

May 9, 2025

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

Attention: Jo-Anne Galarneau
Executive Director and Board Secretary

Re: Application for Capital Expenditures for the Purchase and Installation of Bay d'Espoir Unit 8 and Avalon Combustion Turbine – Confidential Information Inquiry – Hydro's Reply

Newfoundland and Labrador Hydro's ("Hydro") recently filed application for capital expenditures for the purchase and installation of Bay d'Espoir Unit 8 ("BDE Unit 8") and the Avalon combustion turbine ("Avalon CT") (collectively, "2025 Build Application") noted that the information provided as evidence contained commercially sensitive information. Hydro indicated that if the commercially sensitive information were made public, it would undermine Hydro's ability to obtain goods and services at the lowest possible cost and therefore negatively impact Hydro's customers. As such, Hydro provided to the Board of Commissioners of Public Utilities ("Board") a version of the application in which the commercially sensitive information was redacted in full and requested that that version be utilized for posting to the Board's website. A complete unredacted version was also provided to the Board for its review, and to the parties upon completion of non-disclosure agreements.

In the Board's correspondence to Hydro on April 11, 2025, the Board advised that its general policy is that all information filed with the Board should be available for all parties and the public to review to ensure that proceedings are open, transparent, and accessible. However, the Board acknowledged that some information may be of a confidential nature. The Board stated that it balances the need to protect confidential information with the objective of ensuring transparency. With respect to the 2025 Build Application, the Board noted that it had concerns with the extent of the information that had been redacted and was unclear as to the reasons for the confidentiality of each piece of information.

Hydro has reviewed the 2025 Build Application, in particular the documents that were redacted in the original filing. Hydro submits that a substantial amount of the information previously identified as commercially sensitive remains so, and requests that it remain confidential; however, in the interests of meeting the principles of being open, transparent, and accessible, Hydro has unredacted portions that were previously not released. Hydro's original redactions of entire documents were made in an abundance of caution during the initial review process to ensure that the commercially sensitive material contained throughout was not released; however, upon further examination, Hydro has identified portions that do not present risk.¹

With respect to the information that Hydro maintains is confidential due to commercial sensitivity, Hydro's basis for this position is set out in the remainder of this response. Hydro provides a summary of

¹ Some of the smaller attachments to the Basis of Estimate and the Basis of Schedule remain redacted in full as they are primarily made up of commercially sensitive information. For those documents, the confidentiality has been noted on the cover sheet, and the documents themselves have been removed in the redacted version of the filing.

how utility regulators in Canada approach requests for confidentiality of certain filings, which Hydro has used as a barometer in assessing the reasonableness of its requests. Hydro also provides the justification for the specific groups/types of information that have been identified as commercially sensitive and requiring confidentiality.

Canadian Practice

Canadian utility regulators share many of the same or similar considerations when evaluating whether information can and should be maintained as confidential throughout the review process. Hydro has based its review and analysis of the confidentiality of the information in the 2025 Build Application on the generally consistent positions in those jurisdictions.

The common circumstances under which information is considered to reasonably be maintained as confidential are when disclosure of the information could be reasonably expected to:

- i. Result in undue material financial loss or gain to a person or party directly affected by the hearing or other proceeding; or
- ii. Cause significant harm or prejudice to a party's competitive or negotiating position; or
- iii. Interfere with the contractual obligations of a party.

Additional scenarios that give rise to confidentiality include when:

- i. The information is personal, financial, commercial, scientific, labour relations or technical in nature and has been consistently treated as confidential; or
- ii. The document may disclose matters involving public security or cybersecurity

The regulators in the various jurisdictions consider the above when determining if the interest in confidentiality outweighs the public interest in the disclosure.²

As an example, in a 2014 proceeding before the Nova Scotia Utility and Review Board ("NSUARB"), Nova Scotia Power Incorporated ("NS Power" or "NSPI") requested that certain information relating to an application for approximately \$93 million in capital expenditures be maintained by the NSUARB as confidential. NS Power stated:

The more a supplier is aware of NS Power's specific requirements and competitors' bids, the better their ability to obtain the highest price, reduce competition and ultimately increase the cost for NS Power and its customers. The cost of such transparency is not always immediately evident. Information from regulatory proceedings can provide competitive advantages over other suppliers, and that could be advantageous in bidding or negotiation. Higher prices, or avoidable contractual constraints, will result in unnecessary higher costs to customers.

NS Power strives to keep the terms and conditions of suppliers' pricing and arrangements confidential from their other customers or potential competitors. This

² British Columbia Utilities Commission, Rules of Practice and Procedure, Order G-296-24; Manitoba Public Utilities Board (14 March 2007), Rules of Practice and Procedure; Ontario Energy Board (17 December 2021), Practice Direction on Confidentiality Filings; *Canadian Energy Regulator Act*, SC 2019, c. 28; Yukon Utilities Board (October 17, 2012), Rules of Practice; *Nova Scotia Board Regulatory Rules*, NS Reg. 235/2005, amended NS Reg. 90/2021.

prevents competitors from using their information to gain a competitive advantage. This is equally true for NS Power, which desires to protect its ability to acquire capital services and equipment on the most competitive terms. Those "best" terms may not be available if there is a risk that they will be disclosed to the customers or competitors of the supplier.

Since NS Power customer rates are cost-based the maintenance of confidentiality for this item is to the direct benefit of customers.³

The NSUARB approved NS Power's request, noting:

In the Board's opinion, the details of such costs are commercial information, which, if publicly revealed, could harm ratepayers. It is important that NSPI obtain the best prices for materials and contracts so that projects can be undertaken at the lowest cost. Thus, the rate base is maintained at an amount which is no higher than necessary in order to provide safe and reliable electricity to ratepayers. Should suppliers have access to this information through a Board proceeding, the Board agrees with NSPI that "competitive advantages" may be gained, which would ultimately result in higher costs to ratepayers.⁴

In a separate matter regarding the options for the Annapolis Tidal Generating Station, NS Power requested confidentiality over certain documents based on the premise that confidentiality was required to protect customers by mitigating the risk that competitors or vendors could access proprietary or commercially sensitive information. NS Power noted that the more information suppliers have about NS Power's costs, the less competitive the bidding process would become. The NSUARB approved NS Power's confidentiality request.⁵

In the decision, the NSUARB noted that their rules require that "*. . . the desirability of avoiding disclosure . . . outweighs the desirability of adhering to the principle that documents be available to the public.*" The NSUARB stated that there is a significant public interest in not having the regulatory process create undue costs to NS Power and, by extension, its customers. The NSUARB acknowledged that while there must be a balance between the transparency of a process and protecting against a demonstrable risk of harm, there is a significant public interest in not having the regulatory process itself create undue costs to NS Power and, by extension, its consumers.⁶

2025 Build Application

The Board identified certain areas of the 2025 Build Application where it had concerns over the extent of the redactions, including:

- The planned project budget rate impact analysis;
- The project budget breakdown;
- Portions of the basis of estimate; and
- Portions of the critical path schedule.

³ Nova Scotia Power Incorporated (Re), 2014 NSUARB 5 (CanLII), <https://canlii.ca/t/g2lzh>, para 12.

⁴ *Supra*, f.n. 3, para 28.

⁵ Nova Scotia Power Incorporated (Re) 2022 NSUARB 2 <https://nserbt.ca/sites/default/files/M10013%20-%20Decision.pdf>.

⁶ *Supra*, f.n. 5, para 114.

These areas are included in the specific explanations below. Other information contained in the originally redacted documentation, not included in the categories discussed below, has been unredacted for transparency as requested by the Board.

Planned Project Budget Rate Impact Analysis

The Planned Project Budget Rate Impact Analysis summarizes the impact on Hydro's revenue requirement as a result of the Planned Project Budget. The Planned Project Budget figure included in this analysis is considered confidential and commercially sensitive for the reasons noted in the below sections of this letter. By extension, Hydro considers the associated rate impact confidential as well, as disclosure of the revenue requirement impact combined with Hydro's assumptions could enable calculation and/or extrapolation of the Planned Project Budget figure.

Planned Project Budget Breakdown

The Planned Project Budget Breakdown summarizes Hydro's budgeted cost into components. The confidential and commercially sensitive nature of these components is detailed below:

Base Cost Estimate

Base Cost Estimates, broken down by construction work package, are considered confidential and commercially sensitive, particularly during the early stages of the procurement process. Disclosing Hydro's forecasted cost for specific construction work packages could influence the pricing submitted by proponents. Further, knowledge of the budget available within a construction work package could incentivize contractors to seek claims to access known budget availability.

For projects with a low number of construction work packages, disclosing the total Base Cost Estimate would provide indicative information on the budget available in a construction work package and could negatively influence the cost of a project.

Contingencies and Management Reserves

Contingency is generally defined as a provision made for variations to the basis of an estimate of time or cost that are likely to occur but cannot be specifically identified at the time the estimate is prepared and/or the commitment amount is determined.

Management Reserve is generally defined as a provision held outside the baseline budget and is reserved for unforeseen costs that are within the project scope. It is usually available to senior management to address strategic risks that materialize outside of Hydro's control.

The amount of Contingency and Management Reserve is considered confidential and commercially sensitive. Disclosure of this information could impact the procurement process by revealing Hydro's estimate of the value of work and Hydro's assessment of the risk around project execution, both of which could influence bid pricing. Further, knowledge of the existence of Contingencies and Management Reserves can influence contractors to be more claims-focused and attempt to access these budget reserves, thereby increasing cost.

Escalation and Interest During Construction

Escalation and Interest During Construction, in itself, is not commercially sensitive; however, owners would not normally provide an indication to the marketplace of the forecasted escalation assumptions during a bid phase. Additionally, providing the marketplace with this information may make it easier to

extrapolate the budget that remains for other scopes of work or contingencies and management reserves, thereby increasing the risks noted above.

Authorized Budget

Hydro determined the Authorized Budget as having limited sensitivity due to the challenges around the ability of proponents and contractors to extrapolate the budgeted value of work for specific construction work packages, Contingencies and Management Reserves. This risk is higher for projects with fewer construction work packages, as the ability to extrapolate the construction work package budgeted cost becomes easier. However, in the interests of balancing the objectives of transparency and openness and the need to protect information that could have detrimental impacts, Hydro has not requested that the Authorized Budget be considered confidential.

Basis of Estimate

The Basis of Estimate for a Major Project outlines the key inputs, assumptions, and exclusions used by Hydro to estimate not only the Base Cost Estimate, but also Contingencies and Management Reserves. This information, contained throughout the Basis for Estimate documents for both BDE Unit 8 and the Avalon CT, is considered confidential and commercially sensitive and these aspects of the Basis of Estimate continue to be redacted in the documentation. If the information were publicly available, it would provide insight into Hydro's assumptions, methodologies, and data used in determining a cost estimate and could influence proponents' bid pricing as well as contractors' claims. Disclosing Hydro's pricing strategies, cost structures, and internal processes could significantly impact bid pricing and claims.

Escalation Factors

The Escalation Factors provided in the Basis of Estimate for both projects are information purchased from the Conference Board of Canada, for limited purposes, and are not generally publicly available. Additionally, the escalation factors would provide insight into elements of the project estimate that contractors could use to their advantage in bidding and negotiations.

Basis of Schedule and Critical Path Schedule

The Basis of Schedule documents the basis and assumptions underpinning the project schedules for each of the proposed projects. That document and the Project Control Schedule are meant to be complementary and read together. The Basis of Schedule documents the current execution intent, sequence, assumptions, risks, and opportunities developed during the Front-End Planning phase of the project, and these aspects of the Basis of Schedule continue to be redacted in the documentation.

The Critical Path Schedule for a Major Project outlines the control schedule as well as various assumptions made by Hydro in developing the control schedule and planning the project execution strategy. It specifically outlines the critical path work and any schedule contingency that Hydro may have reserved for project execution.

The information described above would be considered confidential and commercially sensitive for reasons including the following:

- Having knowledge of Hydro's detailed assumptions around work execution timelines can negatively influence approaches to work and timeline optimization during the competitive

bidding process, which can negatively influence the ability to realize opportunities in cost and schedule for Hydro and, ultimately, the ratepayers.

- Contractor's knowledge of Hydro's schedule contingency may influence work performance and hinder Hydro's ability to apply delay claims against contractors.
- Contractor's knowledge of other scheduled work and critical path activities may provide them with leverage when negotiating with Hydro.

Conclusion

As was noted by NS Power in the reference above, Hydro's concern is that when a supplier gains access to specific information about a utility's requirements, it can enhance their ability to command higher prices, limit competitive pressure, and ultimately drive an increase in costs for the utility and its customers. While some of the information Hydro considers to be commercially sensitive may seem minor, it is the cumulative impact that can create a competitive advantage for some suppliers, potentially influencing future bidding strategies or negotiations. This may result in higher prices or restrictive contract terms, both of which lead to avoidable and unnecessary costs for customers.

Hydro's requests for confidentiality are intended to mitigate this risk, to ensure full and fair competition. Given that Hydro's customer rates are based on the utility's cost of service, maintaining confidentiality in these matters directly supports the best interests of its customers.

Hydro requests that the information identified in the attached documents be accepted as commercially sensitive and maintained as confidential in the Board's public filings. In line with the Board's direction, Hydro has updated the application to reflect the released information. As such, Hydro has updated both the confidential and redacted versions on its external website. Hydro asks that the Board utilize the updated redacted version for posting to its website.

Should you have any questions, please contact the undersigned.

Yours truly,

NEWFOUNDLAND AND LABRADOR HYDRO



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