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## O'DEA, EARLE

LAW OFFICES

October 5, 2006

**Via Courier  
& email**

Board of Commissioners of Public Utilities  
Suite E 210 Prince Charles Building  
120 Torbay Road  
P.O. Box 21040  
St. John's, NL A1A 5B2

**Attention: G. Cheryl Blundon, Board Secretary**

Ladies and Gentlemen:

**Re: Newfoundland and Labrador Hydro Application for the Approval of the costs to be recovered through the Rate Stabilization Plan charged to Newfoundland Power Inc. and the Industrial Customers of consuming No. 6 Fuel not exceeding 1% Sulphur by weight**

By letter from the Board Secretary dated and transmitted on September 29, 2006, the parties were advised that the Board is currently considering the above noted application and was requesting that if any comments were to be made that they be submitted by 4:00 p.m. Friday, October 6, 2006.

Please accept these submissions on behalf of the Consumer Advocate.

The Consumer Advocate acknowledges that the Board, in its decision and reasons rendered in Board Order No. PU 16 (2006), left it open to Hydro to reapply to the Board with evidence of the requirement to switch to lower sulphur content fuel which the Board found, having considered all the parties' submissions, that Hydro had failed to provide in its application then under consideration. Accordingly, from a procedural perspective, the Consumer Advocate takes no objection to Hydro's re-application.

Substantively, the Consumer Advocate also acknowledges and agrees that in this re-application Hydro has now demonstrated that it is obliged (by virtue of the Department of

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Environment's August 4, 2006 amendment to Hydro's Certificate of Approval #AA06-025458) not to burn any fuel with sulphur content greater than 1% by weight. It would appear from the materials filed by Hydro on the re-application to the Board that this amendment was prompted following the Department's review of the report entitled "Update of the Human Health Risk Assessment of Air Emissions From The Holyrood Thermal Generating Station, April 2006". It is noted that this report was not in evidence before the Board when Hydro's previous application was dealt with and therefore the issue of the effect of that report on Hydro's ability to enter into a compliance agreement given the provisions of s. 105 of the Environment Protection Act naturally could not be addressed.

There remains, however, a further substantive issue. Hydro's current application requests that the Board grant an order approving the recovery through the RSP of Hydro's fuel purchase expenditures for 1% sulphur fuel costs consumed on or after October 1, 2006.

In the first hearing, Hydro stated that it had ordered its first shipment of 288,000 barrels of 1% sulphur fuel on January 8, 2006 for delivery on February 8, 2006. A second shipment of 1% sulphur content fuel was ordered on February 15, 2006 for delivery on March 15, 2006. Hydro expected that at the current output level, the inventory of 2% sulphur fuel would be depleted by mid-April at which time the plant would start to use 1% sulphur content fuel (see page 3, lines 1 to 7 of Board Order P.U. 16 (2006)).

The only concern remaining for the Consumer Advocate is the fact that consumers should not be paying for 1% sulphur content fuel prior to a board order approving that expense. On page 15 of the Board Order P.U. 16 (2006) (lines 32 to 37), the Board states:

*As Hydro did not provide any other basis within the jurisdiction of the Board to justify this decision at this time the Board cannot approve Hydro's proposal to recover increased fuel costs for 1% sulphur content fuel from ratepayers. In the absence of an exemption or direction from Government pursuant to the Act or the EPCA Hydro can continue the purchase of this fuel but must do so without recovery from ratepayers.*

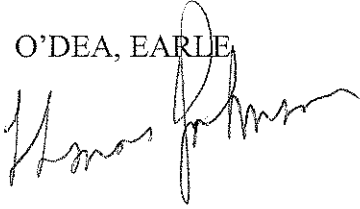
Given the prohibition against retroactive rate making, any incremental cost incurred by Hydro up to the date of the order (or at the earliest, the date Hydro was mandated to burn 1% sulphur fuel – \*September 14, 2006) should not be allowed. [\*Please note that in response to CA 28 NLH in its 2006 GRA, Hydro states that it was on September 14, 2006 that it received the amended Certificate of Approval that prohibited the burning of fuel with a sulphur content in excess of 1% by weight.] In its original application (page 6, Clause 14), Hydro indicated that the premium for 1% sulphur fuel over 2% sulphur fuel was \$6/barrel. Subsequently, Hydro provided an updated premium figure of \$2/barrel (see page 3, lines 16 to 26 of Board Order P.U. 16 (2006)). On this basis, the Consumer Advocate submits that Hydro refund to the RSP an amount equal to \$2 for each barrel of 1% sulphur fuel ordered

prior to the date of the Board's order relating to this application (or at the earliest, the date Hydro was mandated to burn 1% sulphur fuel – September 14, 2006).

Thank you for the opportunity to make the foregoing submissions.

Yours very truly,

O'DEA, EARLE

A handwritten signature in black ink, appearing to read 'Thomas Johnson', written over the printed name.

THOMAS JOHNSON

TJ/cel

cc: Newfoundland and Labrador Hydro  
Attention: Ms. Gillian Butler, Q.C. [info@gillianbutler.com](mailto:info@gillianbutler.com)  
and Geoffrey P. Young [gyoung@nlh.nl.ca](mailto:gyoung@nlh.nl.ca)

Newfoundland Power  
Attention: Mr. Ian Kelly, Q.C.  
and Mr. Peter Alteen [palteen@newfoundlandpower.com](mailto:palteen@newfoundlandpower.com)

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