

POOLE ALTHOUSE

Barristers & Solicitors



D. Paul Althouse, Q.C.*
George L. Murphy
Cillian D. Sheahan

Leonard L. Thomas, Q.C.
Jamie Merrigan
J. Annette Bennett

Joseph S. Hutchings, Q.C.
Dean A. Porter
Riley M. Adams

Western Trust Building
49-51 Park Street
P.O. Box 812
Corner Brook, NF
Canada
A2H 6H7
Telephone: (709) 634-3136
Facsimile: (709) 634-8247/9815

Edward P. Poole, Q.C., Retired

*A Master of the Supreme Court

Direct Line: 637-6425
e-mail: jhutchings@pa-law.ca

Via facsimile and courier

May 15, 2003

Board of Commissioners of Public Utilities
Prince Charles Building
120 Torbay Road
St. John's, NL
A1A 5B2

Attn: Ms. Cheryl Blundon

**Re: 2004 Newfoundland and Labrador
Hydro Capital Budget**

Dear Ms. Blundon:

Attached and enclosed is the Application on behalf of the Industrial Customers for a postponement of the hearing scheduled in this matter for June 10, 2003.

The Applicants request an oral hearing in respect of their application.

We trust you find this to be in order.

Yours very truly,

POOLE ALTHOUSE

Joseph S. Hutchings

JSH/sh
cc Mr. Mark Kennedy
J:\clients\25754-20\ltr-pub

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

APPLICATION TO POSTPONE HEARING

POOLE ALTHOUSE

Western Trust Building
49-51 Park Street
Corner Brook, NF
A2H 6H7
Telephone No. (709) 634-3136
Fax No. (709) 634-8247
Solicitors for the
Industrial Customers

STEWART MCKELVEY STIRLING SCALES

Cabot Place
100 New Gower Street
St. John's, NF
A1C 5V3
Telephone No. (709) 722-4270
Fax No. (709) 722-4565
Solicitors for the
Industrial Customers

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

TO:

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

THE APPLICATION of Abitibi Consolidated Inc. (Grand Falls), Abitibi Consolidated Inc. (Stephenville), Corner Brook Pulp & Paper Limited and North Atlantic Refining Limited (the “Applicant Intervenors”) says:

1. The Applicant Intervenors seek an order that the hearing scheduled herein for the 10th day of June, 2003 be postponed and consolidated with the General Rate Application of Newfoundland and Labrador Hydro (“Hydro”) which is required by order to this Board to be filed before December 31, 2003 and which the Applicant Intervenors have been advised was to be filed by April 30, 2003 with a view to commencement of hearing in early September, 2003.
2. The Applicant Intervenors say that the current application is untimely. Hydro does not require approval of its capital budget until it begins to spend capital monies in 2004. The history shows that such orders are normally granted very late in the year for the following year. The 2002 capital budget was actually approved in January 2002. (See PU 10-1996-97 Dec. 16, 1996; PU 11-1997-98 Dec. 8, 1997; PU 32-1998-99 Nov. 16, 1998; PU 19-1999-2000 Nov. 25, 1999; PU 31-2000-01 Dec. 18, 2000; PU 31-2001-02 Jan. 14, 2002; PU 29-2002-2003 Nov. 29, 2002.)

3. The Applicant Intervenors say that, as a matter of inescapable fact, the capital budget in any year is highly dependent upon the results of capital spending in the previous year. Projects scheduled for any given year may be dependent on certain other work being done in the previous year. A typical application such as that filed for the 2003 Capital Budget has a specific section in the Capital Budget Overview entitled "Projects Carried From 2002 to 2003". That heading does not even appear in the 2004 Capital Budget Application. The only possible reason for the omission is the fact that Hydro simply does not know at this time what will need to be carried over to 2004 from 2003. Schedule F of the Application shows that, at the time the application was prepared, Hydro had spent only 2.7% of its 2003 budget. The facts necessary to judge Hydro's requirements for capital funds in 2004 are simply not yet available since essentially nothing has been spent on the 2003 capital plan.
4. The capital budget process of Hydro was described by its then Vice-President of Finance, Derek Osmond, in his testimony before the Board in the 2003 Capital Budget hearing on October 28, 2002 and appears beginning at line 70 at p. 4 of the Transcript of that day's hearing. A copy of the relevant portion of the Transcript is appended hereto. The normal process that Mr. Osmond described begins in January of the year previous to the budget in question after the long-term load forecasts have been prepared in December. Proposals are reviewed by field staff and then the manager and directors. Vice-Presidents then review the proposals usually in April. The budget then goes to the Management Committee which does one review in May, returning the proposals to Vice-Presidents for a second look to allow the second review by the Management Committee in August. The budget then goes to the Board of Directors and is typically submitted to the Public Utilities Board in September.
5. Assuming that this is an accurate presentation of the normal budget process and assuming that such scrutiny as is contemplated therein is a necessary element of a properly prepared budget, the only possible conclusion is that Hydro does not now have a properly prepared capital budget for 2004 to be reviewed by this Board. Mr. Osmond described an apparently pain-staking process which undoubtedly utilizes enormous amounts of Hydro's resources of time and personnel at a cost which Hydro has assured the Board in numerous applications are all necessary and proper costs associated with the provision of service by Hydro. Otherwise, of course, Hydro would have been incurring unnecessary costs and collecting too much from their customers in rates.
6. If the review by this Board in the exercise of its mandatory duty to review Hydro's capital budget is to be at all meaningful, and is to constitute a valid exercise of the Board's jurisdiction, it must have a meaningful capital budget to review. The Act clearly contemplates an annual review of the capital budget; to review spending proposed for December 2004 on the basis of actual spending to

February 2002, some 22 months earlier simply does not fall within the powers of the Board as granted by the Act.

7. Further, the capital budget has a significant impact on the rates which will be set in the General Rate Hearing. The Applicant Intervenors have been advised to expect rate increases in excess of 30% in the upcoming General Rate Application. That represents an additional expenditure on the part of the Applicant Intervenors in each future year of at least \$15,000,000.00. Approved capital expenditures need to be financed and the interest costs associated with such financing are recovered in rates, either as a direct interest expense or as an allowance for funds used during construction (AFUDC). Approved capital expenditures lead to capital assets being added to rate base which increases the depreciation expense, which is charged to all customers including the Applicant Intervenors, and leads to an increase in profit for Hydro by adding to the dollar amount of the return on rate base, whether in the interest or the equity component. When the Board has the opportunity to see what we submit is the frightening level of rates to be demanded by Hydro in its General Rate Application, it will undoubtedly wish to reduce the capital budget so as to limit the catastrophic impact that the proposed increases will have on Hydro's customers. If the Board proceeds to approve a capital budget in isolation from the surrounding circumstances of impending rate increases of unprecedented proportions, it will fetter its ability to deal properly with those rate increases when Hydro's application is presented.
8. The Applicant Intervenors say further that the 2004 Capital Budget Application of Hydro was apparently filed with the Board on March 28, 2003 and copied at or about that time to Newfoundland Power, the single largest customer of Hydro and the only customer which pays more in rates to Hydro than the Applicant Intervenors. Notably, the Applicant Intervenors were parties to the 2003 Capital Budget Application of Hydro but Newfoundland Power was not. The filing of the Capital Budget at this wholly unprecedented early date came to the attention of the Applicant Intervenors quite by accident and it was only through the courtesy of the Board Secretary that the Applicant Intervenors received a copy of the Application under cover of a letter of April 10, 2003.
9. While the 2004 Capital Budget, per se, is at a stated amount of \$34,465,000, the projects approval of which is sought total \$56,816,000 as appears from Page A-1 of the Application. An addition to rate base of \$56,816,000 at the long term rate of return on rate base proposed by Hydro in its 2001 application of 9.5% will cost ratepayers an additional \$5,397,520 per year until these assets are fully depreciated and paid for, and well over a million dollars a year of that amount will be demanded of the Applicant Intervenors. Where much of these additions to rate base are computer and communications equipment with relatively short service lives, the impact of the depreciation expense for immediately upcoming

years will be very significant, much moreso than where additions are made to generation or transmission assets which are depreciated over periods of 30-50 years.

10. It became clear in the 2003 Capital Budget Hearing that the Board was hampered in its consideration of the Budget by lack of independent expert evidence analyzing the needs of Hydro in the context of seemingly uncontrolled increases in rates. The time allowed between the service of the application and the hearing date is simply insufficient to allow proper analysis to be made by an expert who could then assist the Board with testimony. The Applicant Intervenors have retained consultants and have only as of May 14, 2003 been able to consult with them by teleconference to determine that expert evidence would be useful, including evidence to address regulatory methods applied in other jurisdictions to issues of capital budgeting. The Applicant Intervenors are awaiting a further report from their consultants expected to be available on or about May 23, 2003 with respect to potential witnesses. The Applicant Intervenors would expect to call one to two expert witnesses to provide evidence as discussed above as well as proper analysis of the major information technology (and, possibly, communications) projects, included in the 2004 Capital Budget.
11. To allow, however, for preparation of information requests by our expert(s), the provision of answers to those requests, analysis of the replies and preparation of expert evidence will require, we submit, at least an additional six weeks beyond the date that we have confirmation that the hearing will be postponed. If the Board needs to allow for Information Requests to our expert and provision of answers to same, at least an additional two weeks ought to be allowed. Given the impending summer period which inevitably affects availability of experts, counsel and other participants, a fall hearing would appear to be the most sensible approach. Given the millions of dollars annually at stake in these proceedings, such a delay is, in our submission, more than reasonable. If Hydro does, in fact, proceed with a filing for a General Rate Hearing before the beginning of the summer period, the time pressures on all participants will obviously be further increased.
12. The Applicant Intervenors say that they will be prepared to present oral argument in support of the Application on such date as the Board may direct for the hearing of this Application.

Dated at Corner Brook, Newfoundland, this 15th day of May A.D., 2003.

**POOLE, ALTHOUSE/
STEWART MCKELVEY
STIRLING SCALES
Solicitors for the Applicant Intervenors**