

December 10, 2014

Paul L. Coxworthy  
Direct Dial: 709.570.8830  
[pcoxworthy@stewartmckelvey.com](mailto:pcoxworthy@stewartmckelvey.com)

**Via Electronic Mail and Courier**

Newfoundland and Labrador Board  
of Commissioners of Public Utilities  
120 Torbay Road  
P.O. Box 21040  
St. John's, NL A1A 5B2

**Attention: Ms. G. Cheryl Blundon, Director of Corporate Services  
and Board Secretary**

Dear Ms. Blundon:

**Re: Newfoundland and Labrador Hydro – 2013 General Rate Application – Hydro's  
2014 Interim Cost Recovery Application dated November 28, 2014**

These are the submissions of the Island Industrial Customer (IIC) Group (Corner Brook Pulp and Paper Limited, North Atlantic Refining Limited and Teck Resources Limited), on the above Application, invited by the Board's correspondence dated December 3, 2014.

**Interim relief and the compressed timeframe**

The Board in its correspondence stated that as the Application was filed on November 28, 2014, and that as Hydro was seeking an Order of the Board on the requested relief by December 31, 2014, there was insufficient time to follow the normal regulatory process. In particular, these timelines would not allow for requests for information or the filing of additional evidence. While the Board has invited submissions, the IIC Group would note that these also are having to be prepared in a compressed time frame. The IIC Group would respectfully submit that in such circumstances, particular care should be taken that interim relief not have unintended consequences, and that the interim relief be wholly susceptible, and made subject, to a future full review (and if warranted, reversal, in whole or in part).

**The Board's correspondence of December 3, 2014**

The Board, by its December 3, 2014 correspondence, has specifically requested that submissions address the following:

*What are the implications or issues which should be considered in relation to an Order of the Board which approves only the creation of the deferral account and transfer of the amount of \$45.9 million from Hydro's income statement to the deferral account and denies all of Hydro's other requests. For clarity, there would be no approval at this time of Hydro's request i) to use the 2014 Test Year Cost of Service Study as a basis for allocating the revenue deficiency, ii) to use the credit balance in the RSP Hydraulic Variation Account balance at December 31, 2014 to provide recovery, and iii) to revise Section A of the RSP Rules to segregate the 2014 year-end balance in the RSP Variation Account.*

### Hydro's submissions dated December 9, 2014

We have had the opportunity to review Hydro's submissions by its correspondence to the Board dated December 9, 2014. We would make the following comments and submissions in respect of those Hydro submissions:

1. At page 5, section 6.0 Hydro submits that "*Hydro's Evidence to its Amended [Amended GRA] Application provides indisputable evidence of a material deficiency for 2014.*" The IIC Group submit that any interim relief granted to Hydro should make clear that it is not grounded in any determination by the Board that (a) Hydro has incurred a revenue deficiency in 2014 in the amount of \$45.9 million or that (b) any material revenue deficiency incurred by Hydro in 2014 will necessarily be recoverable by rates charged to Hydro's customers or by transfers from the RSP Hydraulic Variation Account or the segregated RSP Load Variation Component. Any interim relief should be made expressly subject to the questions of the amount of the 2014 revenue deficiency, and of whether any of the 2014 revenue deficiency is recoverable by rates charged to Hydro's customers or by transfers from the RSP Hydraulic Variation Account or the segregated RSP Load Variation Component, being determined in 2015, by a GRA process that has been completed (at least in respect of these questions).
2. Hydro, at page 3, in section 2.0 acknowledges that "*Approval of the proposed deferral account without dealing with recovery of the 2014 Revenue Deficiency would not negatively impact Hydro's ability to earn a reasonable return in 2014. The Board can deal with options for recovery during the hearing on the Amended Application.*" However, IIC Group would go further to submit that if \$45.9 million is an appropriate amount to allocate, on an interim basis, to a revenue deficiency deferral account, it is only because, given the compressed process, the Board is constrained to consider interim relief based on Hydro's evidence alone, untested by the GRA or an equivalent process. Therefore, it is respectfully submitted, the interim relief order should make clear that the questions stated in our submission paragraph 1 above must also be dealt with during the hearing of the Amended GRA, in 2015.
3. Hydro, at page 5, section 6.0 of its submissions, acknowledges that in current circumstances, the implementation of interim rates is not available for the interim relief Hydro is seeking. However, in the same section Hydro goes on to say that the Deferral Account Option is consistent "*...with the clear intention of the legislature as expressed in section 75 of the Public Utilities Act which provides that the Board is empowered to unilaterally make an interim order without a public hearing or notice.*" We note that the interim orders referred to in section 75 relate to the approval of a schedule of rates, tolls and charges.

#### Interim order

**75.** (1) *The board may make an interim order unilaterally and without public hearing or notice, approving with or without modification, a schedule of rates, tolls and charges submitted by a public utility, upon the terms and conditions that it may decide.*

The IIC Group submit that it is not necessary to decide definitively, in the present compressed process, whether the “Deferral Account Option” proposed by Hydro falls within the meaning, however broadly and liberally interpreted, of a schedule of rates, tolls and charges as contemplated by Section 75 of the *Public Utilities Act*. In the *Stated Case*, as cited at paragraph 57 of the 2012 Court of Appeal decision (Attachment 1 to Hydro’s December 9, 2014 submission), the Court of Appeal stated, *inter alia*, that

“... ”

*The failure to identify a specific statutory power in the Board to undertake a particular impugned action does not mean that the jurisdiction of the Board is thereby circumscribed; so long as the contemplated action can be said to be “appropriate or necessary” to carry out an identified statutory power and can be broadly said to advance the purposes and policies of the legislation, the Board will generally be regarded as having such implied or incidental power;*

*In carrying out its functions under the Act, the Board is circumscribed by the requirement to balance the interests, as identified in the legislation, of the utility against those of the consuming public;*

*The setting of a “just and reasonable” rate of return is of fundamental importance to the utility and must always be an important focus of the Board’s deliberations; however, the “entitlement” of the utility to a just and reasonable rate of return does not guarantee it that level of return...”*

The IIC Group would submit that it would be consistent with the application of the above principles to not consider the granting of interim relief in the present circumstances, in the nature of a revenue deficiency deferral account, as a precedent for the granting of such relief, interim or otherwise, in future circumstances. The above principles identify that, in all circumstances and in any particular circumstance, whether the relief sought is appropriate is a matter of identifying how best to advance the policy objectives of the legislation (and, the IIC Group would acknowledge, of applicable Orders-in-Council) and of balancing the interests of Hydro and its customers.

### **The interim relief**

The IIC Group, in the context of this compressed process, accepts that an interim order that “approves only the creation of the deferral account and transfer of the amount of \$45.9 million from Hydro’s income statement to the deferral account and denies all of Hydro’s other requests” could be found by the Board to be appropriate, provided that it is expressly confirmed that the questions identified in our submission paragraphs 1 and 2 above remain fully susceptible to being addressed in the Amended GRA, in 2015.

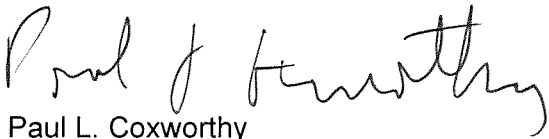
### **IIC Group Costs**

The IIC Group comprise the majority of Hydro's industrial customers, and are significant consumers of power supplied by Hydro. Industrial customer rates have been subject to a great deal of uncertainty and unpredictability in recent years, and this promises to continue to be the case, at least until conclusion of the upcoming GRA process in 2015. The interim relief sought by Hydro has substantial potential implications for rates to be paid by the industrial customers. The IIC Group submit that these are circumstances in which it is reasonable to award to the IIC Group their legal and consultant's costs of participating in this compressed process, and respectfully request that the Board make an order awarding the IIC Group their costs.

All of which is respectfully submitted on behalf of the IIC Group.

Yours truly,

Stewart McKelvey



Paul L. Coxworthy

PLC/kmcd

- c. Geoffrey P. Young, Senior Legal Counsel, Newfoundland and Labrador Hydro
- Thomas J. Johnson, Consumer Advocate
- Gerard Hayes, Newfoundland Power
- Dean A. Porter, Poole Althouse
- Thomas J. O'Reilly Q.C., Vale Newfoundland and Labrador Limited
- Edward M. Hearn Q.C., Miller & Hearn
- Senwung Luk, Olthuis, Kleer, Townshend LLP
- Yvonne Jones, MP Labrador