

Office of the Consumer Advocate

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January 18, 2018

Via Courier

Board of Commissions of Public Utilities
120 Torbay Road, P.O. Box 2140
St. John's, NL A1A 5B2

**Attention: G. Cheryl Blundon, Director of
Corporate Services / Board Secretary**

Dear Ms. Blundon:

**RE: Newfoundland and Labrador Hydro ("Hydro")
- 2017 General Rate Application (the "2017 GRA")
Consumer Advocate Application to Delay Proceeding**

A. Background

In its 2017 General Rate Application, Hydro proposes rate increases for Island customers based on a cost of service study that it freely admits does not reflect its expected cost of supply. Further, Hydro recommends that its proposed rates be accompanied by an Off-Island Purchases Deferral Account to collect revenues over-and-above its expected cost of supply to be used to pay for the Muskrat Falls project following that project's commissioning. Hydro does not propose a rate mitigation plan, but rather proposes an account that would accumulate funds expected to exceed \$174 million by August 31, 2020 (NP-NLH-115, rev. 1) with those funds being used for some unspecified future rate mitigation plan.

In a January 4, 2018 letter to the Board, the Consumer Advocate forwarded an application requesting that:

"the Public Utilities Board order a delay of any proceedings, including settlement discussions, negotiations, the filing of issues lists and witness lists, the motions day, and the commencement of public hearings, until this additional information is provided to the parties in the usual form."

The additional information requested in the Application is summarized below:

- i) A 2019 test year cost of service study based on the expected supply scenario with off-island purchases over the Labrador-Island Link (LIL) and the Maritime Link (ML).
- ii) Because a cost of service study based on the expected supply scenario would render Hydro's proposed Off-Island Purchases Deferral Account obsolete, Hydro would be exposed to uncertainties brought on by off-island purchases, so should propose a supply cost adjustment mechanism to complement the cost of service study and protect it from such uncertainties.
- iii) Hydro's power procurement plan for off-island purchases over the LIL and ML.
- iv) Hydro's plan for sales of power over the LIL and ML.
- v) A vetting program for both sales and purchases over the LIL and ML that will enable the parties and the PUB to determine if customers are receiving optimum value.
- vi) An open access transmission tariff, including an explanation of the facilities included in the tariff and how the open access regime will work, and how open access can be leveraged to provide optimum value to Island customers. This should include LIL/LTA transmission, O&M costs that Hydro references in CA-NLH-177 and a legal position documenting why Hydro believes it is allowed to recover these costs prior to commissioning the Muskrat Falls project.
- vii) A wholesale power rate for Newfoundland Power that better reflects forecast marginal costs.

In response to the Consumer Advocate's application, Hydro submitted a letter to the Board on January 12, 2018 documenting its position. In turn, Newfoundland Power and the Island Industrial Customers (the IIC Group) filed submissions with the Board on January 15, 2018 documenting their positions.

This letter conveys the Consumer Advocate's Reply to the submissions filed with respect to its application by Hydro, the IIC Group and Newfoundland Power.

B. Summary of the Submissions by the Parties

A summary of the main points of the submissions by the parties is provided below.

Hydro

“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 opportunity at the hearing to test Hydro's evidence.

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.”

Island Industrial Customers

“After due consideration, the IIC Group are of the view that delay of the current GRA, to allow for the filing of the additional information requested by the Consumer Advocate, would raise the real prospect of an extended period under interim rates and consequent rate uncertainty in 2018 and likely extending into 2019.

If deficiencies in Hydro's GRA evidence asserted by the Consumer Advocate are borne out in the GRA hearing, it is Hydro that bears the risk of its OPDA proposal not being approved. The IIC Group trusts that Hydro, in expressing its position that the GRA should proceed based

on the evidentiary record filed to date, is prepared to address the possibility of its OPDA proposal ultimately not being approved in a full hearing process, so that its non-approval would not give rise to a prolonged period of rate uncertainty, under interim rates.

The IIC Group acknowledge that the Board will have to consider the positions and interests of all parties, and their representatives, and further acknowledge that it is for the Board to determine whether the evidentiary record is adequate to proceed to the GRA hearing.”

Newfoundland Power

“The evidence filed by Hydro in support of the OIPDA proposal is not supported by detailed, complete and current information regarding the timing and amount of anticipated rate increases.”

“it is unclear whether the OIPDA conforms to provincial Cabinet directives. Order in Council OC2013-343, which governs recovery of Muskrat Falls project costs, specifically prohibits the recovery of Labrador Island Link (“LIL”) costs until the project is “commissioned or near commissioning.” The OIPDA, as proposed by Hydro, specifically provides for recovery of Nalcor Energy operating and maintenance costs associated with the LIL in 2018 and 2019.”

“Hydro’s evidence indicates it expects significant reductions in Holyrood generation in the test period as a result of off-island purchases. Therefore, the test year forecasts that the Board is requested to use to establish customer rates do not reflect Hydro’s actual expectation regarding the cost of supply. This is a significant departure from the cost of service standard, regulatory practice in this jurisdiction, and the power policy of the Province.”

“Newfoundland Power submits that:

1. the evidence filed in support of the OIPDA does not appear to provide sufficient information in relation to the timing and amount of future customer rate increases associated with the Muskrat Falls project to be approved by the Board;
2. the Board should, in the circumstances, give due regard to Hydro's assertion of its right to proceed with its 2017 GRA as filed; and
3. any consequences of Hydro choosing to proceed with the 2017 GRA at this time should be borne exclusively by Hydro and not by Newfoundland Power's customers.”

Newfoundland Power concludes:

“It appears that Newfoundland Power's customers will ultimately bear a significant portion of the costs associated with the Muskrat Falls project in the rates they must pay. The magnitude

of those costs indicate that there is merit in a full and thorough investigation of options available to mitigate the customer rate impacts.

For such investigation to proceed before the Board, however, it must be informed by the most detailed, complete and current information available. The OIPDA filed as part of Hydro's 2017 GRA is not, in Newfoundland Power's view, supported by such information.”

C. Consumer Advocate Reply

The principle point of disagreement between the Consumer Advocate and Hydro is with Hydro's statement that “The Consumer Advocate has had full opportunity to question Hydro's GRA and to provide competing information on the record.” While it is true that the Consumer Advocate has been given this “opportunity”, Hydro has not provided the information requested. The application (and Part A of this letter) provide a list of the information that has not been provided. In response to CA-NLH-222 which asks if Hydro has surveyed its customers as to their preference between using fuel cost savings owing to off-island purchases for rate mitigation in 2018 and 2019, or using those savings for post-Muskrat Falls mitigation, Hydro responds that it believes “this present matter can be well addressed in the present proceeding, which includes intervenors representing a range of customers”. The Consumer Advocate, being an intervenor representing ratepayers, submits that it is not able to address this matter in the present proceeding because the information needed to address this matter has not been provided by Hydro.

The IIC Group is concerned that allowing for the filing of the additional information requested by the Consumer Advocate would “raise the real prospect of an extended period under interim rates and consequent rate uncertainty in 2018 and likely extending into 2019.” First, Hydro has not filed information justifying a rate increase, interim or otherwise. Second, Hydro states in the GRA application that it may not need a rate increase at all – in fact, off-island purchases could result in a slight rate reduction (Application Volume 1, page 1.11, lines 18 to 20). Third, rate uncertainty will prevail under Hydro's proposal whether or not the Board orders in favour of the Consumer Advocate's application because Hydro has not proposed a plan for how or when the funds set aside for rate mitigation will be applied.

Newfoundland Power and the Consumer Advocate are in agreement that:

- 1) Hydro's proposed cost of service study violates the cost of service standard, and is inconsistent with regulatory practice in this jurisdiction and the power policy of the Province;
- 2) The evidence filed by Hydro in support of the Off-Island Purchases Deferral Account is incomplete; and

- 3) Hydro's proposed Off-Island Purchases Deferral Account appears to be in violation of Cabinet directives pertaining to the Muskrat Falls project.

According to OC2013-343, no amounts paid by Hydro for the Muskrat Falls project "shall be included as costs, expenses or allowances in Newfoundland and Labrador Hydro's cost of service calculation or in any rate application or rate setting process, and no such costs, expenses or allowances shall be recovered by Newfoundland and Labrador Hydro in rates.....in respect of each of Muskrat Falls, the LTA or the LIL, until such time as the project is commissioned or nearing commissioning..." The Consumer Advocate argues that Hydro's application is in clear violation of this Order in Council. Raising rates in excess of the anticipated actual cost of service in order to accumulate funds to pay for Muskrat Falls is contrary to the Order. The Consumer Advocate's position is that the matter of paying for Muskrat Falls energy cannot be the subject matter of this GRA. The Consumer Advocate believes that a comprehensive assessment of rate mitigation plans for Muskrat Falls is an important matter, but one that should be undertaken separately and involve Hydro, Newfoundland Power and all Intervenors.

Even if OC2013-343 were not in place, Hydro's GRA would still be a violation of the cost of service standard, in which case the Consumer Advocate, as now, would seek sufficient information to assess the actual anticipated costs; that is the information being requested in the Consumer Advocates application of January 4, 2018.

While a Board Order requiring Hydro to file the information requested in the Consumer Advocate's application may delay the proceeding as Hydro claims, proceeding without this information may very well delay the proceeding by significantly more time, leading to a similar outcome experienced in Hydro's 2013 GRA which took almost 4 years to complete.

The Consumer Advocate is committed to an efficient GRA process. The Consumer Advocate reiterates the request for a delay in proceedings until the information described in his letter of January 4, 2018 is provided by Hydro.

D. In Conclusion

While Hydro has maintained its right to bring this application, that right is not unfettered. The intervenors are entitled to natural justice including procedural fairness. As Sack & Poskanzer write: "Procedural Fairness is a requirement applicable to public bodies and domestic tribunals when making decisions that affect the rights and interests of individuals. The rules of natural justice require that persons affected by a decision be notified of the case against them and be given a reasonable opportunity of presenting their case, and that the body making the decision listen fairly to the sides and reach a decision untainted by bias. The precise content of natural justice varies according to the nature of the power exercised, the decision involved, and the consequences that flow therefrom."¹

¹ Sack and Poskanzer, *Labour Law Terms: A Dictionary of Canadian Labour Law* (1984), p. 102.

Hydro has put forward an incomplete application seeking financial relief from ratepayers. Intervenor find the application wanting. This is not an acceptable standard of practice before our Public Utilities Board. The Public Utilities Board needs to call this utility to order now, grant the delay requested so Hydro is able to provide the reasonable requirements which intervenors have stated are essential before proceeding. A delay at this juncture is much preferred over another 4-year ordeal such as that experienced with Hydro's 2013 GRA.

We trust this is in order.

Yours truly,



Stephen Fitzgerald
Counsel for the Consumer Advocate

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cc

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