

June 24, 2003

Board of Commissioners of Public Utilities

P.O. Box 21040

St. John's, NL

A1A 5B2

Attention: Cheryl Blundon, Board Secretary

Dear Sir or Madam:

Re: Hydro General Rate Application

Please find enclosed a Notice of Intervention and Submission on behalf of the Town of Labrador City.

Yours very truly

MILLER & HEARN

Edward M. Hearn, Q.C.

EMH/Ih

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 Rural Customers.

TO: The Board of Commissioners of Public Utilities (the "Board")

NOTICE OF INTERVENTION

The Town of Labrador City hereby gives notice of its intention to intervene in the within proceeding.

Dated at Labrador City, in the Province of Newfoundland and Labrador this 24th day of June A.D. 2003.

Edward M. Hearn, Q.C.

Miller & Hearn
P.O. Box 129
450 Avalon Drive
Labrador City, NL
A2V 2K3

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TO: The Board of Commissioners of Public Utilities (the "Board")

SUBMISSION ON BEHALF OF
THE TOWN OF LABRADOR CITY

MILLER & HEARN
P.O. Box 129
450 Avalon Drive
Labrador City, NL
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Per: Edward M. Hearn, Q.C.

INTRODUCTION

1. In the present hearing, Newfoundland and Labrador Hydro (Hydro) is proposing that the rates for Labrador Interconnected Customers be based on the uniform rate structure as approved in Order Number P.U.7(2002-2003) and phased in over a five year period as outlined in the Rates and Customer Service Evidence filed with Hydro's application.
2. The effect of implementation of Hydro's proposed rate plan is that the rates for Labrador West ratepayers are proposed to increased by approximately 113% from present levels and further that over time ratepayers in Labrador West and Happy Valley – Goose Bay will bear the same rates – based on a so-called Single Interconnected System.
3. Labrador West ratepayers submit that it is inaccurate to speak of the provision of electrical service to the Happy Valley – Goose Bay area and to the Labrador West area as a Single Interconnected System; rather, so-called Labrador Interconnected System consists of two separate, discrete systems with different cost structures.
4. The Town intends to present evidence and argument to show that there are two different systems with different cost structures that warrant different rates.

5. The Town submits that the rural deficit is a social cost not appropriately recovered as part of the rate base. The Town submits that the social costs should be recovered by way of a dedicated tax of general application imposed on all electrical energy produced in the province.
6. The issue of appropriate rates for the so-called Labrador Interconnected System is raised in the context of a general rate application by Hydro that deals largely with issues related to the operation of the island system and other issues not relevant to Labrador Interconnected Customers.
7. The Town respectfully requests that issues related to the Labrador Interconnected System be dealt with in a separate sub-hearing.
8. To properly present the appropriate evidence and argument, expert assistance is required; the Town, therefore, requests as a preliminary issue that it be granted its costs of this intervention.

SUMMARY OF ARGUMENTS TO P.U.B.

1. The proposed rate structure in relation to the Labrador Interconnected System is based on the incorrect premise that there is a Singled Interconnected System; rates in Labrador West should reflect the distribution costs for that system.

There is no evidence to warrant a rate increase for the customers in Labrador West at the present time.
2. The proposed allocation of the rural deficit is inappropriate and ought to be allocated as a tax on the entire electrical production base of the Province, including electrical production exported from Churchill Falls.
3. There should be a separate sub-hearing to deal with issues affecting the Labrador Interconnected System.
4. The Town of Labrador City should be granted its costs of this intervention.

ARGUMENT 1

THERE IS NO SINGLE LABRADOR INTERCONNECTED SYSTEM; RATHER THERE ARE 2 SEPARATE SYSTEMS WITH DIFFERENT COST BASES.

1. The so-called Labrador Interconnected System is in reality two different systems with nothing in common except a common generation source.
2. The Happy Valley – Goose Bay area receives its energy from Churchill Falls via a Hydro owned 269 Kilometers 138 KV Transmission line. This line and ancillary terminal stations are owned and maintained by Hydro. Neither the transmission line nor the local distribution facilities in the Happy Valley – Goose Bay area has any relation to the supply of electrical energy in Labrador West.
3. The energy to serve Labrador West customers is wheeled from Churchill Falls at no cost to Hydro to the transmission facilities of Twin Co. then distributed throughout Labrador West via the Hydro owned local distribution facilities. The Labrador West Distribution System is un-related to that of Happy Valley – Goose Bay.
4. The Labrador West Distribution System constitutes a much smaller proportion of the total distribution investment in the Labrador Interconnected System than the facilities associated with the supply of energy for Happy Valley – Goose Bay. Therefore, it is appropriate to maintain a lower rate for Labrador West ratepayers than for those in Happy Valley – Goose Bay.

5. Hydro has maintained in argument to the Board that, where customers are served by the same system or grid, they should pay the same rates.
6. No authority has been presented for this proposition and no reasoning outlined by Hydro.
7. Labrador West ratepayers have in the previous rate hearing before this Board presented evidence that there is not a single system, but two different systems in the so-called Labrador Interconnected System with different cost bases.
8. This evidence has not been refuted.
9. Labrador West ratepayers in the previous rate hearing have presented expert evidence that different cost structures warrant different rates; therefore in principle rates in Labrador west should be lower than those in Happy Valley – Goose Bay to reflect the lower costs.
10. The argument was rejected by this Honorable Board in its 2001 rate hearing with the comment: "No evidence was submitted in the present hearing to convince the board that costs in the Labrador Interconnected system are not properly allocated by the approved COS methodology".

11. No reasoning or analysis is presented by the Board for this conclusion.
12. With respect, the Board's conclusion is erroneous in that it ignores unrefuted evidence and argument of the Town of Labrador City including the expert evidence of Mark Drazen, an independent expert in regulatory matters.
13. The Town submits that the Board's finding that the Labrador Interconnected System is a Single Interconnected System is contrary to reality; in principle, cost differences should be reflected in rate differences in the two distinct areas of the Labrador Interconnected System- namely Labrador West and Happy Valley – Goose Bay.

ARGUMENT II

THE PROPOSED ALLOCATION OF THE RURAL DEFICIT IS INAPPROPRIATE AND OUGHT TO BE COLLECTED AS A TAX ON THE ENTIRE ELECTRICAL PRODUCTION BASE OF THE PROVINCE, INCLUDING ELECTRICAL PRODUCTION EXPORTED FROM CHURCHILL FALLS

14. Hydro's proposals include allocating the rural deficit subsidy to retail electrical customers on the island Interconnected System and on the Labrador Interconnected system.
15. By compelling some electrical consumers to pay the rural rate subsidy, these electrical consumers are forced to pay what is effectively a social tax that is added to their rate base.
16. The Town proposes that the rural deficit be collected by the imposition of a tax (X mills per kilowatt hour) collected in all electrical production in the Province whether exported or not. The tax would be payable on the transaction by the purchaser as a condition of the purchase.
17. A tax in the range of 1 to 1½ mills per kilowatt-hour applied to the entire electrical production base of the province would be sufficient to pay the rural deficit.
18. In contrast, the effect of applying the burden of the rural rate subsidy only to retail electrical consumers on the Island and those on the Labrador Interconnected

System is to add, on an annual basis, a much larger amount to the electrical rates paid by those consumers.

19. Section 92A of the Canadian *Constitution Act* is relevant to this discussion. S. 92A (4) reads as follows:

In each Province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

(a) non-renewable natural resources and forestry resources in the province and the primary production therefrom, and

(b) sites and facilities in the province for the generation of electrical energy and the production therefrom,

whether to not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the Province.

Ref: *Constitution Act*, 1982, being Schedule B to the *Canada Act*, 1982 (U.K.), 1982, c. 11

20. In an article entitled *Newfoundland Resources: the Supreme Court Strikes Again* by William D. Moull, Associate Professor of Osgoode Hall Law School of York University, Professor Moull made the following pertinent comment:

Section 94A (4) now authorizes the province to impose indirect taxation on sights and facilities in the province for the generation of electrical energy and the production therefrom and this indirect taxation may be imposed whether or not such production is exported in whole or in part from the province so long as the tax regime adopted does not differentiate between production exported to another part of Canada and production not exported from the province.

Ref: [1985] 7 Supreme Court L.R., 419 at 435

21. The authority of the province to enact such a tax has been confirmed by the Supreme Court of Canada in Ontario Hydro v. Ontario (Labour Relations Board) et al, per La Forest, J.:

It was to respond to this insecurity about provincial jurisdiction over resources – one of the mainstays of provincial power that s. 92A was enacted. Section 92A reassures by restating this [page 377] jurisdiction in contemporary terms, and the following provisions go on, for the first time, to authorize the provinces to legislate for the export of resources to other provinces subject to Parliament's paramount legislative power in the area, as well as to permit indirect taxation in respect of resources so long as such taxes of not discriminate against other provinces.

Ref: [1993] 3 S.C.R. 327

22. Under Section 92A, the authority of the province to impose a tax upon electrical production exported from the province, is subject to the reasonable proviso that such taxation be of non-discriminatory nature and not differentiate between production exported to another part of Canada and production not exported from the province.

Ref: The *Constitution Act*, supra

23. Ironically, the imposition of the rural rate subsidy on certain electrical consumers in the province, while exempting others and exempting production exported, is in effect discriminating against those customers in the province upon whom the burden of the rural rate subsidy is imposed.
24. It is submitted that the Public Utilities Board is established as an independent regulatory authority, and its role is not limited to simply approving or disapproving the proposal before it.

[2] The Board of Commissioners of Public Utilities ("the Board") is a quasi-judicial tribunal constituted under the **Public Utilities Act**.

[3] ... It was therefore decided by Government to appoint a committee for the purpose of assessing the role of the Public Utilities Board and to conduct an organizational review. That committee reported to Government in January 1989 and the following recommendations were made:

1. The need for a strong independent Public utilities Board exists given its current legislative mandate.

Ref: Wells v. Newfoundland and Board of Commissioners of Public Utilities (1997), 156 Nfld. & P.E.I.R. 271, p.p. 274 - 275

25. Rather, the Board itself may recommend the necessary course of action, including legislation, the best ensures appropriate and fair utility rates.

Ref: *Public Utilities Act*, R.S.N. 1990, c. P-47, s. 83

26. It is submitted that the Board would be in serious dereliction of its obligations to electrical consumers if it imposed the rural rate subsidy as requested by Hydro rather than recommending legislation to include a much wider base on which to impose the burden of such subsidy. It is submitted that the appropriate base is all electrical production for the Province, including that exported from the Province.

ARGUMENT III

THERE SHOULD BE A SEPARATE HEARING OR SUB-HEARING TO DEAL WITH THE ISSUE OF FUTURE RATES THE LABRADOR INTERCONNECTED SYSTEM.

27. Hydro has applied to the board for approval of Hydro's proposals on 16 issues and has requested 10 additional orders.
28. Of these 26 areas of concern, only one relates to the Labrador Interconnected System.
29. It is submitted that it is inappropriate and inefficient to deal with issues affecting the Labrador Interconnected System in a general rate hearing.
30. It is also unduly onerous to require ratepayers in the Labrador Interconnected System to attend a hearing in St. John's where its issues are only of minor or peripheral interest.
31. The present general rate hearing structure is a cumbersome, expensive process involving multiple parties. Issues involving ratepayers in the Labrador Interconnected System would be more appropriately and efficiently dealt in a separate focused sub-hearing for that purpose.

32. It is therefore requested that the issues affecting the Labrador Interconnected System be decided in a separate hearing scheduled in Labrador for that purpose.

ARGUMENT IV

COSTS : THE TOWN OF LABRADOR CITY REQUESTS THAT IT BE GRANTED ITS COSTS OF THIS INTERVENTION.

33. The regulatory rate process is a complicated and expensive one requiring the input of people with specialized expertise.
34. The process itself only has credibility if the affected parties are able to participate and present the necessary evidence.
35. The setting of appropriate rates for customers of the Labrador Interconnected System is an issue of vital concern for ratepayers within that system.
36. Our concerns of the Island consumers and others throughout the rest of the system are clearly represented by the Consumer Advocate.
38. Given the divergent interests of ratepayers in the Happy Valley – Goose Bay area and those in Labrador West, it would not be reasonable to expect the Consumer Advocate to speak for either particular group.
39. It is therefore appropriate to fund this intervention on behalf of consumers in Labrador West.

40. Given the limited community resources and the past experience of having been deprived of costs for a focused intervention in the 2001 rate hearing, the Town of Labrador City respectfully requests a preliminary ruling that it is entitled to its costs of this intervention.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Labrador City, in the Province of Newfoundland and Labrador, this 24th day of June A.D. 2003.

Edward M. Hearn, Q.C.

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