

February 3, 2016

Ms. G. Cheryl Blundon
Board of Commissioners of Public Utilities
120 Torbay Road, P.O. Box 12040
St. John's, NL A1A 5B2

Ladies & Gentlemen:

Re: Newfoundland and Labrador Hydro's 2013 Amended General Rate Application of Newfoundland and Labrador Hydro on November 10, 2014
And Re: Further comment upon Regulatory Authorities filed by Newfoundland and Labrador Hydro

The Board has permitted parties to file written comments in reply to the regulatory authorities filed by Newfoundland and Labrador Hydro (Hydro) at the oral argument held on January 25, 2016.

The Consumer Advocate appreciates the opportunity to do so.

The regulatory authorities presented by Hydro were:

1. E.B.R.O. 363-I-2 (re Consumers' Gas Company) dated October 27, 1977 (Ontario Energy Board);
2. R.P. – 1999 – 0017 (re Union Gas Limited) dated July 21, 2001 (Ontario Energy Board);
3. Decision 2957 – D01 – 2015 (re Direct Energy Regulated Services) dated July 7, 2015 (Alberta Utilities Commission).

Hydro's counsel, Mr. Cass, during argument presented these cases as "*just some examples of how – of regulatory practices of other Boards addressing situations where they need to contend with the existence of actual information, even though they are dealing with a case presented on a forecast basis.*" (January 25, 2016 Transcript, page 9, line 20, to page 10, line 2) (underline added) In his reply before the Board, Mr. Cass stated that the cases were put forward "*largely because the Board had asked in its questions – a number of questions talked about regulatory practice and also seemed to touch on use of actual costs when costs are being presented on a forecast basis, but then actual costs become available. The cases were put forward as an attempt to respond to the Board's request for regulatory practices to look at.*" (Transcript, p. 138, lines 8 to 16) (underline added)

The Consumer Advocate does not regard these cases as relevant to or helpful to the issues before the Board, and in particular the claim of Hydro for its 2014 revenue deficiency. As noted in the Consumer Advocate's Final Written Submission dated December 23, 2015 at page 4, Hydro's Amended GRA filed on November 10, 2014 proposed that Hydro's 2014 Test Year revenue requirement of \$562,855,000 be approved and requested a revenue deficiency of \$45.9 million in respect of 2014. Hydro's proposed 2014 Test Year revenue requirement was based on part actual 2014 costs and part projected costs for the balance of 2014. This is not an approach consistent with prospective rate making.

This is not a situation analogous to either of the three authorities put forward by Hydro:

1. E.B.R.O. 363-I-2 (1977) (O.E.B.)

In the Consumers' Gas Company case, the utility did act in accordance with prospective rate making principles. In the context of a major rate application initially filed May 16, 1977, Consumers' Gas Company made an application on August 24, 1977 for an interim order approving an increase in rates for the sale of gas on and after October 1, 1977. As stated by the Board (para. 22) the August application sought approval to increase rates on an interim basis to recover an alleged revenue deficiency in the return then currently being realized and the return expected to be experienced in the fiscal year ending September 30, 1978 (the fiscal year starting October 1, 1977).

Thus, in advance of the application being filed on August 24, 1977 the utility had identified a future revenue deficiency that it would sustain without interim relief starting in October of that year, being the start of the new 1978 fiscal year. The Board considered that the most appropriate financial results to use to determine the amount of the revenue deficiency for the purpose of the interim rate relief application was the 9 months actual data for fiscal year 1977 and 3 month forecast data (para. 42). This discussion remains about using 1977 data as a basis for determining 1978 forecast costs and hence a prospective revenue deficiency. This remains consistent with prospective ratemaking. Hydro's proposal is not.

2. R.P. – 1999 – 017 (2001) (O.E.B.)

Turning to the Union Gas decision, it is not clear how this case relates to the issues raised in the Amended GRA. It would appear that Union Gas which in 1999 while operating under traditional cost of service method of rate regulation filed in late 1999 a PBR plan to occur starting on January 1, 2000 based on a 1999 test year. At its heart, the Board's discussion from page 60 to 61 centers around whether there should be adjustments made to the 1999 test year data as the Board's belief was that (see para. 2.165) "*. . . it is important to establish a realistic set of data at the commencement of price-cap PBR plan and that such data must be representative of the current operations of the utility.*"

The Board stated that productivity improvements realized in 1999, net of relevant costs, should be for the benefit of ratepayers in future years when rates are changed to reflect the new costs. The Board held that these productivity improvements should be recognized in rates set for the first year of the new PBR plan “*and they would have been, had the company provided a consistent set of operating date (sic) for the first year of the plan.*”

Accordingly, the Board proceeded to identify a number of cost reductions that were realized by the utility in 1999 which were sustainable and would carry forward into subsequent years. Once the cost reductions were identified, the Board made adjustments to the revenue base for 2000 in respect of these cost reductions. Here again, the utility made an application to set rates prospectively for 2000 using 1999 as a test year. This has no relevance to Hydro’s use of a 2014 test year filed in November of 2014 to claim entitlement to a 2014 revenue deficiency.

3. Decision 2957 – D01 – 2015 (2015) (A.U.C.)

In this matter, the utility applied in September of 2011 to set rates for 2012 to 2016. After delays, including delays arising from the rejection of a settlement, the application was not decided until mid-2015 by which time actual results were available for 2012, 2013 and 2014. At para. 69 the Commission stated:

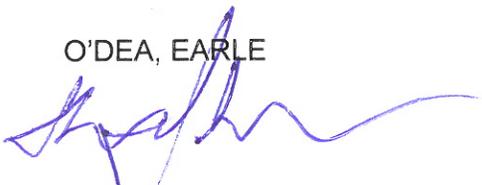
The Commission sets rates on a prospective basis; however, situations of regulatory lag arise, where approvals of revenue requirement for certain years of a test period are made after those years have passed. In this proceeding, full year actuals for 2012, 2013 and 2014 are available. In determining the revenue requirement for each of these years, and, with the exception of AIP, LTIS and SAS amounts, the Commission has considered these actual results in assessing the applied-for forecast amounts. (underline added)

This case was about using actuals to assist in testing the reasonableness of the original forecasts; it was not about using actuals as a forecast in the absence of a forecast. Hydro’s 2014 test year was not based on a forecast – there was an absence of a forecast in respect of 2014. The situation at hand is readily distinguishable from the circumstances before the AUC and this order is certainly not of assistance to Hydro’s argument for entitlement to a 2014 revenue deficiency.

We trust the foregoing is found to be in order.

Yours very truly,

O’DEA, EARLE



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TJ/cel



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