

**NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

AN ORDER OF THE BOARD

NO. P.U. 36(2016)

1 **IN THE MATTER OF** the *Electrical Power*
2 *Control Act, 1994*, SNL 1994, Chapter E-5.1 (the
3 “*EPCA*”) and the *Public Utilities Act*, RSNL 1990,
4 Chapter P-47 (the “*Act*”), as amended, and regulations
5 thereunder; and
6

7 **IN THE MATTER OF** a proposal by Newfoundland
8 and Labrador Hydro for the refund to its customers of
9 a surplus balance in Newfoundland and Labrador Hydro’s
10 Rate Stabilization Plan.
11

12
13 **WHEREAS** Newfoundland and Labrador Hydro (“Hydro”) and Newfoundland Power Inc.
14 (“Newfoundland Power”) are corporations duly organized and existing under the laws of the
15 province of Newfoundland and Labrador, are public utilities within the meaning of the *Act*, and
16 are subject to the provisions of the *EPCA*; and
17

18 **WHEREAS** Hydro’s Rate Stabilization Plan (the “RSP”) is a mechanism that limits volatility in
19 customer rates related to variations in several factors, one of them being the cost of fuel used at
20 the Holyrood Thermal Generating Station; and
21

22 **WHEREAS** between January 2007 and August 31, 2013 a surplus balance accumulated in the
23 load variation account of the RSP as a result of a reduction in the load of certain industrial
24 customers on the Island interconnected electrical system (the “RSP Surplus”); and
25

26 **WHEREAS** by Orders in Council OC2013-089, OC2013-091, OC2013-207 and OC2013-208
27 (the “Orders in Council”) the Government of Newfoundland and Labrador directed the Board
28 and Hydro’s board of directors regarding, among others things, the disposition of a portion of the
29 RSP Surplus by means of a direct payment or rebate to ratepayers; and
30

31 **WHEREAS** in Order No. P.U. 9(2014) the Board found that refunds of the RSP Surplus should
32 be made as a direct payment to Newfoundland Power’s customers and customers on each of
33 Hydro’s systems, except the Industrial Customers; and
34

35 **WHEREAS** upon appeal of Order No. P.U. 9(2014) by the Consumer Advocate and Hydro, the
36 Newfoundland and Labrador Court of Appeal determined that the refund is to be made to
37 Newfoundland Power’s customers and to Hydro’s Island grid customers, and referred the matter
38 back to the Board; and

1 **WHEREAS** on June 30, 2016 Newfoundland Power filed an application for approval of a plan
2 (the “Newfoundland Power Customer Refund Plan”) to refund to Newfoundland Power’s
3 customers a portion of the RSP Surplus, which was approved by the Board in Order No. P.U.
4 35(2016); and

5
6 **WHEREAS** on July 12, 2016 Hydro filed an application for approval of a plan (the “Hydro
7 Customer Refund Plan”) to refund a portion of the RSP Surplus to Newfoundland Power and to
8 those Hydro Island Interconnected Rural customers whose rates are based on the rates charged
9 by Newfoundland Power and who received, and paid for, electrical service between January
10 2007 and August 31, 2013 (the “Application”); and

11
12 **WHEREAS** the Hydro Customer Refund Plan provides for: i) calculation and payment of the
13 refund of Newfoundland Power’s allocated portion of the RSP Surplus; ii) calculation and
14 payment of the refund of a portion of the RSP Surplus to eligible Hydro customers on the same
15 basis as set out in the Newfoundland Power Customer Refund Plan; iii) transfers of funds from
16 the RSP Surplus to permit Hydro to provide the refunds; and iv) recovery from the RSP Surplus
17 of Hydro’s reasonable costs of administering the refunds to customers; and

18
19 **WHEREAS** Hydro has also set out a detailed customer communications plan to provide notice
20 and information about the RSP Surplus refund to existing and former customers of Hydro; and

21
22 **WHEREAS** Hydro states that it has received an interpretation from Canada Revenue Agency
23 (CRA) that HST would be applicable to refunds; and

24
25 **WHEREAS** Hydro states that, following Board approval of the Hydro Customer Refund Plan, it
26 will have discussions with the Government of Newfoundland and Labrador on whether the tax
27 refund will reflect the residential energy rebate that was in place for the period October 1, 2011
28 through August 31, 2013; and

29
30 **WHEREAS** the Board published notice of the Application on July 27, 2016 and requested that
31 any comments be filed with the Board by August 17, 2016; and

32
33 **WHEREAS** the Board did not receive any comments on the Application; and

34
35 **WHEREAS** by letters dated July 25 and August 12, 2016 the Board requested clarification from
36 Hydro on certain aspects of the Application, to which Hydro provided responses on July 29 and
37 August 18, 2016; and

38
39 **WHEREAS** by letter dated August 24, 2016 the Board requested the Consumer Advocate and
40 Newfoundland Power to advise in writing whether they support the Application; and

41
42 **WHEREAS** by letter dated August 30, 2016 Newfoundland Power advised that it supported
43 approval of the Application but submitted that the Board’s approval should include an
44 adjustment to reconcile any difference in the amount calculated in accordance with section 2.2
45 and section 4 of the Hydro Customer Refund Plan to ensure that funds transferred from Hydro to

1 Newfoundland Power are sufficient to fund refunds to Newfoundland Power's customers, no
2 more and no less; and
3

4 **WHEREAS** on August 30, 2015 the Consumer Advocate advised that he supported approval of
5 the Application and agreed with Newfoundland Power that an adjustment was required to ensure
6 the transfer of funds was sufficient to fund the refunds to Newfoundland Power's customers; and
7

8 **WHEREAS** the Board is satisfied that Hydro should transfer to Newfoundland Power only the
9 amount calculated and requested by Newfoundland Power to fund its customer refunds; and
10

11 **WHEREAS** the Hydro Customer Refund Plan does not contain a provision in relation to the
12 termination of the plan and the Board finds that the following section should be added:
13

14 SECTION 6 PLAN TERMINATION

15
16 Upon closure of the Hydro Customer Refund Plan Hydro will transfer any
17 remaining balance in the RSP Surplus, including any variance between the total
18 refund amount calculated under the Newfoundland Power Customer Refund Plan
19 and the total amount of the Newfoundland Power Refund as calculated in the
20 Hydro Customer Refund Plan, to Newfoundland Power's current balance in the
21 Rate Stabilization Plan.

22 and;
23

24 **WHEREAS** the Board finds that a further application for approval of final refund rates to apply
25 in disposition of the RSP Surplus as proposed in the Application is not necessary but will require
26 Hydro to provide updates on the status of customer refunds in its quarterly reporting to the
27 Board; and
28

29 **WHEREAS** the Board is satisfied that the Hydro Customer Refund Plan should be approved
30 with the noted change; and
31

32 **WHEREAS** Hydro will be required to file with the Board: i) copies of correspondence with the
33 Government of Newfoundland and Labrador with respect to confirmation of the applicability of
34 the residential energy rebate in determining the refunds; ii) a report on the status of the refunds in
35 its quarterly reporting to the Board throughout the refund process; and iii) a final report once all
36 refunds have been issued in accordance with the Hydro Customer Refund Plan.

1 **IT IS THEREFORE ORDERED THAT:**

- 2
- 3 1. The Hydro Customer Refund Plan as set out in Schedule A to this Order is approved.
- 4
- 5 2. Hydro shall file with the Board:
- 6 a. copies of correspondence with the Government of Newfoundland and Labrador with
- 7 respect to the applicability of the residential energy rebate in determining the refunds;
- 8 b. a report on the status of the refunds in its quarterly reporting to the Board throughout
- 9 the refund process; and
- 10 c. a final report once all refunds have been issued in accordance with the Hydro
- 11 Customer Refund Plan.
- 12
- 13 3. Hydro shall pay the expenses of the Board incurred in connection with the Application.


DATED at St. John's, Newfoundland and Labrador, this 7th day of September, 2016.



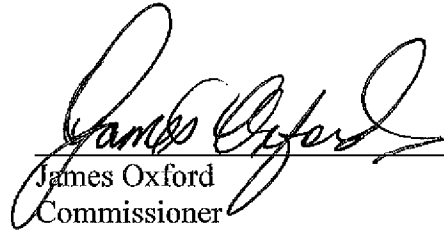
Andy Wells
Chair & Chief Executive Officer



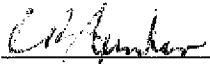
Darlene Whalen, P.Eng.
Vice-Chair



Dwanda Newman, LL.B.
Commissioner



James Oxford
Commissioner



Cheryl Blundon
Board Secretary

**NEWFOUNDLAND AND LABRADOR HYDRO RSP SURPLUS:
CUSTOMER REFUND PLAN**

Table of Contents

SECTION 1	INTERPRETATION.....	2
1.1	Definition.....	2
1.2	Interpretation.....	4
SECTION 2	CUSTOMER REFUND ELIGIBILITY.....	4
2.1	Customers Entitled to Refund.....	4
2.2	Determining the Refund Amount.....	5
2.3	Taxes.....	5
2.4	Informing Customers of the Plan.....	5
2.5	Proof of Eligibility.....	5
2.6	Special Cases.....	6
SECTION 3	REFUND TO HYDRO RURAL CUSTOMERS.....	6
3.1	Determination of Release Date.....	6
3.2	Credit to Existing Balance.....	6
3.3	Payments by Cheque.....	6
3.4	Other Forms of Payment.....	6
SECTION 4	REFUND TO NEWFOUNDLAND POWER.....	7
4.1	Refund Amount to Newfoundland Power.....	7
4.2	Taxes on Refund.....	7
SECTION 5	PLAN ADMINISTRATION.....	7
5.1	Plan Costs.....	7
5.2	Recovery of Plan Administration Costs.....	7
5.3	Liability.....	8
SECTION 6	PLAN TERMINATION.....	8

SECTION 1 INTERPRETATION

1.1 Definition

In this Newfoundland and Labrador Hydro RSP Surplus Customer Refund Plan, the following definitions shall apply:

- (a) "Act" means *The Public Utilities Act*, RSNL 1990, c. P-47, as amended.
- (b) "Board" means the Board of Commissioners of Public Utilities of Newfoundland and Labrador.
- (c) "Customer" means any person, corporation, or organization on the Island Interconnected System (excluding Island Industrial Customers) that accepted or agreed to accept the contract for Service from Hydro, including Newfoundland Power.
- (d) "Customer Refund Plan" means this Newfoundland and Labrador Hydro RSP Surplus Customer Refund Plan.
- (e) "Designated Account" means an account of Newfoundland Power maintained at a bank in the City of St. John's for the purposes of providing Refunds to Newfoundland Power under this Customer Refund Plan.
- (f) "HST" means harmonized sales tax levied under the *Excise Tax Act (Canada)*.
- (g) "Hydro" means The Newfoundland and Labrador Hydro-Electric Corporation continued pursuant to the *Hydro Corporation Act*, 2007, SNL 2007, c. H-17 as amended.
- (h) "Hydro Rural Customer" means a Hydro Rural Island Interconnected customer.

- (i) "Hydro Rural Customer Refund" means an amount payable to eligible Hydro Rural Customers pursuant to the Customer Refund Plan calculated in accordance with Section 2.2.
- (j) "Newfoundland Power" means Newfoundland Power Inc.
- (k) "Newfoundland Power Refund" means an amount payable to Newfoundland Power pursuant to the Customer Refund Plan calculated in accordance with Section 2.2.
- (l) "Refunds" means collectively the Hydro Rural Customer Refund and the Newfoundland Power Refund.
- (m) "RSP Surplus" means the Newfoundland Power allocated amount of the RSP surplus as provided for in Section F of the Hydro RSP Rules as approved by the Board.
- (n) "Refund Period" means the period from January 1, 2007 to August 31, 2013.
- (o) "Release Date" means a day or dates upon which Refunds are released for disposition.
- (p) "RER Program" means the Residential Energy Rebate program established by *Newfoundland and Labrador Regulation 47/12*.
- (q) "RSP" means Hydro's Rate Stabilization Plan as approved by the Board.
- (r) "Service" means electrical service provided by Hydro under rules and regulations approved by the Board pursuant to the Act.
- (s) "Taxes" means HST on the Refunds, less any applicable rebated amounts under the RER Program.

1.2 Interpretation

- (a) Unless the context clearly requires otherwise, this Customer Refund Plan shall be interpreted such that:
 - (i) words importing persons include corporations and organizations; and
 - (ii) words importing the singular include the plural and *vice versa*.

- (b) The Customer Refund Plan shall be interpreted in a manner consistent with the Rules and Regulations governing Hydro's provision of electrical service as approved by the Board.

- (c) Any dispute concerning the interpretation of this Customer Refund Plan shall be determined:
 - (i) in the first instance, by Hydro, acting reasonably; and
 - (ii) if required, by the Board whose decision shall be considered final.

SECTION 2 CUSTOMER REFUND ELIGIBILITY

2.1 Customers Entitled to Refund

- (a) Newfoundland Power is eligible for the Newfoundland Power Refund.

- (b) A Hydro Rural Customer is eligible for a Hydro Rural Customer Refund if that Customer
 - (i) paid the same rates as those approved for billing by Newfoundland Power and
 - (ii) was billed for electrical energy usage during the Refund Period.

- (c) Customers on Hydro Rural Rate 1.3 are not eligible for the Hydro Rural Customer Refund.

2.2 Determining the Refund Amount

- (a) The Hydro Rural Customer Refund shall be calculated in accordance with Schedule 1 to the Newfoundland Power Customer Refund Plan.

- (b) The Newfoundland Power Refund shall be calculated in accordance with Schedule 1 to Hydro's Customer Refund Plan.

2.3 Taxes

Taxes on the Refund that were billed to the Customer for Service will be provided in addition to the Refund.

2.4 Informing Customers of the Plan

- (a) Hydro shall take reasonable steps to inform Customers of the terms of the Customer Refund Plan and their entitlement to receive Refunds thereunder.

- (b) For Customers who are no longer receiving electrical service from Hydro, reasonable notice of the terms of the Customer Refund Plan may include, amongst other things, public advertisements throughout Canada.

2.5 Proof of Eligibility

- (a) Hydro shall be entitled to request a Customer provide reasonable proof of that Customer's eligibility to receive a Refund under the Customer Refund Plan.

- (b) Where Hydro has requested a Customer provide reasonable proof of that Customer's eligibility to receive a Refund under the Customer Refund Plan, such Customer shall not be entitled to a Refund (or associated Taxes) until provision of such reasonable proof.

- (c) Should a Customer be delayed in the provision of reasonable proof of that Customer's eligibility to receive a Refund under the Customer Refund Plan, that Customer shall not be entitled to receive interest on a Refund for the period of delay.

2.6 Special Cases

For Customers entitled to a Refund under the terms of the Customer Refund Plan that have died, have become legally incapacitated, or are bankrupt, Hydro shall be entitled to pay the Refund to the Customer's estate, legal representative or trustee as appropriate. Payment of the Refund (and associated Taxes) to such an estate, legal representative, or trustee, as the case may be, shall be conclusively considered to be payment of the Refund (and associated Taxes) to the Customer.

SECTION 3 REFUND TO HYDRO RURAL CUSTOMERS

3.1 Determination of Release Date

Hydro and Newfoundland Power shall agree from time to time on a Release Date for payment of Refunds (and associated Taxes) to Customers.

3.2 Credit to Existing Balance

Hydro will be entitled to credit the Refund (and associated Taxes) to which a Customer is entitled under the Customer Refund Plan against an existing balance owing by that Customer to Hydro.

3.3 Payments by Cheque

Any Refund and Taxes, or portion of a Refund (and associated Taxes) remaining following the issuance of a credit against an existing balance owing under Section 3.2, will be paid by cheque issued within three business days of the Release Date, to the Customer entitled thereto.

3.4 Other Forms of Payment

Hydro may agree with its Customers to other forms of payment of a Refund (and associated Taxes), where practicable.

SECTION 4 REFUND TO NEWFOUNDLAND POWER

4.1 Refund Amount to Newfoundland Power

Hydro will refund from the RSP Surplus to Newfoundland Power an amount specified by Newfoundland Power pursuant to Newfoundland Power's RSP Refund Plan as approved by the Board.

4.2 Taxes on Refund

In addition to the transfer of funds from the RSP Surplus to Newfoundland Power made under Section 4.1, Hydro shall also transfer an amount from an account outside of the RSP to Newfoundland Power to provide a refund of the appropriate Taxes with respect to the RSP Surplus that were paid by Newfoundland Power to Hydro through monthly billings during the Refund Period.

SECTION 5 PLAN ADMINISTRATION

5.1 Plan Costs

The Customer Refund Plan has been created to disburse amounts due to Customers as directed by Orders in Council. Both Refunds payable to Customers under the Customer Refund Plan and the costs incurred to administer the Customer Refund Plan shall be funded by amounts in the RSP Surplus.

5.2 Recovery of Plan Administration Costs

- (a) Hydro shall be entitled to recover its reasonable costs of administering the Customer Refund Plan from the RSP Surplus.

- (b) Hydro will provide the Board with a report at the end of each fiscal quarter indicating its incremental costs incurred in administering the Customer Refund Plan.

- (c) Hydro will transfer the funds to recover its incremental costs of administration from the RSP Surplus 30 days from filing the report with Board.
- (d) Hydro will transfer funds to Newfoundland Power to recover plan administration costs as set out in Section 5.2 of Newfoundland Power's Customer Refund Plan

5.3 Liability

Hydro shall not be liable to any party for any reason whatsoever associated with the good faith administration of the Customer Refund Plan.

SECTION 6 PLAN TERMINATION

Upon closure of the Hydro Customer Refund Plan Hydro will transfer any remaining balance in the RSP Surplus, including any variance between the total refund amount calculated under the Newfoundland Power Customer Refund Plan and the total amount of the Newfoundland Power Refund as calculated in the Hydro Customer Refund Plan, to Newfoundland Power's current balance in the Rate Stabilization Plan.

SCHEDULE 1

CALCULATION OF THE NEWFOUNDLAND POWER REFUND

1. The Newfoundland Power Refund will be calculated by multiplying (i) the kWh Refund Rate in the Newfoundland Power Customer Refund Plan by (ii) the Newfoundland Power kWh sales to its customers during the Refund Period. The Newfoundland Power Refund (expressed in dollars to the nearest \$0.01) shall be calculated as follows:

$$A \times B = C$$

Where:

A = the kWh Refund Rate in the Newfoundland Power Customer Refund Plan.

B = the Newfoundland Power kWh sales to its customers during the Refund Period.

C = the Newfoundland Power Refund.

2. The Wholesale Refund Rate (expressed in cents per kWh and calculated to the nearest 0.001) shall be calculated as follows:

$$C / D = E$$

Where:

D = the total firm energy (in kWh) purchased by Newfoundland Power from Hydro during the Refund Period.

E = the Wholesale Refund Rate.