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 and;

IN THE MATTER of a complaint from the Town of Labrador City and the Town of Wabush, that the Rates proposed for Labrador West by Newfoundland and Labrador Hydro in its 2003 General Rate Application are discriminatory. and;

IN THE MATTER of a hearing by the Public Utilities Board with respect to the appropriate rate calculation methodology for the Labrador interconnected system;

BRIEF OF ARGUMENT ON BEHALF OF THE TOWN OF LABRADOR CITY AND THE TOWN OF WABUSH

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INTRODUCTION AND BACKGROUND

1. Newfoundland and Labrador Hydro (NLH) has applied to the Public Utilities Board (PUB) for an Order inter alia setting rates for the so-called Labrador Interconnected System based on the principle of common rates for Labrador East and Labrador West with a phase in period.

2. By Order-in-Council the PUB was directed to consider the issue of the proposed rates for Labrador West on a complaint from a Labrador West municipality that the proposed rates would be discriminatory.

3. The Town of Labrador City and the Town of Wabush has each made such a complaint.

4. NLH proposes a common rate structure for Labrador East and Labrador West with a five (5) year phase in period.

5. If NLH's proposed rate policy were implemented there would be dramatic and substantial increases in rates in Labrador West. For the next five (5) years rates in Labrador East would be projected to remain stable or decline.

6. The proposed rates for Labrador West would not reflect the cost of service for electrical consumers in Labrador West.

7. The Towns of Labrador City and Wabush have provided uncontradicted expert evidence that the costs for electrical service for Labrador West are lower than costs to provide electrical service in Labrador East. The ratio is approximately three to one.

8. It is a fundamental principle of utility rate design that rates should reflect costs or, to put it another way; consumers should pay the costs associated with providing such consumers the electrical service.

9. In large measure, the costs to service electrical consumers in Labrador West are lower than in Labrador East because of past and continued contributions by the mining companies, the Iron Ore Company of Canada and Wabush Mines. IOCC and Wabush Mines built the electrical distribution system for Labrador West and gave this system to NLH for a nominal sum.

10. In addition, the mining companies contributed millions of dollars for upgrading to ensure that the electrical system was in proper operational condition.

11. The mining companies who are major shareholders of Twin Falls Power Corporation continue to provide a subsidy to electrical distribution in Labrador West by allowing NLH to wheel energy from Churchill Falls to Labrador West at no cost to NLH.

12. The evidence provided to the PUB by IOCC and Wabush Mines is that the electrical distribution assets were transferred to NLH with the expectation and intention that rate increases would be based on the costs of service to Labrador City and Wabush.

When both mining companies transferred these assets, we did so with the expectation that rate increases in the future would be based on actual cost of services to the communities…

Reference: Evidence of Dave Porter, VP, Human Resources, IOCC November 26, 2003, pg. 45

13. NLH suggests as a matter of policy that there should be a common rate applicable to Labrador East and Labrador West.

14. With respect, NLH provides no justification at all – no economic, social, political or legal reasons to support this policy decision.

15. The proposed policy would indirectly spread the current mining company finance subsidy directed towards Labrador West and divert a large portion of said subsidy to the electrical consumers in Labrador East to the detriment of the mining companies and the citizens of Labrador West.

16. The proposed policy also means that Labrador West consumers and ultimately the mining companies are required to subsidize costs in Labrador East that are unrelated to Labrador West including costs for back up generation in eastern Labrador.

17. The proposed NLH policy of having a common rate applicable to Labrador East and Labrador West discriminates against consumers in Labrador West in that it requires Labrador West consumers to subsidize costs of a separate and unrelated system servicing Labrador East.

18. Comments of Mr. David Porter, Vice President of Human Resources IOCC are particularly apt :

> *In summary, I guess I'd like to say that we believe that the iron ore mines In Labrador West have already paid for infrastructure and distribution and should not be asked to do so again. We believe that the creation of a common rate for Labrador spreads what is an indirect subsidy designed by the Iron Ore Company and Wabush*

Mines for the purposes of attracting and retaining quality people all across Labrador. Ultimately, any increase in residential costs that come back to Labrador West will be borne on the back of the iron ore mines in Labrador West and that is an environment where we are most vulnerable.

Mr. Chair, in kind of concluding remarks, you mentioned at the onset that natural justice was something that was considered in the mandate of this Board. We'd suggest to you that our position is that because of the situations, which we pointed out, to draw the conclusion that Labrador is one interconnected system and to set rates across that entire system defies natural justice. Because of our history and because of what's gone into the logic that our predecessors have found to be fundamentally sound for the last 50 years, to do also defies natural logic.

Reference: Evidence of Dave Porter- November 26, 2003 pg.62- 63

19. The long-term impact on the mines will be especially dramatic since NLH's proposal for uniform rates for Labrador West and Labrador East will result in more than Four ($4,000.000.00) Million dollars in additional costs annually for electrical consumers in Labrador West.

Q. So the phase in of the additional increase means, on an aggregate basis, that there'll be over 4 million dollars additionally taken out of this area in electricity costs?

A. That's correct, in order to be able to bring in the uniform rate system over the five-year period, that has to be done.

Reference: Evidence of Sam Banfield – November 26, 2003 pg. 102

20. To put this figure in perspective the Iron Ore Company of Canada (IOCC) which may ultimately have to bear a large portion of these costs, had a business plan objective for the year 2003 to make Four ($4,000.000.00) million dollars net profit.

21. The proposed rate structure is further discriminatory in that it would place a undue burden on IOCC and Wabush Mines at a time when the iron ore industry is precarious. The proposed first year increase alone would have a substantial negative impact on both IOCC and Wabush Mines and indeed amount to approximately 25% of IOCC's profit objective for 2003.

22. NLH also proposes that the rates for Labrador Interconnected costumers and Newfoundland Power customers would include an amount to subsidize the costs of electricity in rural areas.

23. Labrador City and Wabush propose that the rural deficit ought to be recovered by way of a dedicated tax on all electrical production in the Province, including that exported (utilizing the authority conferred on the Province by virtue of Section 92A (4) of the *Canadian Constitution)* and that the PUB should recommend such a tax to the Province instead of collecting the rural deficit subsidy from electrical customers of Newfoundland Power and electrical customers on the so-called Labrador Interconnected System.

<u>PROFILE OF "LABRADOR INTERCONNECTED SYSTEM"</u>

<u>The Labrador Interconnected System is not a single Interconnected System but rather two different systems connecting Labrador East and Labrador West respectfully.</u>

24. The so-called Labrador Interconnected System consists of two separate systems: one which serves Labrador East and another which serves Labrador West. Labrador West receives energy from Churchill Falls via a 230 KV transmission line owned by Twin Falls Power Corporation, a company whose shareholdings include the Iron Ore Company of Canada (“IOCC”), Wabush Mines and Newfoundland and Labrador Hydro (“NLH”). This energy is distributed throughout Labrador City and Wabush via a distribution system that is a combination of systems built by the mining companies IOCC and Wabush Mines, at their cost. These systems were given to NLH for nominal consideration with the mining companies contributing millions of dollars towards upgrading to ensure that the system was state of the art.

25. The distribution system serving Labrador West has no operational relationship with the system serving Labrador East (Happy Valley – Goose Bay Area). No energy flows from Labrador West to Labrador East; no energy flows from Labrador East to Labrador West.

26. Labrador East receives its energy from Churchill Falls via a 138 KV transmission line owned and maintained by NLH. In addition, NLH has installed in Labrador East a gas turbine generator to provide back up generation capacity. The transmission line from Churchill Falls is for service to Labrador East only; there is no relationship to Labrador West.

The back up generation capacity in Labrador East is for Labrador East only and has no relevance to Labrador West.

27. The two systems are operated separately. It is a misnomer to refer to these disparate regions as a single interconnected system. Mr. David Porter, VP, Human Resources IOCC explained:

> *"Our understanding of an interconnect system is that it has a series of consumers of hydroelectricity and generators of hydroelectricity in a format where at any given time the generators can't tell where their power is going necessarily, and the consumers can't tell where their power is coming from necessarily. The Labrador model is quite different. It's different on the right-hand side, and in fact, there is one fundamental generating point, a second I'll come back to in a moment, and the power goes off in two separate directions.*
>
> *As I pointed out earlier, everything to the left of Churchill Falls light bulb there was initially financed and put into place by the Iron Ore Company of Canada and Wabush Mines. Today, the power is wheeled for residential customers over that same high voltage infrastructure, which continues in large measure to be financed by those two organizations and distributed through the local distribution system.*
>
> *Unlike the interconnected system, our view is that we have truly two different systems here between Labrador West and Labrador East. We understand that there is a backup generator in Happy Valley – Goose Bay. Unfortunately, we have no impact or involvement in how that was put in place. Our information is that its generating capability is not sufficient to be an alternative to transmit power to Labrador West, and one of the proofs of that was when*

we considered the potential for a millennium disaster in 2000, all of the plans around alternative power sources in Labrador West were around generating power in Labrador West with diesel engines that Wabush Mines and IOCC were going to bring in. That's an indication of how the dependency occurs and how the system is truly not interconnected."

Reference: Evidence of Mr. David Porter-November 26, 2003 pgs.47-49

28. Mr. Porter's views are echoed by Mark Drazen, an independent regulatory expert*:*

Mr. Fitzgerald: But that does not make them an "interconnected system"? And I understood, perhaps incorrectly that the reason why you don't believe it's an interconnected system is because the costs are so different, west versus east and also because of the history?

Mr. Drazen: No Sir, the fact that it's not an interconnected system has to do with what I call the topology of the system. It's the flow of power on the facilities.

Reference: Evidence of Mark Drazen-November 20, 2003, pgs.125-126.

29. It is respectively submitted that it is factually incorrect to refer to the Labrador East and Labrador West electrical systems as a single

interconnected system. The reality is that there are two separate electrical systems serving Labrador East and Labrador West respectively.

POSITION OF IRON ORE COMPANY OF CANADA AND WABUSH MINES

30. In the early 1960's, the mines paid for Labrador West's generation, transmission, and distribution infrastructure. In 1974, water was diverted away from the Twin Falls generating station to increase the capacity of the Churchill Falls generating station. As compensation, the Churchill Falls Labrador Corporation Limited (CFLCo.) was required, under the 1961 water power sublease, to enter into a contract to supply electricity to Twin Falls Power Corporation ("Twinco") at a rate equivalent to the Twin Falls generation cost.

31. In 1985, Wabush Mines gave the Town of Wabush electrical distribution system to NLH for the nominal fee of One ($1.00) Dollar and then contributed $3.0M towards the upgrade of the system. In 1992, IOCC gave the Labrador City electrical distribution system to NLH for the nominal fee of One ($1.00) Dollar and then contributed $2.5M to upgrade the system. The contribution to upgrading ensured that NLH was given the distribution assets in good condition.

32. Twinco owns the transmission lines from Churchill Falls to Labrador West and does not charge NLH to transmit energy over these lines. As per the 1992 Transmission Contract between NLH, Twinco and IOC, NLH only pays for incremental costs incurred by Twinco in providing such transmission.

33. There should be a significant difference in the cost to service Labrador East as opposed to Labrador West because IOCC and Wabush Mines paid for the electrical infrastructure in Western Labrador. The reason the mines originally paid for the Towns' electrical distribution infrastructure

and other community facilities was to provide an indirect subsidy to attract and retain highly skilled people to the Labrador West area.

34. The mines support NLH raising electricity rates, if required, to compensate for an increased cost to service Labrador West; however, raising Labrador West and lowering Labrador East rates in order to create a common interconnected rate is merely a detrimental spreading of the mines' electrical infrastructure contribution for Labrador West subsidy to Labrador East.

35. Even in these difficult economic times, the mining companies continue to make a contribution to reduce the cost of electrical supply to Labrador West. The mining companies are major shareholders of Twinco and agree to Twinco wheeling power to Labrador West at no cost.

36. A common East-West Labrador rate dilutes the effect in Labrador West of the past contributions of the mining companies to infrastructure and the present subsidy through wheeling at no cost.

37. The serious impact of NLH's proposed rate policy on the mines was explained by Mr. McGrath and Mr. Porter in their presentation to the PUB on November 26, 2003.

Hearn Q.C. Q. Is a figure of $324,000 a significant figure for Wabush Mines, in terms of costs?

Mr. McGrath A. Very significant.

Hearn Q.C. Q. And how would Wabush Mines respond, and indeed, how would IOC respond to having a cost increase over five years of approximately 141 percent, based on present rates?

Mr. McGrath A. I think some people would choke on it. It would be a very serious impact. The issue is reducing costs and not increasing them and it's a struggle, it's a major struggle to reduce and when you talk about 141 percent increase in a specific component, that would be a major problem for us.

Reference: Evidence of John Mcgrath, Wabush Mines – November 26, 2003 pgs. 81-82

Hearn Q.C. Q. Mr. Porter, you were not asked to quantify the contribution that the Iron Ore Company is expected to make to present costs. Would you have any idea of that quantification?

Mr. Porter A. I guess the best guess would be to multiply the numbers that Mr. McGrath has just given you by a little over three times, because that's the size of the workforce differential.

Hearn Q.C. Q. So yours would be more in the realm of approximately a million dollars annually?

Mr. Porter A. That would be a reasonable estimate.

Hearn Q.C. Q. Is that significant cost figure for the Iron Ore Company of Canada?

Mr. Porter A. Let me answer the question this way. IOC's business plan objective in the year 2003 was to make four million dollars of net profit. That's 25 percent of the net profit generated off of operating a billion dollar enterprise. That's the magnitude of its *impact.*

Hearn Q.C. *Q. So a million dollar impact would be considered a significant impact for the Iron Ore Company of Canada?*

Mr. Porter *A. Absolutely.*

Hearn Q.C. *Q. And that would be based on present rates only?*

Mr. Porter *A. Correct.*

Reference: Evidence of Dave Porter, IOCC- November 26, 2003 pgs. 82-83

38. The impact of phased in uniform rates would even be more serious for the mining companies that ultimately have to bear a substantial portion of the burden of these costs. The uniform rate policy proposed will result in more than Four million dollars in additional costs annually for electrical consumers in Labrador West.

Reference: Evidence of Sam Banfield – November 26, 2003 pg.62

39. This increase in electricity costs is equivalent to IOCC's profit objective for the calendar year of 2003.

40. In summary a common East-West Labrador rate discriminates against electrical consumers in Labrador West and effectively charges the mines twice for the infrastructure. These mines built the distribution system presently servicing Labrador West, and contributed millions of dollars to the costs of upgrading to ensure that NLH received a state of the art

system. The system was given to NLH for nominal consideration. The mining companies, as major shareholders of Twinco, continue to subsidize local consumers by wheeling power to Labrador West at no cost to NLH. As the largest and core employers in Labrador West, the mining companies are negatively impacted by unwarranted increases in the costs of living. Higher costs of living make it difficult to attract and retain skilled employees. Such higher costs also result in increased supplier costs, which are inevitably passed on to the companies.

41. NLH's proposed "single system" approach to calculating the cost of the Labrador Interconnected system would effectively give almost half of the distribution system contributions of the mining companies to Labrador East customers. Hence, Labrador West customers are not getting the full value of those contributions. Further, NLH proposes to charge Labrador West customers(distribution system and IOCC) for about 70% of the cost of the backup capacity that was installed for Labrador East customers, from which consumers in western Labrador receive no benefit. NLH's "cost study allocates $1M of Labrador East standby generation cost to IOCC. Labrador West and IOCC do not - and cannot – benefit from Labrador East standby capacity. In fact, when additional capacity in Labrador West is needed, IOCC curtails its own use of electricity to ensure that Labrador City and Wabush consumers get power. IOCC does not receive any compensation from NLH for this; it is an additional contribution from IOCC to the residents of those towns.

EXPERT EVIDENCE

42. The Towns of Labrador City and Wabush have called expert evidence to establish that the costs of services between Labrador East and Labrador West are different. These cost differences exist in all three major components: generation, transmission, and distribution. In each of the three areas, cost of electrical service for Labrador West is substantially lower than those for Labrador East.

…in the evidence I show that there is a material difference in the cost between serving Labrador East and Labrador West. The difference, it shows 8.9 million for Labrador East for a load of 218,000-megawatt hours or for sales of 218,000. For Labrador West, it's 3.6 million for a higher level of sales of 260,000, so that the cost per megawatt hour is $41.00 in the east and $14.00 in the west, roughly three to one, and my understanding from listening to Mr. Greneman is that Hydro doesn't have any quarrel with the calculations per se.

Reference: Evidence of Mark Drazen – November 20, 2003 pg.88-89

43. The evidence of Mr. Drazen with respect to this point is accepted by other experts and by NLH.

"Hearn, Q.C.: Do you take any issue with Mr. Drazen's evidence on that?

Ms. Tabone: …mine is based on policy and whether those costs differences, regardless of how significant they are, whether they matter on policy basis.

Hearn, Q.C.: *So you don't take any issue with Mr. Drazen's evidence that the cost of service that even though the sales in Labrador West are greater than those in Labrador East, the cost of service is less than half, given the ratio of about three to one in respective costs in the two areas?*

Ms. Tabone: *Yes, I agree with his findings on the technical basis, yes.*

Hearn Q.C.: *Would you acknowledge that there's standby generation capacity in Labrador East that serves Labrador East only, some 38 megawatts?*

Ms. Tabone: *Again, that was in Mr. Drazen's evidence and I don't take issue with that. I don't see it being that different from some of the issues that we were talking about the Island Interconnected System.*

Hearn Q.C.: *So would you agree that on distribution, transmission and generation, that there are different cost basis for the two different portions of what's referred to as the Labrador Interconnected System? Would that be correct?*

Ms. Tabone: *That would be correct.*

Hearn Q.C.: *And in each case, the costs associated with Labrador West are significantly lower than those associated with Labrador East?*

Ms. Tabone: *I would agree with that….."*

Reference: Evidence of Gail Tabone – November 19, 2003 pg.181-183

Hearn, Q.C.: *There's been some evidence presented that suggests that the--Mr. Drazen's evidence, that the-- in the distribution systems that the costs for Labrador West are significantly lower than that for Labrador East. Do you disagree with that?*

Mr. Greneman: *No, I don't.*

Hearn, Q.C.: *And we've already discussed the transmission aspect that I understand you'll agree that the actual transmission costs to deliver energy to Labrador West are lower than they are to deliver to Labrador East?*

Mr. Greneman: *Yes. This is all manifested in Mr. Drazen's estimates, so all this filters down to his two estimates of Cost of Service. So, yes. I could agree to what you are saying……*

Hearn , Q.C.: *…do you disagree with what Mr. Drazen has said about the cost for that generation?*

Mr. Greneman: *I will accept that. I have no basis at the moment to disagree.*

Reference: Evidence of Robert Greneman – November 20, 2003 pgs. 20-21

Greene Q.C.: *…Hydro does accept that there are differences in the costs between Labrador East and Labrador West and after revised evidence of Mr. Drazen we accept generally the costs that Mr. Drazen has outlined for Labrador East and Labrador West and what the differences are.*

Reference: Quote from Maureen Greene Q.C., Corporate Counsel for Newfoundland Hydro- November 20 testimony, Pg. 22.

44. All experts who have addressed the issue of single rates for the so-called Labrador Interconnected System agree that the question is ultimately one of policy for the PUB.

Reference: Evidence of Robert Greneman- November 20, 2003
Evidence of Gail Tabone- November 19, 2003
Evidence of Mark Drazen-November 20, 2003

45. Mr. Drazen makes the following relevant comments with respect to the issue of policy considerations:

Yes, I already said this was ultimately a policy issue, but that policy should be formed by what the cost data are and question of what the policy achieves……….. So, when you say something is a policy issue, we also have to say, from a social perspective or regulatory perspective or an economic perspective, what's a good policy and what's not a good policy.

Reference: Evidence of Mark Drazen- November 20, 2003 pg. 123

46. Mr. Greneman, addressing the issue for NLH, agrees that aligning rates with the cost of service be said to be the most widely recognized measure for the setting of rates that are equitable and non-discriminatory.

Hearn Q.C. : Do you agree that aligning rates with cost of service can be said to be the most widely recognized measure of rates that are
equitable and non-discriminatory?

Mr. Greneman: I wholly agree.

Reference: Evidence of Robert Greneman-November 20, 2003, pg.67

47. This principle is also acknowledged and accepted by Ms. Tabone, the Public Utilities Board's expert.

Hearn Q.C.: Would you agree that it's a widely recognized rate design principle that a utility should recover costs from the customers that cause them to be incurred?

Ms. Tabone: That's very standard principle of cost of service. It's why you do it."

Reference: Evidence of Gail Tabone- November 19, 2003, pg. 196

48. Aligning rates with costs of service is the reason for having separate rate classes. The cost differences among those classes are smaller than the cost difference between Labrador West and Labrador East. Thus the principle of "different costs support different rates" that NLH uses in respect of other aspects of rate design is violated by NLH's proposal for combined rates for Labrador East and Labrador West customers.

49. The systems in Labrador East and Labrador West have operated separately for their entire history and since the mining towns in Labrador West have come into existence.

50. All experts who have addressed this issue agree that a historical relationship is a factor for the Board to consider.

Hearn Q.C. : Would you agree that maintaining historical relationships is also an important factor to be considered?

Ms. Tabone: I think it is a factor for the Board to consider….

Reference: Ms. Tabone's Evidence- November 19, 2003, pg.194

Hearn Q.C: When you say not only historical considerations, do you accept then that historical considerations become a factor to be considered?

Mr. Greneman: *Historical considerations are a recognized factor……*

Reference: Mr. Greneman's Evidence-November 20, 2003, pg.31

Mr. Drazen: *…there is material cost difference between the two and historically, they've been separate……..parts are separate right now, they have been for many years, and that there's no good reason to combine them, given that the costs are so much different.*

Reference: Mr. Drazen's Evidence- November 20, 2003, pg. 91

51. The systems serving Labrador East and Labrador West respectively have been separate and apart for their entire history. Because the systems are operationally unrelated and the costs are greatly different in each of the areas, there is no legitimate reason to combine the two systems.

52. The NLH expert, Mr. Greneman, attempted to justify a policy of single rates for the so-called Labrador Interconnected System on the basis of price signals and opportunity costs. His rationale is that lower prices encourage wasteful consumption in Labrador West and at the same time deprive NLH of export sales to Quebec.

53. With respect, Mr. Greneman does not consider that charging rates in Labrador East which do not reflect the Labrador East costs may encourage wasteful consumption in that area.

54. Further, there is no evidence disclosed to support the proposition that there is wasteful consumption in Labrador West.

55. Nor is there any evidence that NLH is losing export revenue by virtue of energy consumption in Labrador West.

56. Indeed, with respect, the suggestion of Mr. Greneman that rates should be increased in Labrador West and a single rate structure imposed throughout the Labrador Interconnected System so that NLH can export more energy to Quebec is completely without foundation.

57. A policy encouraging domestic consumption and supporting domestic use is preferable to one based on the further export of cheap raw power to Quebec.

58. Ms. Tabone discusses price signals in terms of new generation.

Reference: Evidence of Gail Tabone- November 19, 2003, pg. 200

59. Yet Ms. Tabone (whose evidence is remarkably unencumbered by any factual understanding of the Labrador electrical systems) is not aware of any demand for any new generation in Labrador East or Labrador West.

60. In reality, Labrador East and Labrador West are each in precarious economic circumstances for different reasons as disclosed by the evidence before the Board; no new generation is contemplated for either area.

61. In conclusion, NLH's proposed policy to institute a single rate structure throughout the so-called Labrador Interconnected System would ignore

material cost differences between Labrador East and Labrador West. There is no general policy of rate equalization on the NLH system. Indeed NLH proposes five sets of rates reflecting cost differences among five different sub-systems: Island Interconnected, Island Isolated, Labrador Isolated, L'Anse au Loup and Labrador Interconnected. Systemization is based on the different facilities and costs of service among those five areas. There is no inherent policy that requires the Labrador Interconnected East and the Labrador Interconnected West rates to be equalized. The reasons put forth by NLH's expert Mr. Greneman and the PUB's expert Ms. Tabone, amount to saying "it's a policy decision" but, with respect, do not provide any basis for that policy.

62. The proposed policy of a single rate in Labrador East and Labrador West would discriminate against customers in Labrador West and is directly contrary to the principle that a utility ought to recover costs from the customers that cause such costs to be incurred.

POSITION OF NEWFOUNDLAND HYDRO

63. The position of NLH as indicated by its Corporate Counsel in hearings in Labrador West and Happy Valley – Goose Bay is that NLH has long sought to adopt a policy of equalizing rates between Labrador East and Labrador West.

64. While this may have been NLH's long held goal, there has not been any persuasive evidence put forth to support the aim of NLH. There also been no evidence to indicate that this is the directed policy of the Province.

65. NLH relies on the 1993 methodology hearing before the PUB and the ruling of the PUB in 2001-2002 rate hearing.

66. In the 1993 methodology hearing, Labrador West clearly indicated that it was of the impression that the underlying rationale and application of a uniform rate policy between Labrador East and Labrador West would be examined in the context of a rate hearing. There was no expectation or understanding on the part of consumers in Labrador West that the methodology hearing would result in the application of a common rate policy some ten (10) years later without the issue being presented to the PUB in a rate hearing context, without the underlying principles and rationale being exposed to Board scrutiny, and further without the Board providing detailed reasons for the imposition of such a policy.

67. In effect, Labrador West electrical consumers are faced with the prosepect that because of the theoretical methodology hearing held some ten (10) years ago it is too late to object to such a policy or examine its basis.

68. The issue comes to the PUB as a hearing by virtue of an Order-in-Council from the Province directing the Board to examine the issue on a complaint from a municipality in Labrador West. Implicitly the Province has recognized the need to have the issue fully examined without pre-conditions and with the PUB providing detailed reasons for its ultimate decision after hearing all interested parties.

69. The only evidence put forth by NLH on this issue has been that of Mr. Greneman. It is respectfully submitted that Mr. Greneman's position is not supported by any data or evidence showing a benefit and is thus not persuasive.

HAPPY VALLEY-GOOSE BAY / EVIDENCE OF INTERVENORS

70. The evidence presented to the PUB in Happy Valley – Goose Bay by Dennis Peck, Director of Economic Development for the Town of Happy Valley – Goose Bay is to the effect that the continued existence of 5 Wing Goose Bay, the Air Base that is the Town's core employer, is in doubt.

71. The Air Force of the Netherlands no longer trains at Goose Bay; the German Air Force has announced they will no longer be training in Goose Bay after 2005. The British and the Italians are reviewing their options.

72. Thus, the continued existence of the core employer in Labrador East, as in Labrador West, is in doubt —- albeit for different reasons.

73. It is respectively submitted that this is not the time to propose an unprincipled policy of rate equalization in Labrador East and Labrador West.

74. It is noteworthy that intervenors such as the Combined Councils of Labrador and the MHA for Cartwright/L'Anse Au Clair, Yvonne Jones, do not support the proposed increases in rates for Labrador West.

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

75. NLH's proposals include allocating the rural deficit subsidy to retail electrical customers on the Island Interconnected System and on the Labrador Interconnected System.

76. The rural deficit subsidy is in effect a social tax that is collected from certain electrical consumers in the Province, mainly the consumers on the Labrador Interconnected System and Newfoundland Power Customers.

77. 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.

78. A tax in the range of 1 to 1.5 mills per kilowatt hour applied to the entire electrical production base of the Province would be sufficient to pay the rural deficit.

79. In contrast, the effect of passing 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.

80. Section 92A of the Canadian *Constitution Act* is relevant to this discussion. Section 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 or 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.

Reference: Constitution Act, 1982, being schedule B to the Canada Act, 1982 (U.K), 1982,c. 11

81. 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 "sites 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".

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

82. 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, <u>as well as to permit indirect taxation in respect of resources so long as such taxes do not discriminate against other provinces.</u> {Emphasis added}*

> *Reference: [1993] 3 S.C.R. 327*

83. 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.

> *Reference: The Constitution Act, supra*

84. 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.

85. It is submitted that the PUB 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 the Public Utilities ("the Board") is a quasi-judicial tribunal constituted under the* ***Public Utilities Act.***
>
> *[3]…. It is therefore decided by Government to appoint a committee for the purpose of assessing the role of the PUB 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 PUB exists given its current legislative mandate.*

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

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

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

87. It is submitted that the Board has an obligation to ensure that the most equitable approach to rates is being followed; the Board would be in dereliction of its obligation to electrical consumers if it imposed the rural rate subsidy as requested by NLH rather than recommending taxation

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 of the Province, including that exported from the Province.

COSTS

88. The regulatory rate process is a complicated and expensive one requiring the input of people with specialized expertise.

89. The process itself only has credibility if the affected parties are able to participate and present the necessary evidence.

90. The setting of appropriate rates for customers of the Labrador Interconnected System is an issue of vital concern for ratepayers within that system.

91. The Consumer Advocate is expected to speak to the general interest of consumers in the Province; however, he cannot be expected to represent the interest of a particular group of electrical consumers such as the electrical consumers in Labrador West.

92. This is especially so given that in respect of the rate equalization issue the interest of ratepayers in Labrador West are diametrically opposed to the interest of ratepayers in the Happy Valley–Goose Bay area. It would not be reasonable to expect the Consumer Advocate to speak for either particular group.

93. The Province has recognized the issue before the PUB by directing a hearing on a complaint of discriminatory rates, giving full opportunity to the residents of Labrador City – Wabush, the Iron Ore Company of Canada and Wabush Mines representatives as well as other interested parties to present arguments and evidence at such hearing.

94. A full and complete hearing is not possible without the assistance of counsel and availability of expert evidence.

95. The Towns have presented a focused intervention on issues of vital concern to ratepayers in Labrador West and cannot reasonably be said to have not properly utilized the time before the PUB.

96. The practice in this jurisdiction has been to grant costs to interested parties.

97. It is respectfully submitted that the Town of Labrador City and the Town of Wabush ought to be granted their costs of intervention in this hearing.

CONCLUSION

98. NLH's proposed rates for the so-called Labrador Interconnected System are discriminatory against electrical consumers in Labrador West; NLH's proposal fails to align rates with cost of service and fails to recover costs from the customers that cause them.

99. Instead NLH's proposal is that consumers in Labrador West subsidize the higher cost of service in Labrador East.

100. This proposal is based on the fallacy that the two separate systems serving Labrador East and Labrador West should be treated as a single interconnected system.

101. The historical fact is that the systems in Labrador East and Labrador West are not interconnected and have always existed distinctively from each other with no operational relationship.

102. The directed subsidy from the mining companies, which is aimed to lower costs in Labrador West to ensure that the mining companies can recruit and maintain a skilled workforce, would be diverted in large measure by NLH to the benefit of the consumers in Labrador East.

103. The mining companies in Labrador West built the electrical system at their cost, contributed millions for upgrading, and continued to subsidize power to Labrador West through wheeling at no cost with the expectation and intention that costs in Labrador West would be based on the local cost of service.

104. The effect of NLH's proposal for a common rate policy for Labrador East and Labrador West is that these contributions and subsidies are

appropriated against the wishes of the mining companies and extended to the separate system in Labrador East.

105. Labrador West electrical consumers are also being asked to contribute substantially to the costs of backup generation capacity in Labrador East. This backup generation capacity was designed and exists to service Labrador East alone and has no relevance to Labrador West.

106. A uniform rate policy on the so-called Labrador Interconnected System will increase electrical costs in Labrador West by more than 4 million dollars annually.

107. The effect of this increase on the mining companies will be substantial at a time when the iron ore industry is in a precarious position.

108. While NLH suggests that the decision whether there should be common rates for Labrador East and Labrador West is a policy decision, a policy decision ought to be based on principle and evidence that a policy is beneficial.

109. No persuasive principle or evidence to support this policy has been put forward by NLH.

110. Analogies with postage stamp systems with uniform rates have no application to the system in this Province where the status quo is that six different rates exist and even NLH's proposal is for five different rates. The geographical, climatic, facility and cost differences that gave rise to different rates for Labrador West and Labrador East have not changed.

111. In addition, the Towns of Labrador City and Wabush suggest that the rural deficit be collected by way of a dedicated tax on all electricity produced in

the Province whether exported or not (utilizing the authority under section 92A(4) *Canadian Constitution)* rather than collected from Newfoundland Power customers and customers on the so-called Labrador Interconnected System.

112. The Towns of Labrador City and Wabush have participated in this hearing in a focused and principled fashion. Their participation has been essential for proper hearing of all the issues. Therefore, they should have their costs of this intervention.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Labrador City, in the Province of Newfoundland and Labrador, this __________day of ___________, 2004.

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