NEWFOUNDLAND POWER
A FORTIS COMPANY

Newfoundland Power Inc.

55 Kenmount Road
P.O. Box 8910
St. John's, NL A1B 3P6
Business: (709) 737-5600
Facsimile: (709) 737-2974
www.newfoundlandpower.com

DELIVERED BY HAND

February 24, 2014

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: An Application by Newfoundland and Labrador Hydro pursuant to Sections 70 (1) and 76 of the Act for approval of the Rate Stabilization Plan rules and refunds to Newfoundland Power and Hydro Rural Customers (the "Application")

A. Enclosures

Please find enclosed the original and eight copies of:

1. Evidence of Newfoundland Power with respect to the Application (the "Newfoundland Power Evidence"); and

2. Expert evidence of Mr. Larry Brockman of Brockman Consulting (the "Brockman Evidence").

The enclosures are intended to provide the Board with additional evidence to assist it in considering Hydro's proposal for refunding the Newfoundland Power RSP Surplus (the "Hydro Refund Proposal").

The Newfoundland Power Evidence includes evidence with respect to previous Board practice in approving refunds to Newfoundland Power's customers. The Brockman Evidence provides expert evidence on generally accepted regulatory principles relevant to the Application, and includes a recent survey of regulatory practice in Canada and the U.S. with respect to customer rate refunds.

B. Commentary

General
In considering the Application, the Board must make a general determination of whether the Hydro Refund Proposal provides a reasonable balance between fairness to customers and

practical considerations. In Newfoundland Power's view, that general determination should be informed, among other things, by the Board's previous practice with respect to customer refunds and by regulatory practice in other jurisdictions.

In addition to the general question of the reasonableness of the Hydro Refund Proposal, there are two issues that Newfoundland Power believes merit comment at this time.

Proposed Refund to Hydro Rural Customers
The Hydro Refund Proposal includes a proposal to refund a portion of the Newfoundland Power RSP Surplus to Hydro Rural customers. In Newfoundland Power's view, providing a portion of the refund to those customers is not reasonable in the circumstances.

Firstly, the relevant Orders in Council do not direct that any portion of the Newfoundland Power RSP Surplus be paid to customers other than customers of Newfoundland Power. In fact, the plain language of the Orders in Council directs that the Newfoundland Power RSP Surplus be distributed as a direct payment or rebate to Newfoundland Power's customers.

Secondly, the rates of Hydro's Rural customers do not recover their full cost of service and are subsidized to a significant degree by the rates paid by Newfoundland Power's customers.

Thirdly, Hydro has justified the payment of a portion of the Newfoundland Power RSP Surplus to Hydro Rural customers based on the *Policies for Automatic Rate Changes* contained in Hydro's *Rules and Regulations of Service*. However, the plain language of these policies indicates they operate only in the case of Newfoundland Power rate changes. Since the Orders in Council mandate that the refund of the Newfoundland Power RSP Surplus "shall not be in the form of an electricity rate adjustment", it is Newfoundland Power's position that the *Policies for Automatic Rate Changes* do not apply in the circumstances.

Tax
The other issue that Newfoundland Power believes merits comment at this time is the unresolved issue of HST. As noted in the Newfoundland Power Evidence, the potential HST credit applicable to a refund of the Newfoundland Power RSP Surplus is estimated at $11 million. The tax credit alone is larger than either of the total refunds paid to Newfoundland Power's customers over the last 20 years.

It is Newfoundland Power's view that the Board should not approve any proposal for the refunding of the Newfoundland Power RSP Surplus that does not include a HST credit for customers.

C. Concluding

We trust the foregoing and enclosed are found to be in order. However, if you have any questions whatsoever, please feel free to contact us.

Copies of the enclosures and this correspondence have been forwarded directly to the parties indicated below.

Yours very truly,

Gerard M. Hayes
Senior Counsel

Enclosures

c. Geoffrey Young
Newfoundland and Labrador Hydro

Thomas Johnson
O'Dea Earle Law Offices

IN THE MATTER OF the Electrical Power Control Act, RSNL 1994, Chapter E-5.1 (the EPCA) and the Public Utilities Act, RSNL 1990, Chapter P-47 (the Act), and regulations thereunder;

IN THE MATTER OF an Application By Newfoundland and Labrador Hydro for approval, pursuant to Sections 70(1) and 76 of the Act, of the Rate Stabilization Plan rules and a refund to be provided to Newfoundland Power Inc. customers and to Newfoundland and Labrador Hydro Rural Customers.

Evidence of
Newfoundland Power Inc.

February 24th, 2014

NEWFOUNDLAND POWER
A FORTIS COMPANY

RSP SURPLUS REFUND APPLICATION

CONTENTS

Page

1.0 INTRODUCTION

1.1 Background

Between January 1, 2007, and August 31, 2013, the Load Variation component of the Rate Stabilization Plan accumulated a balance of approximately $160 million (the "Rate Stabilization Plan Surplus"). This balance accumulated as a result of a significant decrease in industrial load. The Rate Stabilization Plan Surplus is effectively an accumulation of savings that resulted from actual fuel costs being less than the forecast fuel costs reflected in Hydro's current base rates, set in 2007.[1]

In 2013, the Provincial Government issued Orders in Council to address the Rate Stabilization Surplus that, among other things, specifically directed that the amount of $49 million be credited towards Industrial Customers with the remainder ($112.6 million) to be credited to Newfoundland Power's Rate Stabilization Plan (the "Newfoundland Power RSP Surplus").[2]

By Order in Council, Hydro was required to file, during its General Rate Application process, a Rate Stabilization Plan surplus refund plan to deal with the disposition of the Newfoundland Power RSP Surplus.[3] Refunds are required to be "…*direct payments or rebates to its ratepayers and shall not be in the form of an electricity rate adjustment"*.[4]

---

1 In Order No. P.U. 34 (2007), the Board made IC rates and RSP rules interim effective January 1, 2008. Interim rates remained in effect until August 31, 2013. The result of IC interim rates was that the RSP adjustments for the ICs did not occur each January as normally required under the RSP rules. These adjustments would normally include (i) an RSP recovery factor determined with reference to the previous year-end Industrial Customer RSP balance and (ii) the implementation of a fuel rider to reflect changes in the forecast cost of No. 6 fuel since the test year base rate was established.

2 $112.6 million is the Newfoundland Power RSP Surplus as of August 31st, 2013. The forecast Newfoundland Power RSP Surplus as of March 31st, 2014 is $117.5 million. See response to Request for Information SR-PUB-NLH-008.

3 See OC 2013-091.

4 See OC 2013-089, Item 7.

On October 31st, 2013, Hydro filed an application with the Board for approval of refunds to Newfoundland Power and Hydro Rural Customers (the "Application").[5] In accordance with the Orders in Council, Hydro included with the Application a refund plan for the Newfoundland Power RSP Surplus.

The Board has the responsibility to make the final determination on the details of the refund of the Newfoundland Power RSP Surplus to ratepayers.[6]

1.2 Evidence of Newfoundland Power

In carrying out its duties, the Board is required to apply tests which are consistent with generally accepted sound public utility practice.[7] To assist the Board in this regard, Newfoundland Power is submitting this evidence and the expert evidence of Mr. Larry Brockman of Brockman Consulting. Mr. Brockman also provides evidence with respect to a survey conducted by Brockman Consulting on customer refund practice in Canada and the United States.

Newfoundland Power's evidence addresses: (1) Hydro's proposed disposition of a portion of the Newfoundland Power RSP Surplus to Hydro Rural customers; (2) Hydro's proposed method of calculating customer refunds; (3) administrative matters; and (4) tax considerations.

[5] Hydro filed an amended application on November 7, 2013 to replace the term "electricity consumption" used in their original application with the term "energy consumption".
[6] See OC 2013-089, Item 6.
[7] *Electrical Power Control Act, 1994*, SNL 1994, c. E-5.1, s. 4.

2.0 CUSTOMER REFUND ISSUES

2.1 Hydro Rural Customers

The Application proposes that $9.1 million of the Newfoundland Power RSP Surplus be paid to Hydro Rural customers, excluding customers on the Labrador Interconnected system.[8]

The Orders in Council relating to the Newfoundland Power RSP Surplus do not contain a direction to pay any portion of the Newfoundland Power RSP Surplus to Hydro Rural customers. Order in Council 2013-089 directs that "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…". (emphasis added).

The rates of Hydro Rural customers, for which Hydro is proposing to provide a refund, do not recover the cost of serving those customers.[9] In accordance with provincial government policy, the deficit between the cost of serving Hydro Rural customers and the rates paid by those customers (the "Hydro Rural Deficit") is subsidized by the rates paid by the customers of Newfoundland Power and Labrador Interconnected Rural customers of Hydro.[10]

[8] This includes an estimated 22,700 customers on the Island Interconnected System, 800 customers on the Island Isolated Systems, 1,000 customers on the L'Anse Au Loup System and 2,600 customers on the Labrador Isolated Systems.

[9] In fact, throughout the period when the Newfoundland Power RSP Surplus accumulated, the rates paid by the Hydro Rural customers never recovered the cost of providing their electric service. For the period 2007 to the forecast 2103 Test Year, the historical revenue to cost ratios show revenue recovery of between 16% and 75% of the cost to provide service. See response to Request for Information SR-NP-NLH-018.

[10] Hydro Rural customers on Labrador systems also receive an additional subsidy on their electricity bills from the Provincial Government through the Northern Strategic Plan ("NSP"). Notwithstanding materially higher cost to serve these customers, the NSP rebate results in many customers on Hydro Rural diesel systems in Labrador paying lower rates than the customers of Newfoundland Power. See the response to Request for Information SR-NP-NLH-045.

The forecast Hydro Rural Deficit proposed to be reflected in Newfoundland Power's customer rates for 2014 is approximately $54 million.[11] Therefore, in 2014, approximately 8% of the rates paid by a Newfoundland Power customer will effectively subsidize the provision of electric service to Hydro Rural customers.[12]

During the period when the Rate Stabilization Plan Surplus accumulated, Newfoundland Power's customers were effectively paying more than the full cost of their service due to rates not reflecting the significant decrease in industrial load on the Island Interconnected System. Throughout the period, the rates paid by Newfoundland Power's customers also contributed to the Hydro Rural Deficit.

In these circumstances, 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.

2.2 Refund Methodology

2.2.1 General

Selecting a methodology for a refund to electricity customers requires the determination of which customers should receive the refund; the period over which the refund should be calculated; and whether the refund should be based on consumption (kWh) or on total billings. The methodology should be both reasonably fair to customers and practical to implement.[13]

[11] Hydro's 2013 Test Year Cost of Service Study, 2013 General Rate Application, Schedule 1.2, page 1 of 6.
[12] 8% = $54 million divided by $676.6 million 2014 forecast customer billings. See Schedule 5, Appendix D of 2013 Newfoundland Power GRA Compliance Application.
[13] For a discussion of considerations of fairness and practicality in the context of the Application, see Brockman Evidence, pages 4-8.

The refund proposal presented in the Application differs in a number of respects from refunds previously approved by the Board for Newfoundland Power's customers.

2.2.2 Proposal

The proposed refund reflected in the Application has the following attributes:

(i) the surplus funds accumulated over an extended period while interim RSP rules and rates were in effect;[14]

(ii) the refund is to be calculated based on electricity consumption over one year;

(iii) the refund proposal limits eligibility to customers billed in the month of disposition;

(iv) the proposed refund is on a ¢ per kWh basis;[15] and

(v) the proposed refund amounts are large.[16]

2.2.3 Previous Newfoundland Power Refunds

The Board has approved refunds to Newfoundland Power customers on three occasions over the last 20 years. These refunds had the following attributes:

(i) in the two cases involving interim rates, the interim rates were in effect for periods of less than 1 year;[17]

(ii) the refunds were calculated over periods of one year or less; [18]

[14] The Newfoundland Power RSP Surplus accumulated over the period January 1st, 2007 to August 31st, 2013.

[15] Fuel cost savings are normally refunded to customers through the RSP/RSA on a ¢ per kWh basis.

[16] The average refund amount per Domestic customer is approximately $340. The largest customer refund paid by Newfoundland Power during the last 20 years was $22.40 per Domestic customer. The proposed refund is materially larger for general service customers (i.e., an average of more than $140,000 for Rate 2.4 customers).

[17] Mr. Brockman's survey of refund practices found that interim rates refunds are often treated differently than other types of refunds. See Brockman Evidence, page 9, line 24 to page 10, line 2.

[18] For the 1998 refund, the refund calculation period was January to August, the period in which interim rates were in effect. For the 2001 refund, the refund calculation period was 2000, the year in which the excess revenue was recognized. For the 2003 refund, the refund calculation period was the 12 months prior to the implementation of new customer rates.

(iii) all customers billed during the calculation period received refunds; [19]

(iv) the refunds were calculated based on a percentage of billings;[20] and

(v) the average refund amounts were relatively small.[21]

Appendix 1 to this evidence is a detailed summary of Newfoundland Power customer refund practices during the last 20 years.

2.2.4 Observations

For Newfoundland Power customer refunds related to interim rates, the Board has approved refund calculation periods that closely matched the duration of the interim rates period. Hydro's proposed refund calculation period is materially shorter than the period during which interim rates were in effect.

When the calculation period matches the period in which the surplus funds accumulated, the amount of the refund will more closely match the amount over-collected from the customer. Mr. Brockman's survey of refund practices in Canada and the U.S. found that refunds associated with interim rates were commonly calculated based on the interim rates period "to ensure the amount the customer gets back is matched with the amount the customer paid."[22]

[19] The Company made attempts to provide refunds to all current and former customers that had electric service charges during the three refund calculation periods.

[20] In 1998, the refund was 2.11% of eight months' billings during 1998. In 2001, the refund was 1.9% of customers' total 2000 billings. In 2003, the refund was 0.9% of billings from August 2002 to July 2003.

[21] The largest refund provided by the Company for the past 20 years was $22.40 per Domestic customer. The Newfoundland Power RSP Surplus is forecast to be $117.5 million on March 31, 2014, representing approximately 17.4% of 2014 customer billings.

[22] Brockman Evidence, page 9, lines 26-28.

In the past, the Board has determined customer eligibility for Newfoundland Power's customer refunds on the basis of the refund calculation period. Effectively, all customers and former customers who were billed during the refund calculation period were eligible for the refund.[23]

This appears consistent with regulatory practice in other jurisdictions. The survey of refund practices carried out by Mr. Brockman found that refunds associated with interim rates are "most often given back to those who paid the money."[24]

Hydro's proposal to limit eligibility to customers billed in the month of disposition is not consistent with the past practice of the Board for Newfoundland Power's customer refunds. Hydro's eligibility criterion effectively excludes those former customers of Newfoundland Power who were billed during the period in which the Rate Stabilization Plan Surplus accumulated. It also excludes former customers who were billed during Hydro's proposed refund calculation period.[25]

The proposed refund is materially larger, on a per customer basis, than any refund identified in Mr. Brockman's survey, or any previously paid by Newfoundland Power.[26] For this reason, the proposed refund is expected to generate a much higher level of customer interest than previous Newfoundland Power refunds.

[23] For example, in Order No. P.U. 16 (1998-99), the Board ordered Newfoundland Power to "make refunds to all customers who purchased power during the period, including former customers."

[24] Brockman Evidence, page 9, lines 25-26.

[25] Newfoundland Power has the ability to retrieve the customer data necessary to identify all of those who were customers of Newfoundland Power during the period when the Rate Stabilization Plan Surplus accumulated, and to calculate customer refunds on the basis of their consumption over the entire period.

[26] The only larger refund per customer Newfoundland Power is aware of is the refund provided to Wabush customers in 2002. Information on the Wabush refund is provided in response to Request for Information SR-NP-NLH-042.

2.3 Administrative Matters

2.3.1 Cost Impacts

The method of refund calculation can have a material impact on the administrative effort and costs that will be incurred to provide the refund to customers.

Newfoundland Power estimates that the incremental cost to deliver the refund based upon Hydro's proposed methodology will be approximately $1.4 million.[27] These costs consist primarily of the cost of responding to customer inquiries and the cost of cheque issuance.[28]

If the Board were to approve a calculation methodology that provided refunds to all customers with electricity consumption during the accumulation period, including former customers, this would result in approximately $400,000 to $500,000 in additional administrative costs.[29]

2.3.2 Recovery of Administrative Costs

Newfoundland Power will incur material costs in administering the delivery of the customer refund directed by the Provincial Government. These costs are not reflected in the costs used to establish Newfoundland Power customer rates for 2014. In the circumstances, Newfoundland

[27] See response to Request for Information SR-PUB-NP-001. The magnitude of the proposed customer refund is unprecedented in Newfoundland Power's experience. Consequently, there is an element of uncertainty inherent in estimating the associated costs. Arrangements for the transfer of funds between Hydro and Newfoundland Power may also affect costs.

[28] The cost of responding to increased customer inquiries is estimated at $1 million. Giving customers the option of receiving a cheque when their refund results in a credit balance will cost approximately $230,000.

[29] The additional cost is primarily related to handling inquiries from customers and the communication costs associated with locating former customers.

Power should be permitted to recover all incremental costs resulting from disposition of the refund.[30]

A deferral account, or other appropriate mechanism, to provide for recovery of these costs would require approval of the Board.

2.4 Tax Considerations

Harmonized Sales Tax (HST)[31] credits were provided to customers for all 3 of the Newfoundland Power customer refunds.[32] Hydro has indicated there would be no HST credit provided to customers under its refund proposal.[33]

The method of calculating the refund appears to be a relevant consideration for Canada Revenue Agency ("CRA") in determining whether a tax credit is payable to customers upon disposition of the Newfoundland Power RSP Surplus.[34] It is Hydro's view that if the Board were to decide the refund should be based upon historical consumption for the period 2007-2013, then customers would be eligible for a HST refund.[35] In these circumstances, Hydro estimates that an additional $11.0 million will be due to customers.[36] The potential customer tax credit alone is larger than any of the 3 Newfoundland Power customer refunds paid in the last 20 years.

[30] The Board has, on a number of occasions, approved cost recovery mechanisms in relation to material costs incurred by Newfoundland Power that were not reflected in customer rates.

[31] Customers currently pay 13% HST on their electricity bills. Effective October 1st 2011, the Provincial Government implemented an 8% Residential Electricity Rebate for Domestic customers.

[32] See Appendix 1 to this Evidence.

[33] See response to Requests for Information SR-NP-NLH-030 and SR-NP-NLH-055.

[34] In response to Request for Information SR-NP-NLH-055, Hydro states that verbal conversations with CRA indicated that HST would apply to refunds if the RSP surplus funds were refunded through credit notes related to previous year bills over the period 2007-2013.

[35] See response to Request for Information SR-NP-NLH-060.

[36] See response to Request for Information SR-NP-NLH-058.

The question of availability of HST to apply to the proposed customer refund is a material issue which is not yet resolved. Hydro has filed a written request for a formal ruling from CRA, but has not yet received a reply.[37]

3.0 SUMMARY

3.1 Proposed Refund to Hydro Rural Customers

Hydro's proposal to refund approximately $9.1 million of the Newfoundland Power RSP Surplus to Hydro Rural customers is (i) not required by the relevant Orders in Council, and (ii) not reasonable in the circumstances.

3.2 Proposed Refund Methodology

Hydro's proposed refund methodology differs in a number of respects from refunds previously approved by the Board for Newfoundland Power's customers, including the primary elements of calculation method and customer eligibility. The Board must determine whether Hydro's proposed refund methodology is fair and reasonable in the circumstances, or whether other generally accepted refund practices in Canada and the U.S. are better alternatives to Hydro's proposal.

3.3 Cost Recovery

Newfoundland Power will incur material administrative costs in delivering a refund of the Newfoundland Power RSP Surplus to its customers. Those costs are not reflected in current customer rates. Newfoundland Power should be permitted to recover those costs.

[37] Hydro has indicated the expected CRA response time is 30 to 45 days. See response to Request for Information SR-NP-NLH-055.

3.4 Tax

The question of availability of HST to apply to the proposed customer refund is a material issue which is not yet resolved. The Board should not approve a refund methodology for the Newfoundland Power RSP Surplus that does not result in a HST credit for customers.

Appendix 1: Newfoundland Power Customer Refunds

NEWFOUNDLAND POWER CUSTOMER REFUNDS

1.0 GENERAL

Newfoundland Power has issued three customer refunds over the past 20 years. They all occurred within a 5-year period from 1998 to 2003. These refunds and, the circumstances giving rise to them, are described below.

1.1 NEWFOUNDLAND POWER REFUNDS

1.1.1 1998 Cost of Capital Review

In 1998, the Board initiated a review of Newfoundland Power's cost of capital. On July 31st, 1998, the Board ordered Newfoundland Power to change 1998 customer rates to reflect a reduced cost of capital effective January 1st, 1998.[1]

As a result, customer rates were reduced by 2.11% from September 1st, 1998 forward, and customers received a refund of 2.11% of amounts billed from January 1st, 1998 to August 31st, 1998.[2] The amount refunded to customers was approximately $5 million, plus HST.[3] The average refund paid in 1998 was approximately $16.60, plus HST, for Domestic customers.[4]

Refunds were provided to all customers that had paid electrical charges during the refund period. Refunds were given to existing customers by means of a credit on their September bills, and

1 See Order No. P.U. 16 (1998-99) at pp. 100 *et seq.*

2 See Order No. P.U. 21 (1998-99) at page 2.

3 The percentage refund was based upon the revenue impact of the reduced return on equity applied to 1997 test year. The 2.11% rate reduction reduced annual revenue by $7.1 million. Because the refund applied to the first eight months of the year which provided approximately 70% of annual revenue, the refund to customers was approximately $5 million (i.e., 70% x $7.1 million).

4 Estimated refund per customer = 2.11% times 1997 Domestic revenue of $203,436,000 times 70% divided by 181,168 customer accounts (i.e., beginning of 1998 customer accounts).

attempts were made to provide refunds to all former customers that had service during the refund period.

1.1.2 2000 Excess Revenue Application

In 2000, as part of a settlement of a long outstanding federal income tax dispute, Newfoundland Power received the interest on amounts on deposit with the federal government.[5] This interest income resulted in excess earnings for the Company of approximately $6.7 million.

In February 2001, the Board approved the disposition of excess revenue from 2000 through a refund to customers of 1.9% of customers' total 2000 billings (inclusive of HST).[6] The amount of the refund was determined based on customer billings during the 2000 calendar year. The average refund paid in 2001 was approximately $22.40 plus HST for Domestic customers.[7]

Refunds were provided to all customers that had paid electrical charges during the refund period. Refunds were given to existing customers by means of a credit on their April 2001 bills, and attempts were made to provide refunds to all former customers that had service during the refund period.

[5] This dispute originated in income tax reassessments issued by the Canadian Customs and Revenue Agency ("CCRA") in 1995.

[6] See Order No. P.U. 37 (2000-2001). The Company submitted it was appropriate to provide a refund to customers rather than apply the funds to offset future costs because the Company did not have a current demonstrated financial need to use these funds elsewhere. See *Transcript, Public Utilities Board, March 12, 2001, page 16, lines 48-60.*

[7] Estimated refund per customer = Approximately 2% times 2000 Domestic revenue of $205,723,000 divided by 183,921 Domestic customer accounts (i.e., beginning if 2000 customer accounts).

1.1.3 2003 General Rate Application

In 2003, following Newfoundland Power's general rate application, the Board ordered Newfoundland Power to file a proposal (i) to finalize interim rates that were in effect for 2003, and to dispose of any variance between revenue generated from the interim rates and the revised 2003 revenue requirement, and (ii) to rebate 2001 excess earnings.[8]

The resulting proposal included (i) a reduction in customer's rates for service rendered on and after August 1, 2003 of 0.15% and (ii) a refund of $3,640,000 (plus applicable taxes) by way of credit on customers' September 1998 electric bills.[9]

The refund represented 0.9% of customer billings from August 1, 2002 to July 31, 2003.[10] Customers received HST credits in addition to the refund of electrical charges. The average refund paid in 2003 was approximately $10.70 plus HST for Domestic customers.[11]

Refunds were provided to all customers that had paid electrical charges during the approved 12-month refund period. The Company made attempts to provide refunds to all former customers that had service during the 12-month refund period.

[8] See Order No. P.U. 19 (2003) at p.123.

[9] Reduced revenue requirement for final electrical rates contributed to a customer refund of $2,696,000. The remaining $944,000 of the refund was a result of 2001 excess revenues.

[10] See Order No. P.U. 23 (2003) at pp 4-5.

[11] Estimated refund per customer = 0.9% times 2003 Domestic revenue of $224,263,000 divided by 188,925 Domestic customer accounts (i.e., beginning of year customer accounts).

1.1.4 Summary of Refund Experience of Newfoundland Power

All three of the refunds were distributed as a percentage of customer billings to customer accounts that were active during the refund calculation period. The use of the percentage of billing approach in distributing the refund was consistent with the reasons for the refunds (i.e., all refunds were revenue-based).

All refunds were provided through credits applied against customers' bills. Cheques were provided to former customers that had service during the refund calculation period.

For the 1998 refund, the refund calculation period was the first 8 months of 1998 prior to the implementation of new customer rates on September 1st. For the 2001 refund, the refund calculation period was the year in which the excess revenue was recognized. For the 2003 refund, the refund period was the 12 months prior to the implementation of new customer rates on August 1, 2003.

For all 3 refunds, the Company made attempts to provide refunds to all former customers that had electrical service charges during the refund calculation period

HST credits were provided to customers for all 3 refunds.

In the Matter of:

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

February 24, 2014

Direct Evidence of

Larry B. Brockman

On behalf of

Newfoundland Power

1.0 Qualifications

My name is Larry B. Brockman. I am the president of Brockman Consulting in Smyrna, Georgia. I have over 30 years experience in the electric power industry, as a planning engineer, regulatory staff member, consultant, educator, and expert witness. I provide electric utilities with assistance in planning and regulatory issues. I have testified before this Board on 8 previous occasions from 1992 through 2009, primarily in the areas of cost of service, rate design and general regulatory practice. A more complete summary of my qualifications is contained in Appendix A.

2.0 Purpose of my Testimony

The purpose of my testimony is to provide comments and expert opinion on Newfoundland and Labrador Hydro's ("Hydro") application for approval of a proposal to distribute to customers a portion of the surplus funds that accumulated under interim RSP rates between January 1, 2007 and August 31, 2013 in the load variation component of the RSP (the "Newfoundland Power RSP Surplus").[1]

My testimony discusses a number of general regulatory principles that may assist the Board in considering the matter. In addition, I provide evidence on a recent survey I conducted on how other jurisdictions in Canada and the U.S. deal with customer rate refunds.

3.0 Background

On October 31st, 2013, Hydro submitted its Application for approval of a refund to be provided to Newfoundland Power customers and to Newfoundland and Labrador Hydro Rural Customers.[2] Hydro's application requests that the Board approve a method for distributing the Newfoundland Power RSP Surplus to Newfoundland Power's customers

[1] Hydro was ordered in OC 2013-089 and OC 2013-207 to submit a plan for NP to distribute the RSP load variation surplus in its next GRA, which Hydro has done. The Board has split this issue out of the GRA case in chief into this proceeding. Hydro's proposed rule changes to the RSP will still be dealt with the GRA.

[2] The Application was amended on November 7, 2013.

and Hydro's Rural customers. The amount to be refunded is approximately $112 million.[3] This is a large refund for a system with a relatively small number of customers.

4.0 Generally Accepted Regulatory Principles

4.1 Principles of Sound Rate Making in Traditional Rate Cases

In traditional rate cases, certain principles of sound ratemaking have become generally accepted. They are commonly referred to as Bonbright's Principles, since Bonbright was the first economist to memorialize them in print. This Board has included its own statement of Bonbright's Principles in its recent general rate orders. In that regard, the Board has noted that sound regulatory practices encompass the following fundamental principles:[4]

Fair Return

Regulated utilities are entitled to an opportunity to earn a fair rate of return.

Cost of Service

Regulated utilities are permitted to charge rates that allow recovery of costs that, among other things, are prudent, assigned based on causality and recovered during the same period in which they were incurred.

Fair Cost Apportionment

Apportionment of the total cost of service in rates among different ratepayers should avoid arbitrariness, capriciousness, inequity and discrimination.

Efficiencies

Rates should discourage wasteful use of electrical service, and encourage economically-justified use.

---

[3] The Newfoundland Power RSP Surplus was $112.6 million as of August 31st, 2013. The forecast Newfoundland Power RSP Surplus as of March 31st, 2014 is $117.5 million. Source: Response to Request for Information SR-PUB-NLH-008.

[4] For example, the Board outlined these fundamental principles in detail in a section titled "Regulatory Principles" in Order No. P.U. 32 (2007).

Rate Stability and Predictability

Rates and revenues should be stable and predictable from year to year, with a minimum of unexpected changes seriously adverse to either ratepayers or the utility.

Practical Attributes

Rates should be simple, understandable and publicly acceptable.

End Result

The end result of regulatory decisions should be fair, just and reasonable from the perspective of both the consumer and the utility.

4.2 Principles Applicable to a Refund Case

Because this is a refund of revenues that were "over-collected" from certain customers,[5] rather than a setting of rates for all customers going forward, some of the above principles do not apply. For example, the amount of the Newfoundland Power RSP Surplus has already been established and segregated by previous Board orders. Therefore, the fair return principle is not at issue. Further, since the refund is a one-time event and will not affect future rates, rate stability and efficiency do not appear to be concerns.[6]

In my opinion, the regulatory principles enunciated by the Board that apply in this case are cost of service (causality), fair cost apportionment, practical attributes and end result. Essentially, in making its determinations in this case, the Board should consider how best to achieve a balance between fairness to ratepayers on the one hand and practical concerns on the other, so that the end result is just and reasonable in the circumstances.

[5] The term "over-collected" does not suggest mistake. The rates were the rates approved by the Board, but subsequently declared interim. Revenues collected under interim rates may be subject to refund, once the final rates for the period are decided upon.

[6] The Order in Council OC2013-089, as amended, states, "The refund plan shall comprise direct payments or rebates to ratepayers and shall not be in the form of an electricity rate adjustment."

4.3 Application of Principles

The cost of service principle requires that, when considering fairness in refunding amounts that have accumulated over time, intergenerational equity be considered.[7] To the extent practical, customer rates in a given period should be based upon the costs necessary to provide them with service in that period. For this reason, when customers have paid interim rates which over-recovered the cost of service, it is common for regulators to base rebates on prior usage. Refunding customers based upon the difference between interim and final rates avoids customers being disadvantaged by regulatory lag, thereby maintaining intergenerational equity.

It is also important to consider the practical attributes of Hydro's refund proposal, in particular, understandability and public acceptability. It is important that customers understand the refund, and that they perceive it as fair.

In exercising its discretion, the Board is required to balance competing considerations. Often, the balance is between fairness and cost. For example, in relation to load research, a regulator may be required to determine how much should be spent on higher cost meters to achieve rates that are slightly fairer. Fairness often comes at a cost.

In the case of the Newfoundland Power RSP Surplus, the more customers that are included in the refund eligibility, the more it may cost to track them down and pay them. At some point, the requirement to improve fairness may outweigh the relative cost of a particular approach. It is for the Board to determine the appropriate balance between fairness and cost.

5.0 Hydro's Refund Proposal

Hydro's proposal for refunding the Newfoundland Power RSP Surplus attempts to balance fairness, the requirements of the government, the existing RSP procedures, and

[7] In cost of service regulation, intergenerational equity is concerned with fairness among past, present and future ratepayers.

the views of other parties. They have acknowledged the proposed method has advantages and disadvantages.

The two primary aspects of a proposal for refunding rate revenues to customers are (1) customer eligibility, and (2) calculation method. The Board must consider each of these aspects in light of the generally accepted regulatory principles outlined earlier in my testimony.

5.1 Customer Eligibility

Instead of refunding the Newfoundland Power RSP Surplus to the customers who were on the system when the funds accumulated, Hydro has proposed giving the refund to only those customers who are on the system in April 2014. Their justification for this approach is that to do otherwise would not be practical, and would not be consistent with current RSP practice.

The Board must weigh the practicality of the eligibility criterion proposed by Hydro in the context of the principles of causality and fairness. The Newfoundland Power RSP Surplus accumulated over an extended period of time. The customers that meet the eligibility criterion will not include all of the customers who paid the money in the first place.[8]

From a practicality perspective, Hydro's proposal does not require the tracing of customers that have left the system.[9] However, even if one accepts the one-year period proposed by Hydro for computing the refunds as reasonable, Hydro's proposal will not provide refunds to customers that had usage during the proposed one-year refund period but had closed their account prior to the month of disposition to customers. The Board must decide whether this is fair in the circumstances.

[8] It is estimated that approximately 70,000 NP customers have left the system since 2007.
[9] See response to Request for Information SR-NP-NLH-016.

Newfoundland Power has indicated that the customers who were on the system during the time the Newfoundland Power RSP Surplus accumulated can be identified.[10] Newfoundland Power's evidence is that refunding all the customers who consumed electricity during that timeframe will cost approximately $400,000 to $500,000 more in administration costs than Hydro's proposed approach. The additional cost is approximately 0.4% of the Newfoundland Power RSP Surplus.

In my opinion, the main advantage of Hydro's proposed approach is that it is administratively simpler and cheaper than trying to give the refund to those who paid it in the first place. On the other hand, it would be fairer and easier to explain to customers if the money is given back to the customers who paid it.

5.2 Calculation Method - Refund Period

Because the Newfoundland Power RSP Surplus accumulated on the basis of consumption, refunding the amounts on a cents per kilowatt-hour basis, as Hydro has proposed, is consistent with the cost of service (causality) principle.

Hydro's proposal would base a customer's refund amount on that customer's consumption between January 1, 2013 and December 31, 2013 only. Hydro justifies this approach as being simpler and less expensive than calculating the refund based on the customer's consumption during the entire 2007 to 2013 period.

The fairest approach from a causality perspective would be to calculate the refund based on the entire accumulation period. Although shortening the refund calculation period to a single year may be a simpler approach, this introduces intergenerational inequity because there will be no matching between the amounts paid by customers and the refunds they receive.[11] The Board should consider whether this approach is justified by the practical considerations of cost and complexity.

[10] Company Evidence, page 7, footnote 25.
[11] See discussion of intergenerational equity in *4.3 Application of Principles.*

6.0 Survey of Rate Refund Practice

In considering whether there are reasonable alternatives to Hydro's refund proposal, the Board may find it helpful to consider how rate refunds are treated in other regulatory jurisdictions. Hydro conducted a limited survey, and provided detailed information regarding the approach taken in a customer refund case in Michigan. Newfoundland Power asked Brockman Consulting to conduct a broader survey of electricity rate refund practices in Canada and the U.S.[12]

For Canadian jurisdictions, a survey questionnaire was e-mailed to known utility contacts in all provinces. In the U.S., the questionnaire was presented by telephone to a combination of utility contacts and regulatory commissions. Additional follow-up research was carried out where necessary.

The results of the survey are, to a large extent, based on the knowledge and memory of the respondents. The results are therefore not exhaustive.

Where the respondents could not, with reasonable effort, provide detailed information on refund cases within their knowledge, their responses were supplemented with reviews of Commission orders and internet searches.

6.1 Summary of Survey Results

The following are the basic numerical results of the survey of rate refund regulatory practice in the U.S. and Canada:

- 31 respondents reported refund cases in the last 10 years.
- 15 reported refunds based on historical usage, while 15 reported refunds based on future usage (5 of those 15 were fuel or power supply adjustments). Some jurisdictions use both historical and future methods, depending on circumstances.

[12] Brockman Consulting's survey identified 31 rate refund cases in the last 10 years, including the Michigan case noted in Hydro's evidence.

- 10 respondents reported refunds based on kWh usage, while 14 reported refunds based on historical bill differences.
- 9 reported trying to track down historical customers for refunds.
- Periods over which the refunds were given back ranged from one-time payments to several years.
- The largest refund on a per customer basis was $80.

The results of the survey demonstrate that a range of approaches to rate refunds have been followed by utility regulators in Canada and the U.S. Ultimately, the survey did not reveal a consensus on any particular approach.

Several respondents observed that, theoretically, refunds should be given back to those who paid the money. On the other hand, there were some who felt that this approach would be impractical or too costly to implement. In some jurisdictions, the payment of customer refunds was governed by legislation and/or utility commission rules.

Although refunds in several jurisdictions involved surpluses accumulated over long periods of time, most refunds covered shorter periods. Fourteen jurisdictions reported refunds based on actual bill re-calculations for the entire period during which the customers contributed to the surplus. Many of these cases involved surpluses that had accumulated under interim rates. In some of these cases, attempts were made to refund customers who had left the system.

The survey results suggest that interim rate refunds are often viewed differently than other types of refunds, such as tax refunds, or power supply refunds. Interim rate refunds were the type most often given back to those who paid the money. The common approaches are to use bill difference or billing percentage methods to ensure the amount the customer gets back is matched with the amount the customer paid.[13] Power supply

[13] A bill difference method involves calculating the difference in billings between interim rates and final rates based on historical usage over the term interim rates were in effect.

and fuel refunds were most often applied to future fuel rate adjustments on a ¢/kWh basis.

The detailed survey is attached as Appendix B.

6.2 Survey Conclusions

On the basis of this survey, I conclude that there is no consensus in Canadian and U.S. regulatory jurisdictions on an appropriate method for refunding surplus rate revenues to customers. Some jurisdictions attempt to identify and trace historical customers, while others have limited refunds to current customers. Some jurisdictions have calculated rate refunds based on historical usage, while others have used a prospective approach.

Although there is no consensus on refund methodology, it appears that regulators have tended to follow generally accepted principles of utility regulation in attempting to balance fairness considerations against the cost and practicality of specific approaches. This is consistent with the regulatory principles outlined above in *4.0 Generally Accepted Regulatory Principles.*

7.0 Concluding Comments

The refunding of surplus rate revenues that have accumulated under interim rates engages the regulatory principles of fairness, cost causality and practicality. Hydro has presented a proposal for the refunding of the Newfoundland Power RSP Surplus that attempts to strike a balance between fairness and practicality. It is for the Board to determine whether Hydro's refund proposal strikes a balance between fairness and practicality that is reasonable in the circumstances, or whether another approach may be more suitable.

In considering this matter, it is appropriate for the Board to consider regulatory practice in other rate regulated jurisdictions. The results of the survey presented with this evidence disclose that utility regulators in Canada and the U.S. have used a range of approaches to refunding surplus rate revenues to customers, including different

approaches to customer eligibility and calculation methods. As indicated by the survey, a variety of approaches are available to assist the Board in striking an appropriate balance between the competing considerations in this matter.

Larry B. Brockman *Resume*

Name

Larry B. Brockman

Present Position

President, Brockman Consulting

Education

Mr. Brockman earned a bachelor's degree in engineering from the University of Florida in 1973. He subsequently completed 35 quarter-hours towards a master's degree in electrical engineering, with a minor in regulatory economics at the University of Florida.

Qualifications Summary

Mr. Brockman has over 35 years experience as a utility planner, consultant, regulator, educator, rate designer, and expert witness. He specializes in strategic planning, regulatory assistance, competitive market assessments, bid evaluation processes, merger and acquisition analysis, cost of service, and rate design, and computer simulation, to help utilities and IPPs meet their strategic goals and maintain competitive advantage.

Prior Experience

During his career, Mr. Brockman has helped perform, and manage numerous consulting projects, including:

Cost of Service and Rate Design

Numerous Cost of service study and rate design investigations for Canadian and US utilities, examining the utilities' marginal and embedded costs-of-service and rate designs for their ability to meet the utilities' and regulatory commissions' strategic and regulatory goals. In many of these examinations, Mr. Brockman has appeared as an expert witness. A list of appearances appears at the end of this document.
Co-developer and instructor for five years of the Public Utilities Reports, Rates and Regulation utility short course teaching hundreds of utility, regulatory and legal staff personnel the theory and concepts behind utility Rates and Regulation.
Author of a client-commissioned Survey of Rate Designs which examined the detailed rate structures of all the major utilities in North America.
Review of a restructured utility's shared services costs of service separation studies to allocate the costs between regulated and unregulated subsidiaries, and procedures for tracking the costs in the future.

Expert Litigation Assistance

Project manager of an anti-trust case involving investigation of all phases of power supply planning covering a 40 year historical period and a successful defense against over $3 Billion damage suit involving alleged actions by an investor owned utility.

Managed a successful defense against a cogenerator seeking to convince regulators that a utility's ratepayers should pay over $1.5 Billion in unnecessary and uneconomic new generation avoided costs by the cogenerator.

Project manager for a precedent setting FERC case defending a utility from an attempt to abrogate a long term bulk power contract worth over $400 Million. Mr. Brockman's team was able to convince the FERC that contract abrogation was not in the public interest, that the plaintiff was not going bankrupt, and that the plaintiff's difficulties were the result of arbitrary and capricious state regulation.

Computer Simulation of Power Systems

Mr. Brockman is an expert in the use of utility simulation software for: planning; operations; and financial analysis including: PROMOD; PROVIEW; PROSCREEN II; PMDAM; PROSYM; EVALUATOR; GEMAPS, IREMM, and several Power Flow programs.

Competitive Market Assessments

Expert testimony to the Arkansas and Louisiana Public Service Commissions on the market clearing prices for generation in a competitive market, and the relative competitive positions of many of the generating companies in the SPP and ERCOT regions. To perform this work, Mr. Brockman used sophisticated computer models and a database containing over 120,000 MW of capacity in the region.

A study on the effects of retail competition on the states of North and South Carolina, presented to the South Carolina Legislature and performed for Carolina Power and Light Company. The study required research on the behavior of prices in other formerly regulated industries and detailed modeling of the market prices and financial effects on the utilities, as well as the effects on state and local taxes.

An independent review of the effectiveness and reliability of a large Mid-Western utility's Power Marketing and Purchases Department in deregulated generation markets, performed as a joint project with the utility and the state's attorney general.

Numerous market outlook and generator profitability studies of the ERCOT, Eastern Interconnect, and WSCC markets for merchant plant developers, using the GEMAPS transmission-constrained production cost simulation tool.

An analysis for a large Canadian utility of the profitability of increased transmission line investments to move power into various competitive markets in the US and Canada.

Strategic Planning

A study of the costs and benefits of a nuclear plant for a large South Eastern utility in support of a Nuclear Regulatory Commission Combined License Application involving extensive simulation of the alternative sources of generation and conservation and demand side management. This study used Ventyx ABB's Strategist simulation software.

A strategic planning project for a large South-Eastern electric utility identifying strengths, weaknesses, opportunities, and threats, in competitive open-access power markets. For each utility in the region, the project identified which customers would be gained and lost, and assessed the impacts of alternative transmission, and contracting strategies. The entire South Eastern US generating and major transmission systems were simulated. Over $1.5 Billion of potential customer revenue migration was identified at the client utility. Strategies for maintaining the utility's profitability were recommended and accepted by senior management.

Development of several successful strategies and power supply bid evaluation procedures in use at investor owned and rural electric cooperatives, to ensure that winning bids are consistent with the utility's business goals and objectives.

Strategic Planning Evaluation of transmission system economics for large regional power transfers for a large Canadian utility.

Operational Studies

A salt dome natural gas storage study for a South Central electric utility. The study identified the hourly operational characteristics necessary for favorable economics of the required storage facility. Estimated savings in excess of $100 Million were identified. The facility was constructed and has been successfully benchmarked against the study results.

Merger and Acquisition Analysis

Mr. Brockman has participated in several merger and acquisition studies assessing the production cost and planning and operational synergies arising from the merger. He testified before the FERC on the accuracy and appropriateness of the production costing computer simulations a merger application. He also participated in a regulated/non-regulated cost separation study for a shared services group of a major utility.

Financial Analysis and Asset Valuation

Construction of detailed utility financial simulation models to forecast regional bulk-power prices and profits for use by Independent Power Producers (IPPs) and power marketers to judge market entry positions and create successful negotiating strategies for purchases and sales in unregulated generation markets.

A profitability study for an electric utility to assess effects on shareholder returns and economic value added (EVA), of various marketing activities of the utility. These studies resulted in re-engineering the marketing department to yield higher returns and be more consistent with corporate goals.

Several asset valuation studies for electric utilities to determine whether a market existed to sell existing generating assets, what they were worth, and whether they would be competitive with existing and new generation in the region. Results were presented to senior management and used to revise the strategic planning direction.

Construction of a computer simulation model and evaluation of utility financial performance under a wide range of Performance Based Ratemaking scenarios. Performed for a major South Eastern utility.

Prior Positions Held

Managing Consultant PA Consulting, 2000-2002. Mr. Brockman managed a group of consultants engaged in the analysis of transmission-constrained competitive generation markets, as well as managing several litigation cases involving electric utilities.

President of Brockman Consulting 1997-2000. Mr. Brockman assisted clients with strategic planning and rates and regulatory assistance.

Managing Director and Vice President 1994-1996, EDS Management Consulting Services (formerly EMA). Responsible for the Atlanta office, engaged in providing technical consulting services in planning, regulatory assistance, marketing, competitive assessments, reliability, bid evaluation, financial simulation, and expert testimony.

Vice President Energy Management Associates (EMA) Consulting Department 1985-1994. Started as lead consultant and rose to position of Vice President. He marketed and provided strategic planning, regulatory assistance, and operational consulting to electric and gas utilities worldwide.

Assistant Director Electric and Gas Department, Florida Public Service Commission 1981-1985. Supervised 48 employees engaged in all phases of electric and gas regulation. Made recommendations to the Commission on rate cases and resource planning dockets for all electric and gas utilities in Florida. Responsible for financial and management audit scopes, prudence reviews of rate base, expenses, revenue requirements, and final rate design. Also advised Commission on economic effects of regulatory and energy policy actions.

Corporate Planning Engineer 1979-1981, Gainesville Regional Utilities. Developed, analyzed, and presented to senior management and the City Council, ideas, plans, and studies affecting the growth, financial well-being and efficient operation of the city owned electric system. Performed detailed simulations and studies of new generation, substations, transmission lines, voltage conversions, re-conductoring, and power factor correction. Mr. Brockman conducted public hearings and testified before the City Council on proposed transmission lines, substations, and rate designs.

Special Consultant 1979-1980, University of Florida Public Utilities Research Center. Under a grant from Florida Power Corporation and the Florida Public Service Commission, performed a detailed review of marginal cost study techniques for electric utilities and completed a marginal cost study for Florida Power Corporation.

Transmission Planning Engineer 1973-1976, Jacksonville Electric Authority. Responsible for bulk transmission planning, including extensive use of power-flow, fault current, and

transient stability computer programs. Chairman of the Florida Electric Coordinating Group's Long Range Transmission Planning Task Force 1974.

Adjunct Faculty Member 1976, University of North Florida. Taught courses in industrial and commercial building wiring design and conformance with National Electrical Codes.

Expert Witness Testimony

City of Gainesville City Council, 1980, testified on behalf of Gainesville Regional Utilities concerning a joint utility and citizen's collaborative effort on rate design.

City of Gainesville City Council, 1981, testified concerning a Long-Range Transmission and Distribution Plan and proposals to construct a new substation.

Florida Public Service Commission, Florida Power and Light, 1981 Docket No. 810002, Rate Case, testified on cost-of-service.

City of Tallahassee - Surcharge Outside the City Limits, 1983. Testified concerning marginal and embedded costs inside and outside the city limits.

Florida Public Service Commission, 1988, West Florida Natural Gas Company. Testified on cost-of-service and rate design and why the utility needed flexibility to meet competition.

Oklahoma Corporation Commission, 1988, Avoided Cost Proceeding. Testified on the appropriate use of computer models to determine avoided cost of generation.

Nova Scotia Board of Commissioners of Public Utilities, 1989, Nova Scotia Power Rate Case. Testified on cost of service and rate design.

Nova Scotia Board of Commissioners of Public Utilities, 1990, Nova Scotia Power Rate Case. Testified on integrated resource planning, cost of service and rate design.

Nova Scotia Board of Commissioners of Public Utilities, 1993, Nova Scotia Power Rate Case. Testified on cost of service and rate design.

Board of Commissioners of Public Utilities of the Province of Newfoundland and Labrador, 1990. Newfoundland and Labrador Hydro rate case. Testified on integrated resource planning and rate design.

Board of Commissioners of Public Utilities of the Province of Newfoundland and Labrador, 1992, Newfoundland and Labrador Hydro rate case. Testified on Cost of Service and Rate Design.

Board of Commissioners of Public Utilities of the Province of Newfoundland and Labrador, 1992, Generic Hearing on Cost of Service and Rate Design.

Board of Commissioners of Public Utilities of the Province of Newfoundland and Labrador, 1995, In the Matter of an Inquiry Into Issues Relating to Rural Rate Subsidies.

Public Service Commission Colorado, 1994, testified on behalf of Public Service Company of Colorado on the proper use of dynamic programming models in the utility's integrated resource planning process.

Federal Energy Regulatory Commission, 1994, Merger Case, Testified on behalf of Central and Southwest utility concerning production cost merger benefits.

Nova Scotia Board of Commissioners of Public Utilities, 1995, Nova Scotia Power Rate Case. Testified on cost of service and rate design.

Board of Commissioners of Public Utilities of the Province of Newfoundland and Labrador, 1996, Newfoundland Power Rate Case, testified on cost of service and rate design.

Arkansas Public Service Commission, 1997, Arkansas Power and Light Rate Case, testified concerning the market clearing prices for power in deregulated markets and the relative competitive positions of various generators in such markets.

Board of Commissioners of Public Utilities of the Province of Newfoundland and Labrador, 2001, Newfoundland and Labrador Hydro rate case. Testified on Cost of Service and Rate Design.

Board of Commissioners of Public Utilities of the Province of Newfoundland and Labrador, 2003, Newfoundland Power rate case. Testified on Cost of Service and Rate Design
North Carolina Docket No. E-22, Sub 412. Draft testimony on behalf of Dominion North Carolina, February 2005, concerning rates to a large steel company. Case was settled before final evidence was submitted.

Board of Commissioners of Public Utilities the Province of Newfoundland and Labrador, 2006, concerning rate design and marginal costs on behalf of Newfoundland Power.

Board of Commissioners of Public Utilities the Province of Newfoundland and Labrador, 2009, on behalf of Newfoundland Power concerning Newfoundland and Labrador Hydro's Industrial Rates.

Clients Mr. Brockman has Performed Consulting Services for Include:

Ahlstrom Pyro Power – IPP evaluation
Alabama Electric Cooperative – Evaluation of the economics of hydro generation
Alberta Power Company – Integrated Resource Plan assistance, TOU rate evaluation
Balch and Bingham – Antitrust Litigation Assistance
Black and Veatch – Generation Economic Evaluation
California Energy Commission - IRP Course for staff
Carolina Power and Light Company – IRP, ratemaking, and litigation assistance
Central and Southwest Company -
Central Vermont Power Company
Chugach Electric Cooperative
Cincinnati Gas and Electric Company
Citibank
Commonwealth Edison Company
Duke Power Company

Enron
Entergy
Florida Public Service Commission
Georgia Power Company
Gainesville Gas Company
Hawaiian Electric Company
Howery and Simon
Hydro One
McKinsey and Company
Mission Energy
Nevada Power Company
New Brunswick Power Company
New York State Electric and Gas
Newfoundland Power
Niagara Mohawk
Nova Scotia Power Company
Oklahoma Gas and Electric Company
Ontario Power Generation
Pacific Gas and Electric Company
Public Service Company of Colorado
Public Service Company of New Mexico
Rochester Gas and Electric
SCANA
Southern California Edison
Tampa Electric Company
The City of Austin
The Southern Company
TransEnergie
West Florida Natural Gas Company
The World Bank

Appendix B

A SURVEY OF RATE REFUND PRACTICES

IN CANADA AND THE U.S.

February 24, 2014

Brockman Consulting
Smyrna, Georgia

Brockman Consulting
Smyrna, GA

1390 Mosswood Lane
(770) 335-0925

I. Background and Introduction

On October 13, 2013, Newfoundland and Labrador Hydro (Hydro), acting on an Order in Council (OC), filed an Application with the Board for approval of a plan suggesting how Newfoundland Power should refund the Newfoundland Power portion of the RSP Surplus that has accumulated since 2007.[1] To improve its knowledge of practices used in providing customer refunds, Newfoundland Power asked Brockman Consulting to perform a survey of refund practices in the U.S. and Canada. This report summarizes the findings of that survey.

II. Methodology

A set of questions concerning refund practice were formulated. Brockman Consulting conducted phone interviews with U.S. utilities and/or regulatory commission staff. In Canada, Newfoundland Power e-mailed a questionnaire to the utilities. In many cases, respondents had limited information. In those cases, internet searches were used to obtain additional details.

The interviews and questions were primarily designed to elicit information on:

- Whether there had been customer refunds during the last 10 years
- The approaches used to deterimine customer eligibility and calculate refunds
- Whether refunds arising from interim rates were treated differently than other types of refunds
- The size and reason for the refunds
- The timeframe over which the refunds were paid
- Whether customers no longer on the system were eligible for refunds calculated from historical consumption
- Administration costs

[1] An Application by Newfoundland and Labrador Hydro pursuant to Sections 70 (1) and 76 of the Act for approval of the Rate Stabilization Plan rules and refunds to Newfoundland Power and Hydro Rural Customers, October 31, 2013.

III. Summary of Results[2]

We found no strong consensus on how refunds are given back. Several respondents stated that, theoretically, refunds should be given back to those who paid the money. But, others believed that would be impractical or too costly to implement, especially for relatively small refunds.

On a numerical basis, we found the following information:[3]

- 31 respondents reported refund cases in the last 10 years.
- 15 reported refunds based on historical usage, while 15 reported refunds based on future usage (5 of those 15 were were fuel or power supply adjustments). Some jurisdictions use both historical and future methods, depending on circumstances.
- 10 respondents reported refunds based on kWh usage, while 14 reported refunds based on historical bill differences.
- 9 reported trying to track down historical customers for refunds.
- Periods over which the refunds were given back ranged from one-time payments to several years.
- The largest refund on a per customer basis was $80.

Interim rate refunds are often viewed differently than other refunds such as tax refunds, or power supply refunds. Interim refunds were the type most often given back to those who paid them. Power supply and fuel refunds are most often done via future fuel adjustments on a kWh basis. The time period over which the refund was applied varied depending on the size of the refund.

The summary of the results for jurisdictions that reported refunds in the last 10 years is attached as Attachment 1.

Several jurisdictions have legislation or administrative rules that provide guidance for the distribution of refunds. Wisconsin, for

[2] Since the results rely to some extent on the knowledge and memory of the respondents, augmented by internet research, the results should not be interpreted as exhaustive.

[3] In some cases, the information was incomplete. Not all respondents were able to answer all questions.

example, has a statute (Chapter PSC 110) that specifically applies to refunds from wholesale suppliers to distribution utilities. A copy of this statute is attached as Attachment 2.

Attachment 1

Customer Refund Survey Summary of Results

Note to explain table headings:

1. Table only includes utilities that have reported having administered refunds in past 10 years.
2. Refund Approach refers to whether historical billings or future billings are the basis for the refund calculation.
3. Refund Calculation Method may include ¢ per kWh, bill difference from interim rate to new rate, % of total billing or others.
4. Total Refund refers to total amount to be provided to customers.
5. Average Refund per Customer refers to Total Refund amount divided by number of retail customers on system in that year.
6. Refund Previous Customer (Yes or No) identifies if the utility tried to contact customers that had been customers while the refund amount accumulated but were no longer customers when the disposition of the refund amount occurred.
7. Term of Balance Accumulation refers to the time frame over which the amount to be refunded accumulated prior to administration of the refund.
8. Comments/Documents gives additional comments and documents references.

Province	Refund Approach	Refund Calculation Method	Total Refund	Average Refund Per Customer	Refund Previous Customer	Refund Year	Term of Balance Accumulation	Refund Reason(s)	Comments/Documents
Saskatchewan	Historical	Bill Difference	$20 million	$43		2005	6 Months	Final rate order approving lower rate change than previously approved on interim basis.	Saskatchewan Rate Review Panel Report – December 17,2004
New Brunswick	Historical	Bill Difference	$12 million	$3.54 per customer	Yes	2008	10 months	Final rate order approving lower rate change than previously approved on interim basis.	New Brunswick Energy and Utilities Board – Feb. 22, 2008
Prince Edward Island	Future	n/a	$6 million	$80 per customer	n/a	2011	7-10 years	Tax refund from Canada Revenue Agency	Docket UE20602; Refund credited against the Energy Cost Adjustment Mechanism deferral account which had a balance owing.

Province	Refund Approach	Refund Calculation Method	Total Refund	Average Refund Per Customer	Refund Previous Customer	Refund Year	Term of Balance Accumulation	Refund Reason(s)	Comments/Documents
Nova Scotia	Future	n/a	$14.5 million	$29 per customer	n/a	2012	1 year	2010 Earnings Deferral	2010 NSUARB 250; Refund credited to Fuel Adjustment Mechanism to offset 2012 fuel costs
FortisBC	Future	n/a	$2.6 million	$2.60 per customer	n/a	2013	1 year	Final rate order approving lower rate change than previously approved on interim basis.	British Columbia Utilities Commission Order No. G-159-12; 2012 excess revenue used to reduce 2013 rate change.
Newfoundland Power	Historical	Percentage of Billings	$3.6 million	$10.70 + HST	yes	2003	1 year	Interim rate	Two prior (historical refund) cases before 2003, as well. See Newfoundland Power's evidence for details.

State	Refund Approach	Refund Calculation Method	Total Refund	Average Refund per Customer	Refund Previous Customer	Refund Year	Term of Balance Accumulation	Refund Reason(s)	Comments/Documents
Alabama	Future	kWh in January	$16.4M	$12 per customer	no	2012	multi-year	A lawsuit settlement with the US DOE concerning nuclear fuel storage costs	There was a $16.4M refund in 2012 due to a law suit against USDOE. It was refunded to current customers based on future one month consumption in January. State does not have interim rates. There is a Formula Rate Plan (FRP) in place where the utiliies file annually and the rates are adjusted with a formula. Any over or under FRP collections go into the future rates. Respondent said the period of time refunds would be spread over depended on the size of the refund and recalled one old case (no docket #) of $100 million that took several years to refund.
Alaska	Historical	bill difference w and w/o interim rate	$175K	$61 per customer	Yes. Cheques Sent to former customers	2011	short (months)	Interim Rate was too high	Case for Bethel Utilities, 2011, Interim rate refund
California	Future	kWh	$750M	$37 per customer	no	2013	2 years	Power Supply Refunds due to market manipulation	3 utilities received settlements totaling $750M for power supply overcharges that occurred in 2001 timeframe. The monies were flowed back through the ERRA (essentially a fuel and purchased power clause). Respondent indicated that about $4B worth of similar settlements occurred in California after the power supply debacle of 2001.

State	Refund Approach	Refund Calculation Method	Total Refund	Average Refund per Customer	Refund Previous Customer	Refund Year	Term of Balance Accumulation	Refund Reason(s)	Comments/Documents
California	Future	kWh	$400M	$20 per customer	no	2010	2 years	Power Supply Refunds due to market manipulation	in 2010 a $400 refund to 3 large utilities in state due to SEMPRA overcharge in 2001. no details on method. The refund was used to offset current bills.
Connecticut	Future				no	2008		Interim rates were too high	Reported 2 interim refund cases last 10 years, one in 2008. The refund was refunded to future customers. No further details given.
Delaware	Historical	bill difference w and w/o interim	$10M	$20 per customer	yes.	2009	months	Interim rate too high	Docket #s 09-414, 09-276T in 2009 and 2010. Delmarva Mailed checks to historical customers, others received bill credit

State	Refund Approach	Refund Calculation Method	Total Refund	Average Refund per Customer	Refund Previous Customer	Refund Year	Term of Balance Accumulation	Refund Reason(s)	Comments/Documents
Florida	Future	kWh consumed in future January month	$365M	$44 per customer	no	2009	1 year	One-time fuel refund	Refund was done differently than a normal fuel adjustment because the Commission and Company wanted to give back relatively large refund quickly. Florida has a Commission Rule 25-6.109 governing certain customer refunds.
Hawaii	Historical	Bill Difference	$304K	$49 per customer	Yes cheques mailed if left system	2012	1 year	Interim rate	2012 Maui Electric Interim rate refund $304K. Docket # 2011-0092, Order # 31288. Similar case with HECO.
Illinois	Uncertain		$37M	$10 per customer		2013		Error in the way a previous rate was calculatd resulted in a refund.	Interim rates theoretically allowed, but rarely sought. Staff said they don't always do refunds the same way. It depends on the size, timing and cause of the refund. Rates for 2 largest IOUs frozen for 10 years in 1997. $37M refunded by ComEd 2013 after courts settled a 6 year old rate calculation dispute. Doesn't know how refunded.
Kansas	Historical					1999-2000		Tax refund	Reported one case last 10 years for a gas company where a tax refund was given back to historic customers. No other details given

State	Refund Approach	Refund Calculation Method	Total Refund	Average Refund per Customer	Refund Previous Customer	Refund Year	Term of Balance Accumulation	Refund Reason(s)	Comments/Documents
Kentucky	Historical	bill difference		$11 per customer		2013	months	Interim refund	Time to refund generally depends on how long rate was in effect. If interim rate put in, company must track customers who pay it in case it has to be refunded. If customers have left the system they don't try to find them. Statute 278.190 requires refunds to be given back within 60 days
Louisiana	Historical	Bill difference	$3.8M	$24 per customer		2013	months	Interim refund	Entergy New Orleans refunded $3.8M over 4 months, due to interim rates. The rest of Louisiana has a Formula Rate Plan where companies file every year and rates are set with a formula. Any over or under collections are applied to future rates. It is possible to have an interim rate if there is a dispute on the FRP
Michigan	Future	January consumption	$10.7M	$4-$6 per customer	no	2010	months	Interim refund Docket 16441	Respondent said Michigan Act 286 governs refunds. For primary customers interim refunds go back to historical customers. For secondary and residential customers the Commission can deterimine the manner of distribution.

State	Refund Approach	Refund Calculation Method	Total Refund	Average Refund per Customer	Refund Previous Customer	Refund Year	Term of Balance Accumulation	Refund Reason(s)	Comments/Documents
Minnesota	Historical	Proportional difference of historical bill				2012		Interim rate refund	State Statute 216-B.116 Sub 3, Cases in 2012, 2013 Docket E002/GR-10-971. Refund usually distributed over 1-2 months.
Mississippi	Future	kWh	$50M			2013		FERC ordered power supply refund	Mississippi has a Formula Rate Plan (FRP) which most rate case items are flowed through each year and applied to the next year's rates. There was a $50M dollar FERC related refund in the last 10 years that was flowed through to future kWh charges in addition.
Missouri	Future	kWh	$26M	$22 per customer	no	2013		Rate miscalculation	A $26M revenue miscalculation was ordered to be included in future fuel charges. Don't usually have interim rates.
Montana	Future	therms				2009		Interim rate for gas company	Have had a few refunds in the last decade flow through future kWh. Docket D-2009.9.129 was cited. No other information given
New Jersey	Future	Applied against future gas rate increase	$122M	$68 spread over 4 years		2010	4 years	Market transition charge settlement from deregulation	Interim rates seldom applied for. A recent PSE&G $122M refund from overcharges for 4 years was applied against future rates in a rate case.

State	Refund Approach	Refund Calculation Method	Total Refund Amount	Average Refund per Customer	Refund Previous Customer	Refund Year	Term of Balance Accumulation	Refund Reason(s)	Comments and Notes
New York	Future		$85M	$25 per customers		2013		Tax refund	There was a recent $85M ConEd tax refund, but no details provided.
New York	Historical	Based on consumption in historic summer and spring months creating over-earnings	$80M	$24 per customer		2010		Refund due to decoupling of rates and costs and exceptionally hot months creating over collection of revenues	ConEd overearned in hot months so revenue being returned to customers who overpaid through NY's decoupling mechanism that tries to match costs to acutual revenues.
North Dakota	Historical	Difference in Bills Calculation	$900K		yes	2009		Interim rate refund	The respondent stated that in 2009 in an Otter Tail Power case, the refund was made to historical customers. If those customers had left the system, an attempt was made to get the refunds to them.
Ohio	Future	kWh	$2.6M						A recent $2.6M AEP refund was based on future kWh. No other details provided

State	Refund Approach	Refund Calculation Method	Total Refund	Average Refund per Customer	Refund Previous Customer	Refund Year	Term of Balance Accumulation	Refund Reason(s)	Comments/Documents
Oregon	Historical	Difference in Bill	$33M			2009			For non-interim rate refunds there is no set way to do it. For one large (Trojan 2009 nuclear decommisioning) refund for PGE a consultant was hired to track down historic customers to give the money back to them. Amount of time to give back refund depends on amount. Said it would be theoretically correct to give back to customers who paid, but not always practical
South Dakota	Historical	Difference in Bills		$10.50 per customer	Cheques mailed if refund to customer more than $3	2013	4 months	Interim rate too high	Utilities can implement interim rates if the Commission doesn't issue an opinion on the rate filing within 12 months. Recent Black Hills Power Case refund based on bill difference.

State	Refund Approach	Refund Calculation Method	Total Refund	Average Refund per Customer	Refund Previous Customer	Refund Year	Term of Balance Accumulation	Refund Reason(s)	Comments/Documents
Virginia	Historical	Bill Difference	$78.3M	$2.85 per customer for 1000 kWh/mo use during refund period		2011	2 years	Utility exceeded authorized return	There was a $78M refund ordered in 2011 for Dominion Power Company due to over earnings. In that case customers received a refund based on their consumption in the historical period.

Attachment 2

Wisconsin Chapter PSC 110
Distribution of Wholesale Electric Refunds

Brockman Consulting *1390 Mosswood Lane*
Smyrna, GA *(770) 335-0925*

Chapter PSC 110

DISTRIBUTION OF WHOLESALE ELECTRIC REFUNDS

PSC 110.01 Purpose. The purpose of this chapter is to set forth regulations for the distribution of wholesale refunds and other monies received from wholesale suppliers by electric utilities which purchase electricity from wholesale suppliers and sell it to retail customers.

History: Cr. Register, December, 1983, No. 336, eff. 1−1−84.

PSC 110.02 Distribution of wholesale refunds. A retail electric utility which has received a refund from its wholesale supplier as a result of a reduction in rates set by a federal regulatory authority shall distribute the refund to its retail customers, including former customers, if they can be located, in the following manner:

(1) Except as provided in sub. (2), the retail electric utility shall distribute the refund on the basis of actual kilowatt−hours used by each customer during the period for which the refund is made.

(2) If the utility can show that the cost of making the refund on the basis of actual usage will substantially diminish the benefit, it may, after commission authorization, distribute the refund through an adjustment to the power cost adjustment clause. The utility shall be required to keep a file for a minimum of 2 years of sales history for the purpose of making a refund based on actual usage.

Note: The 2−year record−keeping requirement of this section does not affect any other record−keeping requirements of the PSC code.

(3) If the utility has the billing capability, it shall show as a separate item on the customer's bill the refund dollar amount or the change in the purchased power adjustment clause level due to the refund. If the utility does not have the billing capability, it shall inform customers of the refund through bill inserts or a newspaper announcement.

(4) If through inaccurate operation or application of the power cost adjustment clause, a utility has not recovered from retail ratepayers the full amount of the increased costs which it had been temporarily charged by the wholesale supplier and which is the subject of a refund under these rules, the utility may, following commission approval, retain a portion or all of the wholesale refund to cover such costs.

History: Cr. Register, December, 1983, No. 336, eff. 1−1−84; am. (1) to (3), Register, August, 1991, No. 428, eff. 9−1−91.

PSC 110.03 Distribution of other monies. A retail electric utility which has received a patronage dividend or capital credit refund from its wholesale supplier as a result of cooperative policies shall distribute the refund to its retail customers in the following manner:

(1) The utility, after commission approval, shall distribute the refund through adjustment to the power cost adjustment clause.

(2) If the utility has the billing capability, it shall show as a separate item on the customer's bill the refund dollar amount or the change in the purchased power adjustment clause level due to the refund. If the utility does not have the billing capability, it shall inform customers of the refund through bill inserts or a newspaper announcement.

History: Cr. Register, December, 1983, No. 336, eff. 1−1−84.

PSC 110.04 Notification. An electric utility shall notify the public service commission within 30 days of receipt of a refund or other monies from its wholesale supplier. The notice shall contain a proposal for distribution of the money and the date by which the distribution is proposed to be made. The money shall be distributed only after commission approval. The utility shall notify the commission as to the date the distribution was made to retail customers, and the total amount distributed.

History: Cr. Register, December, 1983, No. 336, eff. 1−1−84.

PSC 110.05 Interest. Amounts refunded to customers shall include interest on the total amount received from the wholesale supplier from the date of receipt by the electric utility to the date of distribution to its retail customers. If the amount received by the electric utility was not actually invested, simple interest on the refund shall be calculated at the legal rate. Interest does not apply to patronage dividends and capital credits.

History: Cr. Register, December, 1983, No. 336, eff. 1−1−84.

PSC 110.06 Intervention expenses. Costs of intervention in federal regulatory proceedings by electric utilities which purchase electricity from a wholesale supplier are normal operating expenses to be considered in a rate case. Intervention expenses shall not be deducted from wholesale refunds which are distributed to retail customers.

History: Cr. Register, December, 1983, No. 336, eff. 1−1−84.

PSC 110.07 Distribution expenses. Costs of distribution of a refund to retail customers are normal operating expenses to be considered in a rate case. Distribution expenses shall not be deducted from wholesale refunds which are distributed to retail customers.

History: Cr. Register, December, 1983, No. 336, eff. 1−1−84.