

January 26, 2010

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

Attention: Cheryl Blundon, Director – Corporate Services and Board Secretary

Dear Ms. Blundon:

Re: Application by Nalcor Energy pursuant to Section 5.5(1) of the Electrical Power Control Act Conseil des Innus de Ekuanitshit claim in relation to costs

This letter responds to your letter of January 25, 2010 regarding the claim by the Conseil des Innus de Ekuanitshit in relation to costs.

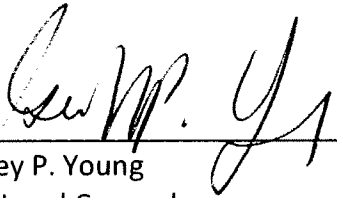
Nalcor makes the following submissions in relation to this matter:

1. The Board's jurisdiction with respect to costs is found in Section 90, and specifically Subsection 90(1), of the *Public Utilities Act*. Section 90 does not specifically permit the Board to award costs to an Intervenor in advance. See for example Order PU8 (2001-2002).
2. In any event, it has not been the Board's practice to award costs of proceedings before it to an Intervenor in advance. It has been the Board's practice to determine whether interventions have provided assistance to the Board in its decision making process prior to making any award of costs in favour of an Intervenor.
3. The case of *British Columbia (Minister of Forests) v. Okanagan Indian Band*, [2003] 3 S.C.R. 371, referred to in the correspondence from the Intervenor relates to an award of costs by a court, not a statutorily based regulatory board. The award of costs in advance by a court is an exceptional power, not to be lightly exercised.
4. The Conseil des Innus de Ekuanitshit have not provided any factual basis or evidence to demonstrate that any alleged land or resource usage by them will be adversely affected by the terms and conditions or the implementation of the proposed Water Management Agreement, in distinction from the development of the Lower Churchill Project itself. The parameters with respect to reservoir levels, water flows and similar

matters will be determined as a result of the environmental assessment process. Water management, on an hourly basis, will operate within the parameters established for the Lower Churchill Project through the environmental assessment process.

5. The Corporation Nishipiminan (Ekuanitshit) received \$55,850.25 under the Aboriginal Funding Envelope of the Participant Funding Program established under the *Environmental Assessment Act* which enables the Conseil des Innus de Ekuanitshit to participate in the environmental assessment process. Nalcor believes that the environmental assessment process is the appropriate forum to deal with consultation issues relating to the development of the Lower Churchill Project and aboriginal land or resource usage.

Sincerely,



Geoffrey P. Young
Senior Legal Counsel

- cc. Peter Hickman and Jamie Smith, Q.C., Counsel for Churchill Falls (Labrador) Corporation
Dan Simmons, Legal Counsel for Public Utilities Board
Jim Haynes, President, Twin Falls Power Corporation
David Schulze, DIONNE SCHULZE, Counsel for Innu of Ekuanitshit (Mingan)
Gary Carot, O'Reilly & Associates, Counsel for Innu of Uashat Mak Mani-Utenam et al



NEWFOUNDLAND AND LABRADOR

AN ORDER OF THE BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

NO. ...

P.U. 8 (2001-2002)

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

IN THE MATTER OF an Application by Newfoundland and Labrador Hydro (“Hydro”) for approvals of: (1) Under Section 70 of the Act, changes in the rates to be charged for the supply of power and energy to its Retail Customer, Newfoundland Power, its Rural Customers and its Industrial Customers; (2) Under Section 71 of the Act, its Rules and Regulations applicable to the supply of electricity to its Rural Customers; (3) Under Section 71 of the Act, the contracts setting out the terms and conditions applicable to the supply of electricity to its Industrial Customers; and (4) Under Section 41 of the Act, its 2002 Capital Budget.

WHEREAS Hydro filed an application with the Public Utilities Board (the “Board”) dated May 31, 2001 for an Order or Orders of the Board approving, among other things, the proposed rates for the various customers of Hydro, commencing January 1, 2002 as set out in the application; and

WHEREAS the Board has moved to hold a public hearing into the above application of Hydro and published a Notice of a pre-hearing conference; and

WHEREAS after publishing notice of a pre-hearing conference, the Board received notices of intervention from the Island Industrial Customers as a group representing Abitibi Consolidated Inc, Stephenville and Grand Falls Divisions, Corner Brook Pulp and Paper Company Limited and North

Atlantic Refining Limited; and

WHEREAS as part of the Notice of Intervention filed, the Island Industrial Customers applied for an Order of the Board pursuant to Section 90(1) of the Act that at the conclusion of the hearing they be entitled to have their costs of and incidental to the rate application taxed; and

WHEREAS the Island Industrial Customers further submitted that in the interest of fairness they should be entitled to know, in advance, that they will be able to recover their taxed costs of participation in the hearing; and

WHEREAS Newfoundland Power Inc. and Hydro both filed a reply to the motion of the Island Industrial Customers; and

WHEREAS at the Motions Hearing on July 18, 2001, the Board heard representations from the Island Industrial Customers as well as Newfoundland Power, Hydro and the Consumer Advocate on the motion; and

WHEREAS Section 90(1) of the Act does not specifically permit the Board to deal with the issue of costs prior to the hearing.

IT IS THEREFORE ORDERED THAT:

In accordance with Section 90(1) of the Act, the Board will consider the issue of costs for the Island Industrial Customers and other intervenors at the conclusion of the hearing.

DATED at St. John's, Newfoundland, this 20th day of July, 2001.

.....
Robert Noseworthy,
Chair & Chief Executive Officer.

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

G. Fred Saunders,
Commissioner.

Don R. Powell, C.A.,
Commissioner.

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

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