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February 13, 2017

The Board of Commissioners of Public Utilities
Prince Charles Building
120 Torbay Road, P.O. Box 21040
St. John's, NL A1A 5B2

Attention: Ms. Cheryl Blundon
Director Corporate Services & Board Secretary

Dear Ms. Blundon:

**Re: Approval of a Plan for the Rate Stabilization Plan ("RSP") Surplus to Customers –
Compliance with Board Order No. P.U. 36(2016)**

Please find enclosed a copy of correspondence received by Hydro dated January 5, 2017, from the Department of Finance, Government of Newfoundland and Labrador. Hydro is filing a copy of this correspondence with the Board in compliance with paragraph 2a. of Order No. P.U. 36(2016).

Should you have any questions, please contact the undersigned.

Yours truly,

NEWFOUNDLAND AND LABRADOR HYDRO

Geoffrey P. Young
Corporate Secretary & General Counsel
GPY/bs

cc: Gerard Hayes – Newfoundland Power

Dennis Browne, Q.C. – Consumer Advocate

January 5, 2017

Newfoundland Labrador Hydro
Hydro Place, 500 Columbus Drive
P.O. Box 12400
St. John's, NL
A1B 4K7

Dear Ms. Roy:

**Re: Residential Energy Rebate (RER) Interpretation -
Application of the RER to the Refund of the Rate Stabilization Plan Surplus**

Thank you for your request of October 17, 2016 concerning the application of the RER under the *Revenue Administration Act* (the “Act”) and *Revenue Administration Regulations* (the “Regulations”) to the refund of surplus funds held in Newfoundland and Labrador Hydro’s (“Hydro’s”) Rate Stabilization Plan (“RSP”).

It is understood from your submission for an RER interpretation that:

1. Hydro’s RSP is an electricity rate smoothing methodology introduced in 1986 to address the impact of volatile fuel prices on electricity rates, which is directly correlated to the cost of fuel used at Hydro’s Holyrood Generating Station and the overall electricity consumption on the system serving the island of Newfoundland.
2. Since 2007, Hydro experienced a significant reduction in its industrial customer consumption, primarily due to a reduction in electricity use within the pulp and paper industry. As a result of this and other RSP variances, a significant positive balance has accumulated in the RSP account (“RSP Surplus”).
3. Through Orders-In-Council OC2013-89, OC2013-91, OC2013-207, and OC2013-208 Hydro has been directed to refund a portion of the RSP Surplus as a direct payment or rebate to eligible ratepayers, and not in the form of an electricity rate adjustment. A portion of the RSP Surplus is expected to be refunded by Hydro to Newfoundland Power and, in turn, refunded by Newfoundland Power to approximately 268,000 of its customers based upon customer electricity consumption (in kilowatt hours) during the period January 1, 2007 to August 31, 2013 (“Refund Period”). Hydro will also directly refund a portion to its own customers in relation to the Refund Period.

4. On September 7, 2016, under Board Order P.U. 36 (2016), the Board approved a plan to refund a portion of the RSP Surplus to Newfoundland Power and Hydro's Island Interconnected Rural customers who received and paid for electricity during the Refund Period.
5. Hydro intends to issue credit memos to customers upon payment of the RSP Surplus refund which detail the amount of the RSP refund, along with the amount of HST being refunded and amount of RER being withheld.
6. In July of 2014, Hydro received a Goods and Services Tax ("GST")/Harmonized Sales Tax ("HST") ruling from the Canada Revenue Agency ("CRA") concerning the application of the GST/HST to a refund of the RSP Surplus. CRA has confirmed that in providing a reduction in consideration against previous taxable supplies and providing a proper credit note, Hydro would be in a position to provide a refund or credit of GST/HST previously charged to or paid by its customers and to adjust its own net tax. CRA advised that Hydro would be able to calculate a GST/HST refund or credit on any amount by which previous consideration for a taxable supply has been reduced, regardless of the reason for the reduction, thereby confirming that there is no requirement to segregate the RSP surplus between amounts of surplus and accumulated interest on the surplus. Hydro intends to report the amount of HST refunded to customers in relation to the RSP refund and claim input tax credits on the HST returns for the periods in which the credit memos are issued.
7. The RER program under the *Act* and the *Regulations* provided a rebate equivalent to the provincial portion of the HST charged on consumption of electricity for residential purposes for the period of October 1, 2011 to June 30, 2015. On a monthly basis, the RER was provided to residential customers at the point of sale by energy suppliers, including Hydro and Newfoundland Power, and reimbursed directly to the suppliers by the Government of Newfoundland and Labrador (the "Province"). In terms of the RSP Surplus, the RER only impacts the portion of the Refund Period when the RER was in effect, that being October 1, 2011 to August 31, 2013. Hydro intends to report and remit the amount of RER withheld from customers in relation to the RSP refund to the Province in the period in which the credit memos are issued.

Interpretation Request

Hydro has requested that the Province provide an opinion and guidance of the following:

1. Whether the refund transactions outlined above and in the Customer Refund Plan will be consistent to include an overpayment of the RER such that a recovery of such overpayment would be required under subsection 23.4(7) of the *Regulations* and/or other relevant legislation.

2. Assuming the refund transactions are considered to include an overpayment of RER that will be required to be recovered from applicable customers by Hydro and subsequently submitted to Finance, specific guidance on how the recovery of the overpayment is expected to be implemented by Hydro.

Interpretation Response

While Part V.1 of the *Regulations* covering the RER was repealed following the elimination of the program effective July 1, 2015, the following transitional provision of section 3 of the *Revenue Administration Regulations (Amendment)* applies as follows:

3(1) Where an application or a return respecting a rebate for an eligible product was submitted before the coming into force of these regulations, the application or return shall be administered as though these regulations were not in force.

As a result of the application of the above, the following provisions of the *Regulations* apply in respect of the RSP refund:

23.4(2) Notwithstanding subsection (1), the minister may order a supplier to make a return in respect of a period prescribed in the order and the supplier shall make that return within the period prescribed in the order.

23.4(7) Where the amount of a reimbursement made by the minister to a supplier under this section is greater than the amount of the reimbursement to which the supplier was entitled, the minister may require the supplier to pay to the minister, or the minister may deduct from any reimbursement of rebates subsequently made to the supplier, an amount equal to the difference between the entitled amount and the rebate credited.

During the period impacted, residential customers overpaid on their electricity bills, including the HST, and thus received a higher RER than they should have from the Province. On the basis of subsection 23.4(2) of the *Regulations*, the minister has authority to require a return for the relevant time period which would result in the overpayment of the RER being identified in the return and repaid to the Province.

Subsection 23.4(7) of the *Regulations* establishes a mechanism through which the minister can collect an overpayment including requiring a supplier to pay to the minister the amount of the reimbursement that they were not entitled as a result of the RSP refund.


As a result, an overpayment will be due to the Province on the RER portion of the RSP refunds issued. Customers overpaid on their eligible purchases, including the HST, and thereby received a higher RER at the point of sale for the period October 1, 2011 to August 31, 2013. The RER should be deducted from the RSP credit memos and repayments and be reported and remitted to the Province in the same period as it is recovered from customers through the RSP refund process.

The RSP refund credit memo issued should reflect details similar to below, using a \$200 electricity overpayment as an example.

Overpayment of Electricity Charges – RSP Surplus Refund (Jan 1, 2007 to Aug 31, 2013)	\$200.00
Overpayment of HST - RSP Surplus Refund (Jan 1, 2007 to Aug 31, 2013)	26.30
Recovery of RER to the Province – RSP Surplus Refund (Oct 1, 2011 to Aug 31, 2013)	<u>(4.60)</u>
Net Overpayment – RSP Surplus Refund	<u>\$221.70</u>

If you require clarification or have additional questions on the interpretation and application of the RER, please do not hesitate to contact me at the number below or Lisa Warren directly at lisawarren@gov.nl.ca or 709-729-6254.

Sincerely,


Ann Marie Miller, CPA, CMA
Comptroller General