

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

AND IN THE MATTER OF a General Rate Application
(the “Application”) by Newfoundland and Labrador Hydro
for approvals of, under Section 70 of the Act, changes
in the rates to be charged for the supply of power and
energy to Newfoundland Power, Rural Customers and
Industrial Customers; and under Section 71 of the Act,
changes in the Rules and Regulations applicable to
the supply of electricity to its Rural Customers.

APPLICATION RELATIVE TO ISSUES AT THE HEARING

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TO:

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

THE APPLICATION of Abitibi-Consolidated Company of Canada (Grand Falls), Abitibi-Consolidated Company of Canada (Stephenville), Corner Brook Pulp & Paper Limited, North Atlantic Refining Limited and Voisey’s Bay Nickel Company Limited says:

1. The Applicant Intervenor seeks the direction of the Board as to whether certain of the issues raised in the evidence of EES Consulting Ltd. are to be considered in the hearing herein scheduled to commence on October 6, 2003 and, if such issues are to be considered, the Applicant Intervenor applies for a postponement of the hearing for a period of six weeks to allow for preparation of expert evidence on these issues.
2. The grounds for this Application are as follows:
 - (a) The evidence filed by EES Consulting Ltd. on behalf of the Public Utilities Board of Newfoundland and Labrador raises two issues of significance to the Applicant Intervenor. These are as follows:
 1. Whether generation plant should be classified using the Peak Credit method rather than the Load Factor method; and
 2. Whether the transmission line and related assets on the Great Northern Peninsula should be assigned to Hydro Rural or to common.

No party to the proceeding has raised these issues in any pre-filed evidence.

- (b) The issue of classification of generation plant was determined by the Board in the 1992-93 Cost of Service Methodology Hearing. The use of the Load Factor Method was confirmed by the Board in the 2001 GRA and no party has even referred to this issue in any material filed to date in this hearing. This issue alone could represent an additional cost burden to the Applicant Intervenors in each and every year of close to \$2,000,000.00. Further, this is an essential element of the whole Cost of Service Study and has implications for all the parties. Re-examination of this issue effectively re-opens the Cost of Service Methodology Hearing and engages areas of expert evidence that have not been contemplated as being related to or necessary for this hearing.
- (c) The issue of plant assignment was determined by the Board in the 2001 General Rate Hearing. Considerable evidence and argument was presented in the 2001 GRA on the issue of assignment of plant on the Great Northern Peninsula. The only issue raised in the application is the assignment of the generation plant on the Great Northern Peninsula and that has been addressed by the expert report filed on behalf of the Applicant Intervenors. The issue of assignment of the transmission plant represents a potential cost to be imposed on the Applicant Intervenors in excess of \$1 million per year. If this issue is to be considered by the Board in the current hearing, additional evidence will be required to ensure that the Board has a full record upon which to determine the issue.
- 3. The Applicant Intervenors were made aware only on September 23, 2003 that this evidence would be received by the Board and have been directing all their efforts since that time toward the previously scheduled mediation proceedings. Neither they nor their advisors have been in a position to deal with the implications of allowing these issues to be reconsidered until this time.
- 4. The Applicant Intervenors suggest that raising these issues at this time effectively amounts to an application to the Board, presumably by its own counsel, to rescind, alter or amend an order, as it is given power to do under Section 76 of the Act. It is submitted that, while such section requires, by its terms, only notice to the public utility, natural justice will require notice to any party significantly affected by such proposed rescission, alteration or amendment, and such notice must be sufficient to allow the parties to know the case they must meet and prepare such expert and other evidence as may be necessary to ensure that all parties get a fair hearing. The Applicant Intervenors submit, however, that no case for review of these orders is made out and the issues should not be considered in the present hearing. If there is any interest in reviewing these issues, the proper forum would be a separate hearing called solely for that purpose. If the issues are to be part of the present hearing, fairness to all parties would require sufficient time to retain necessary experts and file evidence to deal with the points.

5. The Applicant Intervenors suggest that this Application be heard by way of oral hearing at the motions day set for Thursday, October 2, 2003 or, alternatively, if such short notice is found not be adequate, prior to the commencement of the hearing on October 6, 2003.

Dated at Corner Brook, Newfoundland and Labrador, this 30th day of September, 2003.

**POOLE, ALTHOUSE/
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Solicitors for the Applicant Intervenors**