

IN THE MATTER OF the *Public Utilities Act*, (the “Act”); and

IN THE MATTER OF an Application by Newfoundland and Labrador Hydro for approval of: (1) its 2004 capital budget pursuant to s.41(1) of the Act; (2) its 2004 capital purchases, and construction projects in excess of \$50,000 pursuant to s.41 (3) (a) of the Act; and (3) its estimated contributions in aid of construction for 2004 pursuant to s.41 (5) of the Act.

REPLY TO APPLICATION TO POSTPONE HEARING

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TO:

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

The **REPLY** of Newfoundland and Labrador Hydro (“Hydro”) to the Application by Industrial Customers says:

1. The Application by Industrial Customers dated May 15, 2003, states that North Atlantic Refining Limited is an Intervenor. No intervention has been filed on behalf of North Atlantic Refining Limited in this matter.
2. In paragraph 2 of their Application, the Industrial Customers state that Hydro’s application for approval of its 2004 capital budget is untimely. Hydro does not agree with this statement. Generally a number of capital budget proposals in any year require significant pre-engineering and design work, as well as planning, to ensure that the projects are completed within an appropriate timeframe. Experience has led both

Hydro and the other utility in this jurisdiction, Newfoundland Power, in recent years to submit annual capital budget proposals for approval earlier than in the past. For example, Newfoundland Hydro's application for approval of its 2003 capital expenditures was filed on September 18, 2002. Newfoundland Power's application for approval of its 2003 capital budget was filed on August 2, 2002. Hydro submits that the timely approval of an annual capital budget assists both utilities in properly planning and completing pre-construction work required for successful completion of capital projects.

3. With respect to Paragraph 3 of the Application of the Industrial Customers, Hydro states that it does not agree that the capital budget in any year is "highly dependant upon the results of capital spending in the previous year". This is a statement of fact, not agreed to by Hydro, and if it is to be pursued by the Industrial Customers, it is appropriate that it be done in the hearing process at which time argument can be addressed to the Board to allow a decision to be made following review of the evidence as to whether this is a correct statement.
4. With respect to paragraphs 4 and 5 of the Application of Industrial Customers, Hydro states that Industrial Customers have again made a statement of fact, with which Hydro does not agree, which is that Hydro "does not have a properly prepared capital budget for 2004 to be reviewed by this Board". The process for preparation of the 2004 capital budget is an issue which Industrial Customers, if they wish, can pursue before the Board at a hearing. It is improper for Industrial Customers at this time to draw conclusions with respect to the capital budget process before evidence has been heard by the Board with respect to the process followed by Hydro in the preparation of its 2004 capital budget. Hydro submits that its preparation of the capital budget for 2004 has indeed been appropriate allowing proper preparation of all

budget proposals as evidenced by the detail submitted in support of all projects over \$50,000. Hydro submits that statements by the Industrial Customers as contained in paragraphs 3, 4 and 5 of their Application as to factual circumstances, which are not decided by the Board and with which the Applicant does not agree, are not appropriate to support the application for a postponement.

5. With respect to paragraph 6 of the Application of the Industrial Customers, Hydro submits that the Board does have power to review an annual capital budget within a time period as established by the Board under its own rules of procedure. The only legislative restriction with respect to the timing or review of a capital budget is found in Section 41 (l) of the Act, which requires the Board to provide approval for a capital budget of utility not later than December 15th of each year for the next calendar year. In fulfilling its mandate under the Act, the Board has the right to adopt procedures and processes as it finds appropriate. This extends to the issue of scheduling the hearing into Hydro's 2004 capital budget application. There is no statutory limitation on the Board's authority to do this as stated in paragraph 6 of the Application of Industrial Customers other than the limitation found in Section 41 (1) of the Act.
6. In paragraph 7 of their Application, Industrial Customers raised the issue of the timing of Hydro's 2003 general rate application. Hydro submits that the issues that arise in a general rate application are fairly distinct from those issues that arise in a capital budget hearing. To fulfill its statutory obligations to provide service to its customers, Hydro must make capital expenditures, as any utility, throughout the calendar year. Section 41 of the Act requires that the Board must give prior approval for these expenditures. A capital budget hearing focuses principally upon the capital projects for which approval is sought and

includes consideration of engineering evidence justifying the proposed capital projects and issues of the costs of the project and the implications of the proposed projects for reliability and safety. On the other hand, a general rate application focuses on evidence relating to operating costs, return on rate base and issues of rate design and cost of service. The fact that Hydro in any given year may also file a general rate application should not influence the conduct of annual capital expenditure hearings.

7. In paragraph 8 of the Application, Industrial Customers state that Hydro did not provide a copy of the 2004 capital budget application to them. That is correct. The practice has developed, since Hydro first submitted capital budgets to the Board for approval, that it has not provided a copy to any person or group at the time of filing of the application, prior to notification that a party is intending to intervene in the application. Thus, Hydro has not provided a copy of any application to the Industrial Customers or the Consumer Advocate at the time of filing of any of its capital budget applications. The practice has developed for Hydro and Newfoundland Power to exchange copies of their capital budget applications. However, if Industrial Customers wish, as a routine matter, to receive copies of all capital budget applications, Hydro will be happy to comply with such a request. To date Hydro has not received any request from Industrial Customers to this effect. Moreover, Hydro states that the public hearing process provides for public notice and at that time any party, including the Industrial Customers, is required to identify an intention to participate in the hearing and at that time it is appropriate that those filing formal interventions receive a copy of the application with all supporting justification.

8. Hydro states that Counsel for Industrial Customers did not provide Hydro with a copy of its Application to Postpone, even though Hydro is an official party of record to these proceedings. A copy was provided to Hydro by the Board Secretary
9. With respect to paragraph 9 of the Application of Industrial Customers', Hydro states that it is not seeking approval of a budget of \$56.8 million. Hydro's proposed 2004 Capital Budget is \$34.5 million. Some of the proposed 2004 capital projects will require expenditures in future years for which the Board's approval will be requested for the year in which the money is forecast to be spent.
10. With respect to the Application of the Industrial Customers for a delay until the fall, Hydro states that their position raises two issues. The first is the timing of a capital budget hearing in a year in which a utility also has a general rate application and the second is the appropriate time required for an Intervenor to properly prepare for a capital budget hearing. With respect to the first issue Hydro does state that it will be filing a 2003 general rate application during the week of May 19th, 2003. Hydro further states that the issues and evidence considered by the Board in a capital budget application and a general rate application are very distinct. Moreover, practice has shown that it significantly extends the duration of a capital budget hearing to combine both issues as occurred with Hydro's 2001 general rate filing.
11. The Electrical Power Control Act, 1994, sets out the policy of the Province regarding electrical power. Part of this policy requires Hydro to ensure that the power being delivered to its customers is at the lowest cost consistent with reliable service. In order to fulfill this statutory obligation, Hydro must engage in capital projects each year. Hydro has submitted several capital budgets for approval to the Board

since it became subject to Section 41 of the Act. It is clear that the evidence submitted in a capital budget process tends to be of an engineering and operational nature to support the need for the proposed capital project required to meet Hydro's obligation to provide service to its customers. On the other hand, the evidence in a general rate application, which is an application under Section 80 of the Act tends to focus upon operating costs, return on rate base, rate design issues and cost of service issues.

12. With respect to the timing of approval of annual capital expenditures and general rate applications, two recent experiences before the Board are relevant for this issue. The first is Hydro's 2002 capital budget which was considered in the context of its general rate application filed on May 31, 2001. The hearing with respect to Hydro's application started on September 24th, 2001 and continued until January, 2002. Approval was given by the Board for certain of Hydro's proposed 2002 capital projects on December 20th, 2001 and on January 14th, 2002. However, a significant number of proposed capital projects were not approved until June 7th, 2002. Hydro submits that the process of combining the general rate application with the capital budget application was very cumbersome and onerous for the utility as well as all parties. Hydro further states it delayed due consideration of the issues of the 2002 capital budget. As a result of proceeding in this way, Hydro did not receive approval until mid-year for capital projects deemed necessary in that year to be necessary and appropriate to provide reliable safe and adequate service as required by Section 37 of the Act. Approval of a capital budget so late in the year of expenditures places a utility in a difficult position with respect to its ability to properly manage, in an orderly and cost effective way, the capital expenditures in that year. Hydro's recent experience of including the capital budget application with the general rate

application demonstrated that it is not the most effective process for dealing with a capital budget application.

13. The second recent experience is that of Newfoundland Power with respect to its 2003 capital budget application. Newfoundland Power had also filed a general rate application and the Consumer Advocate raised the issue in its intervention of the appropriateness of proceeding with the 2003 capital budget application in advance of the general rate application. In that case the 2003 capital budget application did proceed separately which allowed all of the parties to consider the distinct issues of a capital budget application in a timely and effective way prior to the commencement of the general rate application hearing.
14. The second issue raised by the Application of the Industrial Customers is the appropriate timing of a capital budget hearing allowing due consideration for all parties to the hearing to be fully prepared and able to effectively participate. In this particular case Hydro filed its application for approval of its 2004 capital expenditures on March 28, 2003. The Board issued a notice dated April 16, 2003, which was published in various newspapers in April, 2003 and the Board set a hearing date for June 10th, 2003, some two and a half months after the filing of the application. Industrial Customers received a copy of the application on April 10th, 2003, two months before the scheduled commencement date for the hearing. Hydro submits that this timeframe provides adequate time for any intervenor to properly prepare for the capital budget hearing process.
15. With respect to the process for approval of Hydro's 2003 Capital Budget, it should be noted that Hydro filed on September 18th, 2002, and the hearing started October 28th, 2002, some five and a half weeks

after the time of filing. It should also be noted that Industrial Customers intervened in that hearing. With respect to its 2001 capital budget, Hydro filed its application on October 16th, 2000 with the hearing commencing on November 23th, some five weeks after the filing. Similarly, for its 2000 capital budget, Hydro filed its application on October 20th, 1999, with the hearing commencing on November 16th, 1999, less than four weeks after the filing of the application. Hydro submits that the past experience with Hydro's capital approval process before the Board indicates that, with the exception of the 2002 capital budget which was considered as part of the general rate application, the time from filing of the application and commencement of the hearing has not exceeded six weeks. In this particular case, for the 2004 capital budget, the Board has provided almost ten weeks from the time of filing of the application and more than eight weeks from the time of receipt of the application by Industrial Customers. Hydro submits that this is sufficient time for any party to properly review the information and be prepared for the commencement of the hearing. Hydro would point out that in paragraph 10 of their Application, the Industrial Customers say they did not consult with consultants until May 14th, 2003, which is in excess of four weeks from the time of their receipt of the capital budget application.

16. Hydro must submit annual capital budgets for approval each year. It is clear from paragraph 15 above that the time provided by the Board for consideration of the 2004 capital budget is more than twice as long as any hearing provided in the past with respect to Hydro's capital budget. Hydro submits that this is an appropriate timeframe for any party who wishes to intervene in the hearing to become familiar with the issues and properly prepare for the hearing. The Board must ensure that the process around annual capital budget applications for approval is reasonable and fair to all of the parties involved, including the utility.

17. Hydro submits that a period in excess of two months from the time of the filing of the application for approval of the 2004 capital budget to the commencement of the hearing is sufficient and adequate time for parties to the hearing to have sufficient time to properly prepare. The delay of the hearing until the fall is not appropriate and is not required to ensure that all party's interests are adequately protected through the hearing process.
18. Hydro submits that the Application to Postpone by Industrial Customers should be denied and that the Board order that the hearing proceed as scheduled for June 10th, 2003, with the dates already established for the filing of Information Requests and the replies thereto.

Dated St. John's, Newfoundland this 20th day of May, 2003.

Maureen P. Greene, Q.C.
Counsel for Newfoundland & Labrador Hydro