Q: Page 26, Section 2.5: Does NL's regulatory system adequately cover sales to ratepayers?
2.5.1 Have previously identified shortcomings been addressed?

LEI's review of the record since 2015 suggests that little progress has been made on most of the above recommendations, all of which are generally sensible and with which LEI concurs.

With respect to the areas identified in the Power Advisory report of 2015, specifically the progress made with respect to defining a public interest test; employing outcome-based policy direction; assessing need for new facilities and cost-effectiveness alternatives; requiring integrated resource plans; increasing capital budget thresholds; addressing the rural deficit subsidy; and establishing timely rate review processes, Hydro offers the following commentary.

Public Interest Test

There have been no changes to legislation to specifically define a "public interest" test criterion by which filings must be evaluated. The Board of Commissioners of Public Utilities ("Board") is mandated to carry out its duties in implementing the province's power policy by applying tests which are consistent with generally accepted sound public utility practice and founded in fundamental regulatory principles, as required by legislation[1] and outlined in the Regulatory Framework set out by the Board in Order No. P.U. 8(2007) – see Attachment 1 to this response. Specifically, the Cost of Service principle identifies that "costs should be…reflective of private/social costs and benefits occasioned by the service."[2]

On the other hand, the Board has limited its reach with regard to achieving more general, societal goals where its mandate overlapped with other regulators. In Board Order P.U. 16(2006) the Board said the following:

> The Board's mandate requires that the Board ensure least cost reliable reasonably safe power is provided in accordance with the laws of the Province. Environmental issues are, to some extent, inherent in this mandate. As set out above s. 16 and s. 17 of the *Act* require the Board to ensure that the utility observes the laws of the Province, including environmental laws. The Board is also required to ensure that Hydro is managing the provision of power in a manner consistent with sound financial administration. Therefore environmental issues must be considered in relation to how they impact the financial administration of the utility. Finally the Board must consider environmental issues to the extent that they are a part of reasonably safe and adequate and just and reasonable service as set out in s. 37 of the *Act* and as required by generally accepted sound public utility practice.
>
> It is noted that there is a comprehensive regulatory scheme overseen by the Department of Environment and Conservation (the "Department"), separate and apart from this Board, which specifically regulates Hydro with regard to environmental issues. In this context the Board must be careful to avoid potential duplicative and inconsistent regulation with regard to these issues.

[1] See, e.g. ss.3,4 of the Electrical Power Control Act, 1994, SNL 1994 c. E-51
[2] Board of Commissioners of Public Utilities, Order No. P.U. 8(2007), p. 7.

> Given that the Board is an economic regulator and that there is a separate comprehensive environmental regulatory scheme, the authority of the Board with respect to the oversight of environmental issues is limited to that necessary to carry out its mandate with respect to utility regulation. Issues outside of the jurisdiction of the Board may be addressed by an exemption or direction from Government pursuant to the *Act* or the *EPCA*.[3]

Legislation governing utility practice in Newfoundland and Labrador focuses on affording consumers the lowest possible cost electricity consistent with equitable, safe, and reliable service and consistent with public utility principles.[4] This can be contrasted with the public utility regulation legislation in Alberta which specifically incorporates a consideration of the public interest in a section of the act concerning the choice of large projects:

> **Public interest**
> **17(1)** Where the Commission conducts a hearing or other proceeding on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, it shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment.[5]

Aside from this specific reference to a consideration of the public interest, there is a general requirement in this Alberta legislation requiring members of the Commission to carry out their duties in the public interest.

Outcome-based Policy Direction

Outcome-based policy direction is, at times, employed within the electrical regulatory process in Newfoundland and Labrador. Recent examples in which the Government of Newfoundland and Labrador outlined its policy direction and placed responsibility for either direction and/or recommendations with the Board include:

1. Rural Deficit Subsidy – In 1989, the Government of Newfoundland and Labrador determined that the annual government subsidy for rural systems would be phased out. In 1991, the *Electrical Power Control Act* was amended to provide for the allocation and the funding of the deficit to come from Newfoundland Power, Industrial and Labrador Interconnected customers;

[3] P.U. 16(2006), pp. 4-5.

[5] Alberta Utilities Commission Act, Statutes of Alberta, 2007, Chapter A-37.2, s. 17(1)

subsequent amendment removed the requirement for subsidization by the Industrial Customers. In 1993, a regulatory proceeding (i.e., Cost of Service Methodology hearing) before the Board was completed to review, among other things, the methodology by which the rural deficit would be allocated to the various subsidizing classes. This is an example of a process by which government set the outcome and the Board determined the method by which the outcome would be attained.

2. OC-2013-343[6] – In 2013, the Government of Newfoundland and Labrador provided direction on the treatment of costs related to the Muskrat Falls Project costs in rates. Government directed the Board to determine: (i) the method by which such costs are to be included, and (ii) rates reflecting those costs.
3. Provincial Net Metering Policy Framework – In July 2015, the Government of Newfoundland and Labrador set out policy parameters for a provincial net metering framework. Utilities were responsible for developing and implementing net metering programs for their customers, while the Board was responsible for reviewing the utilities' proposals and approving the programs to ensure compliance with the *Public Utilities Act* and the *Electrical Power Control Ac,1994*.
4. Reference Question on Rate Mitigation Options and Impacts – In September 2018, the Government of Newfoundland and Labrador engaged the Board, seeking input on options to mitigate the impact of Muskrat Falls on electricity rates. The Government of Newfoundland and Labrador outlined specific matters to the Board on which it is seeking advice and directed Nalcor, and hence its subsidiaries, to fully cooperate with the Board on this matter.

Outcome-based policy direction is not uncommon in Newfoundland and Labrador. Newfoundland and Labrador Hydro ("Hydro") believes that opportunity exists for continued and further policy direction by Government, while allowing the regulatory framework to determine the mechanisms by which the policy directions can be met.

There have also been instances of direction which were more prescriptive as to the rates to be charged and the methodologies to be applied in that process. These include Orders in Council (Order in Council 2013—089, as amended by Order in Council 2013-207) that directed the Board with regard to the particular distribution of Rate Stabilization Plan balance amounts.[7]

Regulatory Process to Review the Need and Cost-Effectiveness of New Resource Options

Historically in Newfoundland and Labrador, a hybrid approach has been taken to the approval of new resource options – some happening within the regulatory process and others outside. There have been no new facilities identified since 2015.

[6] OC-2013-343 is a directive to the Board with respect to the recovery in Hydro's rates of any expenditures, payments or compensation paid directly or indirectly by Newfoundland and Labrador Hydro, under an agreement or arrangement to which the Muskrat Falls Project Exemption Order (OC-2013-342) applies and is a companion Order in Council to the Muskrat Falls Project Exemption Order.

[7] Order in Council 2013—089, as amended by Order in Council 2013-207.

Prior to 2015, as examples, the acquisition of a new combustion turbine (100 MW) at the Holyrood Thermal Generation Station and the construction of a new 230 kV transmission line between the Bay d'Espoir and Western Avalon terminal stations (TL 267) were considered and approved through the regulatory process without regulatory exemptions or directives to the Board.[8] These were both large projects with a combined value in excess of $400 million.

More recently, Hydro is working with the Government of Newfoundland and Labrador on an Expression of Interest for Renewable Energy Solutions in Isolated Diesel Communities.[9] As a regulated entity, Hydro will identify regulatory requirements through this process and the Government of Newfoundland and Labrador will determine the appropriate direction on those requirements.

Hydro believes the regulatory process is an appropriate venue through which to review new resource options as it balances the interests of electrical consumers and the utilities with a focus on delivering least-cost, reliable service.

Integrated Resource Planning for All Utilities

In 2018, Hydro filed three reports focused on future system planning, these included the:

- Labrador Interconnected System Transmission Expansion Study;[10]
- Reliability and Resource Adequacy Study;[11] and
- Network Additions Policy for the Labrador Interconnected System.[12]

The Labrador Interconnected System Transmission Expansion Study identifies an appropriate expansion plan for the Labrador Interconnected system, considering a range of load forecasts and with the objective of identifying least-cost, reliable transmission system additions for eastern and western Labrador.

The Reliability and Resource Adequacy Study reflects an assessment undertaken by Hydro to evaluate its long-term planning criteria and its ability to reliably meet customer and system requirements over a ten-year planning horizon (2019 to 2028). This Study was undertaken by Hydro in contemplation of its interconnection to the North American grid. As part of this Study, stakeholder consultations were conducted with Newfoundland Power, Hydro's Industrial Customers, the Consumer Advocate and provincial electricity customers.

The Network Additions Policy is proposed to be used to determine the contribution requirements[13] from customers on the Labrador Interconnected System related to (i) transmission system extensions to

[8] Orders Nos. P.U. 16(2014) and P.U. 53(2014), respectively.
[9] Announced by the Government of Newfoundland and Labrador on April 15, 2019. Expressions of Interest can be found at https://www.gpa.gov.nl.ca/gs/report/TenderGS.asp?conRFQ=EOIENERGY.
[10] Filed with the Board on October 31, 2018.
[11] Filed with the Board on November 16, 2018.
[12] Filed with the Board on December 14, 2018.
[13] The term "contribution requirements" typically refers to upfront project costs payments to be made by those customers that are deemed to have caused a project to be undertaken.

connect new customers or non-utility generators and (ii) demand requirement requests from customers that, immediately or over time, may contribute to transmission network extensions or upgrades.

All three reports are currently before the Board as part of regulatory review processes and reflect Hydro's integrated resource planning efforts.

Capital Budget Filing Thresholds

Hydro supports the modification of the capital budget filing thresholds as currently defined in the *Public Utilities Act*. Under subsection 41(3) of that Act, approval of the Board is required before a utility acquires property or constructs a project where its cost exceeds $50,000 or, in the case of leased property, exceeds $5000 in a year of the lease. These limits have not been updated in the Act since 1978. Since that time, due to inflation, costs associated with capital projects have obviously increased substantially such that even minor capital projects are now captured by this provision. This results in Hydro having to make a number of supplemental capital applications to the Board throughout the year, in addition to its annual capital budget application. Increasing the capital budget filing threshold will support more efficient regulatory process and be more reflective of major capital project costs in today's operating environment.

Appropriate Balance to Rural Subsidy

The purpose of the Rural Deficit Subsidy is to provide affordable electricity to rural customers served directly by Hydro. This subsidy is funded through the recovery of costs from customers served by Newfoundland Power and Hydro's Labrador Interconnected System. It is well recognized and understood that the rates paid by Hydro's rural customers on the Interconnected Island System and Hydro's customers served from isolated electrical systems on the Island and Labrador recover only a portion of the costs of providing electrical service to those customers. This has remained true since electrification of the rural parts of the province. Prior to 1989, the shortfall between costs pf providing rural service and the rates collected from those customers was paid by the provincial government. In 1989, a policy and legislative change resulted in the rural deficit being funded by ratepayers instead of taxpayers. The Board held a Rural Rates study to consider this issue and reported to the Provincial Government on the matter in 1995. In its Report to the Lieutenant-Governor in Council on July 12, 1996 the Board outlined the estimated impact of various scenarios on the rural deficit and recommended that Island Interconnected rates be applied in the Labrador Straits area. Government accepted the recommendations of the Board's Report.

In 2007, the Government of Newfoundland and Labrador announced the Northern Strategic Plan, which included a rebate for residential customers served from Hydro's Isolated Systems in Labrador and on the L'Anse au Loup System. The Northern Strategic Plan provides funding to Hydro to further subsidize customers' rates on the Labrador Isolated and L'Anse au Loup systems to the level of rates on the Labrador Interconnected system (where rates are lower than those paid by Newfoundland Power's customers) for the Lifeline Block[14] of electricity consumption. Residential customers on the Labrador

[14] The Lifeline Block provides an allotment of electricity, which ranges seasonally from 700 to 1,000 kilowatt hours per month, for basic needs, such as lighting, cooking and hot water heating.

Isolated and L'Anse au Loup systems would otherwise pay the same rates as Newfoundland Power customers for this consumption.

Management of the Rural Deficit Subsidy is critical, but also challenging. Through its 2013 General Rate Application, Hydro outlined concerns related to the Northern Strategic Plan subsidy in its 2013 General Rate Application (Refer to Attachment 2 to this document, 2013 General Rate Application, Request for Information ("RFI") response LWHN-NLH-023). Hydro continues to provide annual updates on the management of the rural deficit, specifically its conservation and demand management efforts to limit demand and energy growth on Newfoundland and Labrador's isolated systems. Earlier in 2019, Hydro formed an internal working group focused on the management of the Rural Deficit Subsidy.

Timely Rate Review Processes

Rate reviews are occurring with more regular frequency since 2013. Hydro filed a subsequent General Rate Application in 2017 and, as part of its 2017 General Rate Application ("GRA") Order, has been ordered to file its next GRA no later than September 30, 2020. Board practice now reflects GRA Orders which provide direction on the timing of rate reviews. The duration of Hydro's recent 2017 GRA extended beyond what was originally anticipated. There were a number of factors which contributed to this including re-filings related to changes in Hydro's forecast supply costs, delayed appointment of a Board Commissioner, as well as an extended scope of authority placed on the Board (i.e., energy and insurance regulation) which contributed to a heavy regulatory calendar.

The use of interim rates in Newfoundland and Labrador helps to mitigate the risk of significant rate changes between GRA proceedings, while also providing a reasonable opportunity for cost recovery by the utility. Interim rates are used by both Hydro and Newfoundland Power and are commonplace in utility regulation.

The Board and parties use settlement agreements as part of proceedings to enhance regulatory efficiency. Three settlement agreements were attained in Hydro's 2017 GRA. Hydro believes there is opportunity to enhance the use of issues listings to refine the scope of inquiry and to define the subject matter of Intervenors' participation. Issues listings could be used more extensively and (i) earlier in proceedings (i.e., prior to the RFI process) and (ii) to narrow the focus of hearings.