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2026-04-02

**Newfoundland and Labrador Hydro**

Shirley Walsh

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Dear Madam:

**Re: Newfoundland and Labrador Hydro - 2025 Capital Budget Supplemental Application - Application for the Purchase and Installation of Bay d'Espoir Unit 8 and Avalon Combustion Turbine - Bates White Economic Consulting Expert Report - Phase Two - Confidential Information**

This is further to Hydro's letter, dated March 25, 2026, asking that the Board expand the scope of confidential treatment of information in the Bates White Report.<sup>1</sup>

The Board provided Hydro with a redacted version of the Bates White Report on February 11, 2026. Hydro filed another version of this report with additional proposed redactions on February 26, 2026. The Board advised on February 27, 2026 that it did not accept most of Hydro's additional redactions and granted Hydro's request for a further opportunity to provide comments.<sup>2</sup> Hydro provided its further comments on March 9, 2026 and, on March 19, 2026 the Board advised as to its determinations. Hydro has now asked that the Board again consider Hydro's claim and expand the scope of the information which is treated as confidential.

As set out in the Board's earlier correspondence the Board has accepted Hydro's claim with respect to detailed cost information, prospective schedule information and certain strategic risk information.<sup>3</sup> The Board did not accept Hydro's claim for confidential treatment of high-level information related to costs and risks, including the direct and indirect construction costs, contingency, escalation, IDC ("interest during construction") and management reserve. In making its determinations the Board reviewed each of Hydro's proposed redactions to determine whether the information was commercially sensitive and whether the release of the information is likely to: (i) cause undue financial harm; (ii) harm Hydro's competitive or negotiating position; or (iii) interfere with contractual negotiations. In addition, the Board assessed whether the public

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<sup>1</sup>The Bates White Report, dated February 3, 2026, includes the CAMS Report and the Gruner Report, as well as certain requests for Hydro to provide additional information.

<sup>2</sup> Newfoundland Power filed comments on March 3, 2026 and the Consumer Advocate filed comments on March 4, 2026.

<sup>3</sup> Board letters, February 27, 2026 and March 19, 2026.

interest in openness and transparency outweighed Hydro's interest in confidentiality in the circumstances.

The Board notes that Hydro's March 25, 2026 submission is not clear as to whether it is asking the Board to reconsider all of its determinations or just those specifically addressed in Hydro's letter. Hydro states:

While Hydro believes that all the information it had requested remain confidential presents a risk of financial harm, or harm to Hydro's competitive or negotiating position, and therefore harm to ratepayers, Hydro is most concerned with the release of contingency amounts, direct and indirect construction costs, escalation and interest during construction ("IDC"), and management reserve.<sup>4</sup>

Hydro's letter specifically addresses contingency and management reserve and cost subtotals, including IDC and escalation and provides additional comments on regulatory precedent.

In terms of the direct and indirect construction costs, Hydro does not offer any substantive new information or arguments. Hydro reiterates its previously expressed concerns, particularly that "Disclosure of direct and indirect cost subtotals narrows the envelope within which contractors price their work, reducing uncertainty that normally disciplines competitive bids."<sup>5</sup> The Board does not accept that a contractor could reasonably determine the redacted detailed costs based on the construction subtotals. As previously noted by the Board the direct construction costs include 38 distinct work packages for the Avalon Combustion Turbine and 21 packages for Bay d'Espoir Unit 8. The indirect construction costs also reflect a number of items including Hydro's own estimated costs which would make it difficult for contractors to infer budgeted amounts. In its latest submission, Hydro does not address how a contractor could infer individual budgeted amounts given that there are a number of items included in the subtotals.

Hydro suggests that the risk of reverse engineering detailed costs crystalizes when the subtotal information is combined with IDC assumptions, escalation factors, and project schedules. The Board notes that it has accepted Hydro's claim for confidential treatment of prospective schedule information. Hydro argues that IDC can be used to infer anticipated construction duration, cash flow curves and float and critical path sensitivity when combined with publicly known capital budgets or escalation assumptions. Further Hydro argues that disclosure of escalation subtotals or factors could signal how Hydro expects inflationary pressures to manifest and inform contractors how aggressively to price risk premiums. The Board notes that the subtotals reflect the total IDC and escalation amounts, not the underlying assumptions or factors and that Hydro has asked for confidential treatment of IDC assumptions and escalation factors in the Build Application. The Board believes that the release of the high-level cost information is important and that the risks associated with the release of the underlying IDC assumptions and escalation factors can be addressed when the Board makes its determinations in relation to these assumptions and factors.

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<sup>4</sup> Hydro letter, March 25, 2026, page 1.

<sup>5</sup> Hydro Further Submissions, March 25, 2026, page 2.

In terms of contingency and management reserve, Hydro again makes similar arguments to those it made in its previous correspondence. Hydro states that the contingency and management reserve “would reveal Hydro’s assessment of project risk and claim exposure; signal Hydro’s tolerance for risk realization; and provide a practical benchmark against which contractors may calibrate bids, claims strategies, and change order behavior.”<sup>6</sup> The Board notes that the contingency and management reserve subtotals reflect the overall risks and estimated reserves for the whole project. These subtotals do not set out the amounts associated with individual strategic risks. The Board has accepted that the estimated amounts associated individual strategic risks should be treated as confidential.<sup>7</sup> The subtotals also don’t set out the estimated amount of contingency or management reserve associated with the work packages which make up the project. It is difficult to see how an individual contractor hired for a particular aspect of the project could use this information in any substantive way in making bids or claims. As previously noted by the Board, contingency is a normal and expected part of capital budgets which until now has not been treated as confidential.

While Hydro argues that the release of contingency and management reserve would benefit contractors and harm Hydro, this potential harm must be weighed against the public interest in openness and transparency. Contingency and management reserve are significant issues in this matter. This is the first application for approval of capital expenditures where Hydro has proposed a management reserve.<sup>8</sup> As a result there are issues to be addressed in relation to whether a management reserve is appropriate in general and appropriate in this case, and, if so, how it should be calculated and whether the proposed amount is reasonable. The Board notes the magnitude of the proposed contingency and management reserve is an issue in this matter. The combined amount of the contingency and management reserve is, by itself, significantly larger than any other capital expenditure ever approved by the Board for either Hydro or Newfoundland Power. Further given that the management reserve is meant to capture “unknown unknowns” it is important to consider the nature and extent of the risks which may be reflected in the management reserve. The fact that the management reserve is new and, by definition the risks to be reflected are unknown, is further exacerbated by the magnitude of the proposed contingency and management reserve.

Given these issues it is likely that the parties and the Board may want to address contingency and management reserve in requests for information, submissions and the Board’s order. As the Board has previously stated it is not enough for the Board and the parties to have access to the information relating to these important issues. The Board believes that redaction of this information would significantly impact the public’s ability to see and understand the matters at issue and provide informed commentary. The Board does not believe that the redaction of the contingency and management reserve would allow interested persons to have a full and fair opportunity to understand the issues and provide their views.

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<sup>6</sup> Hydro Further Submissions, March 25, 2026, page 2.

<sup>7</sup> Board letter, March 19, 2026, page 5.

<sup>8</sup> Hydro also proposed a management reserve in its Application for Capital Expenditures for the Life Extension of Bay d’Espoir Unit 7, filed June 20, 2025.

The Board has reviewed the decisions of other regulators referenced by Hydro in its March 25, 2026 letter as well as in its previous submissions, and does not find that these decisions support Hydro's position. Hydro argued that regulatory precedent from across Canada supports confidential treatment of contingency, cost subtotals, IDC, escalation, and management reserve in major capital project applications where disclosure would likely prejudice procurement outcomes, weaken negotiating positions, and ultimately expose ratepayers to increased costs. The Board does not believe that the cited regulatory decisions support the routine confidentiality of contingency, reserve, escalation, IDC, and aggregate cost information. Rather the Board believes that these decisions confirm that each claim for confidentiality should be considered in context. The Board notes that in many cases some cost information is redacted but other cost information is released. In most cases the project reserve, escalation and IDC are released, though aspects of the reserve may not be released. Where cost subtotals are redacted a project cost range is often released providing information which may be used to assess the risks and allowances associated with a project. The Board also notes that in many of the cases there are additional sensitivities as the utility operates in a highly competitive environment or the redacted information is from contractors operating in competitive environments.

Hydro submits that the fact that it has not previously claimed confidential treatment of information in routine applications should not be treated as precedent. The Board agrees as each claim must be considered in context. Hydro suggests that the procurement for the Build Application is more complicated with less competition, but the Board notes that Hydro's annual capital budget applications involve significant annual spending and often include large multi-year capital projects. In addition, Hydro's supplemental capital expenditure applications often involve major projects with significant capital spending. The Board notes that Hydro did not claim confidentiality in its Western Avalon Transmission Line project which involved capital expenditures of over \$290 million or the Southern Labrador Long Term Supply project with capital expenditures of over \$110 million.<sup>9</sup> The Board does not accept that there are significant differences in the risks of disclosure of high-level cost and risk information associated with the Build Application compared to annual capital budget applications or in supplemental capital budget applications.

The Board notes that Hydro's March 25, 2026 letter did not specifically address a number of the Board's determinations. In particular, Hydro did not address the Board's finding that Bates White's opinions, conclusions and recommendations, should be released. Hydro also did not address the Board's findings with respect to strategic risks, except to correct an error Hydro made in the redaction of the Avalon Combustion Turbine strategic risks. The Board accepts this correction, and has reviewed the strategic risks for the Avalon Combustion Turbine. The Board is satisfied that the same approach should be taken for these risks as was taken for the Bay d'Espoir Unit 8 strategic risks. As a result, the Avalon Combustion Turbine strategic risks which are commonplace or obvious will be released and the remaining five risks will be redacted.<sup>10</sup> The

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<sup>9</sup> Order No. P.U. 55(2014) and Order No. P.U. 12(2023).

<sup>10</sup> Bates White Report pages 55 and 56. The five "project-specific risk events" identified by Hatch would be redacted.

Board notes that Hydro did not address the other two inconsistencies in Hydro's proposed redactions which were cited by the Board in its March 19, 2026 letter.<sup>11</sup>

## Conclusion

As previously stated by the Board the public has an interest in understanding the costs and risks of the Build Application which includes two significant projects proposing the addition of two new major sources of generation to the system with associated capital expenditures which are well beyond anything previously approved for Hydro or Newfoundland Power.<sup>12</sup> The Board also notes that the issues in the Build Application may be of particular interest given the relatively recent issues in this province in relation to the Muskrat Falls Project and the upward pressure on costs and rates in the medium and long term.

The Board notes that Hydro's March 25, 2026 letter is Hydro's third submission in relation to its confidentiality claim with respect to the Bates White Report. The Board has reviewed each individual claim made by Hydro for confidentiality in light of the competing interests of protecting commercially sensitive information while ensuring openness and transparency. The Board has found that Hydro has not justified its claim for confidential treatment of high-level cost and risk information, including the subtotals for direct and indirect construction costs, IDC, escalation, contingency and management reserve. As a result, the Board confirms its March 19, 2026 determinations with respect to Hydro's claims for confidential treatment of the Bates White Report, except that five strategic risks for the Avalon Combustion Turbine will now be treated as confidential.<sup>13</sup>

The Board notes that the Bates White Report was provided to Hydro and the Intervenors on February 3, 2026. Almost two months later it has yet to be publicly released. While Hydro has expressed concerns as to the schedule in the Build Application, particularly in relation to the Avalon Combustion Turbine, Hydro's confidentiality claims with respect to the Bates White Report have served to delay and divert the focus from the proposals in the Build Application. Hydro now asks that the Bates White Report continue to be treated as confidential for a period to allow Hydro to consider whether the Board's determinations have any implications for next steps. Given the Build Application schedule concerns expressed by Hydro, the Board believes that it is important to move this matter forward in a timely fashion. As a result, the Bates White Report, with the Board's redactions, will be placed on the Board's website on Wednesday, April 8, 2026.

If you have any questions, please do not hesitate to contact the Board's Legal Counsel, Ms. Jacqui Glynn, by email, [jglynn@pub.nl.ca](mailto:jglynn@pub.nl.ca) or by telephone 709-726-6781.

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<sup>11</sup> Examples include redactions on page 27 of the Bates White report but not redacted on page 8 of the CAMS report and redactions on page 33 of the Bates White report but not redacted on page 43 of the Gruner report.

<sup>12</sup> This application proposes capital expenditures of approximately \$2 billion while the next largest capital project ever approved by the Board was the Western Avalon Transmission Line Project at approximately \$290 million.

<sup>13</sup> Bates White report, pages 55 and 56.

Sincerely,



Mike McNiven  
Board Secretary

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