

July 12th, 2001

Delivered by Hand

The Board of Commissioners of
Public Utilities
Suite E210, Prince Charles Building
120 Torbay Road
P.O. Box 21040
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Attention: Ms. G. Cheryl Blundon, Board Secretary

Dear Sirs:

Subject: Newfoundland and Labrador Hydro 2001 General Rate Hearing –
(1) Application by Island Industrial Customers Seeking an Order under
Section 90(1) of the Public Utilities Act and
(2) Request by the Town of Labrador City re Costs

The following sets out Hydro's position with respect to the Application by Abitibi Consolidated Inc., Stephenville and Grand Falls Divisions, Corner Brook Pulp and Paper Company Limited and North Atlantic Refining Limited ("Island Industrial Customers") seeking an Order pursuant to Section 90(1) of the Public Utilities Act (the "Application") that at the conclusion of the hearing relating to Hydro's general rate application that they shall be entitled to have their costs of and incidental to the rate application to be taxed and the request of the Town of Labrador City in its Intervention that its costs will be "protected".

1. Hydro generally accepts the statements of facts contained in the Application with the exception of the following:
 - (i) With respect to paragraph 3 of the Application, Hydro states that the rates charged by Hydro to Island Industrial Customers did

not become fully regulated by the Public Utilities Board until 1996 when the Hydro Corporation Act was amended to repeal the then Section 21 which exempted Hydro from the jurisdiction of the Board of Commissioners of Public Utilities.

- (ii) With respect to paragraph 5 of the Application, Hydro states that the adjustment in the rates charged Island Industrial Customers arising from the Rate Stabilization Plan (“RSP”) adjustment to be effective January 1st, 2002 (based on the balance in the RSP as of September 30th, 2001) is already provided for in the existing mechanism for setting current rates. In this sense, this is not a proposal by Hydro for a rate increase in 2002, but simply an adjustment under a mechanism previously approved, to reflect events that will have occurred in 2001.
- (iii) With respect to paragraphs 14 and 15 of the Application, Hydro states that the submissions contained therein are more appropriate at the conclusion of the Hearing and that it is premature and outside the jurisdiction of the Board to consider the issue of the award of costs at this time for the reasons set out further in this letter.

2. Section 90(1) of the Public Utilities Act states:

“The cost of and incidental to a proceeding before the board shall be in the discretion of the board, and may be fixed at a definite amount, or may be taxed and the board may order by whom they are to be taxed and to whom they are to be allowed and the board may prescribe a scale under which costs shall be taxed.”

The authority of an administrative board to award costs has been interpreted by Courts in other jurisdictions which contain similar legislative provisions to Section 90. It is Hydro’s submission, based on

these decisions, that a demand for costs cannot be dealt with at the beginning of a hearing and that the discretion of the Board to award costs must be dealt with only at the conclusion of a hearing. It is Hydro's submission that the Board lacks the jurisdiction to make the Order as requested in the Application and that the Application is premature. In addition to the cases which have already been provided by Counsel for the Island Industrial Customers and Counsel for Newfoundland Power, Newfoundland Hydro may rely on the following cases, copies of which are enclosed:

1. Manitoba Society of Seniors Inc., v. Greater Winnipeg Gas Company 1982 Carswell Man 208, 18 Man. R. (2d) 440 (Manitoba Court of Appeal)
 2. Re Regional Municipality of Hamilton-Wentworth and Hamilton-Wentworth Save the Valley Committee Inc. et al (1985), 19 D.L.R. (4th) (Ontario Divisional Court)
 3. Reference re National Energy Board Act (1986), 29 D.L.R. (4th) 35 (Federal Court of Appeal)
 4. Bell Canada v. Consumers' Association of Canada et al (1986), 26 D.L.R. (4th) 573 (C.S.C.)
3. An award of costs as contemplated by Section 90 of the Public Utilities Act is intended to reflect the characteristics of costs granted by courts in that they are to be in favour of parties at the conclusion of proceedings by way of indemnity for liable expenses and services incurred relevant to the proceedings. An award of costs as contemplated by Section 90 is not intended to provide interim funding. The cases referred to in the preceding paragraph will be relied upon for the authority for this position.
4. It is Hydro's position that an application for costs can only be properly dealt with by the Board following the conclusion of a hearing. It is at

that time that the Board can determine whether it is appropriate and proper to provide funding for an intervenor. Some considerations which the Board may take into account would include the interests represented by the intervenor (that is, whether they are of a special interest or of a general public nature), whether the intervenor has sufficient financial resources to cover the cost of the intervention, the nature of the intervention in supporting the public airing of the issues before the Board, etc.

5. It has not been the practice of the Newfoundland Public Utilities Board to award costs to intervenors of the same type as the Island Industrial Customers. No costs were awarded to such a customer with respect to the hearings in which one or more of Hydro's Island Industrial customers have been represented by counsel including Hydro's 1990 and 1992 General Rate Applications, the Rural Rates hearing and the 1993 Cost of Service Methodology hearing. Moreover, costs were not awarded to Abitibi Consolidated Inc. and Irving Oil with respect to their interventions in the 1998 and 1996 general rate applications of Newfoundland Power, respectively. The Nova Scotia Board, as evidenced by the materials filed by Newfoundland Power, have taken the position that it will not award costs to industrial customers with their own financial resources to pay for the costs of their intervention.
6. Edward M. Hearn, Q.C. in the intervention filed on behalf of the Town of Labrador City requested in paragraph 8 "confirmation that costs incurred by the Town in making its intervention will be protected". For the reasons set out above with respect to the Application of the Island Industrial Customers, Hydro takes the position that it is beyond the jurisdiction of the Board to deal with this issue of the award of costs at the commencement of the hearing.

In addition, Newfoundland Hydro further states that, with respect the request of the Town of Labrador City, there is also the issue that a Consumer Advocate has been appointed by the Lieutenant-Governor in Council to represent domestic and general service consumers which would include the domestic and general consumers in the Town of Labrador City. Under Section 117 of the Public Utilities Act the costs of the Consumer Advocate are to be borne by the Board which in turn passes on these costs to Hydro. As a Consumer Advocate has been appointed to represent domestic and general service customers including those in the Town of Labrador City, it is not appropriate to consider an award for costs for a separate Counsel for the Town.

In conclusion, Hydro states its position to be that the Board lacks the jurisdiction to deal, at this time, with the Application by Island Industrial Customers for costs and the request of the Town of Labrador City on costs. Such applications for costs are properly dealt with at the conclusion of the hearing.

Yours truly

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enclosures

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