

1 Q. Does Hydro consider itself to be behaving as an investor owned utility in all
2 aspects of its operations? If not, which aspects does it not behave like an
3 investor utility and what, if any, impact do those aspects have on the
4 determination of what is a fair and reasonable rate of return for Hydro? (**WW**
5 **p. 22, generally**)
6
7

8 A. Yes. Hydro considers itself to be behaving as an investor owned utility in all
9 aspects of its operations. Pursuant to Chapter 37 of the Statutes of
10 Newfoundland 1995, there were a series of legislative amendments affecting
11 Hydro. The effect of these amendments was to repeal certain provisions that
12 had existed under the Hydro Corporation Act, Revised Statutes of
13 Newfoundland, 1990, as amended to that time, and under various other
14 statutes. Prior to the repealing of these provisions, a number of special
15 legislative treatments usually associated with crown corporations and
16 government agencies had applied to Hydro.
17

18 Section 5 of Chapter 37 reads as follows:
19

20 “5. Section 14 of the Act is repealed.”
21

22 Section 14 of the Hydro Corporation Act provided Hydro with the exclusive
23 franchise to develop all previously un-granted hydroelectric sites on the
24 island portion of the province.
25

26 Section 6 of Chapter 37 reads as follows:
27

28 “6. Paragraph 16(1)(h) of the Act is repealed and the following substituted:

1 “(h) deposit money or securities with a bank, trustee, trust company, or other
2 depository in Canada or outside Canada;”

3 Prior to this amendment, the prior approval of the Lieutenant-Governor in
4 Council was required to deposit money or securities outside Canada.

5
6 Section 7 of Chapter 37 starts as follows:

7
8 “7. Sections 17, 18, 19, 20 and 21 of the Act are repealed”

9
10 Under section 17, Hydro had access to special powers of expropriation under
11 the Expropriation Act. Section 19 provided Hydro with the ability to obtain
12 rights to water powers and lands through an assurance of the Lieutenant-
13 Governor in Council. Under sections 20 and 21, respectively, Hydro was
14 exempt from the Crown Lands Act and the Public Utilities Act.

15
16 Section 8 of Chapter 37 reads as follows:

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18 “8. Sections 22 and 23 of the Act are repealed.”

19
20 Under section 22, Hydro was subject to the Public Service Collective
21 Bargaining Act. Subsection 19(1) of the Hydro Corporation Act as amended
22 by Chapter 37 reads as follows:

23
24 “19.(1) The Labour Relations Act applies to the corporation.”

25
26 Section 10 of Chapter 37 reads as follows:

27
28 “10. Section 26 of the Act is repealed.”

1 Section 26 of the Hydro Corporation Act provided Hydro with certain rights to
2 obtain franchise rights to those hydroelectric sites in Labrador not subject to
3 prior grants by the Crown.

4 Section 11 of Chapter 37 reads as follows:

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6 “11. Subsection 40(2) of the Act is repealed.”
7

8 Subsection 40(2) of the Hydro Corporation Act required Hydro to obtain the
9 approval of the Lieutenant-Governor in Council for borrowing programs
10 reflected in its budget.

11
12 Section 12 of Chapter 37 reads as follows:

13
14 “12. Subsection 41(3) of the Act is repealed and the following substituted:

15
16 “(3) The annual financial statement of the corporation shall be audited by a
17 firm of auditors.”
18

19 Prior to this amendment, the Act provided that the auditors be appointed by
20 the Lieutenant-Governor in Council.

21
22 Section 13 of Chapter 37 reads as follows:

23
24 “13. Subsections 44(3), (4) and (6) and sections 45, 46, 47, 48, 49 and 50 of
25 the Act are repealed.”
26

27 Among other things, these provisions had provided Hydro and its directors
28 special protections and limitation periods in litigation against them.
29

1 Section 20 of Chapter 37 reads as follows:

2
3 “20. Subsection 50(4) of the Crown Lands Act is repealed.”

4 Section 21 of Chapter 37 reads as follows:

5
6 “21. The schedule to the Freedom of Information Act is amended by deleting
7 the words “The Newfoundland and Labrador Hydro Corporation”.

8
9 Section 23 of Chapter 37 reads as follows:

10
11 “23(1) Paragraph 2(b) of the Public Tender Act is amended by striking out the
12 semicolon at the end of subparagraph (viii) and by substituting a comma and
13 by adding immediately after subparagraph (viii) the following:

14
15 but does not include

16
17 (ix) Newfoundland and Labrador Hydro

18
19 (2) the Schedule to the Act is amended by deleting the words “Newfoundland
20 and Labrador Hydro”.

21
22 The Electrical Power Control Act, 1994 revised the power policies that had
23 earlier been set out in the Electrical Power Control Act. The legislature
24 removed from the 1994 statute the special treatment that had existed for
25 Hydro as to the margin of profit. The provision that applies at present is the
26 same for Hydro as it is for Newfoundland Power:

27
28 “3. It is declared to be the policy of the province that

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

3 (iii) should provide sufficient revenue to the producer or retailer of the
4 power to enable it to earn a just and reasonable return as construed
5 under the Public Utilities Act so that it is able to achieve and maintain
6 a sound credit rating in the financial markets of the world . . .”

7
8 Hydro views the following similarities between the way Hydro is intended to
9 operate and the manner in which an investor-owned utility operates.

- 10
11 • Operate in an efficient and least cost basis
12 • Achieve an appropriate return on rate base
13 • Achieve an appropriate return on equity
14 • Achieve appropriate debt/equity ratios
15 • Provide an appropriate dividend payout
16

17 Hydro has determined that the risks to the shareholder's investment in
18 Hydro, are no less than those faced by equity investors in Newfoundland
19 Power, a private investor owned utility. As return on equity is governed by
20 the attendant risk to the equity investment, Hydro considers the requested
21 return on equity to be fair and reasonable. There is no aspect of the
22 operations of Hydro, which would lead to the conclusion that there is a
23 difference between the fair and reasonable returns for Hydro and NP due to
24 the identity of the shareholder.

25
26 See also the response to PUB-107 NLH.