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P.U. 54(2004)

IN THE MATTER OF the *Electrical Power Control Act*, 1994, c.E-5.1 (the “*EPCA*”) and the *Public Utilities Act*, R.S.N. 1990, c. P-47 (the “*Act*”) and their subordinate regulations;

and

IN THE MATTER OF a request by Newfoundland and Labrador Hydro’s (“Hydro”) Industrial Customers (Abitibi-Consolidated of Canada at its Stephenville and Grand Falls divisions, Corner Brook Pulp and Paper Limited, and North Atlantic Refining Limited) for an investigation into rates to be charged for 2005.

Background

Pursuant to Order No. P.U. 40(2003), Section C of Hydro’s Rate Stabilization Plan (“RSP”) requires Hydro to provide, by the 10th working day of October of each year to the Board of Commissioners of Public Utilities (the “Board”), the Industrial Customers, and Newfoundland Power, details of the forecast fuel price change and of the estimated fuel rider that will apply to its Industrial Customers. On October 15th, 2004 Hydro filed this information as required with each of the Industrial Customers, Deer Lake Power Company Limited, Newfoundland Power, and the Consumer Advocate, Mr. Thomas Johnson. Hydro’s letter set out the following projected RSP rates for January 1, 2005 for the Island Industrial Customers:

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Island Industrial RSP Rates (mills/kWh)		
	Existing	Projection Effective Jan. 1, 2005
Historical RSP	7.87	7.75*
2004 RSP	N/A	3.40*
Fuel Rider	N/A	1.97*

* Based on estimates as of September 30, 2004. Subject to adjustment based on results to December 31, 2004.

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6 On November 5, 2004 the Industrial Customers, through legal counsel, filed a letter with
7 the Board requesting an investigation into the rates proposed to be charged by Hydro to its
8 Industrial Customers for the year 2005. Specifically, the Industrial Customers asked that the
9 Board direct an investigation into the total rate sought to be recovered from the Industrial
10 Customers of Hydro with a view to modifying that part of the rate that recovers the historical
11 RSP balance so as to reduce the rates to a reasonable level.

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13 The Board provided a copy of the Industrial Customers' request to Hydro, Newfoundland
14 Power, and the Consumer Advocate. Hydro filed a response on December 3, 2004 and
15 Newfoundland Power filed a response on December 7, 2004.

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17 **Discussion**

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19 While the Industrial Customers' letter does not reference the specific authority or section
20 of the Board's governing legislation in requesting the investigation, the Board has the authority
21 to summarily investigate rates or charges of utilities pursuant to Section 82 of the *Act*, which
22 states:

23 *"Where the board believes that a rate or charge is unreasonable or unjustly*
24 *discriminatory, or that a reasonable service is not supplied, or that an investigation of a*
25 *matter related to a public utility should be made, it may, of its motion, summarily*
26 *investigate the rate or charge or matter with or without notice."*

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2 As set out in Section 82 the Board has reviewed the information provided by the
3 Industrial Customers and the responses from Hydro and Newfoundland Power with a view to
4 determining first whether an investigation is warranted. The Board notes that the Industrial
5 Customers' request pertains directly to the changes in rates to take effect as of January 1, 2005 as
6 a result of the operation of the RSP, and specifically with respect to the recovery of the historical
7 balance in the RSP. The Board has therefore directed its attention only to that portion of Hydro's
8 rates for the Industrial Customers in considering the request for an investigation.

9
10 The RSP was established for Hydro's only utility customer, Newfoundland Power, and
11 the Island Industrial Customers to smooth rate impacts resulting from variations between actual
12 results and test year cost of service estimates for hydraulic production, No. 6 fuel used at
13 Holyrood, customer load, and rural rates. Issues surrounding the RSP were canvassed at length
14 during Hydro's 2001 general rate proceeding and, in the resulting Order No. P.U. 7(2002-2003),
15 the Board implemented a number of changes to the RSP, including recovery of the significant
16 outstanding balance in the RSP. The Board fixed the outstanding historical RSP balance as of
17 August 2002 and extended the recovery period for this balance from three years to five years.
18 The recovery period was extended to further ease the burden of the rapidly increasing cost of No.
19 6 fuel and its impact on electricity rates when considered in conjunction with rate increases to be
20 implemented as a result of other decisions of the Board in Order No. P.U. 7(2002-2003).

21
22 During Hydro's 2003 general rate proceeding issues surrounding the RSP were again
23 raised and considered by the Board. As part of the proceeding leading up to the issuance of
24 Order No. P.U. 40(2003) settlement discussions involving Hydro, the Industrial Customers,
25 Newfoundland Power and the Consumer Advocate were held. As a result of these settlement
26 discussions a proposal for further amendments to the RSP was filed with the Board. All parties,
27 including the Industrial Customers, consented to the proposals concerning the current RSP
28 methodology, including the fuel price rider. While the Industrial Customers did not consent at
29 the time to the terms of recovery of the historical RSP balance, they did not file an objection or
30 offer reasons as to why the Board should not accept the proposal as presented.

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1 On December 16, 2003 the Board issued Order No. P.U. 40(2003) approving the
2 proposed amendments to the RSP as of January 1, 2004 with respect to the rules in the existing
3 rate schedules, as well as recovery of historic RSP balances. As a result of the changes
4 implemented in Order No. P.U. 40(2003), the existing RSP has three distinct recovery provisions
5 that will affect Hydro's rates for 2005 for both the Industrial Customers and Newfoundland
6 Power. The historical RSP balances that were fixed as of August 2002 will be recovered over a
7 five-year period with adjustment rates established each December 31, commencing December
8 31, 2002. There is also a provision for recovery or refund of the balances in the current plan as a
9 result of activity in 2004 and subsequent years. As well a separate fuel price rider has been
10 incorporated to account for changes in the forecast cost of No. 6 fuel as compared to the costs in
11 base rates. The first application of this fuel rider will occur in 2005.

12
13 In Order No. P.U. 14(2004) following Hydro's 2003 general rate proceeding the Board
14 accepted the 2004 forecasts for fuel prices as proposed by Hydro and noted that no intervenor at
15 the hearing raised the issue of whether a price other than the forecast price as filed by Hydro
16 should be used in determining test year fuel costs to be recovered in rates. The Board also
17 directed Hydro to complete a review of the RSP for the period January 1, 2004 to December 31,
18 2005 and report to the Board no later than June 30, 2006 setting out an assessment of the impact
19 on customers in terms of rates based on the outstanding plan balance as of December 31, 2005.

20
21 In support of their current request to the Board to extend the recovery period for the
22 historical RSP balance the Industrial Customers provided the following specific reasons:

- 23 i) the overall rates now being collected by Hydro are reducing the historical RSP balance
24 at a more than reasonable pace and that since the existing rate fully compensates Hydro
25 for all financing charges there should be no increase necessary for 2005;
- 26 ii) fuel prices have recently risen to "unheard of levels" and that this extraordinary and
27 unanticipated rise in cost is not something that could have been taken into account by
28 the Board in approving the RSP in Order No. P.U. 40(2003); and
- 29 iii) to require recovery of the historical RSP plan over the next four years will cause undue
30 hardship on the Industrial Customers, particularly in light of the high fuel prices which
31 are putting pressure on the current RSP components.

1
2 In its response Hydro stated that there have been no change in circumstances since the
3 Board issued Orders No. P.U. 14(2004) and P.U. 17(2004) that would give rise to any basis for
4 the Board to now conduct an investigation as requested. With respect to the Industrial
5 Customers' position that the recent increase in fuel prices is an extraordinary and unanticipated
6 cost, Hydro pointed out that there is previous experience with respect to significant rises in the
7 cost of No. 6 fuel. In Order No. P.U. 7(2002-2003) following Hydro's 2001 general rate
8 proceeding the Board set the price of No. 6 fuel for the test year at \$25.91/bbl. The actual price
9 of No. 6 fuel exceeded that amount by \$10.00/bbl within a very short period of time. This is in
10 contrast with the fuel price forecast increase that was provided to the Industrial Customers in
11 Hydro's October 15, 2004 letter where the forecast indicates an increase of \$4.50/bbl over the
12 No. 6 fuel price included in base rates.

13
14 Newfoundland Power did not comment on the substance of the Industrial Customers'
15 request and submitted only that any order changing the recovery of the Industrial Customer
16 group's cost of service ought not to result in any potential financial or rate impacts on
17 Newfoundland Power or its customers.

18
19 Based on the information before it, the Board is not persuaded that circumstances have
20 changed substantially since the 2003 general rate proceeding and the issuance of Orders No. P.U.
21 40(2003) and P.U. 14(2004) to warrant any changes to the RSP. All the facts related to the
22 recovery of the historical RSP balance, including the amounts and the recovery period were
23 known to the Industrial Customers at that time. The 2004 forecast historical RSP rate
24 component of 8.7 mills was provided to the parties at the hearing by Hydro though an
25 undertaking to counsel for the Industrial Customers (U-Hydro #36). This forecast rate of 8.7
26 mills was higher than the 7.87 mills eventually implemented for 2004 and a further reduction is
27 represented in the proposed 2005 rate of 7.75 mills.

28
29 The proposed mill rates associated with the RSP adjustments result in an expected
30 increase in the mill rate of 13.12 mills/kWh, or an 11.8% increase in revenues from Industrial
31 Customers for 2005. The Board is sympathetic to the concerns of the Industrial Customers with
32 respect to the impact of this rate increase as a result of the RSP adjustments on the overall

1 operating expenses of the Industrial Customers. However, it is noted that, by virtue of the RSP,
2 the Industrial Customers are already sheltered from having to pay the immediate costs of
3 increases in fuel prices incurred by Hydro. The Industrial Customers have also received the
4 benefit of not having to pay those increases in fuel costs in the past as those costs were incurred
5 by Hydro. Over the 10-year period, when the spread between the actual cost of No. 6 fuel and
6 the fuel cost included in base rates was significant, the recovery of these costs was spread over
7 three years. As noted above the recovery period for the historical RSP balance accrued over this
8 time period has been extended to five years.

9
10 The Board is satisfied that the current RSP methodology is fair and provides a reasonable
11 balance between the Board's desire to shield consumers, including the Industrial Customers,
12 from volatility in rates due to changes in fuel prices and the necessity for Hydro to recover its
13 costs of providing electricity. The recovery of the historical RSP balance over a five-year period
14 as set out in Order No. P.U. 40(2003) is also reasonable. The proposal to increase the recovery
15 period of the historical RSP balance raises significant concerns for the Board with respect to
16 intergenerational equity. The Industrial Customers have already received the benefit of the fuel
17 costs incurred in providing service for the period from 1990 to 2002 over which the historical
18 plan balance accrued. The Board believes that any further extension of the recovery period
19 beyond 2007 is not consistent with the principle of intergenerational equity and increases the risk
20 that future industrial customers may be required to pay for costs that they did not cause to be
21 incurred.

22
23 It is the Board's opinion that the change in the rates proposed by Hydro in its October 15,
24 2004 letter is not a change in the fundamental elements of the rates charged to the Industrial
25 Customers. Rather, it is essentially a confirmation of the forecast fuel costs and historical
26 recovery amounts provided during Hydro's 2003 general rate proceeding, in accordance with the
27 Board Orders emanating from that proceeding. The Industrial Customers were aware of all of the
28 cost elements with the exception of the amount of the fuel rider. There are no unforeseen
29 circumstances identified in Hydro's October 15th letter that would warrant a change in the RSP
30 as proposed by the Industrial Customers. As a result it is the Board's view that the proposed
31 rates are not unreasonable or unjustly discriminatory in the current circumstances, and that there
32 is no justification for any further investigation or review at this time.

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IT IS THEREFORE ORDERED THAT:

The request of the Industrial Customers for an investigation into rates to be charged by Hydro for 2005 is denied.

Robert Noseworthy,
Chair & Chief Executive Officer.

Darlene Whalen, P.Eng.,
Vice-Chair.

G. Cheryl Blundon,
Board Secretary.