

# Office of the Consumer Advocate

PO Box 23135  
Terrace on the Square  
St. John's, NL Canada  
A1B 4J9

Tel: 709-724-3800  
Fax: 709-754-3800

May 9, 2023

Board of Commissions of Public Utilities  
120 Torbay Road, P.O. Box 2140  
St. John's, NL A1A 5B2

**Attention: G. Cheryl Blundon, Director of  
Corporate Services / Board Secretary**

Dear Ms. Blundon:

**Re: NLH Application for July 1, 2023 Utility Rate Adjustments**

On April 17, 2023 Newfoundland and Labrador Hydro (“Hydro”) submitted to the Public Utilities Board (the “Board”) an application for July 1, 2023 Utility Rate adjustments. The application proposes:

- A revised RSP Current Plan Adjustment of 0.496 cents per kWh;
- A revised CDM Cost Recovery Adjustment of 0.015 cents per kWh; and
- No revision to the Project Cost Recovery Rider of 0.798 cents per kWh.

In correspondence dated April 20, 2023, the Board set the schedule for the application. Following a round of requests for information (RFIs), the parties are to submit comments on the Application by May 9, 2023. This letter conveys the comments of the Consumer Advocate.

***Summary of Key Evidence***

The Consumer Advocate summarizes the key points of evidence upon which it bases its recommendation as follows:

- At issue in this Application are three rate components: 1) the RSP Current Plan Adjustment, 2) the CDM Cost Recovery Adjustment, and 3) the Project Cost Recovery Rider.
- (Application para. 16) Hydro estimates that its proposed Utility Rate Adjustments would raise the wholesale rate paid by Newfoundland Power (NP) by 5.5%, leading to a 3.9% increase in rates for NP’s end customers.
- (Application para. 19) Proposals made in the Application together with NP’s own anticipated adjustments are estimated to result in an overall average rate increase to NP customers of 6.9% effective July 1, 2023. Estimated rate impacts on NP General Service Rate 2.4 customers would exceed 9%.

- (Application para. 4) In P.U. 33(2021), the Board approved, among other things, Hydro’s proposal to establish the Supply Cost Variance Deferral Account. The Board approval allows Hydro to defer payments required under the Muskrat Falls Project agreements and to begin charging Island Interconnected System supply cost variances to the deferral account.
- (Application paras. 17 and 18) The Project Cost Recovery Rider was approved by the Board in P.U. 19(2022) which initiated recovery of Muskrat Falls Project costs effective July 1, 2022. Consistent with the Board’s order, payments made by Newfoundland Power stemming from the Project Cost Recovery Rider are credited to the “Project Cost Recovery – Utility” component of the Supply Cost Variance Deferral Account.
- (Application paras. 20 and 21, and Schedule 2) Hydro proposes no change in the Project Cost Recovery Rider of 0.798 cents per kWh and states that this is consistent with a government request, contained in a letter from the Minister of Industry, Energy and Technology, dated April 14, 2023, that there be no additional recovery of Muskrat Falls Project costs in rates to be effective July 1, 2023.
- (P.U. 19(2022), pages 2 and 3) With respect to the July 1, 2022 utility rate adjustment:
  - The government provided correspondence (2022 Application, Schedule 3) to Hydro’s Board of Directors referencing its stated policy goal that electricity rates be maintained at a manageable level and *requesting Hydro to file its RSP updates with a view to maintaining retail electricity rates as close to current levels as possible* (emphasis added).
  - To comply with Government’s request, Hydro proposed a Project Cost Recovery Rider of 0.798 cents per kWh effective July 1, 2022 with payments credited to the “Project Cost Recovery – Utility” component of the Supply Cost Variance Deferral Account. This level of Project Cost Recovery Rider in combination with other adjustments<sup>1</sup> effectively resulted in no change in the electricity rates for NP customers on July 1, 2022. In fact, the precise value of 0.798 cents per kWh was chosen to ensure end-customer rates would remain unchanged once all adjustments were made.
  - There were no objections to the Application. The Consumer Advocate submitted that *“the Application is not unreasonable as Hydro can start recovery of costs without imposing a material increase in customer rates”*.
- (CA-NLH-003, Attachment 1) At year-end 2022 the Supply Cost Variance Deferral Account had a balance owed by customers totaling \$196.2 million. The Utility Balance was -\$5.8 million, representing the amount NP customers had paid into the account at year-end 2022. The Industrial customer balance was \$0, representing the amount Island Industrial Customers had paid into the account at year-end 2022. Hydro indicates that the balance will ramp up now that the Muskrat Falls Project is in service. These amounts will be offset to an extent by Holyrood fuel cost savings estimated at \$1.042 billion by 2030 (Reliability and Resource Adequacy Study Review - Technical Conference, May 2023).

---

<sup>1</sup> Other adjustments included: Hydro’s RSP and CDM Cost Recovery Adjustments, and NP’s Rate Stabilization Account and Municipal Tax Adjustment factors.

- (PUB-NLH-001) Hydro indicates that it did not consider reducing or eliminating the Project Cost Recovery Rider to lessen the projected rate impact because in its opinion doing so would be inconsistent with “*regulatory principles*” relating to cost of service, rate stability, and intergenerational equity.
- (PUB-NLH-003, Attachment 1) In a letter dated March 30, 2023 from the Minister of Industry, Energy and Technology, Hydro was notified of a grant from the provincial government in the amount of \$190.4 million.
- (PUB-NLH-003 (a)) Quoting from the March 30 letter, Hydro indicates that government direction with respect to the \$190.4 million grant is as follow: “*The funds provided under the grant can be used for no other purpose but to be included as rate mitigation to reduce the balance in Newfoundland and Labrador Hydro’s Supply Cost Variance Deferral Account for the benefit of rate payers in the rate setting process.*”
- (CA-NLH-004 (a)) Hydro states that it was not aware that the grant would be forthcoming when it first applied for the Project Cost Recovery Rider in May of 2022.
- (CA-NLH-007(d)) Referring to the letter of April 14, 2023, Hydro states “*The letter from the Minister does not specifically address whether the Project Cost Recovery Rider should decrease.*” However, the letter also does not specifically address whether the Project Cost Recovery Rider should remain constant.
- (CA-NLH-007(a)) Hydro states with respect to non-recovery of amounts owing to Muskrat Falls Project costs “*There are no negative financial impacts on Hydro from short-term deferral of Project costs.*”
- (CA-NLH-007( c )) Hydro states “*While the Government has not made any further commitment beyond the \$190.4 million grant provided in March, the letter dated April 14, 2023 reiterated Government’s commitment to rate mitigation.*”
- (CA-NLH-011) There is no firm date for the release of the government’s rate mitigation plan. Hydro does not expect to implement new rates resulting from its next General Rate Application (GRA) before “*the latter half of 2025 at the earliest*”.
- (CA-NLH-012 and CA-NLH-009) If the Project Cost Recovery Rider were decreased from the current level of 0.798 cents/kWh to 0.299 cents/kWh, the resulting average rate impact, when combined with the proposed changes to the RSP Current Plan Adjustment and the CDM Cost Recovery Adjustment, on NP’s end customers effective July 1, 2023 would be approximately zero. However, there would still be a rate increase on July 1, 2023 owing to NP rate adjustments. Hydro estimates that cost recovery from the Project Cost Recovery Rider for the July 1, 2023 to June 30, 2024 period would be \$44.0 million if the current 0.798 cents/kWh rider were continued, and \$16.5 million if the Project Cost Recovery Rider were set at 0.299 cents per kWh.

### Consumer Advocate Comments

- 1) The Consumer Advocate does not oppose the proposed changes to the RSP Current Plan Adjustment and the CDM Cost Recovery Adjustment.

- 2) The Project Cost Recovery Rider was set in P.U. 19(2022) at the current level of 0.798 cents/kWh to avoid a change in NP's average customer rates on July 1, 2022 including the effects of both Hydro and NP rate adjustments. This was consistent with government correspondence. Specifically, a letter dated May 20, 2022 from the Minister of Industry, Energy and Technology to Hydro (2022 Application, Schedule 3) requested Hydro to file its RSP with a view to maintaining retail electricity rates as close to current levels as possible. That letter went on to state "*Our Government hopes and trusts this will alleviate some of the significant cost of living pressures facing Newfoundlanders and Labradorians at this time.*" If Hydro is to continue to meet this government objective, the Project Cost Recovery Rider should be reduced sufficiently to offset the other changes proposed by Hydro and NP so that the effect of all the July 1, 2023 adjustments on NP's end customer rates is approximately zero. If the required reduction in the Rider is more than its current level then it should be set to zero, effective July 1, 2023.
- 3) The Consumer Advocate does not agree with Hydro's argument that reducing or eliminating the Project Cost Recovery Rider to lessen the projected rate impact would be inconsistent with "*regulatory principles*" of cost of service, rate stability, and intergenerational equity, for the following reasons:
- a. If cost of service was a concern, Hydro would not have proposed a deferral account, but instead would have filed a GRA with a proper and defensible cost of service study rather than continuing to rely on the cost of service study filed with its General Rate Application 6 years ago in 2017. This cost of service study in no way reflects the current supply and delivery system to the Island. The fact that Hydro estimates Holyrood fuel savings of over \$1 billion for the period up to 2030 is a good indicator that the cost of service study is not reflective of the current supply situation.
  - b. If rate stability was a concern, Hydro would not be proposing changes, when combined with NP's own adjustments, that result in an average NP customer rate increase of 6.9%, and a rate increase in excess of 9% to General Service Rate 2.4 customers. As noted by Hydro, these rate impacts are material. Rates will be far more stable if the Project Cost Recovery Rider is set at a level that minimizes the overall average rate increase for NP's customers effective July 1, 2023.
  - c. If intergenerational equity was a concern, Hydro would have applied for the full amount owed in the Supply Cost Variance Deferral Account on July 1, 2022, and again now for July 1, 2023. Further, Hydro would be recovering an amount greater than zero from the Island Industrial Customers.
  - d. Finally, Hydro: 1) does not yet know the final cost of the Muskrat Falls Project, 2) does not yet have details of the government's rate mitigation plan, and 3) has not yet developed a cost of service study for the post-Muskrat Falls era, so cannot know what rates might be in 2025. Further, a rate mitigation plan that sets rates at 14.7 cents/kWh is likely to diminish the relevance of rate-setting principles relating to cost of service and intergenerational equity.

- 4) There is no evidence on the record suggesting that reducing the Project Cost Recovery Rider is inconsistent with the latest government direction, (i.e., the letter of April 14, 2023). In fact, reducing the Project Cost Recovery Rider would be consistent with government correspondence in the May 20, 2022 letter to Hydro, referenced above.
- 5) Any reduction in revenue to Hydro from reducing the Project Cost Recovery Rider is not now especially onerous in light of the \$190.4 million grant from the provincial government to it for rate mitigation. As admitted by Hydro, when it first sought the Rider in May 2022 it was unaware that such assistance would be forthcoming.
- 6) Despite the lack of a formal and comprehensive rate mitigation plan, Hydro (and NP) is encouraging higher consumption of electricity, notably through electrification. Increases in end customer rates by an average of 6.9% would induce customers to consume less electricity than otherwise. This acts against electrification by inducing some customers to reconsider their electrification plans or by inducing other customers to consume less. Reducing the increase in rates would mitigate this effect.
- 7) While a reduction in the Project Cost Recovery Rider would decrease the contribution to the Supply Cost Variance Deferral Account, it should be noted that Hydro is in a much improved financial position. Table 1 shows Hydro's profits for the years 2017 to 2021 and for the first nine months of 2022. (An estimate for full year 2022 was requested in CA-NLH-005 but Hydro indicated it was not yet available.)

Table 1

## NL Hydro's Profits

Year	Profit (millions)
2017	\$4
2018	\$182
2019	\$127
2020	-\$90
2021	\$72
2022 (Jan. - Sept.)	\$543

Sources. NL Hydro *2021 Annual Report* page 36 for 2017 to 2021 and *2022 Q3 Financial Update*, page 11, for 2022.

Table 1 shows that Hydro's profits have improved substantially since 2020. The outstanding feature is that in just the first nine months of 2022 its profits were in excess of half a billion dollars. That is much more than the sum of the annual profits from 2017 to 2021.

Table 2 shows a decomposition of that 2022 nine-month profit and provides a comparison with the corresponding period in 2021. As can be seen, most of Hydro business segments had greater profits in the first nine months of 2022 compared to 2021, \$543 million versus just \$37 million. While the biggest increase was in the Oil and Gas segment, Muskrat Falls was not far behind with a move from a loss of \$106 million to a profit of \$95 million.

Table 2

NL Hydro's Profit from Continuing Operations: Comparisons (in millions)

Business Segment	2021 (first 9 months)	2022 (first 9 months)
Hydro Regulated	\$40	\$35
Muskrat Falls	-\$106	\$95
LCP Transmission	\$83	\$58
Churchill Falls	\$41	\$45
Energy Trading	\$14	\$59
Other Electric	-	\$9
Oil and Gas	-\$22	\$252
Corporate	-\$8	-\$8
Inter-segment	-\$5	-\$2
<b>TOTAL PROFIT</b>	<b>\$37</b>	<b>\$543</b>

Source: NL Hydro, *2022 Q3 Financial Update*, page 11.

These profit figures suggest that at least for the time being, specifically for July 1, 2023 to June 30, 2024, Hydro is well positioned to address a decrease in revenue due to a reduction in, or elimination of, the Project Cost Recovery Rider.

More generally, any rate mitigation plan ought to include substantial contributions from Hydro profits. Those contributions should not be limited to a subset of business segments. Muskrat Falls and its relevant components is an unregulated project. In light of the Muskrat Falls Inquiry, it is not difficult to argue that the Muskrat Falls Project costs were not prudently incurred, and Hydro does not claim otherwise (CA-NLH-010).

### **Consumer Advocate's Recommendation**

Based on the forgoing, the Consumer Advocate recommends that the Board:

- Approve Hydro's proposed revised RSP Current Plan Adjustment of 0.496 cents per kWh effective July 1, 2023;
- Approve Hydro's proposed revised CDM Cost Recovery Adjustment of 0.015 cents per kWh effective July 1, 2023;

- Order Hydro's Project Cost Recovery Rider to be set at a rate that offsets the two preceding changes plus NP's anticipated changes in its Rate Stabilization Account and Municipal Tax Adjustment factors so as to minimize the overall increase in NP customer rates effective July 1, 2023; and
- Urge Hydro to speed up its work with the Province in developing a comprehensive rate mitigation plan, one that includes use of Hydro profits, regardless of business segment, to ease the burden of the Muskrat Falls Project on ratepayers.

Please contact the undersigned if you have any questions on this submission.

Yours truly,



**Stephen Fitzgerald, KC**  
**Counsel to the Consumer Advocate**

/bb

cc

**Newfoundland & Labrador Hydro**

Shirley Walsh ([ShirleyWalsh@nlh.nl.ca](mailto:ShirleyWalsh@nlh.nl.ca))

NLH Regulatory ([NLHRegulatory@nlh.nl.ca](mailto:NLHRegulatory@nlh.nl.ca))

**Newfoundland Power Inc.**

NP Regulatory ([regulatory@newfoundlandpower.com](mailto:regulatory@newfoundlandpower.com))

Dominic Foley ([dfoley@newfoundlandpower.com](mailto:dfoley@newfoundlandpower.com))

Lindsay Hollett ([lholllett@newfoundlandpower.com](mailto:lholllett@newfoundlandpower.com))

**Board of Commissioners of Public Utilities**

PUB Official Email ([ito@pub.nl.ca](mailto:ito@pub.nl.ca))

Jacqui Glynn ([jglynn@pub.nl.ca](mailto:jglynn@pub.nl.ca))

Sarah Kean ([skean@pub.nl.ca](mailto:skean@pub.nl.ca))

**Industrial Customers Group**

Paul Coxworthy ([pcoxworthy@stewartmckelvey.com](mailto:pcoxworthy@stewartmckelvey.com))

Dean Porter ([dporter@poolealthouse.ca](mailto:dporter@poolealthouse.ca))

Denis Fleming ([dfleming@coxandpalmer.com](mailto:dfleming@coxandpalmer.com))

**Teck Resources Limited**

Shawn Kinsella ([shawn.kinsella@teck.com](mailto:shawn.kinsella@teck.com))

**Linde Canada Inc.**

Sheryl Nisenbaum ([Sheryl\\_nisenbaum@praxair.com](mailto:Sheryl_nisenbaum@praxair.com))

Peter Strong ([peter.strong@linde.com](mailto:peter.strong@linde.com))