IN THE MATTER OF the *Public Utilities Act* (the "Act"); and

IN THE MATTER OF an Application by Newfoundland and Labrador Hydro for an Order approving (1) its 2011 capital budget pursuant to s. 41(1) of the Act; (2) its 2011 capital purchases, and construction projects in excess of $50,000.00 pursuant to s. 41(3)(a) of the Act; (3) its leases in excess of $5,000.00 pursuant to s. 41(3)(b) of the Act; and (4) its estimated contributions in aid of construction for 2010 pursuant to s. 41(s)(5) of the Act and for an Order pursuant to s. 78 of the Act fixing and determining its average rate base for 2009

SUBMISSION OF THE INDUSTRIAL CUSTOMERS

INTRODUCTION

These are the written submissions of the Industrial Customers of Newfoundland and Labrador Hydro on the Island of Newfoundland, the current customers being Corner Brook Pulp and Paper Limited, North Atlantic Refining Limited, and Teck Resources Limited, and the future customer being Vale Newfoundland & Labrador Limited (the "Industrial Customers").

As in all matters before this Board, the Industrial Customers contend for fair regulation consistent with the legislation applicable to Hydro and fostering economic efficiency in the provision of electric power to users in the Province of Newfoundland and Labrador.

The Board's considerations in ruling on Hydro's Capital Budget are governed by the *Electrical Power Control Act, 1994* and specifically Section 3(b) thereof which requires Hydro to manage and operate its facilities in a manner that results in power being delivered to consumers in the province at the "lowest possible cost consistent with reliable service". While the amounts spent

on capital projects by Newfoundland and Labrador Hydro do not immediately appear in rates being charged to consumers, the funds required for such projects are sourced by Hydro as either debt or equity and the consumers ultimately pay the interest on the debt and the return on equity, as well as depreciation on the acquired assets. This confirms the application of Section 3(b) to this proceeding as it relates to the management of facilities which will affect the costs that consumers pay for electricity.

In this application, the onus is on Hydro to establish to the satisfaction of the Board that the expenditures proposed are necessary in the year which they are proposed and represent the lowest cost alternative for the provision of electricity services in the province.

The rationale for regulation of public utilities is largely related to the need to control the exercise of monopoly power by an enterprise which has the sole legal right to provide a particular service. In non-regulated business activities, competition exerts control over enterprises which forces them to make economically sound choices on matters of expense and capital expenditure. They are constrained by their ability to fund their activities from revenues produced by sales of their services. In regulated utilities, prices are set by regulators rather than in the marketplace. Hence, the active oversight by the regulatory agency must replace the competitive restraint that has been removed by the monopoly character of the utility. One way in which this is done is by ensuring that proposed capital expenditures are reasonable and necessary before they are considered in determining rates.

In the context of the capital budget, non-regulated enterprises must face internal approval mechanisms in their organizations and compete within the enterprise for a limited amount of capital based on the return which any project can generate. The enterprise as a whole can only

undertake such capital projects as it can fund based on its sources of revenue. Again, the active oversight by the regulatory agency must replace that constraint when it undertakes to approve a capital budget. The Board's responsibility is to act as the "governor" on Hydro's capital spending which would otherwise be restrained by market forces in a non-monopoly environment, and to ensure compliance with the legislation which requires least cost electricity be provided to customers in the Province.

While the Industrial Customers have not requested a hearing, they rely on the Board to scrutinize every project in the context of the submissions of the parties as if these submissions were made after a contested hearing before the Board.

THE UNCHECKED GROWTH OF HYDRO'S CAPITAL EXPENDITURES

The unchecked growth of Hydro's capital expenditures continues to be of concern to the Industrial Customers. In their 2008 submissions relative to the 2009 Capital Budget, the Industrial Customers stated:

> *In their Submissions on the 2008 Hydro Capital Budget, the Industrial Customers reviewed in detail the principles which they believe ought to be applicable to Hydro's budgeting practices, within a regulatory context. In summary, the Industrial Customers submitted then, and would reiterate in these present Submissions, that the Board's function must be to act as a governor on Hydro's level of capital expenditure. Hydro has resisted the suggestion that regulation by the Board of Hydro's capital expenditures ought to extend beyond a project-by-project examination of each annual capital budget. While such project-specific scrutiny is important, the Industrial Customers submit that the Board's review of the overall quantum of each annual capital budget, of the growth in the level of capital expenditure from year to year, and of what is being achieved by*

increasing capital expenditure, are also critical parts of the regulatory function. Such overall scrutiny is necessary to ensure that the legislative direction to provide electricity at the lowest possible cost consistent with reliable service is being achieved over time.

The Industrial Customers note that the Board in P.U. 30 (2007), while continuing to endorse project-specific review of Hydro's Capital Budget, also acknowledged the importance of monitoring levels of capital spending. The Board sought to address, at least in part, the latter issue by requiring Hydro to file a five-year Capital Expenditure Plan. However, the Plan as filed is largely reflective of a reactive approach to issues of aging plant (primarily Holyrood) and fails to indicate how anticipated increases in level of capital expenditure will serve the goal of providing electricity at the lowest possible cost consistent with reliable service.

Per Section G of the 2009 Application, annual Actual Capital Expenditures in the period 2004 - 2007 were $27.984, $33.952, $41.217, and $35.669 million, respectively. Per Section H of the 2009 Application, approved budgeted Capital Expenditures for 2008 are $52.836 million; it is noteworthy that only $42.898 million of this expenditure was approved in the original 2008 Hydro Capital Budget Application, with the balance being the subject of supplementary applications to the Board. The final approved budgeted Capital Expenditures for 2008 of $52.836 million (which Section H confirms will be almost entirely expended) represent a nearly 50% increase over the 2007 actual capital expenditure (which was close to the annual average for the period 2004-2007).

The proposed 2009 capital budget is $47.856 million. If approved this would represent an over 30% increase over the 2007 actual capital expenditure; if the potential for supplementary applications is considered, it is not unreasonable to anticipate that Hydro may seek to incur actual capital expenditures in 2009 at the same level as 2008. The Industrial Customers believe that, before such heightened level of annual capital expenditure becomes the "new normal", there should be

commensurate heightened scrutiny of what is being sought to be achieved by Hydro, in the longer term, by its overall capital program.

It is noteworthy that no major capital expansion project, such as a new generation source or a major new transmission line, underlies this rapid rate of increase of capital expenditure. As the projects proposed by Hydro's Application indicate that this should be a typical year for capital works for Hydro, and the proposed level of capital spending is even more a matter of major concern.

The concerns expressed by the Industrial Customers in 2008 about the "new normal" of capital expenditure have come to pass. The actual 2009 Hydro capital expenditures of $54 million, the total approved 2010 Hydro Capital Budget of $62 million (per Volume I of the Application, Sections G and H) and the level of capital expenditure sought by Hydro in this 2011 Capital Budget Application, even as revised to $60.2 million, represent the entrenchment and indeed escalation of the "new normal" of high levels of capital expenditure even in the absence of any major capital expansion project, such as a new generation source or a major new transmission line. At page 6 of the 2011 Capital Plan, filed as part of this Application , Hydro confirms that it expects to continue this escalated level of capital expenditure, over the next 20 years - an average of $65 million over the next five years and an average of $56 million over the next 20 years, all in 2010 dollars - merely to maintain existing systems.

2010 CAPITAL EXPENDITURE OVERRUNS

The Industrial Customers, in the context of expressing concern about escalating capital expenditure even as budgeted, feel obliged to pass comment on the perplexing explanation offered by Hydro for the very significant cost overrun on the project from 2010 Capital Budget to Replace Accommodations, Septic System and upgrade Plant Communications system at Cat

Arm. The Industrial Customers at the time of the 2010 Capital Budget application challenged Hydro as to why greater consideration was not given to the "stay off site" option.

The variance from budget on this Cat Arm project was $348,000, which would clearly have caused the Net Present Value calculation included in the 2010 application to prefer the "stay off site" option and likely caused the project to be disallowed.

When asked this question in IC-NLH-45, Hydro responds:

> *The original Net Present Value calculation was based on a labour rate of $25 per hour which was sufficient to confirm that the construction of the accommodations was the preferred option. The labour rate of $52.50 was used in the recalculated Net Present Value calculation since it is a more accurate estimate of the rate that would be charged into the project.*

It is difficult to understand why Hydro could not have provided *"a more accurate estimate"* of the labour rate when it asked the Board to approve this project. The Board needs and is entitled to rigorously arrived at and reliable estimates, and not just inputs which are *"sufficient to confirm"* Hydro's preferred option. Particularly in times when Hydro is requesting that its customers bear the burden of escalating capital expenditures, there should be a corresponding expectation that the inputs and estimates provided by Hydro to the Board can be relied upon. It is submitted that the consequences of not providing reliable inputs and estimates – capital expenditure overruns – should not be overlooked when considering whether marginal or low priority projects should be approved in years when Hydro is proposing, overall, a high level of capital expenditure.

SUPPLEMENTAL APPLICATIONS

Hydro's practice with respect to supplementary applications for capital projects is also of concern, as a further indicator of the lack of rigour applied by Hydro to the capital budgeting process. It is to be noted that supplementary applications are being made for significant expenditures (over $2.8 million in new projects approved by 2009 Board Orders, per Volume I of the 2011 Capital Budget Application, Section H), and in support of projects for which Hydro has had a long lead time to prepare, rather than to address issues that have risen suddenly or unexpectedly.

An illustrative example is the supplementary application, filed by Hydro on October 19, 2010 in the midst of the 2011 Capital Budget Application, for a proposed expenditure of $1.8 million for the installation of pipe blinds and other secure devices at the Holyrood facility. This significant expenditure has been purportedly rendered necessary by a change in *Occupational Health and Safety Regulations* in August 2009, a year before the filing of this 2011 Capital Budget Application. The Industrial Customers are intervening in that supplemental application, and as a formally separate process, and one in which the Industrial Customers at this point have incomplete information, it is neither appropriate nor possible for the Industrial Customers to comment here on the individual merit of this proposed supplemental capital expenditure. However, the Industrial Customers would submit that this supplemental application is an illustrative example of a project which should have been able to be filed as part of the 2011 Capital Budget application and subjected to the same scrutiny of being considered in the context of Hydro's overall planning for the Holyrood facility and for "Infeed" vs. "No-Infeed" scenarios, and in the context of Hydro's overall level of capital expenditure (including as part of that

context Hydro's newly unveiled system for prioritizing capital projects, a subject which is further discussed below in these Submissions).

The Industrial Customers also note that Hydro's November 2, 2010 revision to the 2011 Capital Budget, while decreasing somewhat the total capital expenditure presently applied for, anticipates the filing of further supplemental applications later in 2010 or in 2011.

The Industrial Customers submit that the Board should not lose sight of the impact of such supplemental applications in assessing the justification, reasonableness and prioritization of Hydro's overall level of capital expenditure on a year over year basis.

PRIORITIZATION OF CAPITAL EXPENDITURES

Hydro has, apparently within the past year, implemented a fundamental change to its capital budget planning. The reference to a Project Prioritization methodology at p. 6 of the 2011 Capital Plan document gave rise to questions from the Consumer Advocate, CA-NLH-4 and CA-NLH-5. In response, Hydro has disclosed a detailed ranking system for projects and provided rankings for the projects in this Capital Budget.

This is in stark contrast to the position taken by Hydro in respect of the 2007 Capital Budget application. In that year, the Industrial Customers by Requests for Information raised the issue of prioritization of projects, and submitted in their final Written Submission dated October 6, 2006 that there was no evidence that Hydro even attempts to prioritize its capital projects. The submission of Hydro, in reply, dated October 13, 2006 says at p. 2:

> "The reason that Hydro does not prioritize all of its projects is simply that it is not a productive or informative process to carry out for projects that must be

> undertaken and completed to ensure the safety of the public or of Hydro's employees, or to ensure compliance with environmental regulations."

Hydro has now unveiled, albeit only after Requests for Information by the Consumer Advocate, a prioritization process which was previously regarded by Hydro as not being "productive or informative".

The disclosure of Hydro's ranking of its proposed capital projects by CA-NLH-5 has remedied somewhat the unenviable position in which the Board has been placed in previous Capital Budget Applications of having to surmise what projects might be considered by Hydro itself to be of low priority.

However, the unveiling of Hydro's prioritization system has only partially rectified Hydro's previously monolithic approach.

Hydro's decision to exclude almost $17 million of its capital expenditure on "Multi-Year Projects" from the prioritization system is presumptuous in its implication that once the first year or second year expenditures have been made the Board does not have the continuing right and responsibility to scrutinize whether approval of further years' expenditure on such projects should be postponed, modified or denied. The Board is given no perspective as to how Hydro prioritizes subsequent years of a multi-year project, as compared to new projects.

Hydro's decision to award the ranking of "1" to 19 projects is a merely continuation of the previous monolithic approach on a somewhat smaller scale, ie the Board is being asked to accept that it is neither "productive" nor "informative" to differentiate the relative importance which Hydro attaches to these 19 projects, which represent almost 25% of the "ranked" projects.

Hydro's "cut off" for projects to be submitted for approval in this Capital Budget at the ranking of "53" is insufficiently explained and arbitrary. Hydro's attempted explanation for this "cut-off" in CA-NLH-5 is that "*It is merely incidental that the lowest ranking was 53, as the total of the projects to be included is determined based on balancing unit load, overall budget, and other logistical considerations*". One is left to wonder whether or not, somewhere within Hydro, there was produced a more rigorous and detailed explanation for the "53" cut-off. In the absence of such rigorous and detailed analysis, and without knowing what and how many projects were considered and assessed at a lesser priority than the "53" ranking, it is difficult not to arrive at the conclusion that "overall budget" was the overriding determinant, ie that Hydro had previously declared projected capital expenditures at the $65 million level for the next 5 years and that this was the overriding cut-off criteria.

The Industrial Customers would submit that, bearing in mind

(a) that these projects are to be scrutinized by the standard of "lowest possible cost consistent with reliable service";

(b) the comparison between the recent ballooning of proposed annual capital expenditures to above the $60 million mark and the average for the years of 2006-2009 of less than $45,000,000;

(c) that approximately two-thirds of the ranked projects as set out in CA-NLH-5 are ranked 1 to 30;

(d) that even approving just the projects ranked 1 to 30 would result in the approval in this Application of capital expenditures of approximately $50 million per the cumulative project costs set out in CA-NLH-5; and

(e) that the present and anticipated further supplemental applications will, if approved, add further millions to the overall level of capital expenditures for 2011;

it is reasonable for the Board to not approve any of the proposed capital expenditures ranked 31 to 53 in this Application.

The Industrial Customers, in making the foregoing submission, should not be taken as necessarily endorsing all of the proposed capital expenditures which have been ranked 1 to 30 by Hydro. In that regard, it is difficult to understand why Hydro has not provided, as part of the Justification for each proposed expenditure, the specific analysis described in CA-NLH-4 as it was applied to each expenditure. Surely this specific information, for each proposed expenditure, would have been of assistance to the Board. As matters stand, it is not reasonable to simply accept Hydro's undocumented assessment of its 1 to 30 rankings. The Industrial Customers submit that individual proposed expenditures even within a budget threshold of $50 million must be justified and subject to scrutiny and, when not sufficiently justified, to modification, postponement or denial by the Board.

INDIVIDUAL 2011 CAPITAL BUDGET PROJECTS

The Industrial Customers comment below on some of the individual projects proposed by Hydro's Application. The Industrial Customers would note that the fact that they have not passed comment on a particular project does not necessarily indicate endorsement of the project. The Industrial Customers anticipate, based on past experience, that the Board and the other Intervenors will exercise their own due scrutiny of the Application, informed by their respective perspectives and mandates. The individual projects commented upon below represent those which, from the perspective of the Industrial Customers, appeared most problematic.

Upgrade Stack Breeching Unit 1, Holyrood, p. B-5 ($1,769,600)

The Industrial Customers submit that Hydro has provided insufficient support for this substantial Holyrood expenditure, even as revised.

The Project Justification, as revised, still refers to deterioration of the breeching plate as having the potential to discharge boiler flue gas that contains sulphur dioxide inside the plant as "a major safety issue" but has deleted all the text explaining how or why such safety concern arises. The necessary implication is that this Project Justification no longer exists, given Hydro's revised assessment of the condition of the stack breeching. Indeed, even prior to the revision of this proposed project, one questions how significant a safety risk was posed, given Hydro's indication in response to CA-NLH-4 that safety issues are given a very significant weighting in its project prioritization process, and that even as unrevised the project was only given a rank of "43" per CA-NLH-5.

The other Project Justification provided is that failure of the breeching during operation could result in an unplanned unit outage of four to six weeks duration and a repair cost estimated at one million dollars. When reference is made to page 15 of the revised report to the Board "Upgrade Unit 1 Stack Breeching", revision 1, October 26, 2010, it is clear that this Project Justification is based on an absolute worst case scenario. There is no support, either in the Alstom report or otherwise, for Hydro's positing that such a failure would be likely to occur in 2013, or at all. Indeed, the Alstom report does not posit the possibility of such a worst case scenario failure.

The Alstom report identifies that the past operating conditions which lead to corrosion of the breeching plate and deterioration of the internal insulating liner and concrete floor have been mitigated by the switch to lower sulphur content fuel. While Alstom indicates that deterioration of the current liner may continue even under current conditions, they do not specifically recommend the revised solution proposed by Hydro.

Again at page 15 of the revised Report to the Board, "Upgrade Unit 1 Stack Breeching", when considering the viability of continuing to operate Unit 1 on a status quo basis, Hydro posits the event of a complete replacement of the breeching at a cost of as high as $3.5 million. It is noteworthy that the Alstom report provides no substantive support for such a failure of the support structure; nor does the ranking of this project at a "43" priority even prior to revision. All that is said about the support structure in the Alstom report, at page B-17, is as follows:

> *The existing support structure on Units 1 & 2 breeching requires some repair and should be replaced if the breeching is replaced. It was determined after the meeting that the pricing for the supports is not in the current estimate. Also, fairly extensive repairs would be required to the support structure. For pricing purposes, only a replacement is to be priced.*

It is noteworthy that this comment is made in the context of a post-meeting follow up, rather than as part of Alstom's actual analysis. The Alstom comment itself is contradictory, switching from "requires some repair" to "fairly extensive repairs". In either case however, the risk of failure of the support structure is not opined upon by Alstom. Furthermore, it provides no rationale for why only "replacement" cost of the structure is to be priced.

At page 15 of the revised report, "Upgrade Unit 1 Stack Breeching", Hydro posits an annual operating and maintenance cost for the status quo alternative at an estimated $53,000.00 per year, based on the average ten year maintenance history presented in the Application. That maintenance history, set out on page 9 of the report, in Table 1, must be scrutinized. The ten year average is skewed by an extraordinary expense in 2006 of $321,000.00. With reference to page B-77 of the Alstom report it becomes apparent that this extraordinary cost was due to the pouring of a new floor in 2006 in Unit 1. This is not an expense which is likely to be repeated within the projected ten (in a Labrador Infeed scenario) or even twenty year continuing lifetime for this Unit, given that Unit 1 was commissioned in 1971, and the floor took thirty five years to deteriorate to the point of requiring replacement in 2006, under conditions of higher sulphur fuel than will exist on a go-forward basis. Therefore, when the ten year maintenance expense average is considered without the inclusion of the extraordinary 2006 expense, the average is only approximately $21,000.00 per year. This is a significant change in the cost benefit of proceeding on the basis of the status quo (even if status quo were supplemented by enhanced maintenance and some less extensive refurbishment than proposed by Hydro).

The Team Industrial Report provided in response to IC-NLH-16 indicates that the casing is generally in good condition, with only the observation, in the summary, of a "lot of deterioration

around expansion joints". There is no recommendation in the Team report supporting the scope of work – almost $1.77 million worth – proposed by Hydro's revised Application.

As well, as has been already noted above, even before the revision of this project due to the condition of the Unit 1 being found to be better than originally presented by Hydro, it was ranked at number 43, out of 53, in order of priority. It can only be presumed that, in light of the revision of this project, and the reasons therefor, it now ranks at an even lesser priority. However, even at priority rank 43, with the concerns identified above the Industrial Customers submit that there is clearly insufficient support for approving this project at this time.

Refurbish Fuel Storage Facility, Holyrood, p. B-8 ($2,637,900.00)

The information purporting to justify this project, the refurbishment of Tank 3, is based on an inspection by SGE Acre's in 2003 which has not been updated – see page 4, section 3.2 of the report to the Board at Tab 3 of Volume 1 of the Application. At that time, in 2003, repairs were made which are purported to have extended the life of Tank 3 by just 5 years. However, in the seven years since, no risks or failures in respect of Tank 3 have manifested themselves. Section 3.5 of the report to the Board confirms that there have been no outages or failures in respect of Tank 3. With the 2003 repairs, and without any failures since, there is reason to assess that the risk of any serious failure of Tank 3 in the near future is not high.

By IC-NLH-2, Hydro advises that a decision to proceed to the next phase of the Lower Churchill is scheduled to occur in 2010. Reference to IC-NLH-3 confirms that the Labrador Infeed can still be expected by 2016, even if the sanction date is postponed to the end of 2011. The Labrador Infeed will greatly reduce the need for fuel storage at this multi-tank facility.

This $2.6 million dollar project is directed toward a single tank of the four-tank facility. The total facility has a capacity of over 800,000 barrels. While the rated capacity, according to the report at Tab 3 is 200,000 barrels for each tank, the information produced in IC-NLH-23 shows that the actual levels in the tanks are often in excess of that and regularly exceed 208,000 barrels.

In the past two years, according to IC-NLH-23, the maximum amount of fuel stored has never exceeded 565,888 barrels, this in March, 2009. Given this fact, the fourth storage unit is already effectively surplus capacity, even without the Labrador Infeed. There is no evidence of risk of near-term failure of any tank. Adequate storage would be available even if one tank were to become temporarily unusable. With the past refurbishment of Tanks 2 and 4, and the unlikelihood of both Tank 1 and Tank 3 suffering a sudden significant failure at the same time, Hydro has already obtained more than sufficient assurance of being able to maintain this facility to the necessary capacity in the case of a Labrador Infeed through to 2020.

Per section 3.3 of the report to the Board at Tab 3 of Volume 1 of the Application, the proposed refurbishment to Tank 3 will extend its useful life for 20 years, to 2031. This substantial expenditure of $2.6 million can only be justified in the case of a very substantial delay in the sanction of the Labrador Infeed. As already noted above, we are told by Hydro that a decision on sanction can be expected in 2010.

It is noteworthy, when considering all of the above, that the refurbishments of Tank 2 in 2008 and Tank 4 which is currently in progress were punctuated by a pause of 2 years. Surely, given the impending decision on a Labrador Infeed, there is reason to postpone consideration of a refurbishment of Tank 3 for at least another year (which would simply put the Tank 3

refurbishment on the same schedule as the earlier refurbishments), rather than accelerate the pace of refurbishment.

With the Labrador Infeed apparently even more likely now, according to recent public pronouncements, than when the Hydro filed its Application and responded to Requests for Information, it is appropriate to defer this project for the time being and revisit it, if necessary, if it appears that the Labrador Infeed will be delayed.

Upgrade Power Transformers, Various Sites, p. B-59 ($865,900)

While replacement of transformers would clearly constitute a capital expenditure, there is nothing in the material provided relative to this project to indicate that it involves anything more than normal maintenance of transformer equipment. Failing parts are being replaced and depleted fluids are being reclaimed. The amounts being spent are distributed so widely over a large number of pieces of equipment that they are likely insignificant in comparison to the value of the equipment. The only justification for calling this capital work, offered in IC-NLH-30, is "collectively" the replacements extend the life of the transformers. With respect, any good maintenance program extends the life of the equipment, allowing it to function longer than if it were left unattended. These expenditures constitute maintenance and the project ought to be disallowed.

Upgrade Burnt Dam Spillway Structure, Bay d'Espoir, p. C-2 ($257,900)

It is difficult to relate this project to the report of Hatch upon which Hydro relies to support it. Page C-43, p. 48 of the Hatch report, recommends $495,000 worth of work on Burnt Dam Spillway over a period of more than 7 years from 2009. This includes a $100,000 budget cost for

Broad Band Communications in the 0-2 year time frame. Hydro's project proposes to spend $257,900 in 2011 and a total of $2,645,000 over the following three years for a grand total in excess of $2.9 million without, apparently, undertaking the Broad Band Communications at all. All this for a facility that Hatch rates as in good condition with a Health Index of 66, implying some deterioration but function not significantly affected. See Table 2.1 at p. C-32.

Hydro attempts to justify this project with a nightmare scenario of inability to raise the gates as required, but Hatch itself says at p. C-41 that "the likelihood of needing both gates open or being able to open neither gate is remote". In response to IC-NLH-33, Hydro advises that the both gates have only had to be open at the same time on four occasions in the last 18 years.

This appears to be a proposal to germinate a very major project with a relatively small initial capital allowance on the assumption that once commenced all the work will be permitted to proceed with little review in future years. This project should be totally disallowed at this time given that the consultants hired to examine this facility did not recommend anything like the level of expenditure Hydro is proposing.

The Industrial Customers note that Hydro itself, per CA-NLH-5, only rates this project as a "34" in priority.

Install Weatherhoods for Vent Fans, Holyrood, p. C-44 ($208,200)

The evidence cited in support of this project does not stand up to scrutiny. All that the supporting study shows is that the design air exhaust flow rate is not being achieved in windy conditions. There is no evidence of testing of actual air quality to prove that there is an actual problem with the air as a result of the fans not working up to design specifications. In IC-NLH-36, Hydro, in

response to a question as to the justification for hoods on the north side of the building, simply states that the fans will experience backflow if the winds blow from the north. That was obviously never tested; there is no evidence of how prevalent north winds are in the area; there is no quantitative evidence to show that any such backflow, even if it existed, would negatively impact air quality. There is no quantitative evidence to show how many hoods are necessary to repair any air quality problem that might exist. This project should be disallowed until appropriate quantitative evidence indicating the extent of the problem to be addressed and the minimum scope of capital work necessary to fix it.

Remove Safety Hazards -Various Sites, p. C-204 ($252,400)

This project is simply too nebulous for approval by the Board. There is no specific work identified that will be done. Any amount approved under this project would essentially constitute an open account on which Hydro may draw for purposes it determines during the course of the year.

It is noteworthy that the capital expenditure approved for removing safety hazards as recently as 2008 was, at $130,900, approximately half the presently proposed amount. The $252,400 amount approved in the 2010 Budget Application was in the context of no amount having been proposed for removing safety hazards in the 2009 Budget Application. While Hydro says that "any capital expenditures" related to safety for 2009 would be addressed through the Allowance for Unforeseen Capital, the amount expended in 2009 under that Allowance, and on what safety measures, is not provided.

Hydro apparently now has the expectation that the $252,400 amount approved for 2010 will, as a matter of course, also be approved for 2011.

The Industrial Customers submit that to simply approve this undefined expenditure year after year is to create what is, in effect, unregulated contingency fund. It is not identifiable capital expenditure which the Board can meaningfully consider and approve. It would have been interesting to have seen, given the "1" ranking assigned by Hydro to this proposed contingency fund, how this was justified using the prioritization system described by Hydro in CA-NLH-4.

All of which is respectfully submitted on behalf of the Industrial Customers.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 8th day of November, 2010.

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