

September 23, 2013

VIA COURIER and ELECTRONIC MAIL

Board of Commissioners of Public Utilities
120 Torbay Road
P.O. Box 21040
St. John's, NL A1A 5B2

Attention: Ms. G. Cheryl Blundon
Board Secretary

Dear Ms. Blundon:

RE: Rate Stabilization Plan Application of Newfoundland and Labrador Hydro

Enclosed are the original and twelve (12) copies of Vale's Written Submissions in respect of the Application.

We have provided a copy of this correspondence together with enclosures to all concerned parties.

We trust you will find the enclosed satisfactory.

Yours faithfully,



Thomas J. O'Reilly, Q.C.

TJOR/js
Encl.

cc. Newfoundland and Labrador Hydro
Hydro Place, 500 Columbus Drive
P.O. Box 12400, St. John's, NL
A1B 4K7
Attention: Geoff Young

Thomas J. O'Reilly, Q.C. | Partner

Direct 709 570 5320 Main 709 738 7800 Fax 709 726 3070 Email toreilly@coxandpalmer.com
Suite 1000 Scotia Centre 235 Water Street St. John's NL A1C 1B6

September 23, 2013

Roebathan, McKay & Marshall
Barristers & Solicitors
34 Harvey Road, 5th Floor
St. John's, NL A1C 5W1
Attention: Colin Feltham

Newfoundland Power
P.O. Box 8910
St. John's, NL A1B 3P6
Attention: Gerard Hayes

Curtis Dawe
Barristers & Solicitors
P.O. Box 337
139 Water Street
St. John's, NL A1C 5J9
Attention: Liam O'Brien

Newfoundland Power Inc.
55 Kenmount Road
St. John's, NL A1B 3P6
Attention: Mr. Peter Alteen

Thomas Johnson Q.C.
Consumer Advocate
O'Dea Earle
Barristers & Solicitors
323 Duckworth Street
P.O. Box 5955
St. John's, NL A1C 5X4

Stewart McKelvey
Barristers & Solicitors
Cabot Place, 100 New Gower Street
St. John's, NL A1C 5V3
Attention: Paul Coxworthy

Stewart McKelvey
Barristers & Solicitors
Cabot Place, 100 New Gower Street
St. John's, NL A1C 5V3
Attention: Gregory Moores

Poole Althouse
Barristers & Solicitors
49-51 Park Street
P.O. Box 812
Corner Brook, NL A2H 6H7
Attention: Dean Porter

Sheryl Nisenbaum
Praxair Canada Inc.
1 City Center Drive
Suite 1200
Mississauga, ON L5B 1M2

Mr. David Meade
Praxair Canada Inc.
1 City Centre Drive
Mississauga, ON L5B 1M2

IN THE MATTER OF the *Public Utilities Act*, (the "Act"); and

IN THE MATTER OF an Application by Newfoundland and Labrador Hydro for the approval, pursuant to Sections 70(1) and 76 of the Act, of the Rate Stabilization Plan rules and components of the rates to be charged to the Island Industrial Customers, including Vale Newfoundland & Labrador Limited.

TO: The Board of Commissioners of Public Utilities ('the Board')

1 **WRITTEN SUBMISSIONS OF VALE NEWFOUNDLAND & LABRADOR LIMITED**

2 The following are the submissions of Vale Newfoundland and Labrador Limited ("Vale")
3 in relation to Newfoundland and Labrador Hydro's ("Hydro") Rate Stabilization Plan
4 ("RSP") Application before the Newfoundland and Labrador Board of Commissioners of
5 Public Utilities (the "Board"). Vale's submissions are limited to the issues of (i) the
6 length of the phase-in period for industrial customer rates, (ii) the differential
7 treatment of industrial customers during the phase-in period, (iii) changes to the RSP
8 rules relating to the load variation component of the RSP and (iv) costs.

9 **Issue 1: Length of the Phase-In Period**

10 In this Application, Hydro is proposing that, effective September 1, 2015, all industrial
11 customers will be charged the base rates approved by the Board following Hydro's
12 pending General Rate Application ("GRA"). Vale submits that the phase-in period for

1 industrial customers other than Teck Resources should extend from September 1,
2 2013 to September 1, 2016, not September 1, 2015 as interpreted by Hydro. Vale
3 submits that the phase-in period suggested by Hydro is inconsistent with Order in
4 Council OC2013-089, as amended by OC2013-207 (the "Order in Council"). Vale
5 further submits that the calculation of rate adjustments over the phase-in period
6 should be based on the forecasted energy for 2014 to 2016 as opposed to 2013 test
7 year energy.

8 The Order in Council states that, effective September 1, 2013, rates for industrial
9 customers other than Teck Resources "will be phased in over a three year period"
10 (emphasis added). Hydro argues that this means that the rates should be phased in
11 over three installments (i.e. on September 1 of 2013, 2014 and 2015) as opposed to
12 over a 36 month period. In RFI's PUB-NLH-11 and PUB-NLH-12, Hydro supports its
13 position by relying on the language used to describe the phase-in of Teck Resource's
14 rates in the Order in Council.

15 Vale submits that Hydro's position is inconsistent with the wording and intention of the
16 Order in Council. Section 1 of the Order in Council, which deals with the phase-in of
17 rates for industrial customers other than Teck Resources, states that rates "will be
18 phased in over a three year period" (emphasis added) while section 3, which deals
19 with the phase-in of Teck Resources' rate, refers to "three equal annual percentage
20 increases". While the language used in the two sections is different, Hydro takes the
21 position that the effect is the same.

1 Vale submits that the rules of statutory interpretation should guide the Board in
2 interpreting the Order in Council. A fundamental rule in statutory interpretation is that
3 words should be interpreted in accordance with their ordinary meaning. Applied to the
4 Order in Council, Vale submits that the ordinary meaning of “three years” would be a
5 36 month period, not a 24 month period as proposed by Hydro.

6 It is also a rule of statutory interpretation that the use of different words implies that a
7 different meaning was intended. As noted by Malone J.A. in *Peach Hill Management*
8 *Ltd. v. Canada*:

9 When an Act uses different words in relation to the same subject
10 such a choice by Parliament must be considered intentional and
11 indicative of a change in meaning or a different meaning.¹

12 Based on this maxim of statutory interpretation, there is significance to the Executive’s
13 decision to use “three years” when referring to the phase-in rates for industrial
14 customers other than Teck Resources and “three....installments” when referring to
15 Teck Resources’ phase-in. While Teck Resources’ phase-in over three installments
16 should end on September 1, 2015, it does not follow that the phase-in for the rest of
17 the industrial customers should end at that same time. Rather, a common language
18 reading of “three years” and the differential language used in sections 1 and 3 of the
19 Order in Council holds that the phase-in of rates for industrial customers other than
20 Teck Resources should continue until September 1, 2016.

21 The use of a differential phase-in period for Teck Resources and the remainder of the
22 industrial customer group makes sense in the context in which the Order in Council

¹ [2000] F.C.J. No. 894 (F.C.A.) at para. 12 [Copy available upon request]

1 was issued. As discussed in Hydro's response to RFI NP-NLH-6, Teck Resources is
2 expected to stop taking power by April 2015. Therefore, a phase-in of rates between
3 September 1, 2015 and September 1, 2016 will have no effect on Teck Resources.

4 An Order that the phase-in period for industrial customer rates be extended to
5 September 1, 2016 would require an adjustment to the industrial customer rate for
6 the period September 1, 2014 to September 1, 2015 in order to ensure that the
7 balance from the RSP Surplus (as defined in the Order in Council) lasts until
8 September 1, 2016. In IC-NLH-29, the Industrial Customer Group requested that
9 Hydro recalculate the rates using a three year phase-in but Hydro refused to complete
10 the analysis on the basis that the phase-in period ends on September 1, 2015. Vale
11 submits that the recalculation of rates during the period between September 1, 2014
12 and September 1, 2015 should be completed as part of the GRA. It is worth noting
13 that, unless the rate proposed by Hydro in its GRA is accepted, the rate during this
14 period would have to be adjusted even if Hydro's proposed phase-in period is
15 accepted.

16 When the phase-in rates are recalculated as part of the GRA, instead of using 2013
17 test year energy to calculate the adjustments, due to the forecasted increase in
18 industrial load between 2014 and 2016, the recalculation of rates during the phase-in
19 period should be based on forecasted energy for 2014 to 2016 as set out in PUB-NLH-
20 17. Using the forecast from 2014-2016 is consistent with section 3 of the *Electrical*
21 *Power Control Act*, which holds that rates should be based on "forecast costs for the
22 supply of power for 1 or more years" (emphasis added), and would increase the

1 likelihood that the RSP Surplus will remain in a positive balance until the end of the
2 phase-in period.

3 In summary, Vale requests that the Board order that the phase-in of the industrial
4 customer rates occur over the three year period between September 1, 2013 and
5 September 1, 2016 and that the calculated adjustments to rates during the phase-in
6 period be based on forecasted energy for 2014 to 2016 as opposed to 2013 test year
7 energy.

8 **Issue 2: Differential Treatment Within the Industrial Customer Group**

9 As no explanation has been provided, Vale takes no position with respect to the
10 preferential treatment provided to Teck Resources in the Order in Council.

11 Consistent with the position taken by Hydro in the responses to RFIs IC-NLH-20, 21, 23
12 and 31, Vale agrees that the Order in Council dictates that all industrial customers,
13 other than Teck Resources, are to be subject to the same rates and phase-in
14 adjustments after September 1, 2013. In particular, Vale relies on the provision in
15 section 2 of the Order in Council stating that, effective September 1, 2013, "all Island
16 industrial customers, with the exception of Teck Resources, will be subject to the same
17 standard industrial rate, equivalent to the existing base rate but excluding the Rate
18 Stabilization Plan adjustment currently in place" (emphasis added)

1 Issue 3: Changes to the RSP Rules Affecting Allocation of The Load Variation
2 Component

3 In its RSP Application, Hydro sought a change to the rules for the load variation
4 component of the RSP that would attribute year to date net load variation based on
5 the energy usage of each class as opposed to attributing changes in load to the class
6 that is responsible for the change. Vale submits that the continuation of the load
7 variation component of the RSP, or changes to that component, should be deferred to
8 the GRA. It appears from the answers to RFIs CA-NLH-10, NP-NLH-11, PUB NLH-1 and
9 PUB-NLH-3 that Hydro has agreed to defer this matter to the GRA. If Hydro is not
10 consenting to the consideration of this issue being deferred to the GRA, Vale submits
11 that the Board should nevertheless order such a deferral.

12 Hydro first requested a change in the method for attributing load variation in its 2006
13 GRA. During the 2006 GRA, Hydro agreed that, instead of having changes to the load
14 variation component of the RSP considered as part of the 2006 GRA, the rules then in
15 place would continue while the interested parties completed a review of the RSP. As
16 set out in the response to RFI CA-NLH-6, the contemplated review was started but was
17 never completed.

18 Vale submits that the continuation of, or changes to, the load variation component of
19 the RSP requires investigation, discussion and negotiation that is not possible within
20 the timelines of the current Application. Further, by ordering that any load variation
21 that occurs between September 1, 2013 and conclusion of the GRA proceedings is to

1 be placed in a separate account for future disposition by the Board, the Board can
2 remove any urgency for a determination on this matter.

3 Therefore, Vale requests that the Board order that load variation occurring for each
4 customer class after September 1, 2013 (i) continue to be calculated pursuant to
5 Section B, subsection 1.2 of the RSP approved in Board Order P.U. 40(2003) and (ii)
6 be held in a separate account for disposition by the Board in a future Order.

7 **Issue 4: Costs**

8 Vale requests that the Board award Vale costs on the within Application on the same
9 basis as any award of costs made in favor of the Consumer Advocate and/or the
10 Industrial Customer Group. An award of costs in favor of Vale is justified based on the
11 fact that:

12 1. When Vale's processing plant in Long Harbour begins production, Vale
13 will be the single largest industrial customer of Hydro. As the changes to the
14 RSP Rules and rate changes being requested by Hydro will remain in effect past
15 the date of first production at Long Harbour, Vale had a significant interest in
16 participating in the within Application; and

17 2. Vale's interests in the within Application were distinct from the interests
18 of the Industrial Customer Group. In particular, the differential treatment of
19 Teck Resources was of particular interest to Vale. Further, Vale and the

1 Industrial Customer group were arguably not aligned on whether, *inter alia* (a)
2 the phase-in period for industrial customer rates should extend to September
3 1, 2016, and (b) as suggested by the Industrial Customer Group in certain RFIs,
4 whether the RSP Surplus should be used solely or disproportionately for the
5 benefit of the Industrial Customer Group. As such, Vale could not rely on its
6 interests being protected by the Industrial Customer Group.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 23rd day
of September, 2013.

COX & PALMER

Per: 

Thomas J. O'Reilly, Q.C.

TO: The Board of Commissioners of Public Utilities
Suite E210, Prince Charles Building
120 Torbay Road
P. O. Box 21040
St. John's, NL A1A 5B2
Attention: Board Secretary

TO: Newfoundland & Labrador Hydro
P. O. Box 12400
500 Columbus Drive
St. John's, NL A1B 4K7
Attention: Geoffrey P. Young
Senior Legal Counsel

TO: Newfoundland & Labrador Hydro
Hydro Place
500 Columbus Drive
St. John's, NL A1V 4K7
Attention: Mr. Colin Feltham

TO: Newfoundland Power
P. O. Box 8910
55 Kenmount Road
St. John's, NL A1B 3P6
Attention: Gerard Hayes
Senior Legal Counsel

TO: Newfoundland Power Inc.
55 Kenmount Road
St. John's, NL A1B 3P6
Attention: Mr. Peter Alteen

TO: Curtis Dawe
11th Floor, Fortis Building
139 Water Street
St. John's, NL A1C 5J9
Attention: Liam O'Brien

TO: Thomas J. Johnson, Consumer Advocate
O'Dea, Earle
323 Duckworth Street
P. O. Box 5955, Stn. C
St. John's, NL A1C 5X4

TO: Praxair Canada Inc.
1 City Centre Drive
Mississauga, ON L5B 1M2
Attention: Mr. David Meade

TO: Praxair Canada Inc.
1 City Centre Drive, Suite 1200
Mississauga, ON L5B 1M2
Attention: Sheryl Nisenbaum,
Assistant Secretary

TO: Corner Brook Pulp and Paper Limited,
North Atlantic Refining Limited
and Teck Resources Limited
Stewart McKelvey
PO Box 5038
11th Floor, Cabot Place
100 New Gower Street
St. John's, NL A1C 5V3
Attention: Paul Coxworthy

TO: Poole Althouse
Western Trust Building
49-51 Park Street
Corner Brook, NL A2H 2X1
Attention: Dean A. Porter