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Via Email & Courier

Board of Commissioners of Public Utilities
Prince Charles Building
120 Torbay Road, P.O. Box 21040
St. John's, NL A1A 5B2

Attention: Ms. Cheryl Blundon
Director of Corporate Services & Board Secretary

Dear Ms. Blundon:

Re: 2017 General Rate Application – Hydro's comments to the Consumer Advocate's Application to delay the 2017 General Rate Application Hearing

Following is Newfoundland and Labrador Hydro's ("Hydro") comments the above noted Application of the Consumer Advocate.

1.0 Application Background

On July 28, 2017, Hydro filed a General Rate Application ("GRA") with the Board of Commissioners of Public Utilities ("the Board"). The GRA requested that the Board approve, among other things, i) Hydro's proposal to have its 2018 and 2019 Test Year revenue requirements, and resulting rates, reflect the costs of the continued supply of power to the Island Interconnected System from existing Island generation, and ii) Hydro's proposal to establish a deferral account, the Off-Island Purchases Deferral Account, to include any difference between the: actual costs attributable to off-island power purchases including the cost of delivery, and the costs that would have been incurred if that same amount of energy had been supplied from the Holyrood Thermal Generating Station based on the approved Test Years' unit cost of No. 6. Fuel. These proposals are described in Chapter 1 and Chapter 5 of the evidence filed in support of the GRA. On September 15, 2017, Hydro filed supplemental evidence with respect to its proposed Off-Island Purchases Deferral Account, included as Chapter 6 – *Supplemental Evidence*.

On September 21, 2017, a pre-conference hearing was held and the intervenors in Hydro's application, the schedule of dates for the application, and the rules of procedure for the application were set in Order No. P.U. 30(2017). As per Order No. P.U. 30(2017), negotiations were scheduled to begin on January 10, 2018, with the public hearing scheduled to commence on January 30, 2018.

Since that time, Hydro has filed revisions to its GRA based on revisions that were required to its Cost of Service Studies and to its Depreciation Report. Hydro has also responded to approximately 950 Requests for Information ("RFIs") which provided additional information on, among other things, how the proposed Off-Island Purchases Deferral Account would operate, the estimated net savings projected to accumulate in the Off-Island Purchases Deferral Account (including estimated gross costs and gross savings), as well as expert evidence providing regulatory support for such a deferral account.

On January 4, 2017, the Consumer Advocate filed an application (the "Application") with the Board requesting that the Board delay any further proceedings, including settlement discussions, negotiations, the filing of issues lists and witness lists, the motions day, and the commencement of public hearings, until additional information as set out in the Consumer Advocate's Application is provided to the Board.

2.0 Hydro's Response

A. Overview

Hydro submits that the Consumer Advocate's Application is inappropriate, without regulatory precedent, premature, prejudicial to Hydro, and ignores the very purpose of a holding a hearing on a general rate application.

The Consumer Advocate is seeking to dispose of Hydro's GRA prior to the testing of the evidence that Hydro, and the other parties, have put on the record. Hydro submits that addressing issues related to the appropriateness of Hydro's proposal on the Off-Island Purchases Deferral Account at a hearing will provide the fullest opportunity for the Board to assess any issues raised by the intervenors, and arguments made on those issues, in the context of a comprehensive record. The purpose of a hearing is to gather evidence and argue and permit the Board to exercise its statutory mandate. Hydro will be putting forth Company and Expert witnesses to support its pre-filed evidence as to why the deferral account is the best mechanism to deal with the uncertainties Hydro faces related to off-island supply, how the Off-Island Purchases Deferral Account will work, including how costs will be incurred and how savings will be achieved, and to explain why Hydro's proposal is consistent with regulatory practice. The Consumer Advocate will be afforded full opportunity to test Hydro's evidence during the course of the hearing. A well informed decision requires a hearing that permits the applicant and all parties to present their cases in an efficient and fair manner.

The Consumer Advocate's Application indicates that due consideration of Hydro's proposed Off-Island Purchases Deferral Account cannot occur unless Hydro's GRA is delayed and different information is supplied to the Board. Hydro submits that this is not the case. As detailed further in this Submission, the Board has ample evidence on the record to test the reasonableness of Hydro's proposals and to render a decision upon the completion of the hearing. In effect, the Consumer Advocate's Application is a preemptive attempt to have the Board rule on Hydro's proposal prior to a full hearing. The Application seeks to have the Board prejudge Hydro's application without the evidence before it being tested.

There is no prejudice to the Consumer Advocate and his ability to challenge Hydro's proposals if Hydro's GRA proceeds as filed. As stated, the hearing is the appropriate venue in which the Consumer Advocate should challenge Hydro's proposals. Conversely, to allow the Consumer Advocate's Application would be profoundly prejudicial to the Hydro's GRA and would vitiate the process established by the Board for the GRA's determination.

The Consumer Advocate states that he sees no purpose in participating any further in Hydro's GRA until the information he deems to be appropriate has been filed in the manner that he has deemed appropriate. Hydro respectfully disagrees with the position of the Consumer Advocate. The entire purpose of the public hearing portion of a GRA is to allow the intervenors and the Board to test and challenge the information that Hydro has put forward in support of its application.¹

¹This is consistent with the Alberta Utilities Commission's (AUC) decision of June 22, 2011, in relation to a motion requesting AltaLink Management Ltd produce further information in relation to its Application on the Western

The Consumer Advocate's Application will also result in regulatory inefficiency. If the Consumer Advocate's Application is successful, it will cause at least a six month delay in Hydro's GRA. This is highly prejudicial to Hydro, and in fact, to all parties in this proceeding. The Board has established a schedule and distributed this to all parties well in advance of the Consumer Advocate's Application. All parties have had the opportunity to adjust the preparation of their respective cases accordingly.

B. The Appropriateness of Hydro's Request for Consideration of the Off-Island Purchases Deferral Account

The Consumer Advocate states that there is no precedent for Hydro's proposed Off-Island Purchases Deferral Account and therefore the issue should be prejudged as being insufficient before the evidence on the record has been tested. Hydro submits that this statement is incorrect. As stated by the Supreme Court of Canada in *Bell Canada v. Bell Aliant Regional Communications*:

[D]eferral accounts ... are accepted regulatory tools, available as a part of ... rate-setting powers ... [they] ... 'enabl[e] a regulator to defer consideration of a particular item of expense or revenue that is incapable of being forecast with certainty for the test year' [citation omitted]. They have traditionally protected against future eventualities, particularly the difference between forecasted and actual costs and revenues, allowing a regulator to shift costs and expenses from one regulatory period to another.² [emphasis added]

Further, the use of deferral accounts to deal with uncertain costs has been accepted by this province's Court of Appeal. In the *Newfoundland and Labrador Hydro v. Newfoundland and Labrador (Board of Commissioners of Public Utilities)*, the Court of Appeal stated:

*[63] The operation of deferral accounts is permissible under the existing regulatory scheme in this province regardless of whether it might be argued they incidentally have retrospective or retroactive effect. Deferral accounts are utilized in public utility regulation to deal with the effects of uncertain or volatile costs in a manner that ensures that rates are reasonable, not unjustly discriminatory and that the utility earns a just and reasonable return. They permit the recovery or rebate in a subsequent period of any deficiency or excess between forecast and actual costs. Regulatory regimes generally permit the operation of deferral accounts. See *Bell Canada 2009* at paras. 54-55; *Atco Gas* at paras. 33-44; *City of Edmonton v. Northwestern Utilities Ltd.*, 1961 CanLII 66 (SCC), [1961] S.C.R. 392 at p. 406. It was properly acknowledged by all parties that the PUB Act authorizes the utilization of deferral accounts. See *Stated Case* at paras. 93-98.*

Alberta Transmission Line project. The AUC denied the motion as being premature, lacking evidentiary basis, and because the issue itself could be argued in the proceeding before it based on the evidentiary record developed. (Attached as Appendix A).

² *Bell Canada* at para. 54.

[64] In *Bell Canada 2009* the use of deferral accounts to ensure that rates return to a utility the actual - not forecast - costs, was held to preclude a finding of retroactivity or retrospectivity:

[63] In my view, the credits ordered out of the deferral accounts in the case before us are neither retroactive nor retrospective. They do not vary the original rate as approved, which included the deferral accounts, nor do they seek to remedy a deficiency in the rate order through later measures, since these credits or reductions were contemplated as a possible disposition of the deferral account balances from the beginning. These funds can properly be characterized as encumbered revenues, because the rates always remained subject to the deferral accounts mechanism established in the *Price Caps Decision*. The use of deferral accounts therefore precludes a finding of retroactivity or retrospectivity. Furthermore, using deferral accounts to account for the difference between forecast and actual costs and revenues has traditionally been held not to constitute retroactive rate-setting (*EPCOR Generation Inc. v. Energy and Utilities Board, 2003 ABCA 374 (CanLII), 346 A.R. 281, at para. 12, and Reference Re Section 101 of the Public Utilities Act (1998), 1998 CanLII 18064 (NL CA), 164 Nfld. & P.E.I.R. 60 (Nfld. C.A.), at paras. 97-98 and 175.*)³ [Emphasis Added]

Further, there are several examples where the Board has approved a deferral account where the timing, method of recovery, and affected customer class was unknown. These include, for example, Hydro's 2014 Cost Deferral,⁴ 2015 Cost Deferral,⁵ the Isolated Systems Supply Cost Variance Deferral Account,⁶ the Energy Supply Cost Variance Deferral Account,⁷ the Holyrood Conversion Rate Deferral Account,⁸ and the Load Variation component of the Rate Stabilization Plan,⁹ among others. Hydro submits that uncertainty surrounding the ultimate disposition of the Off-Island Purchases Deferral Account should not prevent its consideration by the Intervenor, and ultimately, the Board.

With respect to the Consumer Advocate's Application, Hydro's proposed Off-Island Purchases Deferral Account is being proposed as a way to "defer consideration of a particular item of expense", i.e., the uncertainty of costs that Hydro is facing with respect to off-island purchases, with any net savings being used to offset future rates that will result from the Muskrat Falls Project. Hydro submits that the uncertainties that Hydro faces, and indeed, the uncertainties raised by the Consumer Advocate, are the very reason that a deferral account is appropriate in the circumstances and Hydro should have the opportunity to fully defend the reasonableness of its proposal at the GRA hearing.

³ *Newfoundland and Labrador Hydro v. Newfoundland and Labrador (Board of Commissioners of Public Utilities)*, 2012 NLCA 38 para 56 (The "RSP Appeal").

⁴ Order No. P.U. 58(2014).

⁵ Order No. P.U. 36(2015).

⁶ Approved in Order No. P.U. 49(2016). Recovery is subject to a further order of the Board.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ The Rate Stabilization Plan Load Variation was segregated in 2013 per Order No. P.U. 29(2013) and not disposed of until 2017 per Order Nos. P.U. 16(2017) and P.U. 24(2017).

Hydro also submits that as stated in the evidence on the record before the Board, Hydro will not benefit from the establishment of the deferral account nor from any funds that may accumulate in that account. Funds in a deferral account are properly characterized as encumbered revenues as the rates are subject to the deferral account mechanisms established by the Board.¹⁰

As was noted in *Re: Section 101 of the Public Utilities Act (Newfoundland)*, “[t]he Board has a broad discretion, and hence a large jurisdiction, in its choice of the methodologies and approaches to be adopted to achieve the purposes of the legislation and to implement provincial power policy.”¹¹

C. Information Currently on the Record

The Consumer Advocate’s Application states that Hydro’s GRA does not contain sufficient specific information with respect to off-island purchases and the proposed Off-Island Purchases Deferral Account generally. Hydro submits that this assertion is incorrect and that there is ample and sufficient evidence before the Board to hold a hearing at this time on its GRA to permit the Board to reach a determination on Hydro’s proposed Off-Island Purchases Deferral Account, and that the allegations put forth by the Consumer Advocate are more appropriately dealt with through the hearing process and should not be permitted by the Board to pre-empt the Board’s consideration of the case Hydro has filed.

i) *Rate Mitigation Plan and Future Rate Increases*

The Consumer Advocate’s Application states that the Off-Island Purchases Deferral Account is not a rate mitigation plan as future rate increases are unknown, and the ‘if, when and how’ of disposition are not on the record. As stated in Hydro’s evidence, there is an opportunity to use savings that can be achieved through the use of the Muskrat Falls transmission assets in 2018 and 2019 to mitigate future rates resulting from the Muskrat Falls Project.¹² As further explained through the RFI process, rate mitigation actions beyond what Hydro has proposed in the 2017 GRA will be a policy decision of government.¹³ This was acknowledged by the Consumer Advocate through a request for information posed to Hydro.¹⁴ This should in no way preclude the Board from adjudicating on Hydro’s proposal to use regulatory tools to assist with future rate mitigation. In this regard, Hydro has also filed evidence as to why its proposed deferral account is consistent with regulatory precedent.¹⁵

With respect to future rate increases, Hydro submits that this information is, in fact, part of the 2017 GRA record. As noted in Hydro’s 2017 GRA Evidence, the average island residential electricity rate is forecast to increase to 22.89 cents per kilowatt hour in 2021 once the Muskrat Falls Project is placed into service.¹⁶ Further, Order in Council OC2013-343 directs that all costs associated with the Muskrat Falls Project be recovered from Island

¹⁰ *RSP Appeal*, para 65.

¹¹ *Re: Section 101 of the Public Utilities Act (Newfoundland), (1998) 164 nfld & PEIR 60 (the “Stated Case”) at para 36 item 2.*

¹² See Chapter 1, Section 1.2; Chapter 5, Section 5.2.3; and Chapter 6, of Hydro’s pre-filed Evidence.

¹³ See Hydro’s response to CA-NLH-006.

¹⁴ Request for Information CA-NLH-187 asks “Given that rate mitigation actions or plans will be a Government policy decision, what does Hydro expect the Board to do with respect to rate mitigation when it appears that any decision it might make could be superseded by Government?”

¹⁵ See Chapter 1 of Hydro’s pre-filed Evidence, Hydro’s response to CA-NLH-023, and the pre-filed report of JT Browne Consulting, dated December 4, 2017, page 5.

¹⁶ 2017 GRA Evidence, Page 5.6, lines 4 and 5.

Interconnected rates.¹⁷ Hydro submits that it has provided the most relevant and useful forecast information in this regard and submits that the Consumer Advocate's statement that upcoming rate increases are 'unknown' is misleading.

Further, Hydro has also provided ample evidence with respect to the disposition of the Off-Island Purchases Deferral Account in several RFI responses, including alternatives for the disposition of the Off-Island Purchases Deferral Account,¹⁸ the pros and cons of the alternative approaches to disposition,¹⁹ and the benefits of the proposed deferral account's subsequent disposition.²⁰

Hydro submits that a hearing is the best venue for the Consumer Advocate to challenge the evidence that Hydro has put on the record in its GRA.

ii) Off-Island Purchases Procurement Plan

The Consumer Advocate states that the Off-Island Purchases Deferral Account lacks transparency as Hydro has not submitted a procurement plan for off-island power purchases. Hydro submits that this is also incorrect. Hydro has provided detailed information and corresponding deferral account calculations with respect to off-island purchases from Recapture Energy from Churchill Falls, under two different fuel forecast scenarios.²¹

With respect to purchases over the Maritime Link, Hydro has confirmed that any such purchases will be captured by the Off-Island Purchases Deferral Account.²² Further, Hydro has confirmed that its affiliate already has the permits and authorizations necessary to participate in off-island electricity markets and take advantage of cost saving opportunities as they arise.²³ Hydro has also stated that it is unable to provide the parties with specific details as to these potential purchases as negotiations are ongoing and the disclosure of that information *at this time* would negatively impact those negotiations.²⁴ Hydro has stated, on the record, that it will inform the Board should it be successful in entering into a commercial arrangement for off-island energy purchases. As previously stated, the GRA hearing is the best avenue for the Consumer Advocate to argue his concerns with Hydro's proposal.

iii) Deferral Definition

The Consumer Advocate's Application states that Hydro's proposal for the Off-Island Purchases Deferral Account lacks definition. Hydro has filed a detailed definition of the proposed calculation of the Off-Island Purchases Deferral Account.²⁵

iv) Consideration of Benefits Arising from the Off-Island Purchases

The Consumer Advocate's Application states that Hydro's proposal for the Off-Island Purchases Deferral Account should account for other benefits that might arise from off-

¹⁷ 2017 GRA Evidence, Page 1.10, lines 13 through 15.

¹⁸ See Hydro's response to CA-NLH-053.

¹⁹ See Hydro's response to CA-NLH-042.

²⁰ See Hydro's response to CA-NLH-187.

²¹ See Hydro's response to NP-NLH-115 and PUB-NLH-110.

²² See Hydro's response to CA-NLH-193.

²³ See Hydro's response to CA-NLH-065.

²⁴ See Hydro's response to CA-NLH-246.

²⁵ 2017 GRA Evidence, Chapter 6, Schedule 6-I, Page 1 of 1. See also Hydro's response to CA-NLH-193.

island purchases. Hydro submits that the examples provided by the Consumer Advocate are already captured through existing regulatory mechanisms, as well as the proposed Off-Island Purchases Deferral Account. Hydro also submits that it has provided ample and sufficient evidence as to the types of benefits to be accounted for in its proposed deferral account. The proposed definition for the Off-Island Purchases Deferral Account will capture savings associated with all off-island power purchases, both firm and non-firm.²⁶ Further, Hydro has also provided evidence that any third party transmission revenues will reduce the transmission costs borne by Island Interconnected Customers.²⁷

Hydro submits that the Off-Island Purchases Deferral Account, as proposed, will return to customers all the benefits of cost savings that result from off-island power purchases, contrary to the assertions of the Consumer Advocate. With respect to the Consumer Advocate's assertion that other considerations should be included in the deferral account, Hydro submits that a hearing is the most appropriate venue for Hydro's proposal to be challenged by the Intervenors, to enable the Board to have fully tested information in making its final determinations as to how off-island purchases and associated savings or benefits are treated.

v) *Island Transmission Costs*

Hydro is unaware of the potential offsets of transmission costs to which the Consumer Advocate is referring. Hydro's transmission costs are primarily fixed, as the costs do not fluctuate with energy flows. While off-island purchases have the potential to change the energy flow over existing transmission lines, there are no savings that will materialize as a result of this change. Hydro submits that it is not clear as to what the Consumer Advocate is proposing on this particular topic, which provides further support that a hearing is the proper venue to assess the appropriateness of Hydro's proposal and any concerns articulated by the Consumer Advocate

vi) *Deferral Account Disposition*

As noted previously, the Board's broad power with respect to deferral accounts and legal precedents generally support that regulatory deferral accounts are appropriate mechanisms to deal with the effects of uncertain or volatile costs and do not constitute retroactive ratemaking. Hydro submits that uncertainty regarding the ultimate disposition of the deferral account is not a sufficient reason to preemptively disallow Hydro's proposal and predetermine the matter before it has been fully tested in a hearing.

D. The Consumer Advocate's Requests

The Consumer Advocate requests that additional information should be filed by Hydro prior to Hydro's GRA proceeding any further. Hydro respectfully disagrees that further evidence or different evidence is required at this time. Rather, the GRA should be permitted to proceed in the normal course.

i) *2019 Cost of Service*

The Consumer Advocate requests that Hydro file a 2019 Test Year cost of service study based on the expected supply scenario with off-island purchases over the Labrador-Island Link and the Maritime Link.

²⁶ 2017 GRA Evidence, Chapter 6, Schedule 6-I, Page 1 of 1.

²⁷ See Hydro's response to LAB-NLH-064 (c).

a) Revenue Requirement Impacts

Hydro submits that the provision of a cost of service study reflecting the expected supply scenario with off-island purchases is not required for the Board to have adequate information to consider Hydro's proposed Off-Island Purchases Deferral Account. Hydro has stated that its estimated net savings from the use of Recapture Energy is \$12.7 million in 2018 and \$78.1 million in 2019.²⁸

The \$12.7 million in projected net savings for 2018 based on the use of Recapture Energy on the Island provides approximately 2.0% of the 2018 Test Year Revenue Requirement for the Island Interconnected System.²⁹ The \$78.1 million in projected net savings for 2019 (based on the use of Recapture Energy on the Island) provides approximately 12.0% of the 2019 Test Year Revenue Requirement for the Island Interconnected System.³⁰

As stated above and in Hydro's responses to RFIs, Hydro is unable to provide the parties with specific details as to potential purchases over the Maritime Link as this information could influence the price paid by Hydro when such purchases occur.³¹ However, the proposed definition of the Off-Island Purchases Deferral Account provides for any savings achieved through purchases over the Maritime Link to be transferred into the proposed deferral account. Hydro submits that there is sufficient evidence before the Board to consider this issue.

b) Cost of Service Methodology

In order to prepare the requested cost of service study, Hydro would need to allocate the transmission operating and maintenance costs of the Labrador-Island Link and the Labrador Transmission Assets in the cost of service study. However, the functionalization and classification of these costs for preparing the requested cost of service study will not be determined until the completion of the Cost of Service Methodology Review hearing planned to start later in 2018. Hydro would also need to determine a cost of service approach for classification and allocation of off-island power purchases (i.e., demand related vs. energy-related). This approach would be impacted by whether the off-island energy purchases are firm or non-firm.³²

Under the Consumer Advocate's proposal, the 2017 GRA would effectively become a cost of service methodology hearing for the pre-commissioning period.³³

²⁸ See response to NP-NLH-115 (Revision 1). In response to PUB-NLH-110, Hydro provided an estimate of the net savings assuming a revised No. 6 fuel cost of \$63.75 per barrel was approved as the 2019 Test Year fuel price.

²⁹ 2.0% = \$12.7 million divided by the \$631.8 million Island Interconnected System revenue requirement provided on Schedule 1.2, page 2 of 6 of the 2018 Test Year Cost of Service Study.

³⁰ 12.0% = \$78.1 million divided by the \$648.7 million Island Interconnected revenue requirement provided on Schedule 1.2, page 2 of 6 of the 2019 Test Year Cost of Service Study.

³¹ See Hydro's response to CA-NLH-065.

³² See Hydro's response to CA-NLH-169.

³³ Hydro notes that if the cost of service to be tested by the Board is to consider the impact of off-island purchases, Hydro would also need to revise a number of other items in the cost of service study. This includes but is not limited to: (i) the Holyrood fuel conversion rate; (ii) the Holyrood capacity factor; (iii) the impact on Holyrood fuel inventory used in rate base; and the (iv) the test year No. 6 fuel consumption. This would further delay Hydro's GRA.

c) Fairness in Disposition of Net Savings from Off-Island Purchases

The cost of service study is used by the Board to consider the fairness of rates in recovering costs. The cost of service study requested by the Consumer Advocate effectively presumes that the savings from off-island purchase should be provided to current customers. The Board must apply established regulatory principles in determining which customers should benefit from the net savings from off-island purchases. Hydro has filed expert evidence which provides regulatory support for its proposal, including why its proposal is consistent with the cost of service standard, the principle of intergenerational equity, and the principle of rate stability and predictability.³⁴

Hydro's proposed Off-Island Purchases Deferral Account is aligned with its proposed Test Year cost of service studies for 2018 and 2019 and its existing deferral accounts to set aside the net savings from off-island purchases.³⁵ This provides transparency for the Board in determining the appropriate approach for disposition of these savings. The Board can then determine whether the savings from off-island power purchases should be: (i) used to minimize electricity rates during the Muskrat Falls Project pre-commissioning period; (ii) set aside for future use to help mitigate the impact of post-commissioning Muskrat Falls Project costs on customer rates; or (iii) some combination of providing rate mitigation during both the Muskrat Falls pre-commissioning period and the Muskrat Falls post-commissioning period.³⁶

There is material uncertainty in Hydro's fuel/supply costs to be incurred in 2018 and 2019 as a result of the planned interconnection to the North American grid. The potential for supply cost variability from the test year costs is outside of Hydro's control as the availability of off-island purchases depends on: (i) the timing of availability of the Labrador-Island Link; (ii) the availability of Labrador-Island Link during the testing period; (iii) the amount of Recapture Energy available from Labrador; and (iv) the availability and pricing of purchases from other jurisdictions including the terms of availability (i.e., firm vs. non-firm). There is currently no cost recovery mechanism in place to deal with supply cost variability that may result from off-island supply.³⁷

The use of cost of service studies for 2018 and 2019 which embed the preliminary estimates of off-island purchases to provide reduced customer rates would require Hydro to establish a separate supply cost deferral account to deal with variances from the net savings assumed in the forecast cost of service studies. This approach, as proposed by the Consumer Advocate, would embed preliminary estimates of net savings in the cost of service study and accumulate either additional net savings or net costs (if the projected savings did not materialize) in a deferral account for future disposition from customers. The approach proposed by the Consumer Advocate does not permit the segregation of the actual net savings from off-island purchases from the

³⁴ As the evidence of regulatory policy expert Mr. JT Browne indicates: "It would be contrary to the principle of intergenerational equity to pass on to customers of one period benefits included in the Pre-commissioning Net Benefits, while a significant amount of the associated costs were borne by customers of a later period." Page 14 of Expert Evidence of JT Browne. See also page 16 of Expert Evidence of JT Browne.

³⁵ See Hydro's response to NP-NLH-119 which explains how the proposed Off-Island Purchases Deferral Account operates in conjunction with Hydro's existing supply cost deferral accounts.

³⁶ Page 6.4 of Hydro's Supplemental Evidence.

³⁷ See Hydro's response to request CA-NLH-042.

cost that would be incurred by existing customer if access to Labrador-Island Link and Labrador Transmission Assets were not available during the pre-commissioning period.

If the Board determines that all net savings from off-island purchases should be set aside to the benefit of customer rates post-commissioning, it is preferable to have the actual net savings segregated in a deferral account to provide the Board flexibility in evaluating disposition options. The use of the cost of service approach would not provide this flexibility to the Board. Hydro submits that this provides further justification as to why this matter should be addressed as part of its GRA hearing.

d) Regulatory Efficiency

The Consumer Advocate's Application states that in the interest of "*regulatory efficiency*" the requested cost of service study should be filed by Hydro prior to any settlement negotiations. Contrary to the submission of the Consumer Advocate, the filing of a cost of service study to reflect the net savings from off-island purchases would not be consistent with regulatory efficiency but would result in regulatory inefficiency. Simply dealing with the Application of the Consumer Advocate will likely delay Hydro's GRA by approximately one month.

The Board has been provided all the necessary information required to evaluate Hydro's proposed Test Year revenue requirements, including the proposed Off-Island Purchases Deferral Account. As indicated earlier in Hydro's submission, it is not uncommon to establish a deferral account to deal with supply cost variances and determine the appropriate disposition approach at a later date. The filing of a cost of service study based on preliminary estimates of the net savings in advance of determining the approach to allocation of the costs and savings within the cost of service study can result in misleading results and does not provide for regulatory efficiency. The value of this exercise in advance of determining how these costs should be treated in the cost of service study is questionable.

The preparation of cost of service studies for 2018 and 2019 including the cost of off-island purchases and the cost of operating and maintenance costs for the Labrador-Island Link and Labrador Transmission Assets will require approximately two months. Hydro would also need to update its evidence and responses to requests for information to reflect the revised cost of service studies. This would require an additional month to provide.

Any updated information provided by Hydro would be expected to be subject to additional requests for information from the parties to the GRA. To provide time for both the preparation of additional requests for information and responses to a single round of requests for information would require approximately two months from the date of Hydro filing its updated information.

The total delay for the hearing process to comply with the Consumer Advocate's Application filed on January 4, 2018 (approximately one week prior to scheduled negotiations) is estimated to be approximately 6 months. Hydro does not agree that approval of the Consumer Advocate's Application requiring the preliminary estimates of the net savings from off-island purchases is either consistent with regulatory efficiency or will be of material value to the Board.

As stated earlier, the Board has provided adequate information to determine a reasonable approach to disposition of net savings that may result from off-island purchases.

e) **Impact of Delayed General Rate Application**

The impact of delaying the 2017 GRA to provide the additional information requested by the Consumer Advocate goes well beyond the current proceeding. There is a busy regulatory calendar for the period of 2018 to 2020 to permit the implementation of revised customer rates in 2020 to coincide with the projected in-service date of September 1, 2010 for the Muskrat Falls Project.

Hydro also plans to file its Cost of Service Methodology application in the third quarter of 2018 with a projected end date, including an order of the Board, of March 2019. The Cost of Service Methodology application will include proposals for the revised rate designs for Newfoundland Power and Island Industrial Customers. Hydro also plans to file its 2019 GRA, which will include recovery of Muskrat Falls Project costs, by June 30, 2019 with the requirement for new customer rates projected to be in effect September 1, 2020.³⁸

Delaying Hydro's current application to provide the information requested by the Consumer Advocate will also materially impact the timing on these proceedings.

ii) *Alternative to Hydro's proposed Off-Island Purchases Deferral Account*

The Consumer Advocate requests that Hydro file an alternative proposal to deal with supply cost uncertainties brought on by off-island purchases. In its GRA, Hydro has proposed what it deems to be an appropriate method of accounting for off-island purchases. As stated, the proposed deferral account will record all net savings resulting from off-island purchases during the pre-commissioning period. Hydro submits that its proposed deferral account complements the 2018 and 2019 Test Year cost of service studies filed in the evidence of Hydro's 2017 GRA.

Hydro submits that the determination of which cost of service approach should be used in the 2017 GRA for determining customer rates is a matter to be determined by the Board following a review of all the evidence presented in Hydro's 2017 GRA. If the Consumer Advocate wishes to challenge Hydro's GRA, it is the responsibility of the Consumer Advocate to submit this position (including through his expert) at the hearing on this matter. This approach will allow the Board to review the evidence of both Hydro and the Consumer Advocate to determine which approach best meets the requirements of the regulatory principles which the Board will apply in determining customer rates.

iii) *Procurement Plan for Off-Island Purchases*

As stated above, Hydro has provided detailed information and corresponding deferral account calculations with respect to off-island purchases from Recapture Energy from Churchill Falls, under two different fuel forecast scenarios.³⁹ Hydro has also explained, in multiple RFIs, that purchases over the Maritime Link will also be captured by the Off-Island

³⁸ See Hydro's response to NP-NLH-095.

³⁹ See Hydro's response to NP-NLH-115 and PUB-NLH-110.

Purchases Deferral Account but that Hydro is unable to provide the specific details relating to on-going negotiations at this time.⁴⁰

iv) *Plan for Off-Island Sales*

The Application requests that Hydro file its plan for sales of power over the Labrador-Island Link and the Maritime Link. Hydro has not yet determined what potential opportunities exist during the pre-commissioning period for achieving savings through the exporting of power generated by Hydro's Island interconnected generation assets.

Due to the uncertainty with respect to the amount of an export sales credit that may be available annually, Hydro recommended in its Cost of Service Methodology Review Report that disposition of any export sales credit should be handled through a deferral mechanism outside the Cost of Service Study.⁴¹ While it may be reasonable to modify the proposed Off-Island Purchases Deferral Account to provide for any savings resulting from the exporting of generation from Hydro's Island Interconnected generation assets to be credited to the deferral account, Hydro submits that this issue can be, and should be, dealt with during the hearing and does not need to, and should not, be addressed in advance of the Board considering all the evidence.

v) *Vetting Program related to Off-Island Sales and Purchases*

The Consumer Advocate has requested that Hydro file or potentially develop a "vetting program" for sales and purchases over the Labrador-Island Link and the Maritime Link that will enable the Board to determine if customers are receiving optimum value.⁴² As provided in Chapter 6 of its pre-filed evidence, Hydro stated that it will provide the Board with ongoing financial reporting on deferral account activity. If the Board determines additional information is required, that can be directed by the Board in its GRA decision.

The power of the Board must be regulative and corrective, but not managerial. While the Board has the general authority with respect to supervision of utilities in the province, the Board is not the manager of the utility and should not as a general rule substitute its judgment on managerial and business issues for that of the Company.⁴³ Hydro acknowledges that the Board has a wide discretion to disallow expenses if they are deemed to be imprudent. However, as stated by the court in the Stated Case:

[120] Having said that, however, there will normally be a presumption of managerial good faith and a certain latitude given to management in their decisions with respect to expenditures. In the United States, the test for disallowance is usually "abuse of discretion" showing "inefficiency or improvidence" or "extravagant or unnecessary costs."

[121] When the issue becomes a retrospective examination of actual expenses as compared with what was projected and determined to be reasonable and prudent, there ought, similarly, to be caution exercised before determining that an expense was improperly incurred. The

⁴⁰ See Hydro's response to CA-NLH-065, CA-NLH-193, and CA-NLH-246.

⁴¹ See Hydro's response to Lab-NLH-021, Attachment 5, titled *Newfoundland and Labrador Hydro Supply Cost Mechanism Review* filed with the Board on June 15, 2016.

⁴² It is unclear to Hydro exactly what the Consumer Advocate is seeking on this issue.

⁴³ *The Stated Case, para 118.*

*circumstances facing a utility are not static and a considerable latitude has to be given to the decisions of management in making expenditures to respond to the new situations as they present themselves.*⁴⁴

Hydro submits that developing a “vetting program” as indicated by the Consumer Advocate would appear to seek to supplant the managerial role of the utility.

vi) *Open Access Transmission Tariff*

The Consumer Advocate is requesting that Hydro file an open access transmission tariff application. Order in Council OC2017-380, dated December 21, 2017, directs the Board to approve, on an interim basis, the transmission tariff to be filed by Hydro in an application. The transmission tariff application will provide the basis for how the open access regime will work. Hydro, as NLSO, is expected to file an application for interim approval of the transmission tariffs reflected in the Transmission Service Agreements prior to the end of January 2018.

Under an open access regime, reciprocity standards require that Hydro pay the published transmission tariff that is chargeable to outside third parties. Upon the Labrador-Island Link and Labrador Transmission Assets being in-service, the tariff will include the annual operating and maintenance cost for each in addition to the transmission costs related to Hydro’s common transmission grid.⁴⁵ Hydro is proposing that the costs to use the Labrador-Island Link and Labrador Transmission Assets be paid for from the savings from off-island purchases.⁴⁶

If the Consumer Advocate believes Hydro cannot legally recover the operating and maintenance costs for Labrador-Island Link and Labrador Transmission Assets from the savings from off-island purchases during the pre-commissioning period then the Consumer Advocate should present that position in legal argument before the Board as part of the GRA process. Hydro has already filed its evidence supporting its position.

vii) *Newfoundland Power – Wholesale Rate*

The Consumer Advocate submitted that Hydro should submit a wholesale power rate for Newfoundland Power that better reflects forecast marginal costs. As part of its GRA, Hydro has requested that it maintain the existing rate structure for Newfoundland Power during the pre-commissioning period. The Consumer Advocate is entitled to challenge Hydro’s proposal. Hydro sees no benefit in providing an alternative rate design at this stage of the hearing, which is not reflective of Hydro’s position.

3.0 Interim Rates

The power of the Board to authorize interim rates is found in section 75 of the *Public Utilities Act*. That section allows the Board to set rates expeditiously without full evidence and submissions, with rates being subject to review and possible modification in a final order of the Board.⁴⁷

⁴⁴ Stated Case, para 120 and 121

⁴⁵ The common transmission grid refers to transmission that is at voltage levels of 230 kV and above.

⁴⁶ Hydro GRA Evidence, Chapter 1, page 1.10.

⁴⁷ As accepted in the Stated Case: In *Bell Canada v. Canada (Canadian Radio – Television and Telecommunications Commission)*, [1889]1 SCR 1722, Gonthier J. stated:

The statutory scheme established by the Railway Act and the National Transportation Act is such that one of the differences between interim and final orders must be that interim decisions may be reviewed and modified in a retrospective manner by a final decision. It is inherent in the nature of interim orders that

Hydro submits that its requirement for 2018 interim rates has been clearly established as a part of the 2017 GRA record. The continuation of 2015 Test Year base rates in 2018 is forecast to result in a revenue deficiency of \$53.3 million, reflecting the revised forecast cost of fuel.⁴⁸ A revenue deficiency of this magnitude would result in a 2018 net loss for Hydro of approximately \$10.7 million and a return on rate base of 3.84%, well below the lower end of the approved range of return on rate base of 6.41% (midpoint of 6.61%).⁴⁹ Hydro's forecast 2018 financial results under existing rates are shown in the 2017 GRA Evidence, Schedule 4-III page 1 of 1.

Even if Hydro were to use the savings from off-island power purchases in 2018 to offset its 2018 revenue deficiency,⁵⁰ this would still result in a rate of return below the approved Test Year rate of return on rate base of 6.41%.⁵¹ It would also be below Hydro's forecast 2018 Test Year rate of return on rate base of 5.73%.⁵²

Hydro submits that the Consumer Advocate's Application ignores Hydro's request for interim rates for 2018. Hydro's request for interim rates remains.

4.0 Summary and Conclusion

Hydro submits that the Consumer Advocate's Application is premature and prejudicial to Hydro. Hydro submits that testing the appropriateness of Hydro's proposal on the Off-Island Purchases Deferral Account at a hearing will provide the best opportunity for the Board to assess Hydro's evidence and any issues raised by the intervenors in the context of a comprehensive record. Hydro will be putting forth Company and Expert witnesses for cross-examination by the Parties and the Board. The Consumer Advocate will be afforded a full every opportunity at the hearing to test Hydro's evidence.

their effect as well as any discrepancy between the interim order and the final order may be reviewed and remedied by the final order. I hasten to add that the words "further directions" do not have any magical, retrospective content. Under the Railway Act and the National Transportation Act, final orders are subject to "further [prospective] directions" as well. It is the interim nature of the order which makes it subject to further retrospective directions. (p. 1752)

*...The underlying theory behind the rule that a positive approval scheme only gives jurisdiction to make prospective orders is that the rates are presumed to be just and reasonable until they are modified because they have been approved by the regulatory authority on the basis that they were indeed just and reasonable. However, the power to make interim orders necessarily implies the power to modify in its entirety the rate structure previously established by final order. As a result, it cannot be said that the rate review process begins at the date of the final hearing; instead, the rate review begins when the appellant sets interim rates pending a final decision on the merits. As was stated in obiter in *Re Eurocan Pulp & Paper Co. and British Columbia Energy Commission (1978)*, 87 D.L.R. (3d) 727 (B.C.C.A.), with respect to a similar though not identical legislative scheme, the power to make interim orders effectively implies the power to make orders effective from the date of the beginning of the proceedings. In turn, this power must comprise the power to make appropriate orders for the purpose of remedying any discrepancy between the rate of return yielded by the interim rates and the rate of return allowed in the final decision for the period during which they are in effect so as to achieve just and reasonable rates throughout that period. (p. 1761).*

⁴⁸ 2017 GRA Evidence, 2018 Test Year revenue of \$676.8 million (Schedule 4-II page 1 of 9), less 2018 fuel adjustment of \$61.7 million (Hydro's response to NP-NLH-102) = 2018 Test Year revenue reflecting updated fuel of \$615.1 million vs. 2018 revenue under existing rates of \$561.8 million (Schedule 4-III page 1 of 1).

⁴⁹ See Hydro's 2015 rate of return on rate base of 6.61% was approved by the Board in P.U. 22(2017).

⁵⁰ Hydro's response to CA-NLH-050, (Revision 1) which shows a rate of return on rate base under this scenario of 4.38%.

⁵¹ See Hydro's 2015 rate of return on rate base of 6.61% was approved by the Board in P.U. 22(2017).

⁵² 2017 GRA Evidence, Page 4.13, Table 4-9.

Hydro submits that the Board has ample and sufficient evidence on the record to test the reasonableness of Hydro's proposals and to render a decision upon the completion of the hearing. The Consumer Advocate's Application seeks to have Hydro's proposal predetermined. The Consumer Advocate has had full opportunity to question Hydro's GRA and to provide competing information on the record. The Consumer Advocate will also (as will all parties) have the opportunity to challenge Hydro's proposals as part of the GRA hearing.

Hydro submits that it is entitled to have the Board hear its case, as filed, and that it should not be forced to refile its GRA with proposals and frame its proposals in a fundamentally different way than it has proposed in the application currently before the Board. Hydro has filed an application before the Board seeking remedies that it deems to be appropriate based on the evidence it has filed. Allowing the Consumer Advocate's Application would essentially strip Hydro of its right to file an application that it seeks; rather it would force Hydro to file an application and seek remedies that the Consumer Advocate deems appropriate. With all due respect to the Consumer Advocate, Hydro's GRA is not the Consumer Advocate's application, and is it not for the Consumer Advocate to dictate to Hydro how to manage the company or what relief it should seek from the Board.

Hydro respectfully requests that the Board reject the Consumer Advocate's Application as submitted.

If you have any questions, please contact the undersigned.

Yours truly,

NEWFOUNDLAND AND LABRADOR HYDRO



Tracey L. Pennell
Senior Legal Counsel

TLP/bs

cc: Gerard Hayes - Newfoundland Power
Paul Coxworthy - Stewart McKelvey
ecc: Denis J. Fleming - Cox & Palmer
Benoît Pepin - Rio Tinto

Dennis Browne, Q.C. - Consumer Advocate
Dean Porter - Poole Althouse
Van Alexopoulos - Iron Ore Company
Senwung Luk - Labrador Interconnected Group



Electronic Notification

June 22, 2011

To: all interested parties

**Ruling on Motion of Mr. Lucien A. Kurata on behalf of Mr. Charles Meggison
Western Alberta Transmission Line
AltaLink Management Ltd.
Application No. 1607067
Proceeding ID No. 1045**

Motion

1. On April 20, 2011, the Alberta Utilities Commission (AUC or the Commission) received a motion from Mr. Lucien A. Kurata, on behalf of Mr. Charles Meggison, requesting that the Commission request or compel: the production of all third-party documents submitted to Cabinet which determined the Western Alberta Transmission Line (WATL) project to be critical transmission infrastructure, the identification of all persons involved in this determination, and the production of any needs justification documents of the government of Alberta in respect of the WATL application, and to adjourn this proceeding in consideration of the aforementioned issues.
2. On April 21, 2011, the Commission sought feedback from interested parties on the proposed requests and received a total of five responses by the April 28, 2011 deadline.
3. The 566 Corridor Group and Mr. Rein Matiisen and Mr. Ken Larsen, representing the Medicine River Landowners Group supported Mr. Meggison's motion. Arguments submitted in support of the motion were that the information was necessary in order for the Commission to properly and fully consider the extent of the social and economic impacts of the proposed WATL project and that the needs documentation would be helpful as a reference point.
4. AltaLink Management Ltd. (AltaLink) opposed the motion. AltaLink submitted that the motion was premature and deficient as it was not supported by affidavit evidence, and requested irrelevant documents. AltaLink also submitted that the motion did not establish any basis for an adjournment. AltaLink added that granting the adjournment would be prejudicial to AltaLink. The Alberta Electric System Operator opposed the motion for the same reasons.
5. Mr. Kurata, on behalf of Mr. Meggison, responded to AltaLink's submission on April 28, 2011. Mr. Kurata submitted that AltaLink misinterpreted the motion, that the motion was not premature, was relevant and would not prejudice AltaLink.
6. The Commission has considered the above-mentioned submissions on the motion and has asked that I inform you of its ruling.

Commission findings

7. In making its ruling, the Commission considered Section 17 of the *Alberta Utilities Commission Act*, which states:

17(1) Where the Commission conducts a hearing or other proceeding on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, it shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment.

(2) The Commission shall not under subsection (1) give consideration to whether critical transmission infrastructure as defined in the *Electric Utilities Act* is required to meet the needs of Alberta.

8. The Commission observes that the motion acknowledges the effect of subsection 17(2) of the *Alberta Utilities Commission Act* and seeks the information in question under subsection 17(1) which directs the Commission to “give consideration to whether construction or operation of the proposed transmission line is in the public interest.”¹ The Commission notes that the motion is not accompanied by an affidavit that sets out the evidentiary basis for the motion.

9. In the Heartland proceeding, the Commission dealt with a similar motion as follows:

27. The Heartland application is the Commission’s first opportunity to consider a facility application for critical transmission infrastructure in accordance with the new provisions introduced through the *Electric Statutes Amendment Act*. As is frequently the case when any new legislation is introduced, some parties have raised questions about the correct interpretation of these new provisions. In the Commission’s view, the effective interpretation of this new legislation is best achieved by considering the reasoned arguments of all potentially affected parties within the context of the formal hearing and based upon the evidentiary record.²

10. The Heartland proceeding is ongoing and a ruling will be made in that proceeding in due course based on the evidence and arguments proffered. In the WATL proceeding, there is no evidence yet before the Commission. Therefore, Commission finds that the motion is premature because there is no evidentiary record on which to base an interpretation of Section 17 of the *Alberta Utilities Commission Act* and the manner in which the information in question will assist the Commission in its interpretation of this section. However, the issue may be argued in this proceeding based on the evidentiary record developed and in light of any ruling that may be made in the Heartland proceeding prior to that time.

11. Furthermore, the Commission notes that the motion acknowledges that third-party documents submitted to the Executive Council may be subject to privilege. However, no

¹ Meggison Reply to AltaLink Management Limited Response, April 28, 2011, page 1.

² Exhibit 774.01AUC-457, AUC ruling on Shaw motion, paragraph 27.

submissions were made or evidence provided that the proceeding before the Commission is one wherein documents of the Executive Council should be disclosed or compelled seeing that the documents in question may be subject to privilege. The Commission cannot make a decision in a factual vacuum and without reasoned arguments.

12. Finally, the Commission observes that subsection 22(1) of the Alberta *Freedom of Information and Privacy Act* and Section 69 of the federal *Access to Information Act* dictate that the head of a public body must refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or Privy Council, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or Privy Council. The types of documents sought by the applicant fit the description of documents that may not be disclosed under the *Freedom of Information and Privacy Act*.

13. For these reasons, the Commission denies the motion and as a result there is no need for the requested adjournment.

Yours truly,

(original signed by)

Giuseppa Bentivegna
Commission Counsel