

DELIVERED BY HAND

January 15, 2018

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

Attention: G. Cheryl Blundon  
Director of Corporate Services  
and Board Secretary

Ladies and Gentlemen:

**Re: Newfoundland and Labrador Hydro (“Hydro”) – 2017 General Rate Application (the “2017 GRA”): Consumer Advocate Application to Delay Proceeding (the “Application”)**

**A. Introductory**

Hydro’s 2017 GRA proposes that rates for Newfoundland Power’s customers should be increased by over 13% by January 1, 2019.<sup>1</sup>

The Application requests that the Board order a delay of further proceedings in the hearing of the 2017 GRA, including scheduled settlement discussions, until certain information specified in the Application has been submitted by Hydro. The information specified in the Application includes information regarding future rate increases, details regarding the anticipated costs and benefits of off-island purchases, and an additional cost of service study.

Hydro asserts that the Application is premature and prejudicial to Hydro. Hydro submits that it’s entitled to have the Board hear its case, as currently filed.

By letter dated January 8, 2018, the Board set today as the deadline for comments on the Application. These are Newfoundland Power’s comments.

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<sup>1</sup> Hydro’s specifically proposes that customer rates be increased by 6.6% effective January 1, 2018 and by a further 6.4% effective, January 1, 2019 for a cumulative increase of 13.4% ( $1.066 \times 1.064 = 1.134$ ). Hydro has also indicated that a July 1, 2018 customer increase associated with Hydro’s Rate Stabilization Plan (“RSP”) could approximate a further 8.2% (See response to Request for Information NP-NLH-165 (Revision 1 – November 27, 2017)). Therefore, total customer rate increases by January 1, 2019 could be on the order of 22.7% ( $1.066 \times 1.082 \times 1.064 = 1.227$ ).

**Newfoundland Power Inc.**

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## **B. The Application**

### ***General***

Newfoundland Power agrees with many of the observations in the Application regarding (i) the sufficiency of the evidence filed in support of the Off-Island Purchases Deferral Account (“OIPDA”) and (ii) the hazards associated with a test year forecast that does not reflect the costs Hydro expects to incur.

### ***The Off-Island Purchases Deferral Account***

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.<sup>2</sup>

In Order No. P.U. 16 (2017), the Board considered various rate mitigation proposals with respect to the July 1, 2017 rate change implementing rates arising out of Hydro’s last general rate application (the “2013 GRA”) and rates resulting from the annual operation of Hydro’s RSP. In commenting on Hydro’s submissions on the matter, the Board stated as follows:

“Hydro argued that rate mitigation would defer rate increases into the future when other rate increases are expected. Hydro did not provide information in relation to the timing and amount of the anticipated increases or as to the other circumstances that may be relevant at the time. The Board believes that without this information the possibility of future rate increases should not be considered when assessing whether the proposed rates should be mitigated.”<sup>3</sup>

This is not the first time that the Board has had to address the lack of reliable information related to the Muskrat Falls project. In its March 30, 2012 report to Government, *Reference to the Board Review of Two Generation Expansion Options for the Least-Cost Supply of Power to Island Interconnected Customers for the Period 2011-2067*, the Board was unable to determine that Muskrat Falls was least cost because the information provided to it was “...not detailed, complete or current enough...”<sup>4</sup>

In addition to this, 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

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<sup>2</sup> Information on future rates is limited to a Nalcor Energy estimate of the average island residential electricity rate in 2021 contained in a June 2017 Muskrat Falls project update. See Hydro Supplemental Evidence, September 15, 2017, Page 6.2.

<sup>3</sup> Order No. P.U. 16 (2017), page 11.

<sup>4</sup> *Reference to the Board Review of Two Generation Expansion Options for the Least-Cost Supply of Power to Island Interconnected Customers for the Period 2011-2067*, March 30, 2012, page iv.

provides for recovery of Nalcor Energy operating and maintenance costs associated with the LIL in 2018 and 2019.

### ***Hydro's Test Year Cost of Service***

The supply cost forecast used in determining the 2018 and 2019 revenue requirements for the 2017 GRA reflects the continued use of No. 6 fuel at the Holyrood Thermal Generating Station ("Holyrood") as if the island remained electrically isolated from the North American grid. However, the island electrical system will be interconnected to the North American grid in 2018 and 2019.

Hydro's test year cost of service does not recognize the interconnection to the North American grid. Instead, Hydro proposes that "fuel savings" based on differences between costs attributable to off-island purchases and fuel-related costs based on the isolated island scenario be applied against the total cost of off-island purchases, including Nalcor Energy's operating and maintenance costs for the LIL. The difference is to be set aside in the OIPDA to mitigate the rate impacts of Muskrat Falls.

Hydro's evidence indicates it expects significant reductions in Holyrood generation in the test period as a result of off-island purchases.<sup>5</sup> 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.<sup>6</sup>

### **C. Hydro's Right to be Heard**

Hydro's assertion of its right to be heard is a serious issue for the Board. It is also a serious issue for Newfoundland Power's customers.

The evidentiary burden is on Hydro to prove that the costs it seeks to recover from customers through rates are reasonable, and that its test year forecasts reasonably represent the utility's costs. If, following a hearing, the Board determines the evidence is insufficient to support Hydro's proposals, those proposals should not be approved.

The Board has broad powers under the *Public Utilities Act* to obtain information from Hydro. Newfoundland Power believes that the Board should consider the impact of requiring Hydro to

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<sup>5</sup> Hydro Supplemental Evidence, September 15, 2017, Page 6.5.

<sup>6</sup> The power policy of the Province, as declared in section 3 of the *Electrical Power Control Act, 1994*, provides that rates "should be established, wherever practicable, based on forecast costs for that supply of power for 1 or more years."

provide the additional information requested in the Application on the overall process associated with the 2017 GRA.<sup>7</sup> The 2013 GRA took almost four years to conclude.

Hydro has the right to determine what evidence it presents in support of applications before the Board; but it also bears the consequences of those determinations. Such decisions are, in Newfoundland Power's view, a routine aspect of regulatory management.

In respect of this point, the Newfoundland and Labrador Court of Appeal (the "Court of Appeal") has observed:

"Although the utility is "entitled "by s.80 of the Act to have the board determine a just and reasonable rate of return based on appropriate predictive techniques and methodologies, it is not "entitled", in the sense of being guaranteed, to the rate of return. The utility therefore takes the risk that its chosen management techniques and the future economic climate may not yield its expected success. Although some of the activities of the utility are regulated within the framework of the statutory objectives, the *utility nevertheless remains subject to business risks and the effects of management decisions. To that extent, the financial risks associated with the operation of the utility, just as in the case of any private business, are to be borne by the investors in the enterprise, not the consumer of the service* (emphasis added)."

#### **D. Newfoundland Power's Submissions**

In the Application, the Consumer Advocate maintains the evidence filed by Hydro in support of the OIPDA is insufficient. This seems consistent with past determinations of the Board. The Application seeks to delay Hydro's 2017 GRA so that additional information concerning the OIPDA can be filed.

In response to the Application, Hydro has indicated that it cannot produce the additional information sought. In addition, Hydro asserts its right to have the 2017 GRA, as filed, proceed to hearing.

It is Newfoundland Power's submission 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;

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<sup>7</sup> The Board's powers to compel the production of information from Hydro are subject to certain limitations contained in the *Muskrat Falls Project Exemption Order*.

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.

**E. Concluding**

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.

We trust this is in order.

Yours very truly,



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