

Our File: 115064

September 9, 2014

The Board of Commissioners of Public Utilities
Prince Charles Building
120 Torbay Road, PO Box 21040
St. John's, Newfoundland & Labrador A1A 5B2

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

Dear Ms. Blundon:

Re: The Board's Investigation and Hearing into Supply Issues and Power Outages on the Island Interconnected System – Motion Response Submission

We are counsel for Newfoundland and Labrador Hydro ("Hydro"). On July 7, 2014, Hydro filed a Notice of Motion to strike certain Requests for Information filed by Mr. Danny Dumaresque and Grand Riverkeeper Labrador, Inc. ("GRLI"). By letter dated August 15, 2014, the Newfoundland & Labrador Board of Commissioners of Public Utilities ("Board") advised that the Motion would proceed by way of a paper hearing with submissions to be filed by Intervenors and Newfoundland Power by August 29, 2014, and a response to be filed by Hydro by September 10, 2014. This correspondence constitutes Hydro's response to the submissions received in this matter.

Submissions were provided by or on behalf of the Consumer Advocate, Newfoundland Power, GRLI and Mr. Dumaresque. Each of those submissions are dealt with in order below.

Consumer Advocate

The Consumer Advocate states that he is "in substantial agreement" with Hydro's Motion. He also notes that maintaining the focus of this inquiry is important as the process has taken and will continue to take significant time and resources.

With respect to the Motion as it relates to certain RFIs of the GRLI, the Consumer Advocate agrees with Hydro that the requests which are being objected to do not appear to be relevant to the inquiry and that in his view the GRLI are attempting to re-examine those very issues it previously stated that it had no intention of pursuing in this inquiry. Notably, the Consumer Advocate concludes in this regard "that to enlarge the scope of this inquiry to encompass the areas that [GRLI] wishes to question and call evidence upon would significantly prolong and

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complicate this inquiry to the prejudice of the inquiry and those participating in it.” Hydro fully concurs.

With respect to the Motion as it relates to certain RFIs filed by Mr. Dumaresque, the Consumer Advocate supports Hydro’s position with respect to the majority of the RFIs in question. With respect to a few of Mr. Dumaresque’s challenged RFIs the Consumer Advocate states as follows:

1. With respect to DD-NLH-50, that question is broad but may be amenable to allow better focus on the SOBI in the context of the issues in this inquiry.
2. With respect to DD-NLH-73, that aspect of the request insofar as it seeks information on the life of the HVDC cables may be relevant.
3. With respect to DD-NLH-52 and 56 the Consumer Advocate takes no position as it is unclear from the present record if these questions might relate to the issues before the Board.

With respect to these items Hydro provides its response below in dealing with Mr. Dumaresque’s submission. With these few minor exceptions the Consumer Advocate is in agreement with Hydro that the remainder of Mr. Dumaresque’s RFIs raised in Hydro’s Motion should be struck.

Newfoundland Power

Newfoundland Power states in its submission that with one exception it is in agreement with Hydro’s submissions on its Motion. The one exception is Hydro’s stated objection to DD-NLH-73, which requests information on the life of HVDC cables. Newfoundland Power’s comment in this regard is similar to that of the Consumer Advocate with respect to this RFI. As noted, Hydro addresses this RFI further below.

Hydro submits it is notable that each of the Consumer Advocate and Newfoundland Power are, with a few minor exceptions, in support of Hydro’s Motion. Hydro also notes that the Industrial Group of customers did not take a position on Hydro’s Motion. Thus, other than the two parties subject to the Motion, those formal parties to the proceeding who have provided submissions are generally supportive of Hydro’s Motion, with the minor exceptions noted above.

Prior to dealing specifically with the submissions of the GRLI and Mr. Dumaresque, Hydro notes that its Motion provided its explicit reasons why it believes certain RFIs are out of scope and should be struck. As stated in Hydro’s Motion, it submits that the reasons it has already provided are entirely consistent with Orders No. P.U.3(2014) and P.U.15(2014).

GRLI

Hydro submits that the GRLI has misconstrued the Board’s Order No. P.U.15(2014) granting the GRLI Intervenor status. The GRLI contends that since the Board noted that the GRLI’s stated intention was to ensure that the Board’s review of the adequacy and reliability of the system after commissioning of the Muskrat Falls generating facility and the Labrador Island Link takes into account the various risks associated with the unavailability of some or all of the planned energy and capacity from Muskrat Falls, and the Board was satisfied that this stated interest may fall within the issues to be addressed in this process, that this somehow means that the

Board believed that the specific issues that it had stated as being excluded in the directly preceding paragraph of its Order were nonetheless to be included.

Hydro submits that this was clearly not the intention of the Board. The Board specifically noted on page 4 of Order No. P.U.15(2014) as follows:

“The Board has determined that it would address adequacy and reliability of the Island Interconnected system following the interconnection with Muskrat Falls. The Board agrees with Newfoundland Power, Hydro and the Consumer Advocate that the issues in the matter should not be extended to the construction, legal, contractual and physical risks of the Muskrat Falls development, as raised by Grand Riverkeeper Labrador, Inc.”

Thus the Board accepted the GRLI’s broad interest as being appropriate to support its intervention in the proceedings, but only on the basis of specific exclusions regarding the scope of the inquiry which it explicitly enumerated. Hydro submits that the GRLI is now attempting to circumvent the Board’s specific Order with respect to what was excluded when it allowed the GRLI the right to intervene. Interestingly, in its submission the GRLI quotes the legal principle of interpretation that a specific provision prevails over a general provision. Although the Board will in any event be cognizant of its own intention when drafting Order No. P.U.15(2014), the application of this principle of interpretation supports the view that the Board’s specific exclusions are paramount to any general comments regarding the right of the GRLI to intervene. The GRLI contends at page 3 of its submission that:

“The Board declines to ‘extend’ the issues in this matter to include these risks, because they are already included in the issues identified in Schedule A in P.U.3(2014).”

Hydro submits that this was clearly not what the Board intended. The specific items in question are not enumerated in Schedule A in P.U.3(2014), and in P.U.15(2014) the Board explicitly advised that the issues in this matter were not to extend “to the construction, legal, contractual and physical risks of the Muskrat Falls Development, as raised by Grand Riverkeeper Labrador, Inc.”. The Board could not have been any clearer.

Hydro thus reiterates the submissions from its Motion with respect to the GRLI RFIs in question and submits for the reasons set out in its Motion and this submission that those RFIs should be struck.

Hydro notes that at page 8 of its submission the GRLI itself withdraws its RFIs 5, 6, 7, 9 and 40, all of which are the subject of the Motion. The GRLI also withdraws RFIs 51 and 52 which were not the subject of the Motion and have already been responded to by Hydro by way of cross reference to other RFI responses.

With respect to the challenged RFIs related to the Water Management Agreement and Hydro Quebec’s litigation the GRLI submits that those RFIs fall directly within the specific inclusions set out in the second paragraph of page 4 of P.U.15(2014), and hence should be allowed. As noted above, these items were not specifically included by the Board but rather the exact opposite position prevails, as the Board specifically excluded legal and contractual risks of the Muskrat Falls development as raised by the GRLI.

Similarly, with respect to the challenged RFIs related to the North Spur, the GRLI submits that the Board affirmed that such questions fall within the defined issues for this proceeding. Hydro submits that once again the GRLI has disregarded the Board's explicit statement that the issues in this matter should not be extended to the construction and physical risks of the Muskrat Falls development as raised by the GRLI.

Hydro also notes that the GRLI is now requesting permission to pose supplemental RFIs concerning the North Spur. Hydro submits that for the reasons previously articulated and set out in its Motion that these RFIs are out of the scope of this proceeding and further that it would be inappropriate at this stage in the proceeding to allow a party an opportunity to unilaterally submit supplemental RFIs.

Hydro finally notes that the GRLI has agreed to withdraw that portion of GRK-NLH-3 dealing with costs, such that the amended GRK-NLH-3 would read, "Please describe NLH's rights to energy and capacity under the MFPPA". As Hydro was only challenging that portion of the RFI dealing with costs, Hydro notes that it has already responded on July 25 to that portion of the RFI referenced above.

Mr. Danny Dumaresque

Hydro notes that it has provided specific reasons in its Motion for requesting that certain RFIs of Mr. Dumaresque be struck. With respect to the submission filed on behalf of Mr. Dumaresque Hydro sets out its reply below.

In paragraph 4 of his submission Mr. Dumaresque states that his questions regarding the SOBI cable are of a similar nature to those posed in PUB-NLH-210, 212 and 223. Hydro submits that this is not the case. In paragraph 17 and 18 of its Motion, Hydro clearly articulated why the RFIs it is challenging regarding the SOBI are inappropriate for this proceeding. As noted in its Motion, many of the challenged RFIs are referable to the option of constructing a tunnel for the SOBI crossing, which is an option that is not being undertaken, while the remainder of the challenged SOBI RFIs deal with issues not relevant to the question of system reliability.

Mr. Dumaresque states in paragraph 5 of his submission that the Board's direction – in a separate process dealing with the treatment of costs associated with repairs to the fuel oil system at the Holyrood generating station – for Hydro to provide a copy to all intervenors regarding Hydro's report on fuel quality at Holyrood, illustrates the relevance of requests regarding fuel to the within proceeding. As Hydro noted in its Motion, it has already reported on this matter to the Board as part of its application for cost recovery in that regard and the Liberty Consulting Group ("Liberty") has concluded that the fuel problems of 2013 did not bear on the events of January 2014.

In paragraph 8 of his submission Mr. Dumaresque notes that Liberty stated in its Interim Report that "Hydro developed a new fuel specification to address alumina and silicate content" but he states this is not the case and that this is confirmed in the report from Hydro to the Board dated July 4, 2014 in response to Board Order No. P.U.4(2014). As noted in Hydro's reporting letter to the Board dated July 4, 2014, at page 3, Hydro met with its fuel oil supplier for Holyrood in July 2013 and its supplier agreed to reduce the levels of aluminium and silicon in the fuel oil being supplied. In the same reporting letter at page 2, Hydro stated as follows:

“Hydro has compared the levels of silicon and aluminium found in the January and February 2013 shipments with shipments received since April 2013. Testing has shown that there has been a decrease in silicon and aluminium in the fuel oil delivered to Holyrood after February 2013.”

Hydro has not experienced operating issues with the Holyrood fuel oil system since the changes.

As the issues of fuel quality at Holyrood have been the subject of a separate proceeding specifically dealing with that issue, Hydro submits that allowing further questions on that issue in this proceeding will simply serve to complicate the hearing and distract from the Board’s review of system reliability.

In paragraph 9 of his submission Mr. Dumaresque specifically states that requests DD-NLH-52 and 56 pertain to obtaining information regarding the physical risks associated with the SOBI cable link. As noted above, the Board has specifically excluded issues related to the “physical risks” of the Muskrat Falls development.

In paragraph 10 of his submission Mr. Dumaresque states that RFI DD-NLH-073 pertains to the use of HVDC cables overland or in a water-free environment. Mr. Dumaresque states that this request is critical for making a comparison and determining whether the chosen cable installation method has the highest level of reliability. This RFI referenced a water-free environment and was comingled with a series of RFIs dealing with a tunnel crossing which is not the option being carried out. Mr. Dumaresque has now noted that his reason for requesting this information is for making a comparison and determining whether the chosen cable installation has the highest level of reliability. Hydro submits that the current review is with respect to issues of system reliability but does not engage a discussion on potential differing options for carrying out the Muskrat Falls development, a matter clearly outside the scope of this review. Notably, Hydro has already provided the Cabletricity Connections Ltd. report on the Strait of Belle Isle submarine cable system design life in response to DD-NLH-067, which in part provides a review of existing major DC submarine cable systems.

In paragraph 11 of his submission Mr. Dumaresque states that various of the challenged RFIs are relevant to determining if the present cable installation plan has the support of expert opinion and whether ice studies have concluded what risks exist to cables being damaged by being placed on the ocean floor. He goes on to state that these requests speak to the risks associated with the chosen plan of installation. As noted in Hydro’s Motion, each of these RFIs (with the exception of DD-NLH-90) appear referable to the option of constructing a tunnel for the SOBI crossing, an option not being undertaken by Hydro. Certain of these RFIs also go to the construction and physical risks of the Muskrat Falls development. Accordingly, these RFIs are outside the scope of this proceeding, as is DD-NLH-90 for the reasons set out in paragraph 18 of Hydro’s Motion. Hydro also notes that with respect to Mr. Dumaresque’s rationale for these questions, Hydro has already responded to Mr. Dumaresque’s RFI 051 requesting that Hydro provide all studies, expert opinions and data concerning the impact of icebergs and pack ice on the SOBI submarine cables.

In paragraph 12 of his submission Mr. Dumaresque states that DD-NLH-86 is relevant to the question of the impact existing geological faults and structures will have on the reliability of cable life and performance. As Hydro noted in its Motion this RFI specifically raises issues

pertaining to alleged construction and physical risks of the Muskrat Falls development, which issues the Board has explicitly stated are beyond the scope of this proceeding.

In paragraph 13 of his submission Mr. Dumaresque states that the agreement with the FFAW is relevant in that the degree of enforcement of this agreement will have a direct impact on the possibility of damage to cables on the ocean floor. Hydro submits that the Board has specifically excluded legal and contractual issues related to the Muskrat Falls development from the scope of this proceeding.

In paragraph 14 of his submission Mr. Dumaresque states that RFIs DD-NLH-062 and 063 deal with the Water Management Agreement and legal processes affecting water management or power supply from the Churchill Falls Power Station. This clearly falls within the explicit exceptions to the issues being dealt with in this process as set out in paragraph 16 of Hydro's Motion and above.

In paragraph 15 of his submission Mr. Dumaresque states that RFIs DD-NLH-057 and 058 deal with the issue of the North Spur and "with physical risks of the Muskrat Falls development which could affect the availability and reliability of the planned energy and capacity from Muskrat Falls". Again, as noted in paragraph 13 of Hydro's Motion and above, this matter is explicitly outside of the scope of the current proceeding.

In paragraphs 16 and 17 of his submission Mr. Dumaresque states that RFIs DD-NLH-42, 44 and 59 deal with the issue of third party reliability. He states he does not intend to contact the insurance company, notwithstanding that is explicitly the request in DD-NLH-42, but rather he is of the view that the request will provide an understanding of the level of reliability shown by third parties in this matter. Hydro submits that the information requested in these RFIs will not address the understanding of the level of reliability shown by third parties in this matter. Hydro's insurance company is not a party to this proceeding, and responses to these RFIs will not provide the Board with a better understanding of Hydro's system reliability.

With respect to DD-NLH-50 Mr. Dumaresque did not provide a specific rationale in support of this RFI. The Consumer Advocate noted the broad nature of this RFI but suggested it might be amenable to provide better focus to the RFI. For the reasons set out in its Motion, Hydro maintains that it would be inappropriate to require a response to this RFI as part of this proceeding.

For the foregoing reasons, Hydro reiterates its request of the Board that the RFIs challenged in Hydro's Motion be found to be outside the parameters and scope of this proceeding.

All of which is respectfully submitted.

Yours very truly,



David S. MacDougall

cc: Interested Parties