

P. U. 42(2004)

IN THE MATTER OF the *Electrical Power Control Act* R.S.N.1994, c.E-5.1 (the “*EPCA*”) and the *Public Utilities Act*, R.S.N. 1990, c.P-47 (the “*Act*”) and their subordinate regulations;

AND IN THE MATTER OF an application by Newfoundland and Labrador Hydro (“Hydro”) for approval of rates to be charged its customers and resulting Order Nos. P.U. 14(2004), P.U. 17(2004), P.U. 24(2004) and P.U. 25(2004);

AND IN THE MATTER OF an application from Hydro’s Industrial Customers for reconsideration of costs awarded in Order No. P.U. 25(2004).

In Order No. P.U. 14(2004) the Board determined that an award of costs should be made to Hydro’s Industrial Customers and to the Towns of Labrador City and Wabush (the “Towns”), and required that a detailed statement of costs be submitted for consideration of the Board. In Order No. P.U. 25(2004) the Board, upon consideration of the detailed statement of costs filed by the Industrial Customers, fixed the award of costs for the Industrial Customers in the amount of \$315,000.

On August 13, 2004 the Industrial Customers filed an application for reconsideration of Order No. P.U. 25(2004), seeking an amendment Order to fix the award of costs at \$578,903.16, the full amount of costs claimed by the Industrial Customers. In its application the Industrial Customers submitted that, in the absence of (a) an established scale of costs, (b) some analysis or

critique of the statement of costs submitted, or (c) some reasoning stated in the Order to justify the amount awarded, the Order appears on its face to be arbitrary and discriminatory, in light of the fact that other parties obtain full recovery of costs.

On September 23, 2004 the Board requested comments on the application, both in terms of whether the application should be reconsidered and also to the substance of the reconsideration application, from the parties to the hearing. The Board received comments and representations from the Consumer Advocate, Mr. Thomas Johnson, Hydro, and the Towns, as well as a further submission from the Industrial Customers in response to Hydro's submission.

The Consumer Advocate submitted that the application for reconsideration should be granted and the parties be permitted to make representations on the issue of costs. As regards the substance of the application of the Industrial Customers, the Consumer Advocate saw no reason to interfere with the Board's exercise of their discretion in this instance given the quantum of the award, the parties' ability to pay and the number of Industrial Customers. Accordingly the Consumer Advocate submitted that the Board's cost Order should stand as issued.

Hydro submitted that the grounds stated by the Industrial Customers do not support the application for reconsideration on the basis that (a) the Board has complete discretion with respect to an award of costs under section 90(1) of the *Act*; (b) there is no requirement that there be an established scale of costs; and (c) there is no requirement that the Board provide reasons for its decision. To support its position Hydro referenced two decisions of the provincial courts, which considered the Board's powers with respect to costs. Hydro's position was that the application for reconsideration should be dismissed for these reasons. In the alternative, should the Board decide to reconsider its decision in Order No. P.U. 25(2004), Hydro submitted that there is no basis to increase the amount which was fixed.

The Industrial Customers filed a reply to Hydro's submission, which was supported and adopted in full by the Towns. In its reply the Industrial Customers argued that the cases referred to by Hydro were not relevant to the application before the Board since those cases focused

primarily on the jurisdiction of the Board to award costs and that question is not at issue in the present application.

Regulation 28 of the *Board of Commissioners of Public Utilities Regulations, 1996*, provides for a reopening or rehearing in certain circumstances. After considering the language of this regulation and the purpose of reconsiderations generally, the Board has determined that a reconsideration of the cost award in Order No. P.U. 25(2004) is not justified in the circumstances. No error in a finding of fact or law by the Board was demonstrated. Further, no additional evidence was presented, no facts or circumstances arose subsequent to the hearing, and no consequences resulting from compliance with the Board's decision were found to justify a reconsideration of the Board's Order.

Under Section 90(1) of the *Act* the Board has discretion to make and fix an award of costs. In exercising its discretion to fix an award of costs the Board reviews in detail the documentation filed to support the claim of costs. The approach taken by the Board when reviewing a claim is a pragmatic one. The specific amounts claimed are considered in the context of the Board's general knowledge and experience as well as the particular circumstances of the case to arrive at a cost award that is fair and reasonable to both the party claiming the costs and the utility which pays the costs, and ultimately consumers whose rates include the expenses of the utility.

IT IS THEREFORE ORDERED THAT:

The application by the Industrial Customers for reconsideration of Order No. P.U. 25(2004) is denied.

Dated at St. John's, Newfoundland and Labrador this 27th day of October, 2004.

Robert Noseworthy,
Chair & Chief Executive Officer.

Darlene Whalen, P. Eng.,
Vice-Chair.

G. Fred Saunders,
Commissioner.

G. Cheryl Blundon,
Board Secretary.