

March 7, 2014

Ms. G. Cheryl Blundon  
Board of Commissioners of Public Utilities  
120 Torbay Road, P.O. Box 12040  
St. John's, NL A1A 5B2

Dear Ms. Blundon:

**Re: Newfoundland and Labrador Hydro – Application for Approval of the Rate Stabilization Plan Rules and Refunds to Newfoundland Power and Hydro Rural Customers**

This submission is in reply to the Board's correspondence of February 27, 2014.

The Board's correspondence requested the parties to address Hydro's proposals that:

- i) the Newfoundland Power Rate Stabilization Plan Surplus refund be apportioned to Newfoundland Power and to Hydro's Rural customers whose rates are based on the rates charged by Newfoundland Power;
- ii) Hydro's Rural Customers, whose rates are based on the rates charged by Newfoundland Power receive a similar refund to Newfoundland Power's customers; and
- iii) the refund to Hydro's Rural customers be funded from a portion of the Newfoundland Power Rate Stabilization Plan surplus.

The Consumer Advocate will address these proposals in turn:

- i) **That the Newfoundland Power Rate Stabilization Plan surplus be apportioned to Newfoundland Power and to Hydro's Rural customers whose rates are based on the rates charged by Newfoundland Power.**

As referenced in Hydro's October 31, 2013 Evidence on Rate Stabilization Surplus Refund Plan, the Consumer Advocate and his expert consultant, Douglas Bowman, conferred with Hydro in the preparation of the evidence and we agreed with the proposals made therein.

Amongst those proposals was that the Newfoundland Power Rate Stabilization Plan Surplus refund be paid to Newfoundland Power and to those Hydro Rural Customers whose rates are based on the rates charged by Newfoundland Power. Hydro's evidence at p. 13 indicates that it has approximately 37,600 Rural residential and general service customers in the province of Newfoundland and Labrador as follows:

	<u>Number of Customers</u>
<i>Island Interconnected</i>	22,700
<i>Island Isolated Systems</i>	800
<i>L'Anse aux Loup Systems</i>	2,600
<i>Labrador Interconnected System</i>	10,500

As Hydro states in its evidence, customers on the Labrador Interconnected System and government customers on the Isolated systems pay rates which are based on the cost of service and thus are not impacted by changes in Newfoundland Power rates. However, all other Rural customers' electricity rates are based on rates charged by Newfoundland Power to its customers, in accordance with Government direction as reflected in section 16 of Hydro's Rules and Regulations. (Hydro Evidence, p. 13-14)

In assessing this proposal, it is submitted that the assessment must take cognizance of the fact that the monies that are in issue are monies that accumulated over several years in a deferral account – the Rate Stabilization Plan – owing to the load variation component. As stated in Hydro's evidence (p. 7), under the current rules of the RSP the amount that was transferred to the credit of Newfoundland Power's Rate Stabilization Plan would normally form part of the RSP balance used to calculate the RSP adjustment rate which would be applied to energy consumption for the period from July 1, 2014 until June 30, 2015. Had the normal operation of the RSP proceeded, certain of Hydro's Rural customers would have had their rates favourably impacted. Indeed, had the fuel savings resulting from a reduction in IC load been passed on to Newfoundland Power customers over the past number of years through the RSP, as would normally be the case, Newfoundland Power customers' rates would have been lower as a result of the July 1 RSP rate adjustment each year. In turn, owing to the section 16 policy, "Policies for Automatic Rate Changes", reduced rates for Newfoundland Power customers would have resulted in lower rates for certain Rural customers. On the flip side, Hydro's Rural customers had their rates unfavourably impacted by reason of the recovery of a large RSP balance over the period from July 1, 2003 to June 30, 2008.

As a matter of principle, the Consumer Advocate submits that the question of what customers should benefit from the monies in the deferral account in question should not have a different answer depending solely upon whether the refund plan takes the form of direct payments (or rebates) or whether the refund plan is in the form of an electricity rate adjustment. This would be to elevate form over substance.

Government in enacting OC 2013-089 is deemed to be fully aware of the fact that rate changes impacting Newfoundland Power's customers also impact certain of Hydro's Rural customers. Government would be aware in enacting OC 2013-089 that Hydro's Island Interconnected customers pay the same rates as Newfoundland Power's customers. In keeping with that knowledge, OC 2013-089 in paragraph 6 directed Hydro to include a Rate Stabilization Plan surplus refund plan "to ratepayers". The refund plan shall comprise direct payments "to ratepayers". The OC directs that the refund plan "will exclude Island Industrial customers". Note that the reference is made to "ratepayers" – not to a particular group or class of ratepayers. The only group excluded are the Island Industrial customers. Notable as well is the final sentence in para. 6, "The Board of Commissions of Public Utilities shall make the final determination on the details to remaining ratepayers". The term "remaining ratepayers" evidences the fact that there is no intent to limit the refund to a particular group or class of ratepayers. The term "remaining ratepayers" clearly encompasses more customers than just customers of Newfoundland Power.



Having excluded only the Island Industrial customers for consideration for the refund, it would simply not make sense to use the term “remaining ratepayers” if the intent was to exclusively benefit Newfoundland Power’s customers. Notable also is the use of the phrase “in the form of” – “The refund plan shall comprise direct payments or rebates to ratepayers and shall not be “in the form of” an electricity rate adjustment”. These words display an understanding that a refund can take two “forms” – 1) it can be “in the form of” a direct payment/rebate, or 2) it can be “in the form of” a rate adjustment.

These are two routes to the same goal – namely, to provide a refund of the RSP surplus. The Consumer Advocate agrees with Hydro’s reply in SR-PUB-NLH-001 that the intent of the directive is to give a refund to those customers who normally receive RSP-related rate changes. As put by Hydro:

*Paragraph 7 of OC2013-089 indicates the manner by which the Newfoundland Power Rate Stabilization Plan surplus is to be distributed; the right to receive it is set in paragraph 6. That right extends to the “ratepayers” and Hydro submits that the intent of the directive is that this would flow to those customers who normally receive RSP related rate changes. In this connection, Hydro notes that the Island Industrial Customers have been specifically excluded from the class of customers who receive the refund. It should be inferred that all other normally eligible ratepayers should receive the refund.*

*While OC2013-089 is silent about the manner of distributing the surplus to Hydro’s Island Interconnected and Rural Customers, paragraph 6 provides direction to the Board to make the final determination as to “details of the refunds to the remaining customers”. Hydro submits that, for consistency, the Board ought to follow the same method of distribution for Hydro’s Rural Customers as applies to Newfoundland Power’s customers in paragraph 7 of the directive.*

To ascribe to the directive an intention that only Newfoundland Power’s customers benefit from the refund would be to accept that Government’s intention was to create a vastly different outcome by the form of the refund directed. This interpretation favours form over substance and would not be in keeping with the manner in which the RSP has operated in the past, including how a large balance in the RSP was collected from 2003 to 2008. Whether one was a Newfoundland Power customer in Cowan Heights or a Hydro customer in Cow Head, the rates reflected the collection of the monies owed by customers to Hydro for oil burned at Holyrood.

As noted above, the Consumer Advocate agrees with Hydro that the right to receive the refund extends to the ratepayers who normally receive RSP related rate changes, which would include certain Rural customers. The revenues derived from the rates these Rural customers pay is well below the costs to provide electricity to these customers, resulting in a rural deficit which is, as a matter of provincial government policy, funded by the rates of other customers, namely customers of Newfoundland Power Inc. and by Hydro’s Labrador Interconnected system customers. The Consumer Advocate submits that the OC did not exclude from the refund those customers whose rates are subsidized. Nor are these customers excluded from the effect of rate decreases that Newfoundland Power customers receive, despite the fact that their rates are subsidized and do not recover the cost of providing their electric service.

Newfoundland Power has argued that Hydro’s Rural customers, whose rates do not recover their full cost of service, should not receive a portion of the Newfoundland Power RSP Surplus. The level of subsidy that a customer in Cowan Heights or Corner Brook effectively provides to a

customer in Cow Head or Cartwright is of concern to the Consumer Advocate, as it rightfully is to Newfoundland Power. However, the subsidy has been in place for many years and was well known to government when it enacted OC2013-089. That OC, in the respectful view of the Consumer Advocate, does not leave it open to the Board to deny a refund to those customers who normally receive RSP related rate changes.

- (ii) **That Hydro's Rural customers, whose rates are based on the rates charged by Newfoundland Power receive a similar refund to Newfoundland Power's customers.**

Hydro is proposing that the Board approve a refund to Newfoundland Power's customers and all rural customers whose rates are based on Newfoundland Power rates, based on customers' total energy consumption on bills issued during the period January 2013 to December 2013. [SR-NP-NLH-008]

Hydro has stated (see SR-NP-NLH-053) that its recommended Proactive Approach which results in an equal ¢ per kWh refund amount for each Newfoundland Power and Hydro Rural customer is an inherently fair allocation methodology and also has the additional desirable attributes of simplicity and understandability.

The Consumer Advocate concurs with the assessment.

- (iii) **That the refund to Hydro's Rural customers be funded from a portion of the Newfoundland Power Rate Stabilization Plan surplus.**

On account of the fact that the refund is to be in the form of a direct payment or rebate as opposed to an electricity rate adjustment, the Consumer Advocate supports Hydro's recommendation to estimate the amount required to cover the Rural RSP refund and to set it aside from the Newfoundland Power RSP surplus. Then the reduced RSP surplus amount would be refunded to Newfoundland Power customers and the estimated amount that is set aside would cover the Rural RSP refund.

We trust that the foregoing is found to be in order.

Yours very truly,

  
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