

March 11, 2014

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

**ATTENTION: Ms. Cheryl Blundon**  
**Director of Corporate Services & Board Secretary**

Dear Ms. Blundon:

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

The following is Hydro's submission in response to the Board's correspondence of February 28, 2014 and it is in reply to the submissions of the Consumer Advocate and of Newfoundland Power, both dated March 7, 2014.

### **The Order in Council**

The issue at hand is whether the RSP Refund should apply to both Newfoundland Power's customers and Hydro's Rural Customers.<sup>1</sup> This issue is dependent upon the correct interpretation of Order in Council 2013-089, as amended. This directive was made under the authority of the *Electrical Power Control Act, 1994* and, as such, it forms a power policy and ratemaking directive that gives guidance to the Board.

There are a number of elements of this directive which are important to consider in establishing the appropriate treatment of the RSP Refund amongst utility customers. The relevant provisions are (shown here as amended and with emphasis added):

2) On August 31, 2013 the Island industrial customers' Rate Stabilization Plan will be credited with \$49 million, the estimated Rate Stabilization Plan amount required to phase-in industrial customer rates, based on Newfoundland and

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<sup>1</sup> Elsewhere throughout this submission, reference will be made to Hydro's Rural Island Interconnected customers. This reference is intended to include that group of customers as well as those whose rates are, at least in part, based upon the Newfoundland Power rate structure.

Labrador Hydro's General Rate Application. The remaining balance in the Rate Stabilization Plan Surplus on August 31, 2013, will be transferred **to the credit of Newfoundland Power's Rate Stabilization Plan**. No future adjustments will be made to these amounts credited. Effective September 1, 2013 all Island industrial customers, with the exception of Teck Resources, will be subject to the same standard industrial rate, equivalent to the existing base rate but excluding the Rate Stabilization Plan adjustment currently in place;

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;**

7) Newfoundland Power's portion of the Rate Stabilization Plan Surplus shall be distributed as a direct payment or rebate to its ratepayers and shall not be in the form of an electricity rate adjustment; and

Also relevant are the opening or introductory words used in the Board approved RSP Rules.

The Rate Stabilization Plan of Newfoundland and Labrador Hydro (Hydro) is established for Hydro's Utility customer, Newfoundland Power, and Island Industrial customers to smooth rate impacts for variations between actual results and Test Year Cost of Service estimates...

### **Structure of the Order in Council**

The Order in Council can be said to contain two distinct steps that are to be applied to make refund payments to customers. Paragraph 2 of the Order (the first step) divides the RSP surplus amount so as to determine the amounts of **entitlement** amongst two components of the RSP (Industrial and Newfoundland Power).

Once the RSP surplus is divided, paragraphs 6 and 7 of the Order (the second step) focuses on the rebates to customers other than the Industrial Customers; that is, these paragraphs address the **method of disposition** of the amount credited to the "Newfoundland Power Rate Stabilization Plan"<sup>2</sup> amongst "the remaining ratepayers". Under paragraph 6, Hydro is directed to file a refund plan that

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<sup>2</sup> Hydro submits that there has never been a circumstance where an RSP balance has been factored into a rate change which did not affect Hydro's Rural Island Interconnected ratepayers.

provides direct payments or rebates to ratepayers as opposed to an electricity rate adjustment but the details by which this second step occurs is subject to the Board's discretion.

Paragraph 7 restricts the Board's discretion with respect to the **method of disposition** of funds to Newfoundland Power's customers but this disposition occurs solely within the second step of the process and it directs the Board as to the Order it should make with respect to Newfoundland Power's customers; it does not narrow the class of "the remaining ratepayers" or negate Hydro's Rural Island Interconnected customers' **entitlement** to a refund. The **entitlement** determination has already been made in the prior step between the Industrial Customers and "the remaining ratepayers". Paragraph 7 of the Order is needed because there are two public utilities involved and Orders will be required as to each of them. The Board is being directed as to the Order that will be binding on Newfoundland Power with respect to its customers.

#### **Meaning of "Newfoundland Power's Rate Stabilization Plan"**

There is no specific mention of Hydro's Rural Customers in the above-noted segment of the RSP Rules that introduces the groups to which the Rules apply, however, it has been the approved practice of the Board to apply Newfoundland Power's rates to Hydro's Rural Island Interconnected customers.<sup>3</sup> In addition, the RSP Rules include specific provisions with regard to manner by which certain RSP calculations and allocations are to be performed.<sup>4</sup> The reference in paragraph (2) of OC2013-089 to "the credit of Newfoundland Power's Rate Stabilization Plan" should not be misconstrued as a directive to the Board that pertains to customers of Newfoundland Power only. Rather, it refers to the non-industrial customer aspect of the Rate Stabilization Plan in a manner that is consistent with the normal processes of rate changes that flow from the RSP.

In response to the point raised in Newfoundland Power's submission as to using the ordinary and grammatical meaning, it should be noted that applying this principle does not require that all sources of context be ignored. In the context of the RSP, the Newfoundland Power RSP is a term of general reference to that component of the RSP that affects equally Newfoundland Power's customers' rates and Hydro's Rural Island Interconnected customers' rates because Hydro's Rural Island

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<sup>3</sup> Subparagraph Section 16(a)(i) of Hydro's approved Rules and Regulations of Service provides:

(i) As Newfoundland Power changes its rates, Hydro will automatically adjust all rates such that these customers pay the same rates as Newfoundland Power customers.

<sup>4</sup> For example, Sections A4 and B2 set out the manner by which the hydraulic variation and the fuel price variation, respectively, are allocated. These sections specifically prescribe the manner in which Hydro's Rural Island Interconnected customers are allocated costs based upon their share in island Interconnected energy consumption. This is logically required because Hydro's Rural Island Interconnected customers share in the causality of fuel costs alongside Industrial and Newfoundland Power customers.

Interconnected customers pay the same rates as Newfoundland Power's customers. This means that transferring an amount to the "credit of Newfoundland Power's Rate Stabilization Plan" as per paragraph 2 of the Order in Council does not instruct the Board as to a different allocation of the RSP surplus between Newfoundland Power's customers and Hydro's customers. The process by which those customers pay the same rates is long standing and is established under section 16 of Hydro's approved Rules and Regulations of Service.

In this respect, Hydro would submit that section 16 of the *Interpretation Act*<sup>5</sup> gives important guidance as to the propriety of considering context and purpose in reaching conclusions about matters of interpretation.

**Rule of construction**

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 objects of the Act, regulation, or provision according to its true meaning.

In the present matter of interpreting the Order in Council as to the RSP, care should be taken to guard against using an ordinary grammatical meaning of a term where doing so is proposed in substitution of a specific regulatory usage of that term. In particular, ignoring the history, the application of regulatory policies and principles and the ratemaking context of the RSP, and of the Island Interconnected System, will not be conducive to attaining the Order's objects and true meaning. Advancing a narrow interpretation of the Order in Council which disentitles Hydro Rural Island Interconnected customers from a portion of the RSP surplus, as is proposed by Newfoundland Power, cannot be reconciled with regulatory practices and terminology consistently applied with regard to the RSP.

Hydro submits that Newfoundland Power's proposed outcome, which would effect a substantive change from the normal disposition of positive balances in the RSP to Hydro's Rural Island Interconnected customers, would require very clear language in the Order in Council that signals such an intention. In particular, if it were the intention that the Order in Council was to direct the Board to make a refund plan that gave amounts to Industrial Customers and Newfoundland Power customers only, that intention could have been easily expressed by substituting "Newfoundland

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<sup>5</sup> RSNL1990 CHAPTER I-19

Power's customers" for "ratepayers" and "remaining ratepayers" where they appear in paragraph 6 of the Order in Council. Hydro submits that no such intention can be shown.

The issue of the method of disposition of the RSP surplus is dealt with primarily in paragraph 6 of the Order in Council. Only two groups of customers are referred to there as entitled to receive portions of the RSP surplus: Island industrial customers and remaining ratepayers. Hydro submits that these words in the Order in Council are not imprecise, incorrect nor ambiguous; on the contrary, they were carefully chosen and their meaning and effect are clear. Where the Order in Council addresses the manner by which the Board is to make refunds with respect to the customers affected by the RSP surplus funds disposition, that authority and discretion is given to the Board with respect to the "remaining ratepayers". By so doing, it is made clear which customers the Board is authorized to consider for refunds—they are Newfoundland Power's customers and Hydro's Rural Island Interconnected customers—that is, all of that other group of customers besides the Industrial Customers that are involved in and affected by the RSP surplus.

#### **Origin of the RSP Surplus**

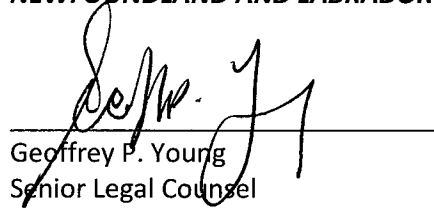
Hydro submits Newfoundland Power's proposition, that the ordinary and grammatical meaning of the Order in Council is that the amount credited to Newfoundland Power be distributed to only Newfoundland Power's ratepayers, is flawed because it cannot be reconciled with the context of the Order in Council which is the nature of the RSP.

The derivation of the RSP surplus, how it arose in the first place, must be considered. The rates paid by Newfoundland Power's customers and Hydro's Island Interconnected customers are the same. If the recognition of a surplus can be said to be an acknowledgment that customers have overpaid based upon the fuel-related component of their rates, then it must be recognized that this is just as true of Hydro's Rural Island Interconnected customers as it is for Newfoundland Power's customers. Whatever might be said of differences between revenue to cost ratio differences for Newfoundland Power's customers vs. Hydro's Rural Island Interconnected customers arising from other causes, there is no evidence or argument available that the difference has anything to do with a difference in the amount of Holyrood fuel costs incurred to serve them. Through the Board's rates policies, rate changes arising from the RSP are always administered such that there is no distinction between amounts paid to Newfoundland Power's customers and Hydro's Rural Island Interconnected customers.

All of which is respectfully submitted.

Yours truly,

**NEWFOUNDLAND AND LABRADOR HYDRO**



Geoffrey P. Young  
Senior Legal Counsel

GPY/jc

cc: Gerard Hayes – Newfoundland Power

Thomas Johnson – Consumer Advocate