

November 21, 2013

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 – Application for Approval of the Rate Stabilization Plan Rules and Refunds to Newfoundland Power and Hydro Rural Customers (the Refund Application)

The Board in its letter of November 14, 2013 requested submissions from Newfoundland and Labrador Hydro, Newfoundland Power Inc. and the Consumer Advocate as to whether Hydro's Refund Application "*should proceed separately or as an issue within the GRA.*" The Consumer Advocate also has received Newfoundland Power's letter of November 6 and 19, 2013. These are the Consumer Advocate's comments in relation to the Board's inquiry.

When Newfoundland and Labrador Hydro filed its General Rate Application on 31 July, 2013 Hydro stated in its cover letter that "*During its GRA process, Hydro will file with the Board an RSP surplus refund plan which will recommend a methodology to be used in refunding the amount of Newfoundland Power's RSP surplus.*" On October 31, 2013 Hydro filed its Refund Application as well as Evidence on Rate Stabilization Plan Surplus Refund Plan.

The Consumer Advocate and his expert consultant, Mr. Douglas Bowman, conferred with Hydro in relation to the proposals contained in Hydro's Refund Application and, as stated at page 2 of the Evidence, are in agreement with the proposals it contains.

With the exception of the Consumer Advocate and Newfoundland Power, no other parties to Hydro's General Rate Application (GRA) wishes to participate in the Refund Application. Newfoundland Power's letter of participation of 6 November, 2013 states that, in order to facilitate the preparation of evidence in relation to Hydro's proposed refund plan, it intends to submit

Requests for Information for response by Hydro. Newfoundland Power states that it anticipates that proper interrogation of the matters in issue will require two rounds of Requests for Information.

It will remain for the Board to determine its own process for the due consideration and treatment of Hydro's Refund Application within the context of the General Rate Application.

Hydro's Refund Application was filed as part of its General Rate Application process. This is consistent with the mandate in OC 2013-089 which provides: *"6) Newfoundland and Labrador Hydro's General Rate Application process shall include a Rate Stabilization Plan surplus refund plan to ratepayers. The refund plan shall comprise direct payments or rebates to ratepayers and shall not be in the form of an electricity rate adjustment. This refund plan will exclude Island industrial customers who will receive Rate Stabilization Plan surplus funds through the three year phase – in of new rates. The Board of Commissioners of Public Utilities shall make the final determination on the details of the refund to remaining ratepayers."*

That Hydro's GRA process shall include a Rate Stabilization Plan surplus refund plan to ratepayers is not to be taken as mandating a particular manner of proceeding with the consideration of the surplus refund plan within the GRA process. The Board has ultimate control over the process and scheduling for matters that come before it, including this present General Rate Application. Should the Board as the master of its process determine that an issue or issues may be appropriately and justly dealt with other than through the GRA's established interrogation, evidence filing and hearing process, it may make an order accordingly.

With respect, Newfoundland Power's position in its November 19, 2013 letter (insofar as it espouses that the Board cannot deal with the refund plan other than within the GRA's established interrogation, evidence filing and hearing process) appears to be borne out of a narrow view of the Board's jurisdiction. The directive in OC 2013-089 should be interpreted in accordance with the principles applicable to the interpretation of statutes. Section 16 of the *Interpretation Act*, RSNL 1990 c I-19 states:

16. Every Act and every regulation and every provision of an Act or regulation shall be considered remedial and shall receive the liberal construction and interpretation that best ensures the attainment of the Act, regulation, or provision according to its true meaning.

Newfoundland Power's approach to the directive's meaning is one that subtracts from the Board's prerogative to control its own process, including the subject GRA's process and fetters the Board's ability to ensure an efficient regulatory process.

There being no impediment to the Board's ability to determine its own process for this GRA including the refund proposal, we turn to the reasons for the Board to consider the refund proposal outside of the established interrogation and hearing process set down for the GRA.

The directive in OC 2013-089 mandates that there be a refund plan comprised of direct payments as relates to ratepayers. The refund plan is not to be in the form of an electricity rate adjustment. If the directive had left open to the Board the possibility of ordering a refund plan by way of an electricity rate adjustment then considering the refund plan in the context of the rest of the issues in the GRA hearing, including Hydro's future electricity rates, would indeed provide a context for consideration of the appropriate disposition of the RSP surplus. However, given that direct payments or rebates to customers is the only option left open by the directive, it is difficult to sustain the notion put forward by Newfoundland Power that Hydro's future electricity rates provides "essential context" for consideration of the disposition of the surplus.

This issue is a fairly discrete issue which need not be introduced into the ongoing process of this GRA which already has its scheduling challenges. The Consumer Advocate is concerned with the impact that introducing the matter into the ongoing process of this GRA would have on the timing of any refund to customers. The Application of Hydro proposes that the RSP surplus be refunded to customers on their April 2014 electricity bills based on consumption on bills issued during the period January 2013 to December 2013. According to the recently distributed proposed revised schedule the GRA hearing will not commence until March 11, 2014. Given the wide range and number of issues in the GRA, it is obvious that given the time necessary for the hearing to be conducted, for submissions to be made and for the Board to deliberate and issue an order, an April 2014 refund will be impossible. This would mean, for instance, that heating customers would not get the benefit of the refund monies in a manner that would assist with their winter heating costs.

This would constitute more delay in the context of an issue that already has taken a number of years to this point. Now that it is clear that an amount of approximately \$112.6 million is to be refunded to customers, it is respectfully submitted that the refund should proceed as quickly as possible and should not be delayed by introducing this rather discrete issue (which several parties have expressed no interest in) into the main GRA proceeding.

From the standpoint of regulatory cost and efficiency, in the circumstances, dealing with this issue in the main GRA proceeding with all parties present can foreseeably lead to elongating the hearing and adding cost for all concerned.

We trust the foregoing is found to be in order. A copy of this correspondence has been sent only to those parties that have expressed an intention to participate in the Application.

Yours very truly,

O'DEA, EARLE



THOMAS JOHNSON

TJ/cel



cc: Newfoundland Power Inc.
Attention: Mr. Gerard Hayes

Newfoundland and Labrador Hydro
Attention: Mr. Geoffrey Young