

1 Q. **Reference: Evidence on Rate Stabilization Plan – Surplus Refund Plan**

2 How does Hydro's Surplus Refund Plan propose to address the HST aspects,
3 including the Provincial Government Residential Energy Rebate, of the proposed
4 refunds?

5
6
7 A. The proposed option is to provide a refund of the surplus funds to customers who
8 had power consumption in 2013. In 2014, Hydro will refund each customer a
9 proportionate share of the surplus based on 2013 consumption. Under this option
10 the refund of surplus funds does not fall under the rules of Section 232(2) of the
11 *Excise Tax Act* as Hydro is not issuing an adjustment against the consideration for
12 the original supply, and therefore Hydro would not be able to refund GST/HST to
13 customers under this alternative. Also, this option of refunding surplus funds does
14 not constitute a supply under Section 165 of the *Excise Tax Act* as customers of
15 Hydro whom are receiving a refund of surplus funds are not providing property or a
16 service to Hydro. Therefore, the payment of surplus funds and any related interest
17 to Hydro's customers under this proposal is not subject to HST. This treatment is
18 consistent with the treatment of the refund of surplus earnings to Wabush
19 customers in 2002 on which Hydro received a CRA ruling on the treatment of such
20 refunds for HST purposes (see SR-NP-NLH-030 Attachment 1). Also, as the refund of
21 surplus funds is not subject to HST there will be no impact on the Provincial
22 Government Residential Energy Rebate under this option.

23

24 Hydro, on page 11 of its evidence, noted that there are a number of administrative
25 challenges, if alternatively, historical consumption over the period 2007 to 2013 is
26 used as the basis for allocating the refund. However, Hydro is currently seeking a
27 ruling from the GRA on the appropriate HST treatment if the surplus funds were to

1 be refunded to customers through credit notes related to previous years' bills over
2 the period 2007 to 2013. If it is determined that GST/HST can be refunded to
3 customers under this alternative and Hydro is able to recover such GST/HST from
4 the CRA by claiming a credit on its HST return, Hydro will provide this information to
5 the Board.



Canada Customs and Revenue Agency
Agence des douanes et du revenu du Canada

GST/HST Rulings
Atlantic Centre *Your file Votre référence*
P.O. Box 638
1557 Hollis Street *Our file Notre référence*
Halifax, NS B3J 2T5

Newfoundland and Labrador Hydro
Corporation
P.O. Box 12400
St. John's, NF A1B 4K7

Case Number: 39452
Business Number: 121394928

Attention: Fred Murphy
Taxation Officer

July 17, 2002

Subject: ADVANCE GST/HST RULING
Refund of surplus earnings to Wabush customers

Dear Mr Murphy:

Thank you for your letter of February 19, 2002 (with attachments), concerning the application of the Goods and Services Tax (GST)/Harmonized Sales Tax (HST) to the proposed transaction described below.

You confirmed that, to the best of your knowledge, none of the issues described herein is being considered by a Canada Customs and Revenue Agency Office in connection with a GST/HST return already filed and none of the issues is under objection or appeal.

STATEMENT OF FACTS

Our understanding of the facts and the proposed transaction is as follows:

Newfoundland and Labrador Hydro Corporation (hereafter referred to as Hydro) is registered for GST/HST purposes having been assigned Business Number 121394928.

Hydro supplies electricity to its customers in Newfoundland and Labrador.

The Board of Commissioners of Public Utilities (hereafter referred to as PUB) in the province of Newfoundland and Labrador approves the rates charged by Hydro to its customers.

In an interim report dated November 10, 1988, PUB approved rates for electricity for the town of Wabush effective for January 1, 1989. At that time Power Distribution District was a crown corporation and supplied electricity to the town of Wabush. Power Distribution District later became part of Hydro. It was also provided in the interim report of 1988 that if in future years

Power Distribution District achieved a surplus, then the surplus would be refunded to the customers.

Since the interim report of 1988, Hydro has been recording in its financial statements an estimate of the surplus based on the costing methodology used in setting the Wabush rates in 1989. At the time you wrote your letter to us, the refund including interest was estimated at \$2,922,755.

Hydro, in its 2001 rate application to PUB, proposed that the surplus be refunded in 2002 based on Wabush customer's power consumption in 2001 proportionate to the total revenue in the town for 2001. This percentage will then be applied against the surplus including interest and refunded accordingly.

On June 7, 2002 PUB approved Hydro's proposal to distribute the surplus to customers who had power consumption in 2001.

Hydro intends to refund each customer's proportionate share in September 2002.

PROPOSED TRANSACTION

Customers who had power consumption in the town of Wabush in 2001, will receive a refund of their proportionate share of the surplus and interest.

RULING REQUESTED

Is the payment of each proportionate share of the surplus and interest to a customer who had power consumption in the town of Wabush, in 2001, subject to GST/HST? If it is subject to GST/HST are there any time limitations on the refund of tax and the recovery of tax by Hydro?

RULING GIVEN

Provided that the preceding statements constitute a complete and accurate disclosure of all the facts, the proposed transaction, and provided that the proposed transaction is completed as described above, our ruling is as follows:

The payment of each proportionate share of the surplus and interest to a customer who had power consumption in the town of Wabush during 2001, is not subject to GST/HST.

This ruling is given subject to the limitations and qualifications set out in section 1.4 of Chapter 1 of the *GST/HST Memoranda Series* issued by the Canada Customs and Revenue Agency and is binding provided that the proposed transaction is completed before March 31, 2003.

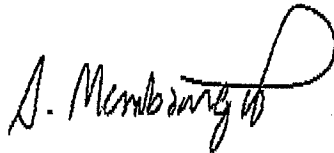
This ruling is based on the *Excise Tax Act* in its present form and does not take into account any proposed amendments to the *Excise Tax Act* or to our interpretative policy, which, if enacted, could have an effect on the ruling provided herein.

EXPLANATION

Section 165 imposes on every recipient of a taxable supply made in Canada to pay tax to Her Majesty in right of Canada on the value of consideration for the supply. A supply includes the provision of property or a service in any manner. As the customers in the town of Wabush, who will be receiving the refund, are not providing property or a service to Hydro, a supply does not take place. Therefore the payment of the surplus and interest to the customers of the town of Wabush who had power consumption in 2001 is not subject to GST/HST.

Should you have any further questions or require clarification on the above or any other GST/HST matter, please do not hesitate to contact me at 1-800-959-8287.

Yours truly,



Steve Mombourquette
GST/HST Rulings

Encl.: GST/HST Memoranda Series 1.4, *Goods and Services Tax Rulings*

Further reference material and information on other CCRA products and services can be found on our web page:

<http://www.ccra.gc.ca>