

DELIVERED BY HAND

March 7, 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. Background

On October 31, 2013, Newfoundland and Labrador Hydro ("Hydro") filed an application for the approval of refunds to customers of Newfoundland Power and certain Rural customers of Hydro (the "Application"). The Application is concerned with a proposal to dispose of the surplus which accumulated in the Load Variation component of the Rate Stabilization Plan between January 1, 2007, and August 31, 2013 (the "Rate Stabilization Plan Surplus"). In particular, the Application requests approval for the disposition of the portion of the Rate Stabilization Plan Surplus which was credited to the Newfoundland Power Rate Stabilization Plan (the "Newfoundland Power RSP Surplus").

The Application proposes that a portion of the Newfoundland Power RSP Surplus be refunded to those Hydro Rural customers whose rates are based on the rates charged by Newfoundland Power ("Hydro's Rural Customers"). The Board has determined that it will consider the matter of the proposed refund to Hydro's Rural Customers in advance of considering the methodology of disposition.

This letter contains Newfoundland Power's submissions with respect to the proposed refund to Hydro's Rural Customers.

B. Legislative Framework

In exercising its duties, the Board is obligated to implement the power policy of the province. This obligation may be circumscribed, however, by the Lieutenant-Governor in Council who may direct

the Board with respect to the determination of rate structures of public utilities.¹

In 2013, the Provincial Government issued OC2013-89 which, as amended, contained specific directions relevant to the Board's consideration of the Application.

C. Proposed Refund to Hydro's Rural Customers

The Application proposes that \$9.1 million of the Newfoundland Power RSP Surplus be paid to Hydro's Rural Customers. In justification of this proposal, Hydro has relied on paragraph 6 of OC2013-089, and on the *Policies for Automatic Rate Changes* contained in Hydro's *Rules and Regulations of Service*.

In Newfoundland Power's submission, the proposed refund to Hydro's Rural Customers is inconsistent with (i) the directions given in OC2013-089; and (ii) the language of Hydro's *Policies for Automatic Rate Changes*.

C.1 Order in Council 2013-089

On the issue of entitlement, Hydro states that, based on paragraph 6 of OC2013-089, the right to receive a refund extends to "ratepayers." As the Island Industrial customers are the only "ratepayers" explicitly excluded, Hydro states that "it should be inferred that all other normally eligible ratepayers should receive the refund." This would include Hydro's Rural Customers.²

As an Order in Council, OC2013-089 should be interpreted in accordance with the modern principle of statutory interpretation. This requires that the context, as well as the ordinary and grammatical sense of the words, be considered.³

As regards the ordinary and grammatical sense of the words, OC2013-089 contains no explicit direction to pay any portion of the Newfoundland Power RSP Surplus to Hydro's Rural Customers. In fact, there is no mention of Hydro's Rural Customers in any of the Orders in Council relevant to the Application.

OC2013-089 directed the Board to divide the Rate Stabilization Surplus into 2 portions. The first portion (\$49 million) was to be credited to the Rate Stabilization Plan of the Island Industrial customers. The "remaining balance" was to be credited to Newfoundland Power's Rate Stabilization Plan. The Order directs that the portion credited to the Island Industrial customers is to be used to phase-in industrial rates over a defined phase-in period. Newfoundland Power's portion is to be distributed as "a direct payment or rebate to *its* ratepayers..." (emphasis added)⁴

¹ *Electrical Power Control Act, 1994*, SNL 1994, c. E-5.1, ss.3, 4 & 5.1.

² See response to Request for Information SR-PUB-NLH-001

³ *Amaratunga v. Northwest Atlantic Fisheries Organization*, 2013 CarswellNS 888 (S.C.C.), paragraph 36;
Glykis c. Hydro-Quebec, 2004 CarswellQue 2402 (S.C.C.), paragraph 5.

⁴ OC2013-089, as amended, paragraph 7.



As regards the context in which the Orders in Council were issued, the rates of Hydro's Rural Customers do not recover the cost of serving those customers. Furthermore, the deficit between the cost of serving Hydro's Rural Customers and the amounts recovered from those customers in rates is subsidized by the customers of Newfoundland Power and certain other customers of Hydro. 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, while Hydro's Rural Customers paid less than their full cost of service.

Hydro's position that OC2013-089 requires that a refund of a portion of the Newfoundland Power RSP Surplus be paid to Hydro's Rural Customers is not consistent with a reasonable, contextual interpretation of the Order in Council.

C.2 Hydro's Policies for Automatic Rate Changes

Hydro also justifies its Rural Customers' entitlement to refunds on the basis of its *Policies for Automatic Rate Changes*.

The plain language of Hydro's *Policies for Automatic Rate Changes*, indicates that they operate only in the case of a Newfoundland Power rate adjustment.⁵ However, OC2013-089, as amended, specifically directs that the Newfoundland Power RSP Surplus "shall not be in the form of an electricity rate adjustment."⁶

Hydro's response to this apparent contradiction is to assert that the proposed refunds to customers of Newfoundland Power would reduce the "effective rate" which Newfoundland Power customers pay in 2014.⁷ Hydro reasons that any adjustment in the "effective rate" paid by Newfoundland Power customers would trigger the operation of the *Policies for Automatic Rate Changes*, resulting in a similar refund for Hydro's Rural Customers.⁸

Hydro suggests that Government intended that the *Policies for Automatic Rate Changes* be triggered by changes in "effective rates". According to Hydro, this is reflected in the fact that certain rate adjustments for Hydro's customers on Isolated Systems are based on "the average rate of change granted Newfoundland Power from time to time".⁹ It is not clear how this supports Hydro's interpretation, since the purpose of the averaging mechanism is simply to facilitate rate adjustments where there are no equivalent Newfoundland Power rates.¹⁰

Hydro's proposition that a rebate should be considered a rate adjustment for the purposes of the *Policies for Automatic Rate Changes*, but not a rate adjustment for the purposes of compliance with

⁵ Hydro's Policies for Automatic Rate Changes provide for the automatic adjustment of Hydro's customer rates "as Newfoundland Power changes its rates." See response to Request for Information SR-PUB-NLH-001.

⁶ OC2013-089, as amended, paragraphs 6 and 7.

⁷ See response to Request for Information SR-PUB-NLH-002.

⁸ See response to Request for Information SR-PUB-NLH-002.

⁹ See response to Request for Information SR-NP-NLH-038.

¹⁰ See response to Request for Information SR-NP-NLH-049.



OC2013-089, is not supported by regulatory precedent and, in Newfoundland Power's submission, is not reasonable.

C.3 Other Issues

The Board's letter dated February 27th, 2014 requested that submissions also address the proposals that Hydro's Rural Customers (1) "receive a similar refund to Newfoundland Power customers" and (2) that the refund "be funded from a portion of the Newfoundland Power Rate Stabilization Plan Surplus."

Should the Board determine that Hydro's Rural Customers are entitled to a refund, it is appropriate, as a general proposition, that the refund be calculated in the same manner for customers of Newfoundland Power and customers of Hydro. Newfoundland Power is not making submissions at this time with respect to refund calculation methodology.

Should the Board determine that Hydro's Rural Customers are entitled to a refund, it should be funded from the Newfoundland Power Rate Stabilization Plan Surplus. This approach would avoid the unnecessary complexity of recovering that portion of the refund through future RSP adjustments.

D. Summary

In Newfoundland Power's submission, the payment to Hydro's Rural Customers of any of the Newfoundland Power RSP Surplus is not consistent with the directions given in OC2013-089, and is not reasonable in the circumstances.

Concluding

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

Copies of 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
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