

**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 2012 Capital Budget  
pursuant to s. 41(1) of the Act; (2) its 2012  
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  
2012 pursuant to s. 41(5) of the Act and for an  
Order pursuant to s. 78 of the Act fixing and  
determining its average rate base for 2010

1                   **WRITTEN SUBMISSIONS OF THE ISLAND INDUSTRIAL CUSTOMERS**

2                   **PHASE II – 2012 HYDRO CAPITAL BUDGET APPLICATION**

3                   **Introduction**

4                   These are the written submissions of the Island Industrial Customers of Newfoundland and  
5                   Labrador Hydro on the Island of Newfoundland, the current customers being Corner Brook Pulp  
6                   and Paper Limited, North Atlantic Refining Limited, and Teck Resources Limited, and the future  
7                   customer being Vale Newfoundland & Labrador Limited (the "Island Industrial Customers"), in  
8                   relation to Phase II of Hydro's 2012 Capital Budget Application.

9                   The Island Industrial Customers reiterate, in relation to the Phase II Projects, the submissions  
10                  made in relation to Phase I of Hydro's 2012 Capital Budget Application, in relation to

- 11                  (a)       the Board's authority and responsibility to implement the power policy set out in  
12                  section 3 of the *Electrical Power Control Act, 1994*;

- 1 (b) Hydro's proposed and projected high level of capital expenditures for the 2012 to  
2 2017 period;
- 3 (c) Hydro's prioritization of capital expenditure;
- 4 (d) Hydro's managing of capital expenditure and of risk;
- 5 (e) Hydro's premature application for approval for capital expenditures;
- 6 (f) Hydro's premature implementation of IFRS; and
- 7 (g) the costs of this application for the Island Industrial Customers,
- 8 as found at pages 2 through to 17 of Submissions of the Island Industrial Customers dated  
9 October 7, 2011, made in Phase I of this Application.

10 **INDIVIDUAL 2012 CAPITAL BUDGET PROJECTS (PHASE II – HOLYROOD PROJECTS)**

11 The Island Industrial Customers submit that the individual Phase II Projects commented in detail  
12 below should be denied, or at least deferred. In that regard, it is submitted that it is important to  
13 bear in mind, in respect of the priority and relative merit to be reasonably accorded to each of  
14 these Projects, the following overarching considerations:

- 15 (a) Hydro's planning is that the Holyrood facility will only be required as a primary  
16 generation facility for another five years;
- 17 (b) Hydro's planning is that the Holyrood facility will have a greatly reduced, standby  
18 role as a generation facility for the period 2017-2020, and thereafter as a  
19 synchronous condensing facility;

1 (c) These Holyrood projects will only be completed in late 2012 (or later), 4 years or  
2 less before the scheduled Labrador Interconnection, which will greatly diminish  
3 the criticality of Holyrood as a generation facility; and

4 (d) The sanction decision on the Labrador Interconnection is anticipated in 2012.  
5 Hydro itself states that this will permit adjustment of the 2013-2017 capital plan  
6 should the Labrador Interconnection not receive sanction (per Hydro's response  
7 to P2-PUB-NLH-4). In this regard, the Island Industrial Customers acknowledge  
8 that Hydro make this comment in light of Hydro's stated concern about "under-  
9 investment" at Holyrood. However, given the imminence of the sanction decision,  
10 the Island Industrial Customers submit that equal or greater consideration needs  
11 to be given to the possibility that approving, before the 2012 sanction decision,  
12 capital expenditures for Holyrood projects runs the risk of over-investment in the  
13 Holyrood facility, either by reason of the Labrador Interconnection proceeding or  
14 if it is indefinitely postponed, by reason of Hydro having to re-examine, it is to be  
15 hoped in short order, the status quo for power generation on the Island.

16 **Fuel Oil Storage Facility – Refurbishment of Tank 3**

17 [NOTE: The references to Requests for Information (RFIs) below which are not preceded by the  
18 "P2" designation are references to the RFIs filed in the respect of Hydro's original application for  
19 approval of this capital project, before it was consolidated with Phase II of the within Capital  
20 Budget Application.]

21 The \$2.695 million capital expenditure for this project is not reasonably justified, given that  
22 Hydro's planning is that it will only require two tanks, from 2017 onwards, per P2-IC-NLH-14.

1 An examination of this project makes clear that it is driven by a hypersensitivity to low-  
2 probability risks which can be mitigated by means other than this substantial capital  
3 expenditure.

4 The "risk" period (to the extent there is a risk) that would be mitigated by this project is only four  
5 years. Table 6, at page 23 of the "Refurbishment of Fuel Oil Storage Facility" report dated July  
6 2011 and filed in support of this project, identifies that it would have been completed in April  
7 2012 if tenders had been prepared in July 2011. As matters presently stand it cannot be  
8 expected that the project would be approved before, effectively, January 2012, which, when the  
9 Table 6 schedule is adjusted accordingly, would result in a late 2012 closeout for the project.

10 Hydro itself acknowledges that Holyrood service until 2017 can be maintained by three tanks.  
11 The risk of service disruption due to two of the four tanks being out of service, at the same time  
12 and for any extended period of time, is low. Per Hydro's response to IC-NLH-18, there is no  
13 consultant's report supporting the speculative scenario of a tank being out of service for the  
14 duration of a winter peak production season, let alone two tanks. Hydro's "plausible scenario"  
15 for two tanks being out of service for more than one delivery cycle, per P2-IC-NLH-13, is with  
16 respect unconvincing. Per P2-IC-NLH-13, even this unlikely scenario could be mitigated.

17 Even if the risk of two tanks being out of service for an extended period of time were to manifest  
18 itself (a risk which is highly remote, assuming a reasonable Hydro regime of visual inspection  
19 and remedial action if and when needed), Hydro could mitigate that risk by, on renegotiation of  
20 its existing fuel supply contract in September 2012 (per Hydro's response to CA-NLH-20),  
21 including provision for the contingency of oil being delivered on a shorter time frame than the  
22 current 28 days (per Hydro's response to CA-NLH-19), if needed. As indicated by Hydro's  
23 response to P2-IC-NLH-12, Hydro was able, in the past exigency of Tank 2 being out of service,  
24 to arrange its scheduled deliveries to ensure reliable levels of fuel storage.

1 A more frequent delivery schedule would also maintain the prudent minimum level of fuel  
2 storage necessary to address the greater generation demands on the Holyrood facility  
3 forecasted by Hydro for the 2012-2017 period. Moreover, the delivery schedule and prudent  
4 minimum level of fuel storage could be further adjusted if it were to turn out that actual  
5 generation demands on the Holyrood facility are less than presently forecasted. It is submitted  
6 that the planning flexibility that can be achieved by adjustment of the fuel delivery schedule is a  
7 more reasonable solution than over-investment in a fuel storage facility to address what will be  
8 effectively only a four-year "risk" period.

9 Hydro's response to IC-NLH-17 indicates that there is no past experience, in over 30 years, of  
10 significant disruption of fuel deliveries due to ice in Conception Bay. The only incident that  
11 Hydro could point to was a delay in docking a vessel in March 1983, which Hydro speculates  
12 may have been due to ice conditions at the time. Hydro submits that there is "unpredictability of  
13 ice conditions" (per line 1, page 3 Hydro's response to IC-NLH-17). In response, it is submitted  
14 that it is quite predictable, based on over 30 years of operational experience at the Holyrood  
15 facility, that any ice conditions in Conception Bay will not significantly delay fuel deliveries.

16 It is submitted that there is no evidence, nor any basis to reasonably speculate, that disruption  
17 of fuel deliveries due to ice risk will manifest itself, in any significant way, in the next five years.  
18 Moreover, a more frequent delivery schedule during anticipated heavy ice conditions (which are  
19 not wholly impervious to forecast) would serve to mitigate this risk.

20 With respect to the proposed roof platform, access steps and Fuel Oil Level Indication System:

21 (a) Hydro in its response to CA-NLH-18 describes the manual dipping of the tanks  
22 as a "high risk task". However, this task has been able performed manually,  
23 apparently without significant incident, for over 34 years (the fatality on top of

1 Tank 4 was not due to any safety deficiency). At page 15 of the "Refurbishment  
2 of Fuel Oil Storage Facility" report dated July 2011 and filed in support of this  
3 project, under "Safety Performance" it is stated that "There are no safety issues  
4 associated with the operation of Tank 3". There is no evidence, and it is not  
5 reasonable to speculate, that Tank 3 will represent any greater level of safety risk  
6 in the five years which remain before it can be decommissioned than it has in the  
7 past 34 years. Moreover, two other tanks would not have the roof platform and  
8 fuel oil indication system (per Hydro's response to IC-NLH-16) and therefore it is  
9 not onerous to expect that Hydro maintain, and enhance if necessary, safe  
10 practices for worker access to tanks which do not have these features, including  
11 as is presently the case Tank 3. If workers require enhanced safety procedures,  
12 assessments and training to ensure they can safely perform what can  
13 undoubtedly be at times a rigorous task, this can be achieved by Hydro at a  
14 fraction of the cost of the proposed capital expenditure.

15 (b) Per Hydro's responses to IC-NLH-19 and IC-NLH-20, there is no Government  
16 directive requiring installation of access steps, and there have been no reported  
17 safety issues.

18 (c) In Hydro's response to P2-IC-NLH-6, Hydro advises that it has not obtained  
19 approval under the applicable Regulations for the Fuel Oil Level Indication  
20 System, as a replacement for manual gauging, dipping and reconciliation  
21 required by the Regulations. As a result, it has not been confirmed that the  
22 proposed system will in fact reduce the degree of manual dipping and verification  
23 to the level identified in P2-IC-NLH-7.

1 The Island Industrial Customers submit that this project, proposing a high level of capital  
2 expenditure to over-manage risks that are limited in time, probability and extent, is not  
3 reasonably justified, and should not be approved by the Board.

#### 4 **Upgrade Marine Terminal**

5 The \$5.869 million capital expenditure for this project is not reasonably justified (with limited  
6 exceptions as expressly noted below), given that Hydro's planning is that it will only require  
7 sharply reduced oil deliveries after 2016, and none after 2020.

8 It is noteworthy that Hydro, per (P1-)CA-NLH-1, has assigned only a ranking of "22" to this  
9 Project, and that it is only 46<sup>th</sup> in the project listing order (a result of Hydro's less than  
10 transparent practice of listing multiple projects as having the same priority "rank"). As the  
11 Island Industrial Customers have submitted in the Phase I submissions, if Hydro's ranking  
12 system is to be given any substantive meaning and purpose in this budget process, this ranking  
13 must be reasonably taken as Hydro's own assessment that it is a project of low priority.

14 The primary "risk" period (to the extent there is a risk) that would be mitigated by this project is  
15 at most only a little over four years (in the subsequent 2017-2020 period, deliveries at the  
16 Terminal, and any risks from delayed deliveries, will be sharply reduced). Table 4, at page 19 of  
17 the report dated July 2011 and filed in support of this project (Tab 3, Volume 1 of the  
18 Application), schedules contract closeout as October 2012, assuming a project start date of  
19 January 2012. As the Board has noted, Hydro has in recent years experienced delays in  
20 completion of approved capital projects; given the relative high engineering complexity of  
21 aspects of this project, it is not inconceivable that it could be subject to delay (and cost overruns  
22 to what is already very expensive refurbishment).

1 Per P2-PUB-NLH-23, Hydro implemented repairs to the fenders in 2008, and with a prudent  
2 regime of annual inspection and completion of identified remedial work requirements, the  
3 fenders have continued to perform their function for the last three years. Per P2-PUB-NLH-21,  
4 Hydro has also implemented a revised docking procedure to mitigate any risk from further  
5 fender deficiencies. Evidently, this prudent inspection, repair and docking regime is expected by  
6 Hydro to be able to continue to maintain the fenders until next year, and indeed beyond given  
7 the low ranking/priority Hydro has itself accorded to this project.

8 There is a low cost alternative to full approval of this project which would further mitigate risk in  
9 relation to the fenders. Per P2-IC-NLH-30, there is an outstanding recommendation of Hydro's  
10 consultant to install a \$110,000 laser sensor display and recording system, to assist in the  
11 controlling and recording of vessel velocities. With reference to Hydro's responses to P2-PUB-  
12 NLH-32 and P2-PUB-NLH-37 (page 2 of 5), the installation of this system would allow greater  
13 control of vessel velocities during the docking, and serve to mitigate any-less-than optimum  
14 condition of the fenders. The Island Industrial Customers support this proposed capital  
15 expenditure of \$110,000, as a reasonable, low cost but high benefit mitigation measure.

16 As indicated by P2-IC-NLH-31, a further detailed investigation of the fenders existing condition  
17 is still required to assess any required remedial work. The Island Industrial Customers submit  
18 that approval of the components of the project relating to fender remediation should be deferred  
19 until this investigation is completed, and a report filed which supports, together with the other  
20 circumstances that may obtain at that time, proceeding with this capital expenditure.

21 With respect to the quick coupler release proposed for the existing loading arms, this is yet  
22 another aspect of this project for which investigation has not been completed, per P2-PUB-NLH-  
23 41. The Island Industrial Customers submit that approval of the components of the project  
24 relating to the loading arms should be deferred until the investigation is complete, and a report



1 filed which supports, together with the other circumstances that may obtain at that time,  
2 proceeding with this capital expenditure. In this regard, the Island Industrial Customers would  
3 add that they are not persuaded that the existing coupling system is deficient so as to justify this  
4 capital expenditure, given Hydro's correction of the disconnection incidence from the originally  
5 asserted 20% to 5-10%, per P2-PUB-NLH-26.

6 Similarly, Hydro's responses to P2-PUB-NLH-37, P2-CA-NLH-12 and P2-CA-NLH-13 indicate  
7 that the inspection of pile jackets/ anodes, and the determination of the cost of remedial  
8 measures justified by that inspection, has not yet been completed by Hydro. It appears that the  
9 further investigation to determine the extent of the necessity of this work, and its cost, could be  
10 made concurrently with the required further detailed investigation of the fenders. The Island  
11 Industrial Customers submit that approval of this component of the project should be deferred  
12 until these investigations are complete, and a report filed which supports, together with the other  
13 circumstances that may obtain at that time, proceeding with this capital expenditure.

14 The Island Industrial Customers do not object to the life safety measures outlined in P2-PUB-  
15 NLH-37 under the "Lighting Upgrades" (\$65,000) and "Install Evacuation Life Raft and Two  
16 Fixed Platforms to Allow Vessel Access" headings, provided that in the latter case the Board is  
17 satisfied that the least cost alternative has been proposed. It is noteworthy that, per P2-CA-  
18 NLH-45, Hydro itself identifies these life safety measures as being of higher priority, relative to  
19 other components of this project.

## 20 **Operator Training Simulator (OTS)**

21 The \$1.028 million capital expenditure for this project is not reasonably justified. It is an  
22 egregious example of Hydro seeking to address, and over-manage, by way of an expensive  
23 capital expenditure "solution", issues which are essentially operational in nature.

1 It is noteworthy that Hydro, per (P1-)CA-NLH-1, has assigned only a ranking of “30” to this  
2 Project; it is the lowest ranked Phase II (Holyrood) project. As the Island Industrial Customers  
3 have submitted in the Phase I submissions, if Hydro’s ranking system is to be given any  
4 substantive meaning and purpose in this budget process, this ranking must be reasonably taken  
5 as Hydro’s own assessment that it is a project of (very) low priority.

6 The Board has recognized the operational aspect, as indicated by P2-PUB-NLH-50. It should  
7 indeed be expected that Hydro, by operational management initiatives, will pursue and achieve  
8 the recruitment, retention and training of necessary staff. It is the submission of the Island  
9 Industrial Customers that this Hydro operational responsibility does not justify this proposed  
10 extraordinary capital expenditure.

11 Hydro’s responses to P2-CA-NLH-35 and P2-CA-NLH-37, and to P2-IC-NLH-38 indicate that  
12 there is no reason to anticipate a “rush for the exits” by existing plant operator staff in  
13 anticipation of the planned conversion of the Holyrood facility to a synchronous condensing  
14 mode, and that there is the opportunity for Hydro to address retention issues by consultation  
15 with these employees (and their bargaining agent).

16 Per P2-IC-NLH-37, as of 2017, Hydro’s need for Thermal Plant Operators (TPOs) and Lead  
17 Thermal Plant Operators (LTPOs) will be reduced from the existing complement of 25 to 15;  
18 from 2021 onward it is reduced to 8. This gradual reduction in the needed plant operator staff  
19 surely offers Hydro ample operational scope to manage retention of sufficient existing plant  
20 operator staff, or if necessary recruitment and training of new staff.

21 Per P2-IC-NLH-49, three LTPOs will be eligible for retirement prior to 2017, and an additional  
22 one by 2021; per P2-IC-NLH-50, out of an existing complement of 20 TPOs, only four will be  
23 eligible for retirement prior to 2017, and only an additional four by 2021. With reference to P2-

1 IC-NLH-38, there is no reason to assume that, with appropriate consultation by and incentives  
2 from Hydro, all of these LTPOs and TPOs will necessarily retire upon their earliest eligibility to  
3 do so. Moreover, per P2-IC-NLH-51, Hydro acknowledges that the absence or presence of OTS  
4 will not materially affect advancement of a plant operator from TPO to LTPO classification.  
5 Given that the TPO requirement will be reduced (per P2-IC-NLH-37) from 20 to 10 in 2017,  
6 there is ample scope to advance “surplus” TPOs after 2016 (only four are eligible for retirement  
7 in 2017) to the LTPO classification, to fill any gaps left by retiring LTPOs.

8 It is also telling that, in response to P2-PUB-NLH-52, Hydro could not justify the Operating  
9 Training Simulator “over the remaining years of plant service” in a cost benefit analysis. Hydro’s  
10 response to P2-IC-NLH-39 indicates that the OTS will be of very limited value once Holyrood  
11 converts to synchronous condensing mode.

12 It appears that Hydro is seeking to justify the need for OTS on the basis of its not being able to  
13 avoid, by appropriate consultation, incentives and other measures, LTPOs and TPOs from  
14 retiring at their earliest opportunity to do so, and on the basis of its not being to meet any  
15 consequent gap in the filling of one or two TPO or LTPO positions by recruitment and training  
16 measures, without a \$1.028 million OTS system. This capital expenditure can only be “justified”  
17 on the assumption of Hydro’s complete failure to meet reasonable operational expectations with  
18 respect to management of its workforce. This is not an assumption that the Board or Hydro’s  
19 customers should be expected to accept.

20 Finally the “risk” (to the extent there is a risk) that is intended to be mitigated by this project can  
21 be readily addressed by Hydro’s existing training program. Per P2-IC-NLH-48, at the very  
22 earliest the OTS will only be operational by September 2013. In Hydro’s response to P2-CA-  
23 NLH-20, Hydro identifies the basis for its belief that the OTS will reduce the needed operator  
24 training period from two years to six months. If this is accepted, then the earliest “graduates”

1 from an OTS cannot be expected until March 2014, six months after the earliest operational  
2 date of the OTS in September 2013. If Hydro views the lack of trained operators to be a real  
3 risk, it could achieve the very same result by recruiting applicants in the first quarter of 2012,  
4 and putting them through the existing two year training program.

5 The Island Industrial Customers urge the Board to deny approval to this patently unjustified  
6 project.

### 7 **Upgrade Fuel Oil Heat Tracing**

8 It is noteworthy that this proposed \$2.888 million capital expenditure (\$1.474 million in 2012 and  
9 \$1.414 in 2013) is described as an “upgrade”. It is manifest that this is not an “upgrade”. As  
10 became evident from Hydro’s responses to the several RFIs which were necessary to elicit a  
11 comprehensible explanation for this project, this expenditure has only become necessary to  
12 rectify a mismanaged operational expense of \$880,000 in 2002, for which Hydro did not seek  
13 Board approval as a capital expenditure, per P2-PUB-NLH-44 and P2-PUB-NLH-48.

14 By invoking IFRS, Hydro seeks to characterize this \$2.888 million expenditure, to rectify a 2002  
15 operational error, as a “replacement” of the fuel oil heat tracing system and therefore now, in  
16 2011, a justifiable capital expenditure. The Island Industrial Customers, in their submissions in  
17 Phase I of this Application, have already objected to the treatment of capital expenditures in  
18 accordance with Hydro’s interpretation of IFRS requirements until Hydro has justified that  
19 interpretation by its promised comprehensive IFRS review. However, the Island Industrial  
20 Customers concerns about this expenditure go beyond Hydro’s presumption about its IFRS  
21 treatment.

1 The Island Industrial Customers feel it to be necessary to expressly invoke in these  
2 circumstances the Board's authority and responsibility to implement the power policy of the  
3 Province under section 3 of the *Electrical Power Control Act, 1994*:

4 ***Power policy***

5 3. *It is declared to be the policy of the province that*

6 (b) *all sources and facilities for the production, transmission and distribution of*  
7 *power in the province should be managed and operated in a manner*

8 (iii) *that would result in power being delivered to consumers in the*  
9 *province at the lowest possible cost consistent with reliable service.*

10 The Island Industrial Customers submit that it is not reasonably possible to characterize Hydro's  
11 decisions in respect of its fuel oil heat tracing expenditures as management of a facility in a  
12 manner that will result in power being delivered to consumers in the province at the lowest  
13 possible cost consistent with reliable service. Hydro's past decisions with respect to heat tracing  
14 have jeopardized reliable service, and Hydro now proposes to pass on the extra costs  
15 consequent upon Hydro's creation of this jeopardy to its ratepayers.

16 Reading only Hydro's responses to P2-PUB-NLH-44, 46 and 49, one might have been left with  
17 the impression that Hydro's consultant (Tyco) in some way contributed to Hydro's error with  
18 respect to the wrong choices made in respect of heat tracing in 2002. It was only by further  
19 RFIs, P2-PUB-NLH-75, P2-CA-NLH-47 and 48 and P2-IC-NLH-32, that it was made clear that  
20 Hydro had failed to follow the recommendations of its consultant and that the heat tracing  
21 system had failed due to Hydro error. All of this information should have been disclosed in the  
22 Project Justification in the Application.

1 The Island Industrial Customers urge that these circumstances demand a meaningful remedy.  
2 Hydro's protestations of having acted in good faith are of little comfort and no benefit to rate  
3 payers who are now being asked to bear the costs of rectifying Hydro mismanagement of what  
4 was deemed by Hydro in 2002 to be an operational expenditure. The Island Industrial  
5 Customers submit that passing on these costs to the rate payers would be grossly inconsistent  
6 with the power policy of the Province. The Board ought not to excuse Hydro's failure to follow its  
7 own consultant's recommendations, particularly when Hydro chose to not seek Board oversight  
8 and approval (which might have avoided the error) by characterizing the 2002 expenditure as  
9 operational.

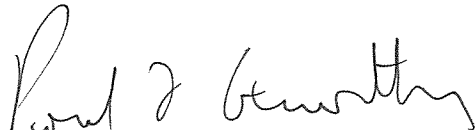

10 The Island Industrial Customers submit that the only reasonable remedy is to refuse approval of  
11 this expenditure as a capital expenditure to be included in rate base.


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

12 **DATED** at St. John's, in the Province of Newfoundland and Labrador, this 24<sup>th</sup> day of  
13 November, 2011.

**Poole Althouse / Stewart McKelvey**

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