INTRODUCTION

The Town of Labrador City objects to any proposed rate increases by Newfoundland and Labrador Hydro (NLH) to Electrical Consumers in the so called Labrador Interconnected System (LIS).

NLH purchases power for electrical consumers within the LIS at a cost of approximately ¼ cent a kilowatt hour. On January 1st, 2004, as a result of Hydro's 2003 general rate application the average rate for the LIS was approximately 2.7 cents a kilowatt hour. In other words, NLH charges electrical consumers within the LIS electrical rates that are approximately 11 times the cost to produce power for these customers. This mark-up within a regulated system is manifestly exorbitant and contrary to general utility principles that the cost must be reasonable while allowing for recovery of costs together with a modest rate of return.

HISTORICAL BACKGROUND

The so-called Labrador Interconnected System consists of the electrical distribution system that services electrical consumers in Labrador West (The Town of Labrador City & The Town of Wabush) and Labrador East (The Town of Happy Valley-Goose Bay, Northwest River, Sheshatshiu and surrounding areas).

The electrical distribution system that services Labrador West is a combination of the electrical distribution system formerly serving the Town of Wabush, which was designed and built by Wabush Mines together with the electrical distribution system for Labrador City which was designed, planned and constructed by the Iron Ore Company of Canada.

The electrical distribution system for the Town of Wabush that was built by Wabush Mines at its cost was a stand alone system, which was state of the art at the time of its construction in the 1960's. NLH took control of the electrical system serving the Town of Wabush in 1985 for the nominal sum of $1.00. In addition Wabush Mines paid approximately $3,000,000.00 to NLH to provide for the cost of upgrading this system.

The electrical distribution system for Labrador City that was erected by the Iron Ore Company of Canada at its sole cost and provided high quality electrical service to Labrador City electrical consumers for approximately 30 years. In 1992 the Iron Ore Company of Canada transferred this system to NLH for the nominal sum of $1.00 and also paid to NLH $3,000,000.00 as a contribution to the costs of upgrading.

Thus NLH received at no cost both individual systems for Wabush and Labrador City together with Millions of dollars for upgrading of these systems.

The logical result of such upgrading is that on-going costs of maintenance and power distribution in Labrador West ought to be relatively modest.

The Labrador East distribution system consists of distribution facilities in Labrador East together with stand by generation capacity (i.e. backup diesel and gas turbine facilities). With little activity at 5 Wing Goose Bay there would seem to be little reason to utilize the backup generation capacity in Labrador East at present or in the foreseeable future.

Both Labrador East and Labrador West receive power from Churchill Falls which is sold to Newfoundland and Labrador Hydro at a cost of approximately ¼ cent a kilowatt hour. The result of the Public Utilities Board (PUB) ruling on Hydro’s 2003 General Rate Application is that the average rate for the entire LIS on January 1st, 2004 was approximately 2.7 cents a kilowatt hour or some 11 times the cost of the production of power.

Electrical energy delivered from Churchill Falls to Labrador West is wheeled to Labrador West by Twin Falls Power Corporation and received at the Wabush substation by NLH with no transmission costs to NLH. Happy Valley-Goose Bay receives power from Churchill Falls via dedicated 230 kv transmission line with NLH responsible for the costs of constructing and maintaining this line. The transmission line from Churchill Falls to Happy Valley-Goose Bay was constructed some thirty (30) years ago and priced in currency of the mid 70's. Thus one would expect modest costs for transmission given that there are no transmission costs associated with the delivery of energy to Labrador West and costs for Labrador East are based on 1970's construction costs together with maintenance. Given such an historic costs basis, it defies logic to understand why the average cost for the retail electrical consumer within the LIS would be some 11 times the cost of electrical energy production in 2004 or that further increases are warranted as proposed in 2008 and beyond.

Either LIS customers both in Happy Valley-Goose Bay and Labrador West are paying a disproportionate share of Hydro's overheads or Hydro is a bloated bureaucracy that adds unwarranted costs to electrical consumers. In either situation it means that the PUB has ill-served electrical consumers in both the Happy Valley-Goose Bay area and Labrador West by authorizing costs that breach fundamental utility principles.

To allow further increases as proposed in 2008 and beyond would be completely inconsistent with sound Public Utility Principles and are totally unwarranted.

COLLECTION OF THE RURAL DEFICIT

Present rates for LIS consumers and the proposed future rates include an amount of the subsidization of rural electricity rates in remote areas presently served by Diesel Generation. Such a subsidy is in effect, a social tax that is being collected through the regulatory system. In principle a regulated electrical system should recover its costs together with a modest rate of return (normally in the range of 1.1 -1.2 times interest cover). Social costs and social taxes ought to be collected through the legislation rather than imposed on certain electrical customers including Newfoundland Power customers and electrical consumers within the LIS.

While the Public Utilities Board must follow the statutory dictates of the Province, the board is an independent regulatory authority. As such it has a duty to consider an electrical policy and to advise the Province if Provincial electrical policy is unnecessarily burdensome on electrical consumers.

In other words the board has an obligation to consider whether there is a more efficient method of subsidizing rural electricity rates. The PUB looses its integrity if it merely rubber stamps flawed Provincial policy.

In 1992, the Canadian Constitution was amended to add Section 92(a), a provision designed to enhance Provincial authority to deal with defined resources including electrical energy produced in the Province. This section was intended to significantly augment Provincial confidence and to eliminate arcane constitutional restrictions on Provincial Legislative authority to deal with its own resources including electrical energy and the production there from. Section 92 A(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 a 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."

Section 92 A(4) clearly states that a Province has legislative authority to levy taxation on electrical production, whether such production is exported in whole or in part from the Province, provided that the taxation levied does not differentiate between production exported to another part of Canada and production not exported from the Province. Thus, the Canadian Constitution has since 1982 explicitly stated that a Province has Constitutional competence to levy a per kilowatt hour tax on all electrical production in the Province including that exported, provided that the legislation is non-discriminatory with respect to production which is consumed domestically and that which is exported.

In a scholarly article written in 1985 by Professor William Moull the following analysis occurs:

> Section 92 A(4) now authorizes a 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 maybe imposed whether or not such production is exported in whole or in part from the Province so long as the tax regime adapted does not differentiate between production exported to another part of Canada and production not exported from the Province.
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> Ref: W.D. Moull, “Newfoundland Resources: The Supreme Court Strikes Again”.,(1985), 7 S.C.L.R., 418, at 435

In previous rate hearings before this board the Town of Labrador City has strenuously argued that if the rural deficit is to be subsidized it ought to be spread over the entire electrical production of the Province including that exported utilizing the authority conferred by section 92 A(4) of the Canadian Constitution. As we have pointed out to this board in the past the Province could impose a tax on all electrical production in the Province including that exported.

Such a tax would more appropriately spread the burden of rural rate subsidization and correspondingly reduce the impact on Labrador domestic consumers within the LIS as well as Newfoundland Power customers on the Island. Indeed a modest tax in the range of 1 mill per kilowatt hour calculated on all electrical production in the Province, whether exported or not, would realize sufficient monies to fund the rural deficit. A tax in the range of 1 cent per kilowatt hour calculated on all electrical production in the Province whether exported or not would realize approximately $400,000,000.00 on an annual basis without unduly burdening the electrical consumer. This amount could stabilize electrical costs in the Province for the foreseeable future and also contribute to the funding of social programs, the payment of unfunded liabilities and unfunded pension plans. Such an approach is a better and fairer way to meet the social needs of the Province rather than placing the entire burden of rural electricity rates on Newfoundland Power customers and the electrical consumers of the LIS.

It is our considered opinion that this board has a duty and responsibility to consider such an approach and decide on its feasibility and viability. The PUB is an independent regulatory body with its own resources including legal counsel. In addition the board conducts hearings such as this where it receives input from electrical utilities, consumer advocate and independent experts as required. The board utilizing its own counsel can assess the viability of a tax on all electrical production of the Province utilizing Section 92 A. In addition the board can require parties to this hearing including the utilities and the consumer advocate to assess the feasibility and viability of our suggested approach.

By simply ignoring the possibilities to spread the social burden and to collect revenue utilizing Section 92 A by means of the Province enacting a tax, this board undermines its own integrity and does a disservice to the citizens of the Province and especially to electrical consumers within the Newfoundland Power system and within the LIS on whom the burden for rural subsidy is presently placed. In our considered opinion the board ought to be recommending such a tax to the Province.

CONCLUSION

Present electrical rates within the LIS are already too high and no further increases are warranted. Electrical energy consumed within the LIS is produced at Churchill Falls and sold to Newfoundland Hydro for approximately ¼ cent a kilowatt hour. To sell this at an average cost of 2.7 cents a kilowatt hour is an exorbitant mark-up that is totally unjustified using proper utility principles. Further proposed increases are unwarranted. Even though electrical consumers within the LIS pay lower rates than elsewhere in the Province, these rates are already too high given the cost of producing energy for the LIS consumers.

The burden of subsidizing rural electricity rates within the areas served by Diesel Generation should not fall exclusively on electrical consumers within the areas served by Newfoundland Power and those of the LIS. A better approach would be to spread this burden over all electrical production of the Province including that exported by mean of a per kilowatt hour tax imposed on such production. A modest tax imposed pursuant to the authority of Section 92 A(4) of the Canadian Constitution would more appropriately spread the burden of rural rate subsidization and at the same time produce much needed revenue for the Province. The board has an obligation to assess the feasibility and viability of a per kilowatt hour tax utilizing Section 92 A(4) and to recommend same to the Province, rather than simply rubber stamping the present flawed Provincial policy.

All of which is respectfully submitted on behalf of the Town of Labrador City

DATED AT, Labrador City, in the Province of Newfoundland and Labrador, this _____ day of February, A.D. 2007.

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GRAHAM LETTO, MAYOR