

IN THE MATTER OF an Application by
Newfoundland and Labrador Hydro concerning the
Rate Stabilization Plan (RSP) components of the
rates to be charged to Industrial Customers

**WRITTEN SUBMISSIONS OF THE INDUSTRIAL CUSTOMERS ON THE
PRELIMINARY ISSUES**

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WRITTEN SUBMISSIONS OF THE INDUSTRIAL CUSTOMERS

1 INTRODUCTION

2 The Board of Commissioners of Public Utilities (the "Board") has determined to convene a
3 hearing, preliminary to the evidentiary phase of these proceedings, to address the following
4 issues:

5 Does the Board have the jurisdiction to issue an order which changes how the rate
6 stabilization plan (RSP) operated before the date of the order and, if so, does this
7 jurisdiction extend to any aspect of the operation of the RSP, including the rate charged
8 to customers, the determination of the balance(s) in the RSP, and how these balances are
9 allocated to customers or customer classes? In particular:

10 Does legislation or common law give the Board any specific relevant authority or
11 alternatively, restrict the Board's authority?

12 What would generally accepted sound public utility practice as set out in s. 4 of
13 the EPCA require?

14 Are there any concerns in relation to vested rights, i.e. does the language of the
15 RSP create a right/obligation in each of the customers or customer classes? If so
16 at what point does this right/obligation accrue? Does this mean that credits/debits
17 allocated to each customer in accordance with the plan are the responsibility of or
18 to the benefit of customers in the class at the time of the accumulation or does the
19 Board have the jurisdiction to order alternative disbursements of the balances?

20 Does the issuance of Order Nos. P.U. 34(2007), P.U. 37 (2008), P.U. 6 (2009), the
21 filing of Hydro's application on June 30, 2009, or any other order of the Board
22 impact the jurisdiction of the Board?

23 These are the written submissions of the Island Industrial Customers ("IC") of Newfoundland
24 and Labrador Hydro ("Hydro") for the purpose of the preliminary hearing. It is the position of IC
25 that, the Board being a body created by statute, it has no common law authority; any authority it
26 has must be found within legislation, as properly interpreted, including authority granted
27 implicitly as well as explicitly. (See **Reference Re s. 101 of the Public Utilities Act (Nfld.)**
28 (1998) 164 Nfld. & P.E.I.R. 60 (Nfld. C.A.) at paragraph 13) Further, it is our submission that it
29 is not possible to address generally accepted sound public utility practice without evidence as to
30 what would constitute such practice. Consideration of that particular issue must be postponed
31 until the evidentiary phase of the hearing. Speculation on what these practices would require, in
32 the absence of evidence of what the practice is, whether it is sound and whether it is generally
33 accepted, is of no value to the Board and simply tends to distract from the purely legal issues that
34 can be dealt with in the preliminary hearing.

SUMMARY OF APPLICABLE LEGISLATION

The starting point for any determination of the jurisdiction of a statutory tribunal, such as the Board, is its constating legislation. The *Public Utilities Act*, R.S.N.L. 1990, c. P-47 is the primary source of jurisdiction for the Board in dealing with matter involving public utilities. It is given by s. 16 general supervision of all public utilities and, in specific provisions of the Act, given authority to make various orders in connection with public utilities. A public utility cannot abandon any part of its works, issue securities, or make any significant capital expenditure without the approval of the Board.

As regards rates, the Act contains what is referred to in the jurisprudence as a positive approval provision in s. 70(1), which reads as follows:

70. (1) A public utility shall not charge, demand, collect or receive compensation for a service performed by it whether for the public or under contract until the public utility has first submitted for the approval of the board a schedule of rates, tolls and charges and has obtained the approval of the board and the schedule of rates, tolls and charges so approved shall be filed with the board and shall be the only lawful rates, tolls and charges of the public utility, until altered, reduced or modified as provided in this Act.

As regards rules and regulations related to the service of utilities, the Act provides in s. 71 as follows:

71. A public utility shall submit for the approval of the board the rules and regulations which relate to its service, and amendments to them, and upon approval by the board they are the lawful rules and regulations of the public utility until altered or modified by order of the board.

Note, in each case, the rates or rules, as the case may be, are the lawful rates or rules "until altered, [reduced] or modified" as provided in the Act, i.e. by an order of the Board. Each of these sections is wholly prospective; there is no provision in either of them for any retroactive or retrospective application of a rate, rule or regulation. These are positive approval, forward-looking regulatory provisions.

Section 75 provides for interim orders of the Board, as follows:

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

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

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

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

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

This is the only reference in the Act to a power in the Board to make an interim order.

The Board does have power under s. 76 to rescind or amend orders, as follows:

76. The board may upon notice to the public utility and after hearing as provided in this Act, by order rescind, alter or amend an order fixing rates, tolls, charges or schedules, or other order made by the board, and certified copies of the order shall be served and take effect as provided in this Act for original orders.

Note that the power to rescind, alter or amend an order may be exercised only “upon notice to the public utility and after hearing as provided in this Act”. This is in contrast with an interim order which may be made unilaterally and without public hearing or notice.

APPLICABLE ORDERS OF THE BOARD

Relevant orders of the Board affecting the Rate Stabilization Plan rules (the “RSP Rules”) since 2002 are summarized in Appendix A to these submissions. This background is useful in considering the history of the Plan. We will address in these submissions the orders which address the specific situation now before the Board.

On May 17, 2007, the Board issued P.U. 14 (2007) which read, in part, “Pursuant to Sections 70 and 71 of the *Act*, the Board approves the Rate Stabilization Plan rules (the “RSP Rules”), as set out in Schedule A to this Order, effective December 31, 2006.” That was a final order arising out of the 2006 General Rate Hearing of Newfoundland Hydro, and was to remain in effect until altered in accordance with the Act pursuant to the power given in that regard under s. 76.

Typically, Hydro would then apply on an annual basis, once in respect of utility customers and once in respect of industrial customers, to fix the actual amount of the RSP rate adjustment calculated under the RSP Rules. In December, 2007, however, Hydro applied for an order that the rates then in effect for IC be continued on an interim basis, without any adjustment under the RSP Rules. That led to Order No. P.U. 34 (2007) which approved, on an interim basis, Industrial Customer rates at their existing level for consumption on and after January 1, 2008 until a final order with respect to 2008 Industrial Customer rates.

In the meantime, when Hydro applied in April, 2008 to fix the RSP rate for Newfoundland Power, it appeared that they had used revised calculations, different from those prescribed by the RSP Rules, to take in to account load reductions on the part of one industrial customer. Accordingly, Hydro amended its application in May, 2008, which led to Order No. P.U. 11 (2008) which, in addition to approving a rate for Newfoundland Power, approved amendments to the RSP Rules in that case to allow the revised calculations to be used.

1 In December, 2008, Hydro applied to continue the interim rates for IC established by Order No.
2 P.U. 34 (2007), to change the rate for Teck Cominco Limited to be the same as the other IC and
3 to amend the RSP Rules by deleting the references to the Historical Plan Balance, given that that
4 balance had been fully paid. This led to Order No. P.U. 37 (2008) which initially recited the
5 relief requested by Hydro and the submissions of the IC. The Order goes on to recite that it was
6 reasonable and prudent to:

7 (i) continue on an interim basis until March 31, 2009 the existing rates for the Island
8 Industrial class of customers;

9 (ii) continue the current RSP rules on an interim basis until final rates are established;
10 and

11 (iii) require Hydro to file an application for approval of final rates, rules and
12 regulations for the Island IC allowing sufficient time for full examination of the
13 matter;

14 and ordered the continuation of the rates, rules and regulations for Hydro's Island IC on an
15 interim basis from January 1, 2009 to March 31, 2009. Hydro was also directed to make
16 application to finalize the rates, rules and regulations by January 30, 2009. This deadline was
17 extended by P.U. 6 (2009) to June 30, 2009 and the continuation of the rates, rules and
18 regulations approved on an interim basis until a final Order from the Board with respect to
19 finalization of rates.

20 Subsequently, the Board issued P.U. 22 (2009) which approved the RSP Rules on Hydro's
21 application to fix the RSP rate for Newfoundland Power.

22 **SUBMISSION**

23 The Industrial Customers submit:

24 2. The Board has no power to change any rate in effect under an order of the Board in
25 respect of a prior period, except where that order is explicitly made as an interim order
26 under s. 75 of the Act.

27 3. The Board has power to review the interim rates applied to IC since January 1, 2008, as
28 the orders under which that rate was set were explicitly interim orders.

29 4. The Board has no power to make the rules and regulations affecting the RSP interim as it
30 purported to do by P.U. 37 (2008), as (a) s. 75 extends only to rates and not to rules or
31 regulations and (b) a hearing is required under s. 76 of the Act to alter or rescind the final
32 orders approving the RSP rules.

33 5. If the Board had power to make any rules and regulations interim as it purported to do by
34 P.U. 37 (2008), on a proper reading of that Order, the only part of the Rules and
35 Regulations made interim thereby were the parts dealing with the Historic Plan Balance
36 as those were the only parts of the rules put in issue by the applicant in the application.

1 **1. Power of the Board to make retrospective orders**

2 The intent of the Public Utilities Act is to ensure that reliable service is provided to customers
3 and a fair return is provided to the utilities. Neither of these goals can be met unless the financial
4 stability of the utility is protected and there is certainty as to the rates to be paid by customers.
5 Both parties suffer unless they can rely upon the fact that rates will be adjusted, generally, only
6 on a prospective basis. Thus we have the prohibition against retrospective rate adjustments
7 discussed in the decision of the Nova Scotia Utility and Review Board in **Re Antigonish**
8 **(County)**, [2001] N.S.U.R.B.D No. 81 and essentially affirmed by the Supreme Court of Canada
9 in **Bell Canada v. Canada (Canadian Radio-Television and Telecommunications**
10 **Commission)**, [1989] 1. S.C.R. 1722, as regards positive approval jurisdictions. (See also the
11 discussion in **Waldman v. The Medical Services Commission of British Columbia**, 1997
12 CanLII 3113 (B.C.S.C.) at paragraphs 156 to 187 on the approach to suggestions that
13 administrative powers may be exercised retroactively or retrospectively.) Our *Public Utilities Act*
14 is a positive approval system—a rate cannot be charged without a prior approval of the Board. In
15 such a system, the rate so approved remains in effect until a further order of the Board modifies
16 it. The sole exception is the provision for interim rates contained in s. 75. Only in a case which
17 falls clearly under s. 75, i.e. an explicitly interim rate, can a rate be amended retrospectively, the
18 intent being that an interim rate can be “trued up” to the proper just and reasonable rate when the
19 Board has had the time to examine the rate in detail and reach a final conclusion. In such a case,
20 there can be additional amounts charged or refunds granted to adjust the interim rate to what it
21 should have been.

22 To allow any further intrusion into established rates, or rules, for prior periods strikes at the heart
23 of the system of public utility regulation established under the Act. Utilities cannot convince
24 investors of their financial stability if their financial statements for prior closed years are required
25 to be re-written as a result of retrospective regulatory changes directed by the Board. Equally,
26 customers who have arranged their affairs and reported their results based on having paid the
27 correct rate for the services of a utility cannot be required to re-write their financial and business
28 history when a rate or rule is changed retroactively. Such a course is ultimately productive of
29 chaos, the very antithesis of what the Act is intended to produce. Note the concern expressed by
30 the Supreme Court of Canada in this regard in its discussion as paragraphs 54-57 of the decision
31 in **Bell Canada**, *supra*.

32 **2. Power to make interim orders final**

33 In the present case, the rate to IC was approved on an interim basis as of January 1, 2008. The
34 Board is now in a position to determine what the proper rate should have been and make the
35 proper adjustment, which in this case will be a refund to IC of amounts which have been
36 overpaid since January 1, 2008. That is the full extent of the retrospective adjustments which the
37 Act contemplates or the intent of the Act can support.

38 **3. Interim orders as to rules**

39 Section 75 applies to rates only; it does not address rules or regulations. The RSP portion of the
40 rates for both utility and industrial customers is set annually and can be set on an interim basis as
41 the Board did in December, 2007 for the IC. The rate is a per kilowatt hour amount calculated

1 annually in accordance with the rules and regulations contained within the rate schedule. Those
2 rules and regulations are established under s. 71 of the Act and can be altered only under s. 76 of
3 the Act. In order to change the rules or regulations, i.e. the provisions of the rate schedule that
4 direct how the RSP portion of the rate is to be calculated, resort must be had to s. 76 where an
5 order can be made only after notice to the utility and a hearing in accordance with the Act. No
6 such proceeding has been undertaken since the issuance of P.U. No. 14 (2007) and accordingly
7 the RSP rules as established by that order remain in effect. To the extent that P.U. 37 (2008)
8 purported to make the RSP rules interim, it was ineffective as s. 75 did not apply and no
9 proceeding under s. 76 was initiated or concluded to allow for an alteration of the existing final
10 order. Accordingly, in our submission, what is available to the Board as a remedy in this
11 proceeding is to determine the correct RSP rate in accordance with the existing rules and order
12 the appropriate refund to IC.

13 It should be noted that the power to issue interim orders granted to the CRTC in Section 60(2) of
14 the *National Transportation Act*, and discussed in **Bell Canada**, *supra*, is not limited in the same
15 way that the power granted to this Board under the *Public Utilities Act* is limited. The CRTC has
16 the broad authority “instead of making an order final in the first instance, [to] make an interim
17 order and reserve further directions either for an adjourned hearing on the matter or for a further
18 application”. This authority would extend to making interim rules whereas the authority of the
19 Board under the *Public Utilities Act* is limited to approving interim rates.

20 It is interesting to note in the decision of the Court of Appeal on the **Reference re s. 101 of the**
21 **Public Utilities Act (Nfld.)** the discussion on how an excess revenue account might offend the
22 principle against retroactive ratemaking (See paragraph 80 *et seq*). The Court discounted the
23 notion that applying a pre-existing rule so as to recover from a utility amounts earned in excess
24 of its established reasonable rate of return had a retroactive effect—this was simply applying the
25 rule made earlier on a prospective basis. It did, however in its reasons say however, in paragraph
26 91:

27 The issue, therefore, is not whether the Board may revise the definition of excess revenue
28 and then apply the revised definition to the results of previous years. That might well
29 engage the principle of non-retroactivity.

30 In our submission, one might equally say that revising the RSP Rules and attempting to apply the
31 revised Rules to the results of previous years does engage the principle of non-retroactivity.

32 It must also be borne in mind that, under existing Board orders, there is a single set of RSP Rules
33 applicable to IC, Newfoundland Power (“NP”) and rural customers. This fact, in itself, militates
34 against any conclusion that the Rules could become interim as a result of an application dealing
35 solely with IC rates. The RSP Rules provide for allocation of plan balances among customer
36 classes in such a way that the full amount which accrues in the RSP Plan shall be allocated i.e.
37 there will be no gain or loss to Hydro. If the Rules became interim as to IC and not as to NP, the
38 potential arises that the allocation to IC could change, the allocation to NP could not change
39 (since it was subject to a final order) and there would then be a gain or loss to Hydro. The only
40 rational alternative would be for the RSP Rules to be interim as to all parties and there has never
41 been a Board order which even contemplated rendering Newfoundland Power’s RSP rates
42 “interim”. Indeed, Order No. P.U. 22 (2009) approved the existing RSP Rules in the context of

1 an application to set the RSP Rate for NP. That order was a final order and would fix the Rules
2 even if they had somehow become interim as a result of P.U. No. 37, (2008). To hold the Rules
3 as being interim produces these anomalous results and this supports the notion that rules cannot
4 be interim under our Act.

5 **4. Interpretation of P.U. No. 37 (2008)**

6 Notwithstanding the foregoing submissions of IC, should it be found that there was power in the
7 Board to make the RSP rules “interim” rules by P.U. No. 37 (2008), it is necessary to construe
8 the order for the purpose of determining its true purpose and intent. Clearly, the intent was not to
9 make the entire RSP rules interim. The mischief associated with that is discussed in the previous
10 section of these submissions. It must be borne in mind that all interim orders are the exception
11 rather than the rule. Any interim order should be strictly and narrowly construed to extend only
12 as far as necessary to address the specific issue before the Board when the order is issued. The
13 application filed by Hydro which gave rise to P.U. 37 (2008) asked to change the RSP rules
14 solely to eliminate the Historic Plan Balance provisions. The Board determined not to make any
15 final order on that application in December, 2008 and, accordingly, issued an order continuing
16 the interim rate already in effect and purporting to make the RSP rules and regulations interim. If
17 that was within the power of the Board, it would, on its face, extend only to the issue raised in
18 the application—i.e. should the Historic Plan Balance provisions be deleted. It would be contrary
19 to principle and inconsistent with the nature of interim orders in the public utility context to
20 expand that order to put in issue and render uncertain the whole RSP scheme. Especially is this
21 the case considering the implication that the RSP Rules for Newfoundland Power could thereby
22 become “interim” in a proceeding in which their rates were not at issue. An application to
23 address specific fact situations which gave rise to an inability on the part of Hydro to make
24 reliable predictions ought not to be transformed into a wholesale review of rate stabilization in
25 the entire system under the guise of finalizing an interim rate.

26 On a procedural level, notice of an application by Hydro to delete the Historic Plan Balance
27 provisions of the RSP Rules would not, in our submission, constitute notice of the intent to
28 reconsider the whole of the Rules. If the Board is acting under an application, its jurisdiction will
29 extend to dealing with the relief claimed in the application; if it intends to proceed, of its own
30 motion, to examine issues which do not arise on the face of any pending application, procedural
31 fairness requires notice to all affected parties of the issues to be considered and sufficient time
32 for those parties to prepare for a full and fair hearing on the matters to be considered. Even if the
33 Board limited its consideration of the RSP Rules to future time periods, it would risk losing
34 jurisdiction if it did not provide notice in a timely manner sufficient to allow interested parties to
35 know the case to be met.

36 **CONCLUSION**

37 IC submits that the Board has authority to approve or vary the interim RSP rates fixed for IC by
38 interim orders having effect since January 1, 2008. The determination of balances in the RSP and
39 the allocation to customers or customer classes of those balances are matters to be calculated in
40 accordance with the RSP Rules which are fixed by final orders of the Board and cannot be
41 altered except by a prospective order i.e. an order to have effect at a time at or after the issuance
42 of that order. The legislation restricts the Board’s authority as outlined in these submissions;
43 there is no common law which grants or restricts the Board’s authority. It is not possible to

1 address generally accepted sound public utility practice until the evidentiary hearing has
2 commenced.

3 There is no "vested" right in the sense of a property right in any person relative to the RSP. The
4 fund is held by Hydro subject to the RSP Rules. The Board has the duty to uphold and apply
5 those Rules and the parties have a right to require that the Rules be upheld and applied. To the
6 extent that interim rates have resulted in over-collection by Hydro from its customers, as in the
7 case of the Historic Plan Balance of the RSP, the Board, in truing up those rates, has power to
8 order appropriate refunds. Where the amounts of overpayment and the identities of those who
9 have overpaid are easily ascertainable, no issue arises as to the appropriate refunds. Where it is
10 impossible or impractical to identify the persons who have overpaid or the amounts involved, the
11 Board can craft another fair solution, as discussed in the **Bell Canada** case. In the case before the
12 Board, no such issues arise.

13 Order Nos. P.U. 34 (2007), P.U. 37 (2008) and P.U. 6 (2009), being interim orders, do affect the
14 Board's jurisdiction by allowing the Board to make retrospective adjustment of rates from the
15 effective date of the first of those orders. Nothing, in our submission, turns on the filing date of
16 Hydro's application; given that our Act requires positive approval of rate changes, such changes
17 occur only when an order is issued, except in the case of interim orders as discussed above. If
18 any rules or regulations are held to have become interim as a result of Order No. P.U. 37 (2008),
19 such rules and regulations became final by virtue of Order No. P.U. 22 (2009).

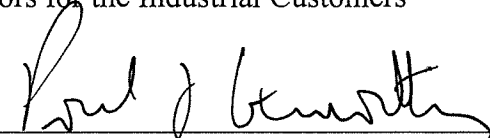
All of which is respectfully submitted on behalf of the Industrial Customers.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 9th day of June, 2010.

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Appendix A

**Summary of Orders of the Public Utilities Board in relation to the Rate
Stabilization Plan**

Summary of certain Public Utility Board Orders related to the Rate Stabilization Plan (the "RSP")

Tab Number	Order Number	Date	Description of Order
	P.U. 7 (2002-2003)	June 7, 2002	<p>Order P.U. 7 (2002-2003) was issued following the 2001 general rate review hearing, which resulted from NLH's May 31, 2001 Application, and which was the first comprehensive review of NLH since it became fully regulated in 1996.</p> <p>With respect to the RSP, the Board states in Order P.U. 7 (2002-2003) that it is "not convinced that the interests of the consumers or NLH would be served through the elimination of the RSP and, other than the specific adjustments and changes described in this decision, will not make any other change in the RSP or its operation at this time". Nonetheless, the Board also stated that the design and elements of the existing plan should be reviewed and stated that it would commission a study of the RSP, including a review of the plans since its implementation, and decide based thereon what further action should be taken.</p> <p>As to the substantive changes to the RSP, Order P.U. 7 (2002-2003) provided in respect of the RSP inter alia as follows:</p> <ul style="list-style-type: none"> • The existing balances in the RSP shall be fixed as of the end of the month prior to the effective date of rate implementation based on the current methodology, and additional recovery of this balance is not allowed in the 2002 test year [known as the "Old Plan"]. • The balance in the RSP shall be recovered in the following manner: <ul style="list-style-type: none"> i. The RSP mill rate for the IC shall be reset as of the effective date of rate implementation for the remainder of 2002 to 2.80 mills/kWh, which was the rate effective January 1, 2001.

Tab Number	Order Number	Date	Description of Order
			<p>ii. The RSP mill rate for 2002 for NP shall remain at 1.77 mills/kWh, which was the rate effective as of July 1, 2001.</p> <p>iii. Recovery of the fixed balance outstanding [in the "Old Plan"] shall be spread over a five year period commencing in 2003 using a straight-line recovery method.</p> <p>iv. The method for calculating the mill rate adjustments and the date of the adjustments for both the IC and NP shall remain the same.</p> <p>v. The amounts recovered shall be credited against the fixed balance of the plan.</p> <p>vi. Interest shall be accumulated and maintained on the balance using the WACC.</p> <p>vii. Recovery or credits of balances that accumulate in the plan after the effective date of rate implementation (the new balance) [known as the "New Plan"] shall be calculated using a straight-line method over a two year period, to be effective January 1, 2004 for the IC and July 1, 2004 for NP.</p> <ul style="list-style-type: none"> • NLH shall file with the Board updated 12-month fuel forecasts as part of its quarterly reports. <p>With respect to recovery of the balance in the RSP, the existing balance in the RSP was fixed as of August 31, 2002 for Newfoundland Power and the Industrial Customers, which balance became known as the "Old Plan", with any new balances accumulating after August 31, 2002 to be referred to as the "New Plan". Order P.U. 7 provides for different recovery schemes for the "Old Plan" and "New Plan" balances, as noted above.</p>
	P.U. 40 (2003)	December 16, 2003	Order P.U. 40 (2003) was issued following a November 13, 2003 Application by NLH, wherein it proposed amendments to the RSP pursuant to two Consents (#2 and #3), to be

Tab Number	Order Number	Date	Description of Order
			<p>effective January 1, 2004. The Application was filed with the consent of certain parties who had been discussing certain changes to the RSP, except for the Industrial Customers, who consented to most of the Application, but took no position with respect to the changes related to recovery of rate balances.</p> <p>Order P.U. 40 (2003) provides for the RSP, unless otherwise ordered by the Board, to be “amended as set out in Schedule ‘A’ effective January 1, 2004”, which amendments provided that the RSP would continue to include four main components, namely: (i) hydraulic variation; (ii) fuel cost variation; (iii) load variation; and (iv) rural rate alteration.</p> <p>Order P.U. 40 (2003) also provided for changes to the recovery of plan balances, providing for a different recovery treatment for RSP balances commencing on January 1, 2004 (known as the “Current Plan”), and for balances existing prior to January 1, 2004 (known as the “Historical Plan”). The Historical Plan was itself composed of two prior plans established in Order P.U. 7, namely the “Old Plan” for balances accumulated up to August 31, 2002, and the “New Plan” for balances accumulated from September 1, 2002 to December 31, 2003.</p> <p>Under Order P.U. 40 (2003), recovery of the “Current Plan” would occur over a one year amortization period, with an adjustment rate established to target a zero balance in the customer plans at the end of each recovery period, in an effort to reduce increasing customer RSP balances. For Industrial Customers, the adjustment rate is effective as of January 1 every year, and was to be calculated based on the existing plan balance as of December 31, 2003 plus financing costs for the next twelve months, as well as a fuel rider.</p> <p>Recovery of the “Historical Plan”, which combined together the balances from the former “Old Plan” and “New Plan”, was to be recovered over a four year period,</p>

Tab Number	Order Number	Date	Description of Order
			commencing January 1, 2004 for the Industrial Customers.
	P.U. 14 (2004)	May 4, 2004	<p>Order P.U. 14 (2004) was issued further to NLH's Application dated May 21, 2003 for a general rate review.</p> <p>With regard to the RSP, given that Order P.U. 40 (2003) has addressed various issues already, Order P.U. 14 (2004) provided only for ongoing monitoring of the RSP, on the basis that the changes to the RSP increased its level of complexity and potential for volatility in rates.</p> <p>Under Order P.U. 14 (2004), the Board noted that it could address additional reporting and review as part of its ongoing regulatory supervision in relation to NLH's quarterly regulatory reports and annual reports. The Board also ordered that NLH be required to undertake a review of the operation of the RSP for the period from January 1, 2004 to December 31, 2005 and file a report based on same with the Board no later than June 30, 2006, in order to assess the effectiveness of the revised RSP, including its impact on customers in terms of rates based on the outstanding plan balance on December 31, 2005.</p>
	P.U. 17 (2004)	June 11, 2004	<p>Order P.U. 17 (2004) approves a revised total revenue requirement, rate base, return on rate base, cost of service study and a revised Schedule of Rates, Riles and Regulations, to be effective as of July 1, 2004, filed by NLH in accordance with the requirements established in Order P.U. 14 (2004).</p> <p>Order P.U. 17 (2004) provided in respect of the RSP inter alia as follows:</p> <ul style="list-style-type: none"> The Rates approved in Schedule "A" will be effective for consumption on and after July 1, 2004 for all customers, except Labrador Interconnected firm customers, whose rates will be effective for bills issued on and after July 1,

Tab Number	Order Number	Date	Description of Order
			<p>2004.</p> <p>In the portion of Schedule “A” titled “Rate Stabilization Plan”, it is noted that each month, the load variation will be assigned to the customer class for which the load variation occurred. It is also stated that a fuel price projection will be calculated to anticipate actual forecast fuel price changes and to determine fuel riders for the rate adjustments, which will occur in October of each year for the Industrial Customers.</p>
	P.U. 20 (2006)	June 21, 2006	<p>Order P.U. 20 (2006) approves rates to Newfoundland Power, as well as a modification to the fuel rider component of the RSP to reflect a reduction in the amount of No. 6 Fuel forecast to be consumed at the Holyrood Generating Station, resulting from the significant reduction in load due to the shutdown of Abitibi Consolidated Inc. – Stephenville Division.</p>
	P.U. 31 (2006)	October 5, 2006	<p>Order P.U. 31 (2006) approves adjustments to the Industrial RSP due to the shutdown of Abitibi Consolidated Inc. – Stephenville Division., namely:</p> <ul style="list-style-type: none"> • a revised calculation of the fuel rider to adjust the 2004 test Year barrels of No. 6 fuel forecast to be consumed at the Holyrood Generating Station to reflect a reduction in load resulting from the shutdown of Abitibi Consolidated Inc. – Stephenville Division; • a modification of the calculation of the Historic Plan RSP recovery rate to reflect a contribution to the plan of account of the shutdown of Abitibi Consolidated Inc. – Stephenville Division; and • an adjustment to the Industrial Customer kWh sales to reflect the shutdown of Abitibi Consolidated Inc. – Stephenville Division. <p>Order P.U. 31 (2006) was made after an Order-in-Council was issued pursuant to section 5.1 of the Electrical Power Control Act (NL) directing the Board to make</p>

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			changes to NLH's rate structures.
	P.U. 1 (2007)	January 18, 2007	<p>Order P.U. 1 (2007) provides for a number of orders in relation to Aur Resources Inc., the operator of Duck Pond Mine in central Newfoundland, in order to facilitate it becoming a new Industrial Customer.</p> <p>Under the previous Order P.U. 1 (2006), the Board had approved interim rates for Aur Resources Ltd. including the Historical Plan balance portion of the RSP, but Order P.U. 1 (2007) approved the exclusion of this portion of the rate, and NLH was also ordered to refund or credit to Aur Resources Inc. the difference between the former interim rate and the newly approved rates.</p> <p>Otherwise, the rates, rules and regulations set for Aur Resources Inc. were to be similar to those of other Industrial Customers, except that for 2006 the demand charge should be based on the highest firm demand in the month and until a new full cost of service study is completed and reviewed, rates should not include a specifically assigned charge.</p>
	P.U. 3 (2007)	January 29, 2007	Order P.U. 3 (2007) was provides for the RSP Fuel Rider charge for 2007 to be set at zero, on the basis that "the Cost of Service for the 2007 Test Year will reflect the most up to date forecast of fuel prices eliminating hr variance between the Test Year Cost of Service price of fuel and the most recent forecast that would have resulted in a Fuel Rider".
	P.U. 8 (2007)	April 12, 2007	<p>Order P.U. 8 (2007) was issued further to NLH's Application dated August 3, 2006 for a general rate review. This Order was issued following the filing on June 30, 2006 of NLH's report on the operation of the RSP for the period from January 1, 2004 to December 31, 2005, s required by Order P.U. 14 (2004), and NLH requested that the changes proposed in that report be approved in Order P.U. 8 (2007).</p> <p>The hearing of the Application resulting in Order P.U. 8 (2007) also involved the</p>

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			<p>consideration of four settlement agreements between the parties which were filed with the Board (one on October 20, 2006 and the other three on November 23, 2006), and a revised Application incorporating the agreements was filed on December 6, 2006.</p> <p>With respect to the RSP, under Order P.U. 8 (2007) the Board decided, inter alia, that:</p> <ul style="list-style-type: none">• NLH will be required to distribute the balance of the reserve account established in Order No. P.U. 46 (2006) in accordance with the special adjustment to the RSP Hydraulic Production Variation Balance as set out in Schedule B, with NLH required to revise the RSP rules to exclude reference to this one-time adjustment [and since this Order was not made until April 12, 2007, NLH adjusted the 2007 opening balances for the Newfoundland Power Current and Historical Plans, as well as the 2007 opening balance for the Industrial Customers' Historical Plan, to reflect the distribution of the Hydraulic Plan balance as of December 31, 2006];• NLH will be required to revise the RSP rules to remove references to the Automatic Adjustment Mechanism [which NLH had proposed for the setting of future rates, but which the Board did not approve of at the time of the Order];• NLH will be required to file for the Board's approval, within fifteen days of the Order approving final rates for customers of Newfoundland Power, revised RSP rules in accordance with the findings of the Board as set out in this Decision and Order;• NLH will be required to file with the Board no later than May 31, 2007 a copy of the terms which are proposed for the RSP review, setting out the terms of reference, the specific review objectives, a list of participants, a planned timeline, and an outline of the review process.

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			Order P.U. 8 (2007) also approved on a final basis the interim rates for Utility and Industrial Customers approved in Order P.U. 41 (2006) and P.U. 3 (2007).
	P.U. 11 (2007)	May 9, 2007	Order P.U. 11 (2007) provides for changes in relation to Newfoundland Power's rates effective for consumption on or after July 1, 2007, including a forecast fuel price change, the resulting fuel rider and the RSP rate to be applied, and a decrease to 0.171¢ per kWh in the Rate Stabilization Adjustment component of the rate for Newfoundland Power.
	P.U. 14 (2007)	May 17, 2007	Order P.U. 14 (2007) provides for the final approval of the RSP rules, further to the directions of the Board pursuant to Order P.U. 8 (2007), requiring NLH to apply to make certain changes to the RSP rules (as discussed in greater detail above).
	P.U. 34 (2007)	December 21, 2007	<p>Order P.U. 34 (2007) is described as an Interim Order, and provides that the rate currently charged to the Industrial Customers would be maintained for consumption on and after January 1, 2008, until a final Order of the Board could be made for 2008 with respect to the rates for Industrial Customers. These rates continued throughout 2008, and therefore the fuel rider was not included in the Industrial Customers' RSP adjustment rate, as 2007 rates were based on a 2007 test year with no fuel rider component.</p> <p>The 2007 RSP adjustment rates also provided for an RSP adjustment rate for the Current Plan as a refund of 2.0 cents per kWh, and the RSP adjustment rate for the Historical Plan was a recovery of 1.215 cents per kWh. When the Industrial Customer Historical Plan balance was completed and it was consolidated with the Current Plan balance on December 31, 2007, these rates combined to a refund rate of 0.785 cents per kWh on the Current Plan balance, effective January 1, 2008.</p> <p>In making this Interim Order, the Board noted that NLH had advised that the information available in relation to the projected rate changes for Industrial Customers as a result of the operation of the RSP suggested that there may be significant rate</p>

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			volatility, due to the projected change in the RSP rate and a significant load change of one of its Industrial Customers. The Board also noted that if, after a full review, it is determined that excess revenue has been earned by NLH as a result of the Interim Order, the Board may order, pursuant to section 75 of the <i>Public Utilities Act</i> (NL), that NLH customers receive a refund or that the excess revenue be placed in a reserve account for that purpose.
	P.U. 11 (2008)	June 12, 2008	Order P.U. 11 (2008) provides for forecast fuel variance, the resulting fuel rider and the RSP rate to be applied to Newfoundland Power's rates, as well as proposed changes to the language of the RSP to accommodate such changes. This Order was made following NLH's April 15, 2008 Notice in relation to same, and an Application proposing changes to the forecasts from that Notice, due to a substantial reduction in load as a result of the shutdown of one of the paper machines at Corner Brook Pulp and Paper.
	P.U. 37 (2008)	December 24, 2008	Order P.U. 37 (2008) is described as an Interim Order, and provides for (i) the continuation of the Industrial Customers' rates, rules and regulations on an interim basis, from January 1, 2009 until March 31, 2009; and (ii) for NLH to file an application for approval of final rates, rules and regulations for the Industrial Customers by January 30, 2009, allowing sufficient time for a full examination of the matter.
	P.U. 6 (2009)	January 30, 2009	P.U. 6 (2009) provides that NLH will make application to finalize the interim rates, rules and regulations for the Industrial Customers by June 30, 2009, and for the continuation of the rates, rules and regulations for the Industrial Customers on an interim basis until a final Order of the Board is made in respect of the finalization of rates.
	P.U. 22 (2009)	June 16, 2009	Order P.U. 22 (2009) provides for forecast fuel variance, the resulting fuel rider and the RSP rate to be applied to Newfoundland Power's rates, as well as proposed changes to the language of the RSP to accommodate such changes, to be effective July 1, 2009. This follows the April 15, 2009 Notice from NLH in respect of same, and NLH's application for modification of the RSP fuel price projection calculation, to reflect a

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			reduction to the 2007 Test Year barrels of No. 6 fuel forecast to be consumed at the Holyrood Thermal Generating Station, and a reduction in the 12 months to date Industrial Customer sales, as a result of a substantial reduction in load resulting from the shutdown of Abitibi Consolidated (Grand Falls), with these reductions being reflected in the customer allocation of the forecast fuel variance, the resulting fuel rider, and the RSP rate to be applied to Newfoundland Power's rates.