

1 Q. In the response to Request for Information NP-NLH-324, Hydro states:
2 *“Hydro filed its GRA in July 2013. Due to delays experienced in the GRA process,*
3 *Hydro updated its financial forecast in Q2 2014 and based on that information,*
4 *revisions to the GRA filing were deemed to be necessary to update the financial*
5 *information in order to provide a more current and relevant basis for rate setting*
6 *purposes”.*

7 Please describe each of the delays referred to that were experienced in the GRA
8 process and indicate the source(s) and nature of each delay, together with a
9 quantification of the period of each delay.
10
11

12 A. **Background**

13 The delays experienced in the current GRA process, in Hydro’s view, result in large
14 measure from the extended period between Hydro’s 2006 GRA filed on August 3,
15 2006 and the 2013 GRA filing on July 30, 2013 for rates effective January 1, 2014, a
16 period of seven years. Hydro believes that a three-year period between GRAs may
17 generally be appropriate.¹ The primary reason for the delay in the GRA filing during
18 the years 2010 to 2013, the period during which a GRA would have been expected
19 to have proceeded, relates to Government’s direction on rates policy.
20 Government’s Orders in Council² issued to the Board and Hydro in April 2013 were
21 the culmination of a period of approximately three years in which Government
22 provided direction to Hydro and the Board on Industrial Customer (IC) rates policy.
23 The implementation of Government direction resulted in further delays in the GRA
24 process.

¹ As stated in Hydro's responses to PUB-NLH-074 and PUB-NLH-075.

² OC2013-089, OC2013-090 and OC2013-091 as amended by OC2013-207 and OC2013-208.

RSP Process

In 2007, there was a significant decline in industrial sales as Corner Brook Pulp and Paper shutdown a paper machine and in late 2008, AbitibiBowater announced that it would be closing its Grand Falls operations in 2009. Due to the operation of the RSP and the potential rate volatility for Industrial Customers, on January 16, 2009, Hydro applied to the Board for an Order to extend the deadline for filing an application until June 30, 2009 and to continue the existing IC rates. In Order No. P.U. 6(2009) the Board approved the continuation of the rates, rules and regulations for Hydro's Industrial Customers on an interim basis and directed Hydro to make an application to finalize the interim rates, rules and regulations by June 30, 2009.

Hydro filed an Application on June 30, 2009 but the Application did not seek changes to the RSP rates. Hydro stated "...that application of the existing RSP rules to calculate rates for Industrial Customers would result in significant and unreasonable rate volatility...". Notice of the Application and the hearing date were published, interventions were filed and over several months, requests for information were issued and answered. On May 25, 2010, the Board wrote the parties to advise that a preliminary hearing would be held on June 14, 2010. On June 2, 2010, Hydro submitted a letter setting out an agreed upon list of issues among the Parties to the proceeding to be dealt with in the preliminary hearing. The issue identified for the Board's consideration, in summary, was as follows:

Does the Board have the jurisdiction to issue an order which changes how the Rate Stabilization Plan (RSP) operated before the date of the order and, if so, does this jurisdiction extend to any aspect of the operation of the RSP, including the rate charged to customers, the determination of the balance(s) in the RSP, and how these balances are allocated to customers or customer classes?"

1 In P.U. Order No. 25(2010), the Board found that “in the circumstances its
2 jurisdiction to make orders in relation to how the RSP operated in prior years is
3 limited.” On September 17, 2010, Hydro and the Consumer Advocate appealed this
4 decision to the Court of Appeal, arguing that the Board did have jurisdiction over
5 the RSP amounts. The appeal on the matter of the Board’s decision was heard in
6 December 2010.

7
8 **Government’s Rates Policy Decisions**

9 In a letter dated December 1, 2010,³ the Board indicated that it was proceeding
10 with a hearing in 2011 on IC rates as follows:

11
12 While the Board is agreeable to settlement discussions taking place we
13 provide notice that the Board is reserving Tuesday, January 25, 2011 as
14 a hearing date should settlement discussions fail to result in any
15 agreement among the parties. The purpose of this hearing will be to
16 hear evidence which will be used to determine the appropriate
17 Industrial Customer rate to continue on an interim basis as well as
18 necessary changes to the RSP. In preparation for the hearing, the parties
19 must file evidence by Friday, January 14, 2011 and final submissions by
20 Tuesday, January 18, 2011.

21
22 Due to a scheduling conflict, the January 25, 2011 hearing date was postponed,⁴
23 and subsequently, on April 19, 2011, Government issued OC2011-116,⁵ which
24 ordered the Board to defer the consideration of matters related to IC rates and also
25 directed Hydro to file a General Rate Application by December 31, 2011. OC2013-
26 116 states as follows:

27
28 On the basis that the Lieutenant Governor in Council will instruct the
29 Newfoundland and Labrador Hydro-Electric Corporation to file a

³ Refer to Attachment 1.

⁴ Refer to Attachment 2 for Board letter dated December 30, 2010.

⁵ CA-NLH-024, Attachment 6.

General Rate Application on or before December 31, 2011 and under the authority of section 5.1 of the Electrical Power Control Act, 1994, the Lieutenant Governor in Council hereby directs the Board of Commissioners of Public Utilities to defer the consideration of all matters currently before the Board pertaining to Industrial Customer rates and rate adjustments and to consider those matters in the context of the General Rate Application process.

Subsequent to directive OC2011-116, which ordered the Board to defer the consideration of matters related to IC rates, Government issued a further directive OC2011-388, which delayed the GRA filing until June 30, 2012.

Meanwhile, the Court of Appeal rendered its decision on June 19, 2012 (21 months after the original Appeal). The Court found that the Board erred in its Decision⁶ as the Appellants had contended. At paragraph 157, the Court stated:

We conclude that the Board has jurisdiction to deal with and dispose of remaining amounts in the RSP in accordance with the broad powers contained in legislation, which include, but are not limited to, refunding it to the Industrial Customers. But these powers are not necessarily confined to disposing of the RSP fund balances solely to the benefit of one class of customers, in this case the Industrial Customers. This is not to say, of course, that the Board should include customers other than the Industrial Customers as beneficiaries, only that the Board has the jurisdiction and authority to, and should, consider the submissions of all interested parties on this issue, taking into account generally accepted sound public utility practice and the imperative of setting just and reasonable rates that are non-discriminatory.

Following the Court of Appeal decision in June 2012, there were further directives⁷ delaying Hydro's filing: OC2012-162, which delayed the GRA filing until July 16, 2012; OC2012-175 which delayed the GRA filing until December 31, 2012; OC2012-

⁶ Section 156, Page 47 of the Court decision.

⁷ For OC2012-162, OC2012-175, OC2012-330, OC2013-048, OC2013-083 and OC2013-089 refer to CA-NLH-024, Attachments 9, 10, 12, 13, 14 and 15 respectively.

330 which delayed the GRA filing until February 28, 2013; OC2013-048 which delayed the GRA filing until March 31, 2013; OC2013-083 which delayed the GRA filing until April 15, 2013; and OC2013-089, OC2013-090 and OC2013-091 dated April 4, 2013 which resulted in Hydro's eventual GRA filing on July 30, 2013.

In summary, the delays in the GRA filing that occurred during the 2010 to 2013 period described above were related to Government's rightful role of setting electricity rates policy in the Province. Further, much of that delay arose from the need to appeal the Board's decision with respect to its jurisdiction regarding the RSP.

Hydro's July 30, 2013 RSP Filing

In response to Government's direction received on April 4, 2013, Hydro filed its GRA on July 30, 2013. Concurrent with the GRA filing, Hydro filed a separate RSP Application. This separate filing was in response to Government's directives OC2013-090 and OC2013-091 which, among other things, instructed Hydro "to bring about such applications and information to the Board of Commissioners of Public Utilities to facilitate Orders from that Board" on matters related to the RSP Surplus balance and the phase-in of IC rates.

OC2013-089 Direction to the Board

In its role of setting electricity rates policy in the Province, Government issued OC2013-089, as amended,⁸ directing the Board, which states as follows:

Under the authority of section 5.1 of the Electrical Power Control Act, 1994, the Lieutenant Governor in Council is pleased to direct the Board of Commissioners of Public Utilities that:

⁸ As amended by OC2013-207.

1) Effective September 1, 2013, Island industrial customer rates will no longer be frozen. Effective on this date rate increases for island industrial customers will be phased in over a three year period, with funding for this phase-in to be drawn from the January 1, 2007 to August 31, 2013 accumulated Load Variation (the Rate Stabilization Plan Surplus) component of the Rate Stabilization Plan and credited to the Island industrial customer Rate Stabilization Plan effective August 31, 2013;

2) On August 31, 2013 the Island industrial customers' Rate Stabilization Plan will be credited with \$49 million, the estimated Rate Stabilization Plan amount required to phase-in industrial customer rates, based on Newfoundland and Labrador Hydro's General Rate Application. The remaining balance in the Rate Stabilization Plan Surplus on August 31, 2013, will be transferred to the credit of Newfoundland Power's Rate Stabilization Plan. No future adjustments will be made to these amounts credited. Effective September 1, 2013 all Island industrial customers, with the exception of Teck Resources, will be subject to the same standard industrial rate, equivalent to the existing base rate but excluding the Rate Stabilization Plan adjustment currently in place;

3) Teck Resources rate increase will be phased in, to a reasonable degree, in three equal annual percentage increases, and at the end of the phase-in period Teck Resources will be subject to the standard industrial rate;

4) Over the three year Island industrial rate phase in period, the shortfall in Newfoundland and Labrador Hydro's revenues when compared to revenue at the Board of Commissioners of Public Utilities-approved Island industrial customer rates, shall be funded from the Island industrial customer Rate Stabilization Plan;

5) Notwithstanding Items 1) through 4) above, effective January 1, 2014, the Island industrial customers will be subject to Rate Stabilization Plan rate changes in accordance with the Board of Commissioners of Public Utilities-approved methodology;

6) Newfoundland and Labrador Hydro's General Rate Application process shall include a Rate Stabilization Plan surplus refund plan to ratepayers. The refund plan shall comprise direct payments or

rebates to ratepayers and shall not be in the form of an electricity rate adjustment. This refund plan will exclude Island industrial customers who will receive Rate Stabilization Plan surplus funds through the three year phase-in of new rates. The Board of Commissioners of Public Utilities shall make the final determination on the details of the refund to remaining ratepayers;

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

8) Newfoundland and Labrador Hydro's General Rate Application shall be based on a 2013 test year in the determination of new electricity rates for customers.

There appears to have been, and continues to be, fundamental differences between Hydro's interpretation of its mandate "to bring about such applications and information to the Board of Commissioners of Public Utilities to facilitate Orders from that Board" and the Board's view of the applications and information it requires to meet its obligations under OC2013-089. Hydro's response to CA-NLH-279 details Hydro's view with respect to differences in the Board's interpretation regarding OC2013-089 Subsections 1 and 3, the phase in of IC rates over a three-year period and Subsection 5, Industrial Customers' annual RSP rate changes resuming January 1, 2014. In summary, CA-NLH-279 states as follows:⁹

Hydro believes it has met its own requirements as directed by the Government in OC2013-090. It appears to be the Board's view that the General Rate Application must be completed (or substantially completed) prior to Industrial Customers' rate changes being implemented in accordance with the directive found in OC2013-089. Hydro disagrees with this sentiment and observes that as a result of this

⁹ CA-NLH-279, page 4, line 30 to page 5, line 5.

view, the Board again constrained its ability to continue the implementation of the phase in [of] IIC rates as contemplated in the directive.

Subsections 6 and 7 of OC2013-089 are directives to the Board related to the Rate Stabilization Plan surplus refund plan to ratepayers. The implementation of these directives currently remains outstanding. In Order No. P.U. 9(2014) dated April 9, 2014, the Board directed a refund of a portion of the RSP Surplus to retail customers which included Rural Labrador Interconnected Customers. As a result of a difference of opinion in the Board's interpretation of OC2013-089 and the interpretation of Consumer Advocate (CA), Newfoundland Power (NP) and Hydro, this matter was appealed to the Court of Appeal on April 17, 2014. The Board and parties are currently awaiting a decision of the Court of Appeal.

Subsection 8 directs the Board that Hydro's GRA "shall be based on a 2013 test year in the determination of new electricity rates for customers." In 2013 and 2014, Hydro filed two interim applications and an amended interim rates application requesting interim rates based on a 2013 Test Year. All have been denied by the Board. In Hydro's response to CA-NLH-279, regarding Hydro's first interim rates application, it is stated as follows:¹⁰

In making its November 18, 2013 filing in compliance with OC2013-90, Hydro had viewed that the Board could use its authority under the Act to implement interim rates¹¹ on January 1, 2014 in order to meet its own requirements of Government directive OC2013-089. Hydro acknowledges, but disagrees with, the Board's view that the General Rate Application must be completed (or substantially completed) prior to Industrial Customers' rate changes being implemented. The result of holding this view is that the Board has limited its ability to meet the January 1, 2014

¹⁰ CA-NLH-279, page 3, lines 16 to line 24.

¹¹ Section 75 of the *Public Utilities Act*.

1 date contemplated in the directive. Hydro believes it has met its own
2 requirements under the Order in Council.
3

4 Because of the delay in achieving interim rates implementation using a 2013 Test
5 Year, Hydro found it necessary to reconsider its approach. In a letter to the Board
6 dated June 6, 2014, Hydro stated the following:
7

8 Revisions to the GRA filing are necessary at this time to update the
9 financial information to provide a more current and relevant basis for
10 rate setting purposes. Obtaining an order based upon the 2013 test year
11 filing, which is before the Board at present, would likely require Hydro
12 to file another GRA very soon, a prospect which does not facilitate
13 regulatory efficiency.
14

15 On October 30, 2014, Government issued OC2014-319, which revoked the Board's
16 requirement under Subsection 8 to use a 2013 Test Year in setting rates and thus
17 enabled Hydro to file its amended Application based on a 2015 Test Year.
18

19 The only remaining subsection of OC2013-089 not addressed above is Subsection 2
20 related to the distribution of the Rate Stabilization Plan Surplus on August 31, 2013.
21 On August 30, 2013, the Board issued P.U. 26(2013) which directed funds from the
22 RSP Surplus to be transferred to NP and IC RSP accounts. To date, Subsection 2 is
23 the only component of OC2013-089's eight subsections, which has been
24 implemented or approved for implementation.
25

26 **Delays in the Current GRA Process**

27 It is Hydro's view that delays in the current GRA process stem mainly from two root
28 causes: (i) the number of years between GRAs and (ii) different interpretations by
29 Hydro and the Board on the requirements for the implementation of Government
30 rates policy directives.

Over the period July 30, 2013 to April 30, 2015, there have been eight filings related to Hydro's GRA filing and the separate RSP Application and related Rate Stabilization Plan Evidence as shown in the following table:

Hydro Filings	Date
General Rate Application	July 30, 2013
Rate Stabilization Plan	July 30, 2013
RSP Surplus Refund Plan	October 31, 2013
Interim Rates Application	November 18, 2013
Amended Interim Rates Application	February 11, 2014
Interim 2014 Cost Recovery Application	November 28, 2014
Amended General Rate Application	November 10, 2014
2015 Interim Rates Application	January 28, 2015

Over the period July 2013 to April 2015, Hydro has also responded to more than 2400 requests for information related to these filings. The number of filings and responses to RFIs related to a single GRA are unprecedented in Hydro's regulatory history before the Board.¹² It is Hydro's view that over this period, sufficient and specific applications have been filed and voluminous information has been provided to the Board to warrant appropriate remedial orders from the Board.

Hydro acknowledges that, at times, because of the overwhelming amount of requests for information it has been necessary to request extensions to the Board's filing deadlines. It is also acknowledged that the Investigation and Hearing into Supply Issues and Power Outages on the Island Interconnected System (Outage Inquiry) and Prudence Review have caused the Board to delay some aspects of the GRA proceeding.

¹² Hydro responded to 849 RFIs in the 2001 GRA, 1172 RFIs in the 2003 GRA and 591 RFIs in the 2006 GRA.

Summary

This present NP RFI requests Hydro to “describe each of the delays referred to that were experienced in the GRA process and indicate the source(s) and nature of each delay, together with a quantification of the period of each delay.” The response to this request for information is based on Hydro’s view of the overall causes for the extended period of time that has elapsed in this proceeding. In summary, Hydro identifies the major sources and nature of the delay as being the significant data requirements resulting from the extended period between Hydro’s 2007 Test Year and the current 2015 Test Year and, as well, the number of filings and related data requests as a result of different interpretations by Hydro and the Board of the requirements for the implementation of Government rates policy directives. It is not possible to quantify the period of each since these causes have simultaneously resulted in a significantly extended GRA process from what has been the norm in this Province. There are also other contributing factors, such as the Outage Inquiry and Prudence Review, which have resulted in some delays.



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RE: Notice of Changes to the Rate Stabilization Plan



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Newfoundland and Labrador Hydro

Mr. Geoffrey Young

Industrial Customers

Mr. Paul Coxworthy

Mr. Dean Porter

Consumer Advocate

Mr. Thomas Johnson

Newfoundland Power Inc.

Mr. Gerard Hayes

Mr. Ian Kelly, Q.C.

Abitibi Consolidated Company of Canada

Mr. Colm St. R. Seviour

Mr. Gregory Moores

Dear Sirs:

Re: Notice of Changes to the Rate Stabilization Plan

As discussed at the meeting held on Monday, November 29, 2010 it is the intention of the Board to set appropriate rates for the Industrial Customers of Newfoundland and Labrador Hydro (Hydro) for 2011 which are reasonable and not unjustly discriminatory. Issues raised by the Consumer Advocate, Newfoundland Power (NP) and Hydro throughout the process of finalizing the interim rates of Industrial Customers for 2008, 2009 and 2010 make it necessary that the rates charged by Hydro to Newfoundland Power are also made interim as of January 1, 2011. It may also be necessary to make amendments to the rates, rules and regulations under the RSP.

As of January 1, 2011 the interim rates for the Industrial Customers shall continue subject to the process outlined below. The rates which Hydro charges to NP shall also be made interim as of January 1, 2011. The entire RSP methodology which sets the RSP component on the rates will also be considered interim as of January 1, 2011. Should any party have an objection to the Board's intention for January 1, 2011 it should be raised with the Board, in writing, before 4 p.m. on Wednesday, December 8, 2010.

As to the process for setting appropriate rates for the Industrial Customers, Hydro has proposed to the Board the possibility that settlement discussions be held between the parties in early January, 2011. The Board understands that Hydro has already contacted the parties to seek confirmation of their agreement to participate in these discussions.

While the Board is agreeable to settlement discussions taking place we provide notice that the Board is reserving Tuesday, January 25, 2011 as a hearing date should settlement discussions fail to result in any agreement among the parties. The purpose of this hearing will be to hear evidence which will be used to determine the appropriate Industrial Customer rate to continue on an interim basis as well as necessary changes to the RSP. In preparation for the hearing, the parties must file evidence by Friday, January 14, 2011 and final submissions by Tuesday, January 18, 2011.

The Board confirms that any changes to the RSP will be effective January 1, 2011 and will not affect the current balance accumulated in the plan. The balance accumulated for 2008, 2009 and 2010 is subject to Board Order No. P.U. 25 (2010), which is currently being appealed and there will be no decision on the treatment of this balance until the Court of Appeal has issued its order.

If you have any questions please contact me at 726-8600 or the Board's Legal Counsel, Jacqueline Glynn, at 726 6781.

Yours truly,



Cheryl Blundon
Board Secretary

Ecc. Dan Simmons

To Parties - Notice of Changes to RSP - Dec 1 2010



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RE: Notice of Changes to the Rate Stabilization Plan (RSP) – Interim Rates January 1, 2011



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Abitibi Consolidated Company of Canada
Mr. Colm St. R. Seviour
Mr. Gregory Moores

Dear Sirs:

Re: Notice of Changes to the Rate Stabilization Plan (RSP) – Interim Rates January 1, 2011

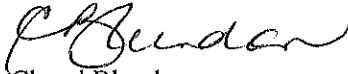
Further to the Board's correspondence of December 1, 2010 the Board notes that no objections have been raised to the Board's proposal to: (i) continue the Industrial Customers' interim rates subject to a hearing; (ii) make the rates Hydro charges to Newfoundland Power interim; and (iii) make the entire RSP methodology which sets the RSP component of the rates interim. A copy of Order No. P.U. 39 (2010), which orders Hydro's rates to Newfoundland Power and the RSP methodology interim as of January 1, 2011, is enclosed.

The Board will schedule a hearing to determine an appropriate rate. A potential conflict has been identified with the hearing date set for January 25, 2011. The Board has requested that the parties continue to reserve this date pending its possible availability as well as possible dates in March, 2011.

Dates for the filing of evidence and submissions had also been previously identified and now require amendment. The Industrial Customers requested that Hydro file a proposed rate schedule with analysis and evidence by December 31, 2010. Hydro has indicated that December 31, 2010 is unrealistic and has proposed a filing date of January 14, 2011. However to preserve the hearing schedule the Board requires that Hydro file this information by Tuesday, January 11, 2011. The filing dates for evidence of the other parties and submissions will be confirmed early in the New Year.

If you have any questions please contact me at 726-8600 or the Board's Legal Counsel, Jacqueline Glynn, at 726 6781.

Yours truly,



Cheryl Blundon
Board Secretary

Ecc. Dan Simmons

To Parties - Interim Changes Jan 11 - Dec 30 2010