

IN THE MATTER OF the *Electrical Power Control Act, 1994*, SNL 1994, Chapter E-5.1 (the “EPCA”), *Public Utilities Act*, RSNL 1990, Chapter P-47 (the “Act”); and

IN THE MATTER OF Board Orders No. P.U. 43(2017) and No. P.U. 9(2018) in relation to Newfoundland and Labrador Hydro’s 2018 Capital Budget Application; and

IN THE MATTER OF the Network Additions Policy Review, dated October 1, 2018; the Labrador Interconnected System Transmission Expansion Study dated October 31, 2018, revised November 5, 2018 and April 3, 2019, filed by Newfoundland and Labrador Hydro.

SUPPLEMENTAL SUBMISSIONS OF THE LABRADOR INTERCONNECTED GROUP

THE SUBMISSIONS OF THE LABRADOR INTERCONNECTED GROUP STATE:

Introduction

1. The following submissions are pursuant to correspondence from the Board dated June 18, 2019, permitting the Labrador Interconnected Group to file a reply submission in response to Hydro’s reply of June 4, 2019, and the memo from Christensen Associates Energy Consulting (“Christensen Memo”) attached to Hydro’s reply. On June 21, 2019, the Labrador Interconnected Group also filed a Supplemental Report by Philip Raphals (“Raphals Supplemental Report”) in response to the allegations of inaccuracies and misstatements set out in the Christensen Memo.
2. The Labrador Interconnected Group (the “LIG”) represents the communities of Sheshatshiu, Happy Valley-Goose Bay, Wabush, and Labrador City. These communities are all part of

the Labrador Interconnected System (“LIS”), to which Newfoundland and Labrador Hydro’s (“NLH” or “Hydro”) proposed Network Addition Policy (“NAP”) will apply, and to which the Transmission Expansion Study (“TES”) pertains.

Context of Supplemental Submissions

3. In its Reply Submissions dated June 4, 2019, Hydro states that the LIG’s submissions of May 28, 2019 contain factual inaccuracies, and that the LIG’s concerns regarding the NAP are either based on misconceptions or factual inaccuracies that Hydro states are addressed in the Christensen Memo enclosed with its Reply.
4. Mr. Raphals’ Supplemental Report outlines our expert’s response to the Christensen Memo, and notes that the comments made by Christensen in the Memo do not in fact relate to factual inaccuracies, but rather differences of interpretation or opinion.
5. The LIG’s response to Hydro’s assertion that its concerns with the NAP are based on misconceptions or factual inaccuracies is outlined below.

Formulation of the Network Addition Policy

6. The Christensen Memo alleged that Mr. Raphals made “misstatements” on various subjects. Mr. Raphals’ Supplemental Report makes clear that these were not misstatements, but rather statements with which Christensen disagrees. Several of these statements concerned Hydro’s invocation of FERC’s “beneficiary pays” approach in support of its NAP proposal.
7. The Christensen Memo asserts that the “beneficiary pays” model is “gaining currency” with the United States Federal Energy Regulatory Commission (“FERC”) and in Canada as well.¹

¹ Christensen Memo, p2.

8. The Raphals Supplemental Report outlines a useful set of correctives to the Christensen Memo. As the Raphals Supplemental Report sets out, the Christensen Memo fails to distinguish between three kinds of situations:
- a) Network upgrade policies carried out by a jurisdictional utility applying its own FERC-compliant OATT (Open Access Transmission Tariffs);
 - b) Network upgrades that create benefits in other regions, in particular those governed by RTOs (Regional Transmission Operators) or ISOs (Independent System Operators); and
 - c) Transmission planning procedures.²
9. Only in case (b) is the “beneficiary pays” principle applied by FERC. With respect to network upgrade policies, the applicable principle is the “but for” approach, which attributes network upgrade costs to a new customer for whom service would not have been possible “but for” the upgrade.³
10. Contrariwise, the “beneficiary pays” approach is only applied by FERC to “network additions in one jurisdiction that create benefits in another jurisdiction”⁴.
11. It relies on the “beneficiary pays” approach in support of its proposal to include reliability benefits in the NAP. The Christensen Memo suggests that a recent Ontario Energy Board (“OEB”) decision supports the inclusion of reliability benefits in a NAP.⁵ The Raphals Supplemental Report notes that the OEB decision applied only to “situations where the need for a system upgrade has been identified to meet reliability concerns and where the upgrade

² Raphals Supplemental Report, p4.

³ Raphals Supplemental Report, p5.

⁴ Raphals Supplemental Report, p6. Underlining in original.

⁵ Christensen Memo, p3-4.

required to serve a new customer makes that reliability upgrade unnecessary.”⁶ It does not support Hydro’s proposal, which provides a reliability benefit to the triggering customer even when no need for reliability improvements was otherwise identified.

Application of the Network Addition Policy

12. Hydro’s Reply alleges that the application of the Network Addition Policy to industrial and cryptocurrency customers only is contrary to the requirement in the *Electrical Power Control Act* requiring that rates should not be unduly discriminatory, and the requirement that all customers in the Province have equitable access to an adequate supply of power.⁷
13. The key to the interpretation of those provisions of the *EPCA* are the concepts of “undue discrimination” and “equitable access”. There is no question that differently situated customers can justly be asked to pay different rates and be subject to different policies. For instance, Hydro’s own NAP proposal proposes different treatment for new customers demanding less than 200 kW of service, between 200 kW and 1500 kW, and above 1500 kW. These are legitimate distinctions between customers because they relate to different energy consumption characteristics. These distinctions do not constitute undue discrimination or impede equitable access.
14. Similarly, industrial customers are already subject to a separate rate because of their distinctive characteristics.
15. The distinctive features of cryptocurrency customers were described in the Régie de l’Energie decision cited in the Raphals Addendum Report dated May 6, 2019:
 - It is energy intensive, with a high load factor;

⁶ Raphals Supplemental Report, p7-8.

⁷ *Electrical Power Control Act, 1994*, SNL c E-5.1, s.3(a)(i) and 3(b)(ii).

- It is mobile and fractionable;
- The technology can be used in any location without regard to the emplacement of the site;
- Its perennity is uncertain, and the technology is evolving rapidly;
- The energy consumption is strongly influenced by the market price of cryptocurrencies; and
- There are requests for rapid service connections and rapid scale-up of load.⁸

16. The Régie noted these characteristics in creating a new cryptocurrency rate class and it is open to this Board to do the same. Contrary to Hydro's assertion that the Régie's order was "in large part driven by direction from the Government of Quebec", the Régie was clear that it was establishing the new rate class on the basis of the consumption characteristics of the class members.⁹

17. Hydro also brings up the matter of whether the NAP should apply to the Department of National Defence ("DND") base in Goose Bay. Although Hydro now calls DND a General Service customer, in prior filings Hydro has accounted for CFB Goose Bay separately from rural loads (which includes General Service customers) in the Labrador Interconnected System.¹⁰ Moreover, Mr. Raphals has noted that he would be supportive of applying the Network Addition Policy to General Service customers over a certain capacity threshold.¹¹ In our submission, the application of the Network Addition Policy beyond industrial and cryptocurrency customers could be the subject of a further proceeding based on a full record on the issue.

⁸ D-2019-052, para 71, cited by Raphals Addendum Report, p9.

⁹ D-2019-052, para 83, cited by Raphals Addendum Report, p11.

¹⁰ See, *eg*, NLH General Rate Application, Rev 4, Schedule 1.2, p 6 of 6; Schedule 1.3, p 3 of 3.

¹¹ NLH-LAB-005.

Whether the Transmission Expansion Study is a Transmission Expansion Plan

18. Hydro's reply submits that the content of several RFI responses should be read alongside the TES to constitute the Transmission Expansion Plan on which the Upstream Capacity Charge and the Advancement Charge is based.
19. In our submission, since the Upstream Capacity Charge and the Advancement Charge are charges that Hydro intends on applying to customers, it is important that their basis be clear. A filing which clearly includes all the relevant information would assist in this regard. Furthermore, since this is a charge on customers within Hydro's regulated operations, it is important that this filing be subject to regular Board oversight.

Effect of PU (18) 2019

20. Hydro's reply also addresses the LIG's submission that the temporary load restrictions in PU 36 (2018) should be extended until the Transmission Expansion Plan has been filed and approved by the Board. Hydro states that PU 18 (2019) amended the temporary load restriction to "allow for the completion of the regulatory process related to the Network Additions Policy and the Labrador Expansion Plan". In fact, PU 18 (2019) extended the temporary load restriction "until further order of the Board". The LIG's submission seeks to clarify the conditions under which the temporary load restriction should be lifted.

Conclusion

21. In summary, the LIG denies that its concerns regarding the NAP are based on misconceptions or factual inaccuracies, and that these misconceptions or inaccuracies are addressed in the Christensen Memo. The LIG continues to rely on its submission of May 28,

2019, together with the reports of Philip Raphals dated April 25, 2019, May 6, 2019 and June 21, 2019.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Toronto, Ontario, this 28th day of June, 2019.

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