

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

AN ORDER OF THE BOARD

NO. P.U. 29(2018)

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*,
4 RSNL 1990, Chapter P-47 (the “*Act*”), as
5 amended, and regulations thereunder; and
6

7 **IN THE MATTER OF** an application by
8 Newfoundland and Labrador Hydro for
9 approval to include in its 2016 and 2017
10 rate base certain expenses in excess of the
11 approved 2016 and 2017 Allowance for
12 Unforeseen Items, pursuant section 78 of
13 the *Act*.
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16 **Background**

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18 In 2016 and 2017 Newfoundland and Labrador Hydro (“Hydro”) incurred capital expenditures of
19 an unforeseen nature that exceeded the \$1,000,000 Allowance for Unforeseen Items approved in
20 its annual capital budget.¹
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22 In Order Nos. P.U. 8(2016)² and P.U. 48(2016)³ the Board approved the addition of supplementary
23 amounts to the 2016 Allowance for Unforeseen Items in relation to expenses associated with the
24 following:
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- 26 (i) T5 Tap Changer refurbishment at Western Avalon Terminal Station;
27 (ii) boiler tube replacements on Holyrood Thermal Generating Station Units 1 and 2;
28 (iii) transmission line rerouting of TL 259 at Sally’s Cove;
29 (iv) Bay d’Espoir access roads refurbishment; and
30 (v) Bay d’Espoir Penstock 1 refurbishment.

¹ Order Nos. P.U. 33(2015) and P.U. 45(2016).

² Order No. P.U. 8(2016) dealt with the T5 Tap Changer refurbishment at Western Avalon Terminal Station, boiler tube replacements on Holyrood Thermal Generating Station Units 1 and 2 and transmission line rerouting of TL 259 at Sally’s Cove. The total variance for these projects was \$3,355,062.

³ Order No. P.U. 48(2016) dealt with the Bay d’Espoir access roads refurbishment and Penstock 1 refurbishment. The total variance for these projects was \$8,311,825.

1 The Board also ordered that Hydro establish a separate account to record the variance above the
2 approved \$1,000,000 Allowance for Unforeseen Items associated with these projects, with
3 recovery of the variance to be addressed in a subsequent order of the Board following a further
4 application by Hydro.

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6 In 2017 Hydro incurred expenses in excess of the approved Allowance for Unforeseen Items
7 related to the Bay d'Espoir Penstock 1 emergency refurbishment. This project began late in the
8 year and was not completed until December 15, 2017. Hydro did not apply for the addition of a
9 supplementary amount to the approved 2017 Allowance for Unforeseen Items.

10 11 **Application**

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13 On June 14, 2018 Hydro filed an application with the Board (the "Application") requesting
14 approval to include:

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16 (i) in its 2016 rate base, the 2016 variance associated with the Western Avalon
17 Terminal Station T5 Tap Changer, the Holyrood Thermal Generating Station Units
18 1 and 2 boiler tube replacements, the Sally's Cove transmission line rerouting, and
19 the Bay d'Espoir Penstock 1 refurbishment,⁴ in the amount of \$8,944,288; and
20 (ii) in its 2017 rate base, the 2017 variance associated with the Bay d'Espoir Penstock
21 1 emergency refurbishment, in the amount of \$3,605,744.

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23 The Application stated that the final amount of the 2016 and 2017 rate base would be determined
24 through a further application to the Board.

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26 The Application was copied to: Newfoundland Power Inc. ("Newfoundland Power"); the
27 Consumer Advocate, Dennis Browne, Q.C.; Corner Brook Pulp and Paper Limited, NARL
28 Refining Limited Partnership and Vale Newfoundland & Labrador Limited (the "Industrial
29 Customer Group"); Teck Resources Limited and Praxair Canada Inc.

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31 Requests for information were issued by the Board and Newfoundland Power which were
32 answered by Hydro on July 16, 2018.

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34 On July 23, 2018 Newfoundland Power filed comments. Hydro filed a reply submission on July
35 27, 2018. No other comments were received by the Board.

36 37 **Submissions**

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39 Newfoundland Power objected to the inclusion in Hydro's rate base of capital expenditures in the
40 amount of \$1,293,141 related to the T5 Tap Changer repair at the Western Avalon Terminal
41 Station. Newfoundland Power submitted that the T5 Tap Changer failed due to overvoltage
42 conditions caused by the improper operation of a capacitor bank breaker controller at the Come
43 By Chance Terminal Station, a Nalcor-owned asset, operated and maintained by Hydro, and not

⁴ Hydro advised that it will make a separate application in relation to the variance associated with respect to the Bay d'Espoir Access Roads project, in the amount of \$2,722,599.

1 subject to Board oversight. According to Newfoundland Power inclusion of these expenditures in
2 rate base would effectively result in costs related to damage caused by an unregulated, Nalcor-
3 owned asset being recovered from Newfoundland Power's customers. Newfoundland Power
4 submitted that it is not clear why costs associated with damage caused by the improper operation
5 of an asset owned by a non-regulated affiliate of Hydro should be recovered from customers of
6 Newfoundland Power.

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8 Hydro, in its reply, submitted that the capacitor bank breaker did not function properly due to
9 equipment failure, as opposed to improper operation in the context suggested by Newfoundland
10 Power. Hydro explained that the tap changer is a common asset that provides benefit to the entire
11 Island Interconnected system. Hydro submitted that absent a proven allegation of negligence or a
12 finding of imprudence, the cause of the failure is not relevant to the recovery of the costs of repair.
13 Hydro further submitted that it would be a significant departure from standard practice for recovery
14 of repair costs for a regulated asset to be borne by a third party and not the regulated customer base
15 served by the common asset where a contributing cause is unforeseen failure of the third party
16 assets. Hydro submitted that had the tap changer damage been a result of the negligent operation
17 of the capacitor bank owned by Nalcor the capital expenditures would not be properly included in
18 Hydro's rate base. According to Hydro there is no evidence that the failure of the capacitor bank,
19 which resulted in damage to the tap changer was caused by negligent operation of the third party
20 asset.

21 22 **Board Findings**

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24 The Board is satisfied that the 2016 variances above the Allowance for Unforeseen Items approved
25 for 2016 associated with the Holyrood Thermal Generating Station Units 1 and 2 boiler tube
26 replacements, the Sally's Cove transmission line rerouting, and the Bay d'Espoir Penstock 1
27 refurbishment,⁵ in the amount of \$7,651,147, should be included in Hydro's 2016 rate base. The
28 Board also finds that the 2017 variances above the approved 2017 Allowance for Unforeseen Items
29 associated with the Bay d'Espoir Penstock 1 emergency refurbishment, in the amount of
30 \$3,605,744 should be included in Hydro's 2017 rate base.

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32 The Board is not satisfied that approval should be granted at this time for Hydro to include the
33 2016 variance associated with the Western Avalon Terminal Station T5 Tap Changer, in the
34 amount of \$1,293,141, in its 2016 rate base. According to the evidence the fault that caused the
35 failure of the tap changer was initiated by the improper operation of a CBC capacitor bank breaker
36 controller. Based on the information filed this breaker and similar breakers on the capacitor bank
37 were not consistently performing appropriately.⁶ While Hydro submitted that the damage to the
38 tap changer was not the result of negligence and therefore the variance is properly included in its
39 rate base, the evidence does not show the cause for this malfunction and does not address whether
40 Hydro took steps to ensure that the malfunction was not the result of negligence. In addition the
41 evidence does not address Nalcor and Hydro's contractual responsibilities in relation to indemnity
42 for property damage caused by these non-regulated assets. The Board acknowledges
43 Newfoundland Power's concern in relation to whether its customers should be responsible for

⁵ Hydro advised that it will make a separate application in relation to the variance associated with respect to the Bay d'Espoir Access Roads project, in the amount of \$2,722,599.

⁶ Application, Appendix C2, page 9 of 167, *Western Avalon Terminal Station (WAV) – T5 Tap Changer Report*.

1 damages resulting from the failure of a non-regulated asset. While Hydro argued that if these
 2 expenses are not included in Hydro's rate base it would be a significant departure from standard
 3 practice, Hydro did not provide evidence setting out industry and historical practice in analogous
 4 circumstances. The Board finds that the evidence is insufficient to demonstrate that the 2016
 5 variance associated with the Western Avalon Terminal Station T5 Tap Changer should be included
 6 in Hydro's 2016 rate base at this time. Hydro may file a subsequent application with additional
 7 supporting information.

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 10 **IT IS THEREFORE ORDERED THAT:**

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 12 1. The application to include in Hydro's 2016 rate base the 2016 variance to the Allowance for
 13 Unforeseen Items associated with the Holyrood Thermal Generating Station Units 1 and 2
 14 boiler tube replacements, the Sally's Cove transmission line rerouting, and the Bay d'Espoir
 15 Penstock 1 refurbishment, in the amount of \$7,651,147 is approved.
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 17 2. The application to include in Hydro's 2017 rate base the 2017 variance to the Allowance for
 18 Unforeseen Items associated with the Bay d'Espoir Penstock 1 emergency refurbishment, in
 19 the amount of \$3,605,744 is approved.

DATED at St. John's, Newfoundland and Labrador, this 21st day of August, 2018.


 Dwanda Newman, LL.B.
 Vice-Chair


 James Oxford
 Commissioner


 Cheryl Blundon
 Board Secretary