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Via Electronic Mail and Courier

Newfoundland and Labrador Board
of Commissioners of Public Utilities
120 Torbay Road
P.O. Box 21040
St. John's, NL A1A 5B2

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

Dear Ms. Blundon:

Re: Hydro Amended 2013 General Rate Application – Compliance Application

- 1 This submission is made on behalf of NARL Refining Limited Partnership (“NARL”) only.
2 This submission is limited to the issues arising from the proposal of Hydro, in the Compliance
3 Application, for recovery of revenue deficiencies from Island Industrial Customer (IIC) RSP
4 credit balances.

5 Hydro proposal for recovery of revenue deficiencies from IC RSP credit balances

- 6 In Exhibit 1 to the Compliance Application (page 6, starting at line 14) Hydro summarized this
7 proposal as follows:

8 *In the Amended GRA, Hydro proposed to utilize a portion of the credit balance in the RSP*
9 *to provide recovery of the revenue deficiencies. Hydro continues to propose this*
10 *approach as it has the advantage of recovering revenue deficiencies by using amounts*
11 *already collected from customers and avoids higher rates in the future in order to*
12 *recover the amounts owing. This approach provides a better matching of 2015 proposed*
13 *rates with 2015 Test Year costs. As indicated in Table 3, 52% of the load variation*
14 *component of the RSP credit balance is required to provide recovery of the revenue*
15 *deficiency from the Island Industrial Customers.*

- 16 In footnote 14, at page 6 of Exhibit 1, Hydro states the following with respect to the above
17 approach:

18 *This approach is similar to the method approved by the Board in the case of Hydro's*
19 *2006 GRA in which \$20.7 million of the Hydraulic Production Variation RSP balance*
20 *owing to customers offset current costs owing from customers.*

- 21 Hydro's summary of its proposal continues at line 1, page 7 of Exhibit 1:

22 *As such, Hydro proposes to: (i) credit \$703,000 to increase the balance in the*
23 *Newfoundland Power RSP current plan to address the amounts owing as a result of the*
24 *excess revenues from interim base rates for Newfoundland Power; and (ii) transfer*
25 *\$1,631,000 from the Island Industrial Customer load variation component credit balance*
26 *of the RSP to eliminate the cumulative revenue deficiency for the period 2014 to 2017*
27 *from Island Industrial Customers.*

28 In section 4.1, page 20 of Exhibit 3 of the Compliance Application, Hydro further explained its
29 proposal as follows:

30 *In the Amended GRA, Hydro proposed to utilize a portion of the credit balance in the RSP*
31 *to provide recovery of the revenue deficiencies. This approach has the advantage of*
32 *recovering revenue deficiencies by using amounts already collected from customers and*
33 *avoids higher rates in the future than would be required to recover the amounts owing.*
34 *This approach also provides a better matching of 2015 proposed rates with 2015 Test*
35 *Year costs.*

36 *The GRA Order requires Hydro to file a revised calculation of the available balances in*
37 *the RSP and a proposed plan for the recovery of the revenue deficiencies, including the*
38 *2014 capacity-related supply cost deferral, and a description of customer rate impacts.*
39 *The Board also directed Hydro to include various approaches in terms of the impact of*
40 *the use of RSP balances and rates riders presenting the impacts of the use 25%, 50%,*
41 *75%, and 100% of the available RSP credit balances to offset the revenue deficiencies.*

42 In section 4.2, at page 22 of Exhibit 3 of the Compliance Application, Hydro asserts that
43 approaches presenting the impacts of the use of 75% and 100% of the available RSP credit
44 balances are “not applicable”.

45 Hydro’s proposed approach does not address how the remaining IIC load variation component
46 credit balance of the RSP, of over \$1.5 million, is proposed to be dealt with, other than that it will
47 remain segregated within the RSP, “*to be available to provide for recovery of the deferred supply*
48 *costs while limiting customer impacts*” (page 25, line 1-3, Exhibit 3).

49 **The GRA Order P.U. 49 (2016)**

50 As already noted above, the GRA Order directed Hydro to include various approaches in terms
51 of the impact of the use of IIC RSP balances and rates riders presenting the impacts of the use
52 25%, 50%, 75%, and 100% of the available RSP credit balances to offset the revenue
53 deficiencies.

54 NARL submits that there is additional comment and direction given by the Board in P.U. 49
55 (2016) which is relevant to consideration of this issue.

56 The Board noted as follows starting at line 19, page 11 of the GRA Order, with respect to the
57 Government-directed phase-in of industrial customer rates:

58 *On August 10, 2016 Hydro advised the Board that, in its view, no action was required on*
59 *September 1, 2016. Hydro explained that in the circumstances the Industrial customer*
60 *rates were reasonable for the remainder of 2016. Hydro proposed that the conclusion of*

61 the Industrial Customer RSP Surplus should be addressed at the time of implementation
62 of new Industrial customer base rates resulting from the conclusion of the Amended
63 Application in late 2016 or early 2017....

64 The Board stated as follows, in the context of its decision not to accept proposed O&M
65 methodology changes for specifically assigned charges, at line 18, page 98 of the GRA Order:

66 The Board's concern is to ensure that all customers pay only those costs they are
67 responsible for, and that these costs are transparent and understood by customers.
68 While Mr. Dean's approach may reduce the O&M costs assigned to Industrial
69 customers, there is no evidence as to whether these costs should be transferred to
70 common costs, and hence to Newfoundland Power. The cost of service methodology
71 review, which was to be done in 2016, would have allowed for a full review of the overall
72 approach that should be taken to determine specifically assigned charges but this review
73 has now been delayed to an uncertain date. This delay means there will not be an
74 opportunity, in advance of the next general rate application, to fully assess the fairness
75 of the proposed methodology or whether another methodology should be considered.

76 [underlining added]

77 NARL submits that it is a necessary corollary of ensuring that all customers pay only those costs
78 they are responsible for, and that these costs are transparent and understood by customers,
79 that to the extent reasonable and possible within rate classes, customers should bear their own
80 costs of service. In this context, the impact of specifically assigned charges in relation to the
81 Hydro revenue deficiency and Hydro's proposed approach for its recovery was not transparent
82 and clear.

83 The Board noted and stated the following, in the context of the issue of award of costs to the
84 intervenors, at pages 127-128 of the GRA Order:

85 [at page 127, line 40, underlining added:]

86 Vale justified its request for a cost award on the basis that it will be the single largest
87 industrial customer of Hydro and that its interests are discrete from those of the
88 Industrial Customer Group, particularly with respect to recovery of past deficiencies
89 through future rate riders or calculation of specifically assigned charges.

90 [at page 128, line 34, underlining added:]

91 The Board notes that there are still substantive issues to be addressed as a result of this
92 Decision and Order. Hydro will be directed to file revised proposals incorporating the
93 findings of the Board, and the intervenors will have the opportunity to review and
94 comment on these proposals. The impact on customer rates will not be known until
95 these revised proposals have been accepted by the Board and Hydro files its final rates
96 for approval. In these circumstances the Board finds that any award of costs should be
97 made following the conclusion of this matter.

98 The manner of Hydro's recovery of its revenue deficiency from IIC RSP credit balances
99 was clearly one of the substantive issues that remained to be addressed, and on which
100 the intervenors would have the opportunity to comment, in this Compliance Application.

101 **Recovery of SAC increases as a component of Hydro's revenue deficiency proposal**

102 It is respectfully submitted that Hydro's proposal does not present, in a transparent way, the
 103 impacts of the SAC increases, incurred by all industrial customers except NARL, as a
 104 component of Hydro's revenue deficiency, or the impacts of Hydro's proposal to address that
 105 revenue deficiency. InterGroup, consultants to the IIC Group, have prepared the following table
 106 with their preliminary analysis of their estimate of these impacts (in \$000 dollars):

Total IC Revenue Deficiency, including impact of Specifically Assigned Charges

\$000	2014	2015	2016	2017	Total Deficiency/ (Surplus)				
A	Total IC Revenue Deficiency								
	3,260	413	-2,076	34	1,631				
B	Revenue Deficiency due to SAC								
	1,241	957	961	239	3,397				
	SAC Revenue Deficiency by customer:								
	CBPP	671	532	528	131	1,862			
	NARL	-36	-61	-61	-15	-174			
	Teck	33	12	13	3	61			
	Vale	572	475	481	120	1,647			
C	Revenue Deficiency due to Energy								
	2,016	-556	-2,985	-241	-1,766				
	Energy/Demand Revenue Deficiency by customer:								
	CBPP	213	-12	-229	-21	-49			
	NARL	1,066	-186	-1,075	-93	-288			
	Teck	262	40	-106	-19	177			
	Vale	388	-341	-1,336	-88	-1,377			
	Praxair	86	-57	-240	-20	-230			
D	NOTIONAL Total Revenue Deficiency by Customer						Total Deficiency/ (Surplus)	Share of \$1.631 million recovery based on sales	Difference
	2014	2015	2016	2017					
	CBPP	885	519	300	110	1,813	123	1,690	
	NARL	1,031	-248	-1,136	-108	-462	618	-1,079	
	Teck	295	52	-93	-16	238	11	228	
	Vale	960	134	-855	32	271	738	-467	
	Praxair	86	-57	-240	-20	-230	142	-372	
Total	3,257	401	-2,025	-2	1,631	1,631	0		

107

108

109 The "share of \$1.631 million recovery based on sales" estimates in the above Table are based
 110 on 2017 estimated loads.

111 As illustrated in Row D of the table above, if Hydro's proposal is implemented, InterGroup's best
 112 estimate of the impact, for each IC, is:

- 113 • CBPP would have its \$1.862 million in deferred SAC offset by the RSP, and have its
 114 GRA energy related credit of \$0.049 million credited to the RSP, and as a result would
 115 have its potential future RSP allocation reduced by \$0.123 million, for a net positive
 116 impact for CBPP of \$1.690 million

- 117 • NARL would receive no credit for the SAC overcollection of \$0.174 million, have its
118 \$0.288 million GRA energy related credit assigned to the RSP, and would have its future
119 RSP allocations reduced by \$0.618 million, for a net negative impact for NARL of \$1.079
120 million

121
122 By similar analysis

- 123
124 • Teck would have a net positive impact of \$0.228 million
125 • Vale would have a net negative impact of \$0.467 million
126 • Praxair would have a net negative impact of \$0.372 million

127
128 In the view of NARL, the above preliminary analysis raises a substantial issue as to whether
129 Hydro's proposal represents a just and reasonable approach to collecting the revenue
130 deficiency. NARL does not purport that this preliminary analysis identifies the impacts with
131 precision. NARL does however submit that it is apparent that the magnitude of the impacts goes
132 well beyond the threshold of the "give-and-take" to be reasonably expected in the context of
133 customer class rate-making.

134 **The Board's broad powers to deal with excess revenue**

135 NARL submits that principles identified by the Court of Appeal in *Newfoundland and Labrador*
136 *Hydro v. Newfoundland and Labrador (Board of Commissioners of Public Utilities)*, 2012 NLCA
137 38 (the "Load Variation Surplus Decision"), with respect to the Board's broad powers to deal
138 with excess revenue, have applicability on the issue raised by Hydro's proposal:

139 *[29] The industrial customers claimed entitlement to the entire load variation*
140 *balance. Based on the available information prior to the preliminary hearing, the*
141 *current industrial customers were paying approximately \$20 million in annual*
142 *electricity costs. However, \$68 million of load variation transfers were*
143 *accumulating as system savings on an interim basis since January 1, 2008 which*
144 *represented approximately three and a half times the annual electricity costs of*
145 *the current industrial customers.*

146

147 *[117] The Board determined that the RSP was a form of deferral account*
148 *because it "allows for the accumulation of balances which are subsequently*
149 *collected from or refunded to customers". This determination was accepted by all*
150 *parties.*

151

152 *[126] The Board noted that Hydro's applications for the interim rates for its*
153 *Industrial Customers and its 2009 GRA had not sought any changes to the RSP*
154 *rules, nor had Hydro filed any application for RSP reviews prior to the end of*
155 *2009 as had been indicated in the covering letter to its 2009 application. In the*
156 *absence of an application, the Board declined "to consider suspending the*
157 *operation of the load variation allocation rules as suggested by Hydro in its*
158 *correspondence" (p. 9).*

159 *[127] The phraseology of that portion of the decision suggests that either the*
160 *Board believed it could not act on that matter without an application or that the*
161 *absence of an application was a sufficient reason for the Board not to exercise its*
162 *jurisdiction. It is not clear which. With respect to the first possible interpretation, in*
163 *our view the PUB Act, including s. 82, confers broad powers upon the Board to*
164 *investigate rates and take remedial action if appropriate. Exercise of such powers*
165 *is not dependent upon receipt of an application. Procedure cannot determine*
166 *jurisdiction. It may affect its exercise but not its existence. With respect to the*
167 *second interpretation of the Board's statement we consider the statement to be*
168 *conclusory only, lacking an explanation of why the stated factor would be*
169 *sufficient.*

170

171 *[130] Indeed, as noted in the Stated Case, paragraph 94, "[t]he power to deal*
172 *with excess revenue is inherent in the nature of the regulatory scheme the Board*
173 *is required to administer" even if there is no express statutory provision dealing*
174 *with the type of excess revenue under consideration. The manner in which the*
175 *Board can deal with excess revenue is limited only by the broad purposes of the*
176 *legislative regime as it is perceived by the Board to apply in a given case.*

177

178 *[150] The Board indicated that the constraint arose from "generally accepted*
179 *sound public utility practice which requires that rates be just and reasonable and*
180 *not unjustly discriminatory". While application of such practice considerations*
181 *might (but not necessarily) justify a conclusion to limit disposition of reserve*
182 *funds to industrial customers in a given case, it does not justify giving a restrictive*
183 *interpretation to the broad language of subsection 75(3), thereby foreclosing its*
184 *use and application for all such cases. As noted above, the Board approached*
185 *this aspect on the basis that the RSP balances should be treated as excess*
186 *revenue to Hydro. However, on that basis and given the magnitude of the*
187 *anticipated RSP balances it is apparent that the constraint stated by the Board*
188 *could adversely affect the ability to establish reasonable and non-discriminatory*
189 *rates for the Industrial Customers from January 1, 2008. See paragraphs 29-30*
190 *above.*

191 [underlining added above]

192 We note that the underlining in the following passage appears in the Court of Appeal's decision
193 text:

194 *[157] We conclude that the Board has jurisdiction to deal with and dispose of*
195 *remaining amounts in the RSP in accordance with the broad powers contained in*
196 *the legislation, which include, but are not limited to, refunding it to the Industrial*
197 *Customers. But these powers are not necessarily confined to disposing of the*
198 *RSP fund balances solely to the benefit of one class of customers, in this case*
199 *the Industrial Customers. This is not to say, of course, that the Board should*
200 *include customers other than the Industrial Customers as beneficiaries, only that*
201 *the Board has the jurisdiction and authority to, and should, consider the*

202 *submissions of all interested parties on this issue, taking into account generally*
203 *accepted sound public utility practice and the imperative of setting just and*
204 *reasonable rates that are non-discriminatory.*

205 NARL would submit that the imperative of setting just and reasonable rates that are non-
206 discriminatory requires the due consideration of the submissions of all interested parties
207 on this issue, and that, with respect, any procedural issues must give way to this
208 imperative.

209 **The submission of NARL**

210 NARL respectfully requests that the Board consider the following submissions, with
211 respect to Hydro's proposal in this Compliance filing for recovery of its revenue
212 deficiency from IC RSP credit balances:

213 1. NARL does not question that Hydro is entitled to recovery, as a revenue deficiency, of
214 \$1.631 million from its industrial customers (subject to adjustments arising from the
215 concurrent IIC and other submissions being considered by the Board in respect of the
216 Hydro compliance filing). NARL however submits that the manner of recovery of that
217 revenue deficiency as proposed by Hydro in its Compliance Application has widely
218 disparate impacts among the industrial customers (as estimated in the InterGroup
219 preliminary analysis above) and as such would result in rates, and rate impacts, that are
220 not just and reasonable, and that would be unjustly discriminatory as between industrial
221 customers.

222 2. The Hydro proposal does not reflect any consideration that, over the period applicable to
223 this GRA, (1) Vale and Praxair have paid nothing in specifically assigned charges, (2)
224 Corner Brook Pulp and Paper have paid substantially less than the amount of
225 specifically assigned charges assigned to it by the GRA Order for this period, and (3)
226 NARL has paid more than the amount of specifically assigned charges assigned to it for
227 this period.

228 3. The disparate impact among industrial customers that would result from Hydro's
229 proposal is not such as can be considered to be *de minimis* or within the range of "give-
230 and-take" that might be considered acceptable within a regulatory context where, to the
231 extent reasonable and possible within rate classes, customers should bear their own
232 costs of service.

233 4. Specifically assigned charges, by definition, are not class-assigned costs of service, but
234 rather are assigned to individual industrial customers, who pay for them essentially as an
235 individual "rider" on what are otherwise common industrial customer rates.

236 5. Any similarity between Hydro's 2006 GRA in which \$20.7 million of the Hydraulic
237 Production Variation RSP balance owing to customers offset current costs owing from
238 customers and the circumstances of this GRA are swamped by the difference of
239 magnitude of the disparate impacts among and between individual industrial customers
240 in the current GRA. In the 2006 GRA, the industrial customers were not dealing with
241 widely divergent SAC changes, and SAC did not loom as large as a component of
242 (some) of the industrial customers rates (and consequently, did not loom as large as a
243 component of any Hydro revenue deficiency). Finally, the Hydraulic Production Variation

244 RSP offset was expressly agreed to by all of the then-industrial customers in the 2006
245 GRA.

246 6. The funds that Hydro proposes to use to offset the revenue deficiency is excess revenue
247 arising from an interim order (interim rates) and as such subsection 75(3) of the Act must
248 be considered:

249 ***Interim order***

250 75. (1) *The board may make an interim order unilaterally and without public*
251 *hearing or notice, approving with or without modification, a schedule of rates,*
252 *tolls and charges submitted by a public utility, upon the terms and conditions that*
253 *it may decide.*

254 (2) *The schedule of rates, tolls and charges approved under subsection (1) are*
255 *the only lawful rates, tolls and charges of the public utility until a final order is*
256 *made by the board under section 70.*

257 (3) *The board may order that the excess revenue that was earned as a result of*
258 *an interim order made under subsection (1) and not confirmed by the board be*

259 (a) *refunded to the customers of the public utility; or*

260 (b) *placed in a reserve fund for the purpose that may be approved by the board.*

261 7. If, as Hydro proposes here, the intention is not to directly refund the excess revenue to
262 the industrial customers, but to in effect treat it (or a portion of it) as a reserve fund for
263 the purpose of offsetting its revenue deficiency, then NARL would respectfully submit
264 that it is reasonable to consider the difference in impact on individual industrial
265 customers of using it for that purpose as compared to a direct refund to the individual
266 industrial customer, and whether or not any difference in impact can still be considered
267 to give rise to rates that are just and reasonable, and not unjustly discriminatory (per
268 section 3 of the *Electrical Power Control Act*).

269 8. NARL would further submit that consideration may be given under section 75(3) of the
270 Act to approaches that blend the direct refund of excess revenue to customers with the
271 proposed use of a reserve fund to offset revenue deficiencies, if this would best achieve
272 the objective of rates that are just and reasonable, and not unjustly discriminatory. As
273 noted above, Hydro's proposal does not exhaust the IIC load variation component of the
274 RSP credit balances.

275 9. NARL submits that Hydro's present proposal for offsetting its revenue deficiency, as it
276 relates to the industrial customers, plainly has a discriminatory impact on NARL, and
277 perhaps some of the other industrial customers, and as that discriminatory effect has not
278 been justified by Hydro, Hydro has not demonstrated that its rate proposals for industrial
279 customers are just and reasonable.

280 10. NARL submits that it is Hydro's responsibility to submit a proposal for collection of its
281 revenue deficiency that, clearly and transparently, considers all of the above factors, and
282 respectfully requests that the Board order that Hydro refile its proposal, to address these
283 concerns. NARL would further respectfully submit that the Board should establish a

April 10, 2017

Page 9

284 process allowing for due input and consultation between Hydro and the industrial
285 customers, before such a refilling, to determine whether a consensus can be achieved
286 on the manner of application of RSP credit balances allocated to the industrial
287 customers to the revenue deficiency.

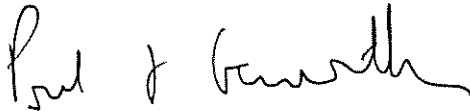
288 In making these submissions, NARL wishes to emphasize that it seeks out, and would welcome,
289 a consultative approach amongst the interested parties to addressing these concerns.

290 As well, as NARL has no interest in delaying other aspects of the Compliance Application which
291 are unaffected by this issue, NARL has joined in with CBPP on a concurrent submission on
292 other matters with which the IIC Group collectively take issue.

293 We trust this is in order.

Yours truly,

Stewart McKelvey



Paul L. Coxworthy

PLC/dob

- c. Tracey L. Pennell, Senior Counsel, Regulatory, Newfoundland and Labrador Hydro
- Dennis Browne, Q.C. Consumer Advocate
- Gerard Hayes, Newfoundland Power
- Denis Fleming, Cox & Palmer
- Dean A. Porter, Poole Althouse
- Sheryl Nisenbaum, Praxair Canada Inc.
- Larry Bartlett, Teck Resources Limited