

**IN THE MATTER OF** the Electrical  
Power Control Act, 1994 and the Public Utilities Act

**AND IN THE MATTER OF** a hearing  
regarding the Newfoundland and Labrador Hydro  
2003 Capital Budget

**INDUSTRIAL CUSTOMERS' PRE-HEARING SUBMISSION ON HYDRO'S 2004  
CAPITAL BUDGET APPLICATION**

**INTRODUCTION**

During the 2004 Hydro Capital Budget settlement conference on June 18, 2003, the Industrial Customers were asked to advise the Board by June 25, 2004 of any projects in the 2004 Hydro Capital Budget to which they will not object during the 2004 Capital Budget hearing scheduled to commence July 7, 2004.

**INDUSTRIAL CUSTOMERS' POSITION**

To date, the Industrial Customers have been very disappointed with the approach of both Hydro and the Board to the capital budget process.

Hydro's attitude during the 2001 General Rate Application, during the 2003 Capital Budget Application and, to date, with respect to the 2004 Capital Budget Application appears to be that the Industrial Customers are a nuisance whose participation in the capital budget process is both unwelcome and obstructionist. This is illustrated in the

closing arguments made on behalf of Newfoundland and Labrador Hydro in the 2003

Capital Budget hearing:

“In addressing the argument of Industrial Customers, I refer to it as the scatter gun approach. It was a similar approach they took during the general rate application last year and in our view, the approach is attack as much as you reasonably think you can in the hopes that something will stick. If you recall in the last general rate application, they objected to dozens of projects, only one of which was not approved at the end of the day, and they were the only intervener to have done that and it appears to be their approach again in this particular application.”<sup>1</sup>

With respect to the Board, the disappointment of the Industrial Customers stems from three recent incidents which, in their view, illustrate the almost insurmountable obstacles to meaningful discussion and analysis of Hydro’s capital projects:

1. Despite their active participation in both the 2002 and 2003 Capital Budget hearings, the Industrial Customers were not aware until June, 2003, when their counsel received Hydro’s response to IC-5, that the Board had ever issued or approved guidelines for the minimum filing requirements for new generation and transmission projects on the Island Interconnected System. Moreover, the Industrial Customers were shocked to discover that those guidelines had been developed jointly by the two electrical utilities in the Province which the Board regulates, without any input from stakeholders and resulting in a situation where

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<sup>1</sup>Transcript, December 4, 2002, page 11, lines 13 to 23.

the regulated bodies have effectively set the guidelines by which they are to be regulated.

This suggests a relationship between the Board and the electric utilities which is not conducive to an objective and independent review of either their capital budgets or their revenue requirements. Moreover, the failure by both the Board and Hydro to advise interveners of these guidelines prejudiced the participation of the Industrial Customers and other interveners in the prior capital budget hearings.

2. At the settlement conference held in relation to the 2004 Hydro Capital Budget on June 18, 2004, five days after the Industrial Customers had filed their expert testimony with respect to the hearing, the Board's counsel advised the Industrial Customers of the existence of PU-36(2002-2003) dated December 23, 2002 in relation to the Newfoundland Power Inc. 2003 Capital Budget Application. Page 11 of that Order states:

"To that end NP will be required to attend a technical conference where the issues of process and filing requirements for capital budget applications will be addressed. It is also expected that this conference should serve to clarify the responsibilities of the utility and the Board with respect to the capital expenditure approval process as required under the *Act*. The Board anticipates other parties will be involved in this process, including NLH. An agenda identifying issues for the technical conference along with its timing will be formulated in consultation with the conference participants."

It is obvious from the submissions of the Industrial Customers on capital budgeting with respect Hydro's 2002 and 2003 Capital Budget hearings, that the Industrial Customers have great concern with the "capital expenditure approval process". Yet, the Board did not deem it necessary to give the Industrial Customers notice of the proposed technical conference either at the time that the decision was made nor, more importantly, after Hydro filed its 2004 Capital Budget application.

The failure by the Board to provide that information to the Industrial Customers and other potential interveners in a meaningful and timely manner is prejudicial to the Industrial Customers. This includes, particularly, but not limited to, the prejudice from not having this information at the time that the Industrial Customers made their application to have the capital budget hearing postponed on the basis that it is premature.

3. The Industrial Customers are also concerned by the deference which the Board seems to accord any evidence adduced by Hydro.

For example, despite extensive participation by the Industrial Customers in the 2003 Hydro Capital Budget hearings, PU-29 approves every single capital budget item proposed by Hydro. It, in its findings <sup>2</sup> accepted Hydro's 2003 Capital Budget without any analysis of or reference to any significant issues raised by

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<sup>2</sup>PU-29 (2002-2003) Appendix 2, pages 22 to 23.

the Industrial Customers. This leads the Industrial Customers to believe that the Board has reversed the burden of proof with respect to Capital Budget hearings. In other words, instead of requiring Hydro to prove, not only that its proposed projects are reasonably necessary, but also that they are at least cost, the Board requires an intervener to prove that they are not.

The Industrial Customers are frustrated by the Board's apparent disregard for their legitimate concerns as reflected in PU-29 (2002-2003).

### **CAPITAL PROJECTS TO WHICH THE INDUSTRIAL CUSTOMERS DO NOT OBJECT**

At the settlement conference on June 18, 2003 the Industrial Customers indicated that, with respect to projects not affecting Industrial Customer costs, namely, those found at pages C-2, B-25, B-43, B-45, B-47, B-48, B-51 and B-52 the Industrial Customers are not making any specific objection.

With respect to projects at pages B-29, B-39, B-41, B-85 and B-86 the Industrial Customers requested additional clarification on cost assignment related to those projects. Having reviewed Hydro's letter dated June 24, 2003 to counsel for the Board, the Industrial Customers have advised that they will not be objecting to projects B-39, B-41, B-85 and B-86.

With respect to the project at B-29, the Industrial Customers take no position with respect to protection for line TL-239 and TL-226.

The Industrial Customers reiterate that their lack of objection to the above noted projects should not be taken as consent. Hydro still must prove to the Board, on the balance of probabilities, that its proposed projects are assessed and allocated and re-allocated in the manner that is necessary to:

- (i) result in the most efficient production, transmission and distribution of power,
- (ii) result in consumers in the Province having equitable access to an adequate supply of power,
- (iii) result in power being delivered to consumers in the Province at the **lowest possible cost consistent with reliable service**.<sup>3</sup>

Moreover, pursuant to Section 4 of the *Electrical Power Control Act*, 1994 the Board is required to implement the above power policy and "in doing so shall apply tests which are consistent with generally accepted sound public utility practice".<sup>4</sup>

During the 2003 Hydro Capital Budget application, the Industrial Customers raised considerable questions with respect to projects for which only one or two percent approval, in the way of engineering, was requested for 2003.

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<sup>3</sup>*Electrical Power Control Act*, 1994 SNL 1994 c. E-5.1, ss. 3(b).

<sup>4</sup>*Ibid* Section 4.

As noted in PU-29 (2002-2003):

“Board Counsel, Ms. Newman, questioned the witnesses regarding the inclusion of expected future year’s capital expenditures in the “Explanations” sheets provided by Hydro. Mr. Haynes explained that approval of the expenditures projected beyond 2003 will be sought in future years’ Capital Budget applications. He admitted, however, that in some cases where projects are carried into future years before completion, and bearing in mind that each year’s capital budget required Board approval in the prior year, there is a possibility of costs being stranded if future years’ budgets are not approved.”<sup>5</sup>

During that hearing, the Industrial Customers were actively discouraged from questioning witnesses concerning the implementation of the projects for which the engineering/specification development costs were being sought. The Industrial Customers therefore intend to fully explore those issues at the 2004 Capital Budget hearing.

With respect to the remainder of the projects contained in Hydro’s 2004 Capital Budget Application, the Industrial Customers do not object to the allowance of 1 million dollars for unforeseen events.

The Industrial Customers intend to call evidence through Mr. Barreca and through cross examination of Hydro’s witnesses, to demonstrate whether Hydro has, on the balance

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<sup>5</sup>PU-29 (2002-2003) Appendix 2, page 15.

of probabilities, provided evidence which can satisfy the Board that its proposed projects will result in:

1. the most efficient production transmission and distribution of power;
2. consumers in the Province having equitable access to an adequate supply of power;
3. power being delivered to consumers in the Province at the lowest possible costs consistent with reliable service.

## **CONCLUSION**

The Industrial Customers submit that Hydro has the burden of establishing that the projects which it proposes meet all of the requirements of the power policy of the Province as set out in Section 3(b) of the *Electrical Power Control Act*, 1994. Moreover, the Board, in exercising its powers under that Act and under the *Public Utilities Act* is required to implement the power policy and apply tests which are consistent with generally accepted sound public utility practice.

While there may be projects which would result in the most efficient production, transmission and distribution of power, those two elements, standing alone, are not adequate. Hydro must also demonstrate to the Board that these projects would result in power being delivered to consumers at the lowest possible cost consistent with reliable service.



The Industrial Customers wish to make it clear to the Board that they are not being obstructionist or unreasonable in questioning these projects. The issues which the Industrial Customers intend to raise are legitimate and deserve respectful consideration, not disdain, on the part of Hydro.

The Industrial Customers are not concerned with increasing the quantity of the documentation required from public utilities in the course of examining their capital budgets nor are the Industrial Customers interested in lengthening capital budget hearings. The issue for the Industrial Customers is the quality of the material submitted by Hydro in support of each of its proposed capital projects.

For that reason, and based upon the expert advice received by the Industrial Customers, the Industrial Customers are concerned about one or more elements of each of the capital projects proposed by Hydro which would ultimately affect the costs of the Industrial Customers.

DATED at St. John's this 4<sup>th</sup> day of July, 2003.

Respectfully submitted.

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