wing are heated by steam. Since 1982, when electric boilers were installed, the steam required to heat the buildings can be generated from either burning oil or from utilizing electricity simply by switching between the electric and oil fired boilers. Prior to 1982 burning oil was the only alternative. The Secondary Energy is used exclusively for the electric boilers used to generate steam.
8. The Wing has been converting its buildings from steam heat to electric heat over the past several years and plans to continue with this conversion in the coming years. The effect is to change the power supply for heat for such converted buildings from steam that may be generated by Secondary Energy to Firm Power.
9. The availability of the Secondary Energy is proposed by Hydro as follows:

“For Service to Customers on the Labrador Interconnected grid engaged in fuel switching who purchase a minimum of 1MV load and a maximum of 24 MV, who provide their own transformer and, who are delivered power at primary voltages. Hydro shall supply Secondary Energy to the Customer at such times and to the extent that Hydro has Churchill Falls electricity available in excess of the amount it requires for its own use, and to meet its commitments and sales opportunities, present and future, for firm energy. Moreover, Hydro may interrupt or reduce the supply of Secondary Energy at its sole discretion for any cause whatsoever. The energy delivered shall be used solely for the operation of the equipment engaged in fuel switching.”

10. It is clear from the proposed availability of the Secondary Energy that it is non-firm and can be interrupted or reduced by Hydro at its sole discretion for any cause whatsoever. There is no provision in the proposed rate structure for compensation for interruption of the supply of Secondary Energy, notwithstanding that:
 - (a) the Wing incurs additional cost when burning oil, and
 - (b) there is nothing to prevent the Wing from requesting Hydro to supply it with Firm Power to run the electric boilers, which Hydro would have a duty to supply.
11. The charge for Secondary Energy proposed by Hydro is as set out on page 18 of Schedule A to the Application. The charge is the greater of either the price equivalent to that negotiated for the sale of energy to non-regulated customers, as adjusted for losses or the customer's cost of fuel (cents per litre) most recently delivered to the customer including fuel additives, if any, in accordance with the formula specifically set out therein.
12. Firstly, there is a typographical error in the formula as set out in Schedule A. The Wing submits that the denominator in the formula should read "C x D" as opposed to "B x C" as set out in the Schedule.
13. Secondly, the language "the customer's cost of fuel (cents per litre) most recently delivered to the customer including fuel additives, if any" is not strictly descriptive of the charge. As can be seen from the formula the charge is essentially 90 percent of that cost and therefore the lead in language is contrary to the formula and creates in our submission an ambiguity.
14. Thirdly, the part B of the charge provision which provides for the price equivalent to that negotiated for the sale of energy to non-regulated customers, as adjusted for losses, is an issue of concern for the Wing as Colonel McCabe stated in his evidence (Evidence of Colonel P. McCabe, Transcript for 19 October 2001 at page 5, lines 82 to 90). He states that this provision leaves the Wing liable for increases in cost of energy beyond those in the current arrangement. There is some disagreement between the Wing and Hydro as to whether this provision existed in the prior arrangements between the parties for power supply to the electric boilers.
15. Colonel McCabe clearly stated in his evidence that the part B "did not exist before" (Evidence of Colonel P. McCabe, Transcript for 19 October 2001 at page 7, lines 82 to 83).
16. Mr. Young, counsel to Hydro, advised the hearing that there had been a contract dealing with secondary energy between the parties for some years and that it was Hydro's position that this contract had a similar effect (Transcript for 19

October 2002 at page 8, lines 9 to 23). To our knowledge the contract has not been entered into evidence.

17. The Wing respectfully disagrees with Hydro's interpretation of the contract and maintains its position that the provisions of part B are new. More importantly, the provisions of Part B are too open-ended and could result in the Wing paying as much or even more for the Secondary Energy than it would have cost them to burn oil as the charge is clearly not capped at 90 percent of the cost of burning oil. The Wing submits that this is nonsensical when it could have Firm Power at a fixed rate which would be lower than the charge for Secondary Energy under either part A or part B of the proposed rate 3.1H.

Revenue to Cost Coverage

18. The Wing has concerns relating to the revenue to cost coverage for the Secondary Energy and, to a lesser extent, the Firm Power.
19. Reference to Schedule 1.2 of Exhibit JAB 1, at either page 1 or 6, discloses that the revenue to cost coverage for the Secondary Energy supplied to the Wing is 21.61. This compares to the revenue to cost coverage for the entire Labrador Interconnected System of 1.25.
20. The revenue to cost coverage for IOCC for both Firm and non-firm power is 1.00. The revenue to cost coverage for Industrial Non-Firm power described on page 3 of Schedule A to the Application is 2.43 (See page 2 of Schedule 1.2 of Exhibit JAB 1) as can be seen by dividing \$381,121 by \$157,088. It is also clear from this page that the combined revenue to cost coverage for Industrial Firm and Non-Firm power on the Island Interconnected System is 1.00.
21. Contrast the position of the Wing with the other users of non-firm power and it is clear that the Wing is paying more than is reasonable for power. A look at page 1 of Schedule 1.2 of Exhibit JAB 1 shows that the revenue to cost coverage for the Secondary Energy is out of all proportion to any other power throughout the entire regulated system. In addition, the revenue to cost coverage for the Firm Power is 2.25. This means that the Wing is subsidizing other customers through both the Firm Power and the Secondary Energy. In the case of the Secondary Energy alone, Hydro forecasts this subsidy at over \$2.8 Million for 2002 (see page 6 of Schedule 1.2 of Exhibit JAB 1). Particularly in the case of the Secondary Energy, the subsidy is significant and out of all proportion to the share borne by others and out of all proportion to the total billings to the Wing. With total annual power bills in the range of \$5.5 Million, more than 51 % of that cost is subsidy (\$2.8 Million divided by \$5.5 Million = 51%).
22. With the legislated requirement of ending the subsidy previously paid by Industrial customers, it is clear that Hydro has shifted a significant portion of the subsidy to the Wing.

23. It is respectfully submitted that to burden one user, in this case the Wing, with such a large subsidy to the system is unreasonable, unfair and unjustly discriminatory. Further it is very unwise economically. Evidence from at least three witnesses has clearly set out the vital importance of the Wing to the Lake Melville economy, particularly the Town of Happy Valley – Goose Bay. The evidence of these witnesses has also confirmed the very competitive, cost-driven, global environment in which the Wing competes. Downloading a significant share of the total subsidy to other, non-industrial users to the Wing could well have the effect of “killing the goose that laid the golden egg” or least hampering it in being able to attract further economic benefits to the area.

Differential Rates in Labrador West

24. The Wing supports the view presented by Dennis Peck on behalf of the Town of Happy Valley- Goose Bay that there should ultimately be no difference in rates between areas serviced by power generated by hydro infrastructure within Labrador (Evidence of D. Peck, Transcript for 18 October 2002 at page 17, lines 45 to 64).
25. Every effort to lower power costs in Happy Valley – Goose Bay will enable the Wing to compete more effectively thereby helping to ensure the continued significant economic activity at the Wing and assisting in growing that activity.

Legislative Framework and Relief Sought

26. The power policy of the Province of Newfoundland and Labrador is set out in the Electrical Power Control Act, 1994, SN 1994, c. E- 5.1, as amended (the “EPCA”). Section 3 of the EPCA specifically sets out that policy as follows:

“3. It is declared to be the policy of the province that

(a) the rates to be charged, either generally or under specific contracts, for the supply of power within the province

(i) should be reasonable and not unjustly discriminatory,

(ii) should be established, wherever practicable, based on forecast costs for that supply of power for 1 or more years,

(iii) should provide sufficient revenue to the producer or retailer of the power to enable it to earn a just and reasonable return as construed under the *Public Utilities Act* so that it is able to achieve

and maintain a sound credit rating in the financial markets of the world, and

(iv) should be such that after December 31, 1999 industrial customers shall not be required to subsidize the cost of power provided to rural customers in the province, and those subsidies being paid by industrial customers on the date this Act comes into force shall be gradually reduced during the period prior to December 31, 1999;”

27. Section 4 of the EPCA provides that:

“4. In carrying out its duties and exercising its powers under this Act or under the *Public Utilities Act*, the public utilities board shall implement the power policy declared in section 3, and in doing so shall apply tests which are consistent with generally accepted sound public utility practice.

28. The Wing repeats that the rate proposed by Hydro for the Secondary Energy is not reasonable in light of all the circumstances and is unjustly discriminatory and is contrary to Section 3 of the EPCA.

29. Furthermore, a rate which yields a coverage of 21.61 times the forecasted cost is not established based on those costs as required by section 3 of the EPCA. To hold otherwise would give no rational effect to subclause 3 (a) (ii) of the EPCA.

30. The Public Utilities Act, RSN 1990 c. P-47 (the “PUA”), provides as follows:

“82. Where the board believes that a rate or charge is unreasonable or unjustly discriminatory, or that a reasonable service is not supplied, or that an investigation of a matter relating to a public utility should be made, it may, of its own motion, summarily investigate the rate or charge or matter with or without notice.

87. (1) Where upon an investigation the rates, tolls, charges or schedules are found to be unjust, unreasonable, insufficient or unjustly discriminatory, or to be preferential or in violation of this Act, the board has power to cancel those rates, tolls, charges or schedules and declare void all contracts or agreements, either oral or written, dealing with them upon and after a day named by the board, and to determine and by order substitute those rates, tolls or schedules that are reasonable.”

31. The Wing submits that sections 82 and 87 of the PUA must be read in conjunction with sections 3 and 4 of the EPCA. By doing so the arguably permissive language in the PUA becomes mandatory so that notwithstanding

that the PUA says the Board “may” investigate and “has the power to cancel” rates and substitute those rates that are reasonable, the clear language and intent of section 4 of the EPCA is that the Board “shall” implement the power policy set out in Section 3 of the EPCA.

32. The Wing submits that the proposed rate for Secondary Power is not reasonable, is unjustly discriminatory, does not have any rational connection to the cost to supply the service and is for all of those reasons not in compliance with the EPCA.
33. The Wing further respectfully submits that the Board must not approve the proposed rate but rather substitute a rate which is reasonable and complies with the EPCA.

All of which is respectfully submitted this 21st day of January 2002.

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