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November 4, 2019

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Via Electronic Mail and Courier

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

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

Dear Ms. Blundon:

Re: Rate Mitigation Reference Submissions of the Island Industrial Customer

Please find enclosed the original and twelve (12) copies of the Island Industrial Customer Submission on the Rate Mitigation Reference.

We trust the enlosed to be in order.

Yours truly,

Stewart McKelvey

Paul L. Coxworthy

PLC/tas

Enclosures
c: Geoffrey P. Young, Corporate Secretary and General Counsel, Newfoundland & Labrador Hydro
Dennis M. Brown, Q.C., Consumer Advocate
Kelly Hopkins, Newfoundland Power
Senwung Luk, Olthuis Kleer Townshend LLP
Dean A. Porter, Poole Althouse
Denis J. Fleming, Cox & Palmer

4145-0352-7961 v3

IN THE MATTER OF the September 5, 2018 Reference Questions to the Board of Commissioners of Public Utilities on Rate Mitigation Options and Impacts pursuant to section 5 of the *Electrical Power Control Act*, 1994 (the "Rate Mitigation Reference")

WRITTEN SUBMISSIONS OF THE ISLAND INDUSTRIAL CUSTOMER GROUP

These are the submissions of the Island Industrial Customer Group, Corner Brook Pulp and Paper Limited (CBPPL), NARL Refining Limited Partnership (NARL) and Vale Newfoundland and Labrador Limited (Vale), hereinafter referred to as the IIC Group, in relation to the Rate Mitigation Reference.

Introduction – Overview of the interests of the IIC Group as Hydro customers

Each member of the IIC Group is in the business of producing and selling commodities in very competitive international markets. They are substantial employers in, and substantial contributors to the overall economic welfare of, the communities and regions in which they are located, and in and of the Province as a whole.

Together the members of the IIC Group represent over 90% of industrial customer load on Hydro's Isolated Island System. The IIC Group have a forecast of 691 GW.h of firm electricity in 2019, comprising approximately 10% of the total firm energy delivered by Hydro to the Island Interconnected system.[1] The Hydro customers comprising the IIC Group operate with high load factors – they have relatively comparable levels of energy use throughout the year.[2]

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1 Pre-Filed Testimony of Patrick Bowman, InterGroup, September 20, 2019, page 4, lines 13-14.

2 *Ibid.*, page 4, lines 4-6.

Reasonable, predictable and market-competitive rates for electrical power, and reliable supply of that power, are all integrally important to the viability of IIC Group's respective industrial enterprises.

Unmitigated impact of Muskrat Falls Project (MFP)[3] Costs

The Provincial Government, in the September 5, 2018 Reference to the Board, has acknowledged that "*[w]ithout intervention, these projected rate increases would likely cause financial hardship for customers in <u>all rate classes</u> on the island portion*" of the Province.[4] (emphasis added).

In the absence of effective and timely rate mitigation of the impact of MFP costs, the Island Industrial Customers, together with the Island domestic customers, will be confronted with rate increases that can be rightfully described as "extraordinary by any measure".[5] Hydro has filed evidence, in the Cost of Service Review being concurrently conducted (but not yet concluded) before the Board, which indicates, in the absence of mitigation, an average rate increase for Island Industrial Customers from 5.22 cents/kW.h in 2019 to 12.44 cents/kW.h after the MFP is fully in service, an increase of 7.22 cents/kW.h or 138%.[6]

The factors influencing the financial viability of industrial enterprises on the Island of Newfoundland have many unique aspects, many arising from its geographically-challenging location. However, its having been, historically, a relatively low-to-moderate cost jurisdiction for

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[3] References to the MFP costs in these submissions should be understood to be inclusive of Labrador-Island Link (LIL) and Labrador Transmission Assets (LTA) costs which will also flow through to Hydro Island customer rates.

[4] September 5, 2018 "Reference Questions to the Board of Commissioners of Public Utilities Rate Mitigation Options and Impacts"

[5] October 3, 2019 Reference Hearing transcript, page 3, line 14.

[6] Pre-Filed Testimony of Patrick Bowman, page 5, lines 23-26; it is acknowledged that this percentage impact may be somewhat mitigated by the Cost of Service Review settlement, if approved by the Board, but only by an order of degree, and not by an order of magnitude.

electrical power should be understood as a positive factor in decisions to establish, maintain and continually invest in those industrial enterprises. The unmitigated rate increases projected will, in a very short time frame, vault industrial rates from the low-to-moderate range to amongst the highest in Canada.[7] Without having to invoke customer-specific examples, it is reasonable to have a high-index of concern about the future of the industrial sector of the Island if, along with the other high costs imposed by its geographic location, it is also to become a high cost electrical power jurisdiction.

The broad and steep impact of these projected rate increases is unprecedented in the history of electrical power regulation before this Board, and indeed appear to be unprecedented in recent North American experience. The only comparators which the Board's consultant Liberty Group (in Mr. Antonuk's hearing evidence) could invoke, of a similar degree of extremity in terms of impact on energy costs to customers, were the oil embargo price shocks and subsequent nuclear power costs "explosion" of the 1970s.[8] Mr. Antonuk noted that the ultimate response to these price shocks was disallowance of costs of what had become uneconomic generation and a more competitive energy market. The Board, under a regime established by the amendments to *Electrical Power Control Act*, 1994 ("EPCA") and the provincial Orders-in-Council, does not have recourse to the regulatory measure of disallowance of MFP costs. By the same regime, Hydro's customers do not have access to the potential benefits of competitive electrical energy; the purported legislative constraint on access to competitive sources of power is particularly severe for island industrial customers:

> ***Exclusive right to supply, transmit, distribute and sell***
>
> ***14.1** (1) Notwithstanding another provision of this Act or another Act,*

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[7] Reference Exhibit P.B. #1; October 17, 2019 Reference Hearing transcript, Evidence of P. Bowman, pages 105 – 106 and 106, lines 12-18.

[8] October 4, 2019 Reference Hearing transcript, page 128, lines 13-25.

> *(a) Newfoundland and Labrador Hydro shall have the exclusive right to supply, distribute and sell electrical power or energy to a retailer or an industrial customer in respect of the business or operations of that retailer or industrial customer on the island portion of the province; and*
>
> *(b) a retailer or an industrial customer shall purchase electrical power or energy exclusively from Newfoundland and Labrador Hydro in respect of the business or operations of that retailer or industrial customer on the island portion of the province.*
>
> *(2) Notwithstanding another provision of this Act or another Act, a retailer or an industrial customer shall not develop, own, operate, manage or control a facility for the generation and supply of electrical power or energy either for its own use or for supply directly or indirectly to or for the public or an entity on the island portion of the province.*[9]

These extraordinary circumstances call for extraordinary measures – measures which are only to a very limited extent within the control of Hydro's customers or within the jurisdiction of this Board, especially given the legislative constraints which have been imposed. It is respectfully submitted that the present Rate Mitigation Reference should not be allowed to deflect or minimize the responsibility of the Provincial Government to deliver effective and timely rate mitigation, given that the regulatory and competitive market mechanisms which might otherwise have achieved mitigation have been closed off by decisions made by the Provincial Government.

Least cost reliable service

In the view of the IIC Group, the overall analysis and ultimate results to be derived from the Reference should be guided by the overarching power policy of the Province set out in section 3 of the EPCA.

While the expression of the power policy in section 3 of the EPCA has several aspects, the IIC Group submit that the policy objective expressed by paragraph 3(b)(iii) is the one most central to this Rate Mitigation Reference:

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[9] EPCA, subsections 14.1 (1) and (2).

> *all sources and facilities for the production, transmission and distribution of power in the province should be managed and operated in a manner ....that would result in power being delivered to consumers in the province at the lowest possible cost consistent with reliable service...*

The IIC Group acknowledge that the Board's powers to oversee the implementation of this central power policy objective (which is abbreviated in these comments to "least cost reliable service") and of other aspects of the power policy mandated by section 3 of the EPCA, have been constrained by various directions, exemptions and statutory amendments by government over the years. Now is not the time to question the past advisability of or past necessity for such constraints. However, the IIC Group respectfully submit that it should be a primary objective of this Reference to identify where such constraints will, if left unmodified, be inimical to the central power policy objective of least cost reliable service.

Government's responsibility for rate mitigation

In the view of the IIC Group, serving the central policy objective of least cost reliable service calls for a focus on the ratepayers being the beneficiaries of rate mitigation measures. A corollary of this focus is that ratepayers should not, by the rates they pay or by acquiescence to unreliable service, be subsidizing or financing other objectives of the utility or of government.

Liberty has identified that utility costs and revenues, under the present MFP financing structure, will <u>not</u> be aligned with utility customer rates:

> "*What stands out is that Hydro customers must pay all of Nalcor's $12.7 billion in costs while receiving the benefits of only a portion of the energy produced with revenue from export sales excluded.*"[10]

Moreover, Liberty has observed the following with respect to Nalcor's expected equity return on MFP financing:

> ...*the rates for* [Hydro's] *customers include several returns that far exceed actual "costs" and will so many times over after commissioning of the MFP assets:*
>
> - *The payment that Hydro makes under agreements for purchases from and use of MFP assets include a substantial return (over $6 billion in the first 20 years of operation), more reflective of investor-owned utility costs; Hydro included these payments in its revenue requirements.*
> - *Nalcor will receive the "profits" expected to come from out-of-Province sales, with no rate offset to Hydro customers.*[11]

[underlining added]

The IIC Group submit that the imposition of these layers and levels of financial burdens on the ratepayers would be unprecedented in this Province, or in any other jurisdiction where utility costs are to be regulated in accordance with generally accepted sound public utility practice[12], and would be manifestly inimical to the central power policy objective of least cost reliable service. The IIC Group respectfully submit that government has a responsibility to take prompt and effective steps to remove or ameliorate these financial burdens before their impacts are visited upon the ratepayers.

The IIC Group respectfully submit that government's responsibilities in this regard have two aspects:

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[10] Liberty Phase One Final Report, page 4.

[11] Ibid., page 5.

[12] EPCA, section 4.

(a) In the immediate short term, identify, negotiate with counter-parties as necessary, and implement the financial measures necessary to effectively mitigate the rate increases that will otherwise immediately confront Hydro's customers upon MFP coming into full service;

(b) In the mid-term, to address the ongoing need for rate mitigation through to 2030 (and beyond), restore and reinforce the regulatory regime necessary for the control of overall electrical system costs, including MFP sustaining costs, and for the responsible and effective implementation of CDM and electrification measures that will serve and achieve, over the longer term, rate mitigation to all Hydro's customers.

The IIC Group take note that the Provincial Government announced on April 15, 2019 its "Plan to Protect Residents from the Costs Impacts of Muskrat Falls" (the "Government Plan"); the IIC Group trust that the Government Plan extends to protecting the Island Industrial Customers as rate payers which have been, by legislative fiat as discussed above, particularly exposed to those cost impacts. The Government Plan reflects the Provincial Government's and the Government of Canada's commitment to examine the MFP financial structure and to consider all options, including those identified in the Board's preliminary Reference report. The Board suspended its work on the analysis of options to mitigate rates that could arise from MFP financing in light of the announcement the Government Plan[13].

The IIC Group would respectfully submit that the Board's final report in response to the Reference Questions should clearly and emphatically recognize that the rate mitigation options that were left within the Board's purview to analyze in this Reference (following the announcement of the Government Plan) cannot, by themselves, come close to delivering

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[13] April 25, 2019 correspondence from the Board to the Minister

sufficient and timely rate mitigation, particularly in the short term, given the imminence of the extreme rate increases that will arise upon MFP coming into full service.

The problem is not a lack of thought or commitment, in this Reference process, to finding effective rate mitigation measures. The options that were left to be considered in the Reference can be broadly characterized as: the foregoing of government benefits and returns; electrification, control of future utilities' cost (facilitated and assured by utilities regulation); export revenues; and CDM (in descending order of potential promise to positively impact rate mitigation). In the time available for the Reference process, most of these options (electrification, facilitating export revenues, CDM) have only been able to be partially analysed and assessed, cannot be successfully implemented by governmental action alone, and are inherently uncertain in the timing and magnitude of rate mitigation they can achieve. At best, and only if permitted the time to be thought-through and implemented in a responsible manner, these highly contingent rate mitigation options will only have a significant positive rate mitigation impact <u>in the longer term</u>. This is, it is respectfully submitted, the clear-eyed, realistic, and responsible conclusion to which this Board should come to in its final report. There should be no doubt that the overwhelming immediate responsibility lies, and can only lie, with government to deliver sufficient and timely rate mitigation, most urgently in the short term, by the foregoing of government benefits and returns, by the restructuring of MFP financial arrangements and/or by such other financial measures available to government to achieve the necessary mitigation results.

Foregoing Government Benefits and Returns

Generally speaking, the IIC Group support the observations of the Liberty Group regarding the actions that could be taken by the Provincial Government to lower the MFP rate impact by reductions to Hydro's required return on equity and equity targets and by applying other energy-sector benefits to rate mitigation, such as Off-System Sales, Churchill Falls dividends and water rentals, and (most importantly) MFP dividends and water rentals.[14]

The IIC Group strongly urge that there should be a willingness to reconsider conventional or entrenched assumptions with respect to Hydro's return on equity and equity targets, given the extraordinary dilemma represented by MFP costs. The IIC Group acknowledge that the Provincial Government needs to balance questions relating to how the perceived "self-sustaining" status of Nalcor and Hydro could impact the Province's own financial standing, as against the need for rate mitigation. We would respectfully submit that the Board has an important role to play in bringing to Government's attention that utility equity parameters and equity realities vary significantly from Canadian jurisdiction to jurisdiction (particularly where there is a need to absorb the rate impacts of new substantial capital costs, as has been recently the case in Manitoba), and that cash flows to meet debt servicing obligations may be more important to credit ratings than short-term equity ratio changes.[15] Moreover, the Provincial Government would benefit from the Board's ongoing oversight and input in determining what is the correct balance between equity return and rate mitigation.[16] A reduction of Hydro's equity target to 20% or lower, in the shorter term and aimed at achieving rate mitigation (and preserving utility customer revenues and cash flows to service MFP debts), is a needed and responsible consideration for rate mitigation. It is submitted that the greater risk to Nalcor's, Hydro's and the Province's financial status is the erosion of Hydro revenue due to failed rate mitigation and consequent rate shock responses of ratepayers.

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[14] Pre-filed Evidence of P. Bowman, pp. 10-13 (Recommendation 1).

[15] Pre-filed Evidence of P. Bowman, pp. 13-17 (Recommendation 2); October 17, 2019 Reference Hearing Transcript, IIC Group Evidence (P. Bowman), pp. 15-20.

[16] October 17, 2019 Reference Hearing Transcript, IIC Group Evidence (P. Bowman), p. 88, line 18 to p. 93, line 8.

The IIC Group would also submit that the broadening of the Board's scope of regulation to MFP sustaining capital and O&M costs (as discussed in greater detail further below) would serve as supporting evidence of utility self-sufficiency and regulatory independence that would enhance credit confidence, and could serve as an offsetting factor to any erosion in credit confidence from lowered equity targets.[17]

Depreciation

The evidence of the IIC Group's expert discussed that consideration should be given to the adoption of non-straight-line depreciation methods in relation to MFP assets, given the heavily front-end loaded impact of straight-line methods.[18] The IIC Group acknowledge that the adoption of non-straight-line depreciation methods, and their application in such a manner as to achieve rate mitigation, will only be possible in the context of re-negotiation of the MFP financing arrangements. Liberty has acknowledged that if these arrangements are re-opened, depreciation methodology would be one of the issues that should be revisited to determine what rate mitigation outcomes could be achieved.[19]

Increased cost efficiency of utilities

The IIC Group agrees with the Liberty conclusion that transfers of assets or operating responsibilities between Hydro and Newfoundland Power would not be expected to yield sufficient benefits to outweigh the complexity, risks and costs of implementing such transfers.[20]

Liberty did identify apparently modest potential sources of mitigation in the functional integration of Nalcor's Power Supply division with Hydro.[21] Based on the evidence in the Reference

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17 Pre-filed Evidence of P. Bowman, pp. 16-17 (Recommendation 3).

18 Ibid., pp. 18-21 (Recommendation 7).

19 October 4, 2019 Reference Hearing transcript, page 9, lines 1-25 and page 10, line 1.

20 Pre-filed Evidence of P. Bowman, p. 17 (Recommendation 4)

hearing, the IIC Group accept that, at least until the MFP achieves "steady state" full in service, such functional integration could risk being unduly disruptive to achieving such steady state. This is not to say however that in the interim there should not be greater regulation by the Board over Power Supply even as a division of an otherwise unregulated Nalcor; the question of greater regulation is discussed in below in this Submission. In the longer term, post-achievement of "steady state" MFP full in-service and, if enabled, with the experience gained by interim Board regulation of Power Supply as a division of Nalcor, the IIC Group believe it would be appropriate to consider whether full functional integration of Power Supply and Hydro would be in the best interests of ratepayers.

The IIC Group note Liberty's relative brief commentary regarding careful examination of projected capital spending under Hydro's five year capital plan. The IIC Group are of the view that, until MFP achieves steady state full in-service, and until the question of whether further generation replacement or expansion may be needed to ensure reliability of power on the Island is addressed by other proceedings before this Board, it will be difficult to come to grips with what should be appropriate levels of Hydro sustaining capital expenditure, and what further processes may be needed to control those expenditures. In the interim, the existing capital budget and general rate application processes before the Board should continue to be applied with the appropriate rigour. The IIC Group do submit that Hydro should continue to be directed to pursue all opportunities for operating and capital cost savings and to report on the progress achieved in its next General Rate Application.

Electrification and CDM

The IIC Group generally support the assessment by Synapse of the potentially significant rate mitigation benefits that could be obtained by electrification. Certainly, based on the evidence in

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[21] Liberty Phase Two Final Report, pp. 5-6.

the Reference regarding the weak prospects for Off-Island Sales, the IIC Group agree that efforts should be focused on maintaining and growing overall electricity consumption on the Island. However, enthusiasm for electrification needs to be tempered by the following caveats:

(a) electrification programs need to be carefully tested, and incrementally introduced, to ensure that there is not overinvestment in initiatives which do not, in practice, achieve the ultimate program goals, which should always be focused on system-wide rate mitigation that benefits all ratepayer classes.[22]; and

(b) electrification programs need to be carefully designed and managed to prevent their driving new demand peaks (and the consequent result of increased system unreliability and/or the need for further capital investment for additional generation on the Island).[23]

It is not realistic, nor prudent, to implement a "crash" program of electrification, as a means of significantly contributing to near-term rate mitigation objectives.

Similarly, more analysis is required with respect to whether Conservation and Demand Management (CDM) could make a positive contribution to system-wide rate mitigation. As noted by IIC Group's expert, CDM pursued on its own gives rise to effects that are inconsistent with rate mitigation, and gives rise to "win-lose" scenarios, between ratepayers in a class and between ratepayer classes, which are problematic for fairness and rate design. Even scenarios considered by Synapse which attempt to model combination of CDM with electrification, give rise to the same "winners vs. losers" impacts, driving "bill reduction" for those customers who have been persuaded, and have the means, to buy into CDM initiatives, but not achieving overall system rate mitigation. CDM initiatives should be restricted to those that can be

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22 Pre-filed Evidence of P. Bowman, p. 24, lines 11-19 (Recommendation 9)

23 Pre-filed Evidence of P. Bowman, p. 24, lines 20-17 and p.25 (Recommendation 10)

demonstrated to reduce overall system rates, as compared to rate levels without such CDM initiatives, as determined by tests such as the "Rate Impact Measure" (RIM).[24]

Synapse's hearing evidence is indicative that its analysis to this point, even after a year of work, can only be considered to be directional[25], that "*diving down into the rate class and the thorny issues of how you implement policy to minimize inequities*" is the next step[26], and that we may have better information in a six to eighteen month time frame[27] to inform electrification, CDM and rate design decisions.

Industrial load

While not an "electrification" issue in the sense of creating new loads, it bears emphasizing that the premise behind electrification as a rate mitigation measure is that existing Island loads will be preserved, and that electrification will be able to build upon those existing loads. The IIC Group has already commented in this Submission on the concerns raised for the Island industrial sector should it become a high cost electrical power jurisdiction. Electrification and CDM measures whose costs and effects do not serve system-wide rate mitigation, and that would have the effect of shifting even more of the MFP cost burden onto the Island industrial ratepayer class relative to other ratepayer classes, may appear to be expedient in the short-term, but put at risk the economic viability of an Island industrial sector. Synapse suggests that measures to ensure stability of industrial rates, and promote industrial "load retention", should not be implemented unless "there is a demonstrated and verified risk that load would depart the system".[28] Synapse's view does not reflect the multi-factorial and time-sensitive nature of

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24 Pre-filed Evidence of P. Bowman, pp. 25-26 (Recommendations 8

25 October 7, 2019 Reference transcript, p. 125, lines 1 to 20..

26 October 7, 2019 Reference transcript, p. 141, lines 16-21

27 October 7, 2019 Reference transcript, p. 141, line 23 to p.143, line 24.

28 Synapse Phase Two Report, page 121.

economic decisions by industry which must compete, and react to changes, on a world stage; we would suggest that it is likely that the pernicious effects of the Island becoming a high industrial rate jurisdiction will not be able to be countered if government waits for a "demonstrated and verified risk" that industrial load will depart the system.

The IIC Group's expert has pointed out the invidious effect of pursuing Off-Island sales at a fraction of the price that will be charged to Island industrial customers.[29] The IIC Group's expert's presentation at the hearing noted that the Provincial Government itself has already identified a need for $35.5 million annually in added industrial load benefits as part of its rate mitigation strategy.[30] As with electrification and CDM, issues relating to rates, rate design and the competitiveness of the Island industrial sector require further study.[31]

Regulation to promote greater transparency and mitigation of MFP sustaining costs

The IIC Group are concerned that rate mitigation efforts may be at risk of being eroded by future MFP sustaining costs (sustaining capital expenditure) and O&M.[32] Under the MFP financial and related power purchase arrangements and by operation of the Provincial Government's direction to the Board by Orders-in-Council, the MFP sustaining costs are understood to be a flow-through to Hydro customer rates. However, these sustaining costs will be planned for, decided upon and incurred by Power Supply, an unregulated division of Nalcor.

There was no serious challenge in any of the Reference evidence to the well-recognized principle that electrical power customers who are served by a utility which holds a monopoly on electrical supply (a position held by Hydro, most markedly vis-à-vis the Island industrial

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[29] October 17, 2019 Reference Hearing Transcript, IIC Group Evidence (P. Bowman), p. 31.

[30] October 17, 2019 Reference Hearing, IIC Group Evidence, P. Bowman Presentation, Slide 5, and related P. Bowman Hearing evidence, p. 8, line 23 to p. 10, line 1.

[31] Pre-filed Evidence of P. Bowman, pp. 22-23 (Recommendation 11).

[32] Again, references to MFP (sustaining) costs should be understood to be inclusive of LIL and LTA sustaining costs.

customers for the reasons to discussed earlier in this Submission) should be protected by a utilities regulation, "if the customers are paying the cost" in the absence of competitive sources of supply that might otherwise serve to ensure reasonable rates. The case for avoiding regulation was focused on future, potential development of new generation (e.g. Gull Island), with the expectation that ratepayers would bear no risk for such developments (similar to the HQ Generation model)[33]. This is not a persuasive case for avoidance of regulation of MFP sustaining costs, where ratepayers bear the full risk of imprudent further expenditures.

The IIC Group concede that, short of re-negotiation of MFP financing arrangements, the introduction of Board regulation of MFP sustaining costs, at the level of disallowance of those costs if not prudently incurred, appears to be an avenue that has been blocked by previous decisions of the Provincial Government. However, Hydro's customers clearly have an interest in the necessary oversight being in place to ensure that MFP sustaining costs are prudently incurred. Indeed, one would think that the MFP bondholders, the Government of Canada as guarantor of a portion of the MFP debt, and the Government of Newfoundland and Labrador would also have the same self-interest in independent oversight, as the incurring of imprudent costs, with the expectation that Hydro's Island customers will be able to pay for them, is not economically sustainable. Hydro ratepayers, if they lose confidence in the sustainability of these financial arrangements, can and will "vote", by the economic choices they make, at the ballot box, and perhaps ultimately with their feet (outmigration). The overarching objective of the Provincial Government's efforts should be to restore and maintain ratepayer confidence.

The IIC Group would submit that, at minimum, there should be an assurance of transparency in the planning, deciding upon and incurring of MFP sustaining costs. The IIC Group do not

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[33] October 8, 2019 Reference transcript, Power Advisory (Mr. Dalton), p. 170, lines 8-14; see also p. 204, lines 11-25 and p. 205, lines 4-5; October 9, 2019 Reference transcript, Power Advisory (Mr. Dalton), p. 42; pp. 57-62; pp. 97-100.

question the integrity and good faith of the officers and employees of Nalcor in making decisions about MFP sustaining costs; however no credible authority subscribes to the notion that a monopoly utility (Crown owned or otherwise), wholly insulated from competition for its customers or without some other regulatory "back stop" such as the Hydro Quebec heritage pool of low cost energy, does not require any independent oversight.

Nalcor's and Hydro's Reference evidence indicates that Nalcor is willing[34] and able, by internal processes already in place or in contemplation,[35] to provide to the Board, at or near the level of detail of Hydro's capital budget applications, the information relating to planning and decisions for MFP sustaining costs. The IIC Group submit that the Board should recommend that the Provincial Government give the necessary direction to require Nalcor Power Supply, on an annual budgetary basis, to provide information on proposed MFP sustaining expenditures (including capital and O&M expenditures) to the Board, and to permit Board scrutiny of those proposed expenditures (by allowing the Board to ask questions of Power Supply and by requiring Power Supply to respond to those questions), all at a level at or approaching the level of justification and detail required of Hydro in its annual capital budget process. The Board should also be permitted to issue public reports, opining on the prudence of proposed MFP sustaining expenditures, even if it is not empowered to disallow them.

Award of Reference Costs - Distinct interests of the IIC Group

The IIC Group notes that the Board has previously identified the appropriate factors to be considered in making cost awards to the intervenors (albeit in the context of a Hydro GRA) in the finding expressed in P.U. 49 (2016) that the Board "*will make its determination on any claim*

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[34] October 8, 2019 Reference transcript, Nalcor/Hydro Evidence (Mr. Stan Marshall), p. 112, lines 2-15.

[35] October 8, 2019 Reference transcript, Nalcor/Hydro Evidence (Mr. Jim Haynes and Ms. Jennifer Williams), p. 221, line 15 to p. 229; October 11, 2019 Reference transcript, Nalcor/Hydro Evidence (Mr. Jim Meaney), p. 113, line 12 to p. 120, line 1 and p. 127, line 20 to p.129, line 10.

for costs based on the intervenor's contribution to this proceeding and the resulting impact on the Board's ability to discharge its legislative responsibilities in considering the Amended Application. The Board will also consider whether there was a distinct interest in the application proposals that justified the intervention and costs."

The IIC Group respectfully submit that, by its participation in the Reference and by this Submission, it has strived to play a constructive role and to bring balance to the considerations before the Board and the Provincial Government, in particular, by seeking to distinguish between the immediate responsibilities for government to achieve rate mitigation in the short to mid term, on the hand, and the possibilities for longer term mitigation measures, on the other, and by emphasizing that the objective should be the achievement of sustainable, reasonable rates to forestall load loss (and thereby sustain Hydro revenues at a reasonable level) rather than "bill reduction" measures which risk giving rise to "winners" and "losers" as between ratepayers.

The IIC Group respectfully submit that, based on the above relevant factors as identified by the Board, the IIC Group should be awarded costs, in respect of the participation of their counsel and expert in the Reference process and hearing.

Concluding comments

If, instead of timely and effective government action, the MFP costs burden is shifted onto the rate payers – by not sufficiently mitigating rates and by punishing rate payers for not "buying" into electrification and CDM aimed at "bill reduction" - this will likely prove to be a short-sighted, confidence-eroding and self-defeating "solution". In the longer term, the successful adoption of other rate mitigation measures is dependent on government action <u>first</u> restoring ratepayer confidence that they will only be required to pay, now and in the future, reasonable rates.

Having said this, the IIC Group do think it is a worthwhile endeavour to complete the analysis and, where conducive to rate mitigation, facilitation of electrification, utilities cost control, Off-Island sales and CDM. The IIC Group also strongly urge the Provincial Government to affirm, and where necessary extend or restore, the jurisdiction of this Board to ensure independent review and oversight and responsible implementation of these longer-term rate mitigation measures.

The IIC Group also strongly urges the Provincial Government empower the Board to exercise an independent oversight role in respect of MFP sustaining costs, even if prevented, by previous government decisions, from extending that oversight role to disallowance of those costs. The IIC Group submit that such independent oversight would promote transparency and contribute to the restoration and maintenance of ratepayer confidence in the long term sustainability of the Province's electric power supply regime.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY THE ISLAND INDUSTRIAL CUSTOMER GROUP.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 4th day of November, 2019.

POOL ALTHOUSE

Per: ______________________

Dean A. Porter

STEWART MCKELVEY

Per: ______________________

Paul L. Coxworthy

COX & PALMER

Per: ______________________

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