

**NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

AN ORDER OF THE BOARD

NO. P.U. 35(2017)

1 **IN THE MATTER OF** the *Electrical Power*
2 *Control Act, 1994*, SNL 1994, Chapter E-5.1
3 (the “*EPCA*”) and the *Public Utilities Act*, RSNL
4 1990, Chapter P-47 (the “*Act*”), as amended,
5 and regulations thereunder; and
6

7 **IN THE MATTER OF** a general rate
8 application by Newfoundland and Labrador
9 Hydro to establish customer electricity rates
10 for 2018 and 2019; and
11

12 **IN THE MATTER OF** a submission filed by
13 the Labrador Interconnected Group requesting
14 an order of the Board directing Newfoundland
15 and Labrador Hydro to respond to certain
16 requests for information.
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18

19 **Background**
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21 On September 25, 2017 the Labrador Interconnected Group (Labrador City, Wabush, Happy
22 Valley-Goose Bay and Sheshatshiu Innu First Nation) filed requests for information (RFIs) LAB-
23 NLH-001 through LAB-NLH-051.
24

25 On October 6, 2017 Newfoundland and Labrador Hydro (“Hydro”) advised that it would not
26 provide responses to LAB-NLH-004, 005, 007 to 009, 016, 018, 021, 022, and 036 to 040 filed by
27 the Labrador Interconnected Group unless so ordered by the Board.
28

29 On October 10, 2017 the Consumer Advocate submitted that the Labrador Interconnected Group’s
30 RFIs are well considered, the responses should provide relevant evidence and that there are issues
31 related to procedural fairness, due process and disclosure.
32

33 On October 11, 2017 the Labrador Interconnected Group requested that the Board order Hydro to
34 answer the RFIs.¹
35

36 On October 13, 2017 the Board provided the parties to the general rate application the opportunity
37 to comment on Hydro’s submission.

¹ The Labrador Interconnected Group clarified that the information sought in LAB-NLH-018 had been provided.

1 On October 13, 2017 the Industrial Customer Group (Corner Brook Pulp and Paper Limited,
2 NARL Refining LP and Vale Newfoundland and Labrador Limited) advised that it would not be
3 making any submissions.

4
5 On October 17, 2017 Newfoundland Power advised that it would not be making any comments.
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7 On October 17, 2017 the Consumer Advocate filed further comments in support of the Labrador
8 Interconnected Group's submission.

9
10 On October 19, 2017 Hydro filed further comments.

11 12 **Submissions**

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14 Hydro advised that it would not provide responses to LAB-NLH-004, 005, 007 to 009, 016, 018,
15 021, 022, and 036 to 040 on the basis that these RFIs are outside the scope of the Labrador
16 Interconnected Group's intervention or are not relevant to the proceeding. In particular Hydro
17 argued that LAB-NLH-004, 005, 007 to 009, 021, 022, 036, 038, and 039 are not relevant to the
18 Labrador Interconnected Group's intervention as they relate to the Island Interconnected system.
19 In relation to LAB-NLH-016, 018, 037, and 040 Hydro argued that the requested information is
20 not relevant to the proceeding and will not assist the Board or the parties understanding of the
21 issues. Hydro further submitted that LAB-NLH-016 will not affect the rates to be charged to those
22 represented by the Labrador Interconnected Group and, in relation to LAB-NLH-018, the record
23 should not be enlarged beyond those documents that will assist the Board with respect to the issues
24 that are properly before it. Hydro submitted that issues raised in LAB-NLH-40, specifically the
25 setting of the transmission tariffs for the Maritime Link, the Labrador Island Link and the Labrador
26 Transmission Assets, will be addressed in a separate proceeding before the Board.

27
28 In its submission the Labrador Interconnected Group expressed the view that Hydro's objection to
29 the RFIs misunderstands the scope of their intervention as well as the factors that drive rates for
30 Labrador Interconnected customers. The group argued that the questions relating to the Off-Island
31 Power Purchases Deferral Account are squarely within the scope of its intervention as the
32 information would enable them to participate in the debate about fair and reasonable ways to
33 attribute the costs and savings arising from off-island purchases. Secondly the Labrador
34 Interconnected Group argued that the cost of service to Island Interconnected customers is relevant
35 to Labrador Interconnected customers since rural rates in Labrador are tied to Island
36 Interconnected rates and because a portion of the rural deficit is paid by customers on the Labrador
37 Interconnected system. The Labrador Interconnected Group pointed out that the impact of the rural
38 deficit subsidy on Labrador Interconnected rates is significant and as of Hydro's last general rate
39 application adds about 15% to the bill of every Labrador Interconnected domestic ratepayer.

40
41 In relation to LAB-NLH-016 the Labrador Interconnected Group argued that the Transmission
42 Funding Agreement and the Muskrat Falls Power Purchase Agreement are relevant to both the
43 magnitude and allocation of the rural deficit as, according to the general rate application, the
44 associated transmission assets could be used to supply the Island Interconnected customers by
45 2018 and commissioning period energy could be available from Muskrat Falls Generating Station
46 by 2020.

1 In relation to LAB-NLH-037 the Labrador Interconnected Group argued that the treatment of
2 capital costs of the Labrador Island Link and the Labrador Transmission assets is relevant to the
3 cost of serving Island Interconnected customers and to the savings arising from avoided Holyrood
4 production and are therefore relevant to the magnitude and allocation of the rural deficit, as well
5 as to the fair apportionment of savings of avoided Holyrood production.
6

7 In relation to LAB-NLH-040 the Labrador Interconnected Group argued that information on the
8 treatment of the costs of using the Maritime Link and the process that will be followed to set these
9 costs is relevant as the Maritime Link could be used to serve Island Interconnected customers by
10 late 2017 and the cost of serving Island Interconnected customers is relevant to the magnitude and
11 allocation of the rural deficit.
12

13 The Consumer Advocate supported the submission of the Labrador Interconnected Group and
14 argued that the RFIs comply with the regulations with respect to information requests. According
15 to the Consumer Advocate the Labrador Interconnected Group is entitled to responses to the RFIs
16 and these responses will contribute to the body of evidence and would be helpful in developing
17 the Consumer Advocate's case. The Consumer Advocate submitted that the RFIs seek evidence
18 that touches upon the rural deficit and the Off-Island Power Purchases Deferral Account which are
19 issues that impact the Labrador Interconnected Group's interests.
20

21 In reply Hydro cited good utility practice and submitted that, since the costs incurred by Hydro are
22 borne by ratepayers, intervenors should make all reasonable efforts to ensure that their
23 participation is efficient and focused on relevant and material issues. Hydro provided the Ontario
24 Energy Board's Practice Direction on Cost Awards, which directs that parties' intervention should
25 not be unduly repetitive and remain focused on material issues, as guidance for the Board on sound
26 public utility practice.
27

28 With respect to the argument of the Labrador Interconnected Group, Hydro acknowledged that
29 they are technically correct that every cost or change on the Island Interconnected system has the
30 potential to impact customers on the Labrador Interconnected system through the rural deficit
31 allocation. However Hydro submitted that the impact on Labrador Interconnected customers is in
32 many cases not material. Hydro further acknowledged that many of the RFIs at issue are relevant
33 to the customers on the Island Interconnected system, and noted that this same position was
34 expressed by the Consumer Advocate in his submission. Hydro offered that it would take no issue
35 with responding to these questions through the Consumer Advocate's second round of RFIs.
36

37 Hydro concluded that the RFIs are either outside the scope of Hydro's application or are not
38 material issues to the Labrador Interconnected Group's intervention and therefore should not be
39 responded to by Hydro.
40

41 **Board Findings**

42 Pursuant to section 14 of the regulations the Board may, for the purpose of a satisfactory
43 understanding of the matters to be considered, permit the filing of RFIs which are relevant to the
44 proceeding.² Regulation 15 requires the filing of a full and adequate response to such information
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² *NL Regulation 39/96* under the *Public Utilities Act*

1 requests. In Order No. P.U. 41(2014) addressing a motion for an order of the Board that certain
2 RFIs were outside of the scope of a proceeding the Board stated:

3
4 Effective regulation requires open and transparent processes which encourage full participation
5 of all interested persons. The issues before the Board are generally complex and technical and
6 may require the issuance of requests for information to enable a full and satisfactory
7 understanding of the matters to be considered by the Board. These requests for information
8 must be relevant and helpful to the proceeding to allow the Board to fulfill its mandate as set
9 out in legislation.³

10
11 The Board acknowledges that there may, at times, be a difference of opinion as to what information
12 will be relevant and helpful in a proceeding. The value or usefulness of certain information is often
13 difficult to assess in the absence of the production of the information. In these instances the Board
14 believes that taking an unduly restrictive approach to the information which should be provided
15 may be counterproductive. Undue focus on technical distinctions at the RFI stage may lead to
16 complications and wasted effort, and in particular may contribute to longer cross examinations as
17 parties continue to try to gather information during the hearing. The Board believes that effective
18 and efficient regulation is served by full disclosure of information which may be relevant early in
19 the process to allow for appropriate focus on relevant issues as the matter progresses.

20
21 In this case Hydro argued two grounds for its refusal to answer the RFIs posed by the Labrador
22 Interconnected Group. In the first instance Hydro argued that ten of the RFIs are outside the scope
23 of the Labrador Interconnected Group's intervention and, for all but three of these RFIs, Hydro
24 also stated that the subject matter of the questions will not impact customers on the Labrador
25 Interconnected System. Hydro subsequently acknowledged that all of these RFIs may be relevant
26 to the Labrador Interconnected Group's intervention but argued that the impact on Labrador
27 Interconnected customers is in many cases not material. The Board does not believe that it is
28 consistent with the goal of effective and efficient regulation to exclude otherwise relevant RFIs on
29 the basis that the requested information is outside of the scope of an intervention or on the basis
30 of materiality. The Board notes that the regulations provide that where the Board permits RFIs for
31 the purpose of a satisfactory understanding of the matters they must be relevant. The regulations
32 do not state that the RFI must be within the scope of an intervention or that there must be material
33 impacts on the party. Further the Board believes that it is not reasonable to expect that the
34 materiality of impacts on a customer can or should be evaluated at the RFI stage before the
35 information is provided. It is also not reasonable for Hydro to suggest that relevant questions from
36 one party would not be answered but would be answered if filed by another party. In the Board's
37 view a question which is issued for the purpose of a satisfactory understanding of the matters to
38 be considered and which may be relevant should be answered. The Board does not accept Hydro's
39 refusal to answer LAB-NLH-004, 005, 007 to 009, 021, 022, 036, 038, and 039 on the basis that
40 these RFIs are not relevant to the Labrador Interconnected Group's intervention and/or are not
41 material to Labrador Interconnected customers. Hydro will be required to answer these questions
42 to the extent they are relevant to the issues to be addressed in this proceeding.

43
44 In relation to the remaining questions Hydro argued that the requested information is not relevant
45 to the proceeding and would not assist the Board's or the parties' understanding of the issues. In
46 reply the Labrador Interconnected Group argued that it asked questions related to Muskrat Falls
47 infrastructure and off-island purchases to participate in the debate that will impact Labrador

³ Order No. P.U. 41(2014), pages 3-4

1 Interconnected customers, including as relates to the rural deficit. The Board notes that this general
2 rate application proposes rates for 2018 and 2019 and, because the Muskrat Falls generating
3 facility is not scheduled for completion before 2020, the resulting impact on customer rates is not
4 the subject of this proceeding. However, based on the available information, there may be some
5 aspects of the Muskrat Falls Project that may have an impact in 2018 and 2019 given Hydro's
6 proposals related to the Off-Island Purchases Deferral Account. The Board believes that those
7 issues which may have an impact in 2018 and 2019 are relevant to this proceeding and may be the
8 subject of information requests and further process. In particular:

- 9
- 10 i. LAB-NLH-016 requests a description of and the documents associated with both the
11 Transmission Funding Agreement and the Muskrat Falls Power Purchase Agreement. In
12 the Board's view this question, as framed, is too broad and is not limited to information
13 which may be relevant in this proceeding,
14
 - 15 ii. LAB-NLH-037 requests information related to costs associated with Hydro's use of
16 transmission assets in advance of the commissioning of Muskrat Falls and therefore
17 aspects of this question may be relevant to the issues to be addressed in this proceeding.
18
 - 19 iii. LAB-NLH-040 requests information related to transmission tariffs associated with off-
20 island power purchases in advance of the commissioning of Muskrat Falls and therefore
21 may be relevant to the issues to be addressed in this proceeding.
22

23 In conclusion the Board agrees that, with the exception of LAB-NLH-016, the information
24 requested by the Labrador Interconnected Group should be provided by Hydro to the extent that it
25 is relevant to the issues to be addressed in this proceeding. Hydro will be required to provide
26 answers to LAB-NLH-004, 005, 007 to 009, 021, 022, and 036 to 040. Hydro will not be required
27 to answer LAB-NLH-016.
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30 **IT IS THEREFORE ORDERED THAT:**

- 31
- 32 1. Hydro shall provide a response to the following Requests for Information in accordance with
33 the findings of the Board: LAB-NLH-004, LAB-NLH-005, LAB-NLH-007, LAB-NLH-008,
34 LAB-NLH-009, LAB-NLH-021, LAB-NLH-022, LAB-NLH-036, LAB-NLH-037, LAB-
35 NLH-038, LAB-NLH-039, and LAB-NLH-040.
36
- 37 2. Hydro will not be required to provide a response to LAB-NLH-016.
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- 39 3. Hydro shall pay all expenses of the Board arising from this Application.

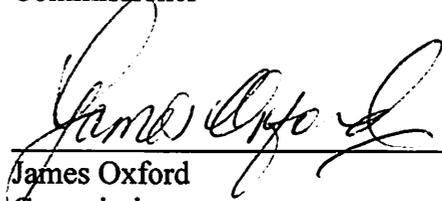
DATED at St. John's, Newfoundland and Labrador, this 3rd day of November, 2017.



Darlene Whalen, P. Eng.
Vice-Chair



~~Dwanda Newman, LL.B.
Commissioner~~



James Oxford
Commissioner



Cheryl Blundon
Board Secretary