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2026-03-19

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 in relation to Hydro's request for information to be treated as confidential with respect to the Bates White Economic Consulting Report, dated February 3, 2026, (Bates White Report) including the attached CAMS and Gruner reports and information request responses. The Board and the intervenors were provided a copy of the report.

On February 11, 2026 the Board provided Hydro with a redacted copy of the Bates White report setting out information which it considered confidential. On February 26, 2026 Hydro provided comments as well as an alternate redacted version of the Bates White report with significant additional redactions. Hydro requested further process if the Board did not agree with the redactions suggested by Hydro. On February 27, 2026 the Board advised that it did not accept certain of the requested redactions, that Hydro had not sufficiently particularized its claims and identified several areas of concern.

On March 3 and 4, 2026, Newfoundland Power and the Consumer Advocate filed comments on the proposed confidential information, acknowledging the competing interests of transparency and confidentiality and that the Board must balance these objectives. Hydro filed its reply on March 9, 2026.

The Board has reviewed Hydro's proposed redactions of the Bates White Report and considered the comments of the intervenors and Hydro. The Board accepts that some of the information in the Bates White Report should be treated as confidential but is not satisfied that all of the information redacted by Hydro should be given confidential treatment.

To ensure that proceedings before the Board are open and transparent all documents are placed on the record and are made available to the public unless the Board accepts a claim for

confidentiality. The Board will grant a claim for confidential treatment of information where it is shown to be commercially sensitive and the release of the information is likely to (i) cause undue financial harm; (ii) harm the utility's competitive or negotiating position; or (iii) interfere with contractual obligations.

Hydro submitted that "disclosure should not become an end in itself."¹ The Board does not agree. Transparency and openness are always paramount and disclosure is presumed and expected. The public's right to be informed and to understand and trust the Board's processes requires full disclosure of relevant information. Parties claiming confidential treatment of information must always demonstrate that it is necessary and appropriate in the circumstances. In this case, the public has an interest in understanding the costs and risks of these two major projects which are significant both in terms of rate impacts and the addition of two new sources of generation to the system. It is Hydro's burden to substantiate each claim for confidentiality by showing that the information is commercially sensitive and that the utility's interest in maintaining confidentiality outweighs the need for public disclosure.

The Board's findings in relation to Hydro's claim for confidential treatment of the Bates White Report are set out below.

Board Consultant Opinions

Hydro agrees that generally, the opinions and findings of the experts should be released but that characterizations of Hydro's budget or schedule would be of significant interest to contractors and would be akin to a direction to those parties about where to place pressure, push negotiations, or file claims.² Hydro suggests that conclusions that costs are under or overestimated could be useful to contractors in negotiations. Hydro therefore claims confidential treatment of wording in the Bates White Report which it says "characterizes certain aspects of Hydro's planned project or related estimates."³

The Board continues to believe that it would not be appropriate for the Board's expert consultant's comments, opinions, findings and conclusions to be treated as confidential.⁴ Hydro's proposed redactions are not of the actual information provided by Hydro but rather the consultants' views of the information provided. The redacted information includes the consultants' views as to costs as well as certain engineering advice.

The Board does not accept that the redacted information may be used by contractors to place pressure, push negotiations or file claims. In particular, the consultant's views as to whether specific amounts are over or under estimated would be of little use to contractors. The minimal value of this information to contractors in negotiations or claims must be weighed against the interest in the release of the information. The consultants' opinions form the basis of the consultants' assessment of the projects. This is key evidence in the Board's assessment of Hydro's

¹ Hydro's reply, March 9, 2026, page 3

² Hydro's reply, March 9, 2026, page 4.

³ Hydro letter dated February 26, 2026.

⁴ Board letter dated February 27, 2026.

request for approval of the two projects proposed in the 2025 Build Application. As a result, the Board believes there would be significant public interest in the release of this information. The Board finds that the public interest in disclosure far outweighs the interest in confidentiality claimed by Hydro. In addition, the Board notes that some information which Hydro redacted is released in other sections of the report.⁵ As a result, the Board does not accept Hydro's redactions of the wording in the Bates White Report setting out the consultants' comments, opinions, findings and conclusions.

Schedule Information

Hydro has now agreed that historical dates can be released but proposes that future dates, critical path indicators, and explicit schedule float should continue to be redacted. Hydro states that this approach allows for an understanding of progress and sequence without providing tactical information that various parties could leverage in negotiations or claims. According to Hydro, the public release of detailed execution dates and schedules can raise costs and weaken procurement outcomes by revealing schedule pressures and critical-path constraints that contractors can price against. It signals where the utility lacks flexibility, reducing negotiating leverage and encouraging inflated change orders, all with no increased benefit to transparency about overall project objectives or prudence.

The Board accepts that, in this case, certain schedule information may be commercially sensitive. Releasing detailed information as to activities and timeframes could provide information which may harm Hydro's competitive or negotiating position or interfere with contractual obligations or otherwise cause Hydro undue financial harm. The Board is satisfied that the interest in maintaining the confidentiality of detailed schedule information outweighs the interest in disclosure of this information. As a result, the Board accepts Hydro's redactions with respect to the detailed prospective schedule information but expects that historical schedule information will be made available as the matter progresses.

Project Cost Subtotals

Hydro claims confidential treatment of certain cost information in the Bates White Report. The Board accepts that detailed cost information, including certain details in the basis of cost estimates, should be treated as confidential. This detailed cost information could provide information to potential contractors which may harm Hydro's commercial interests. Treating this information as confidential serves to protect Hydro's negotiating position with respect to the work to be done which is ultimately in the interests of ratepayers. While there may be times where the commercial sensitivity of detailed cost information is outweighed by the interest in transparency, the Board is satisfied that the balance favours confidentiality in this case. The Board accepts Hydro's redactions of the detailed cost information for specific work packages and how each of the costs are built up.

⁵ 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.

The Board does not, however, accept that high level cost information such as the subtotals of the direct construction costs, indirect construction costs, contingency, escalation, interest during construction and management reserve, should be treated as confidential. The Board notes Hydro has not claimed confidentiality for this information in previous annual capital budget applications.⁶ The Board also notes that Newfoundland Power does not claim confidential treatment of this information in its annual capital budget applications.

While Hydro argues that release of subtotal information may allow contractors to determine the redacted costs, it did not explain how a contractor would be able to determine a redacted cost, in particular, direct construction costs include 38 distinct work packages for the Avalon Combustion Turbine and 21 packages for Bay D'Espoir. The indirect construction cost for both projects includes multiple items, including Hydro's internal costs, which would make it difficult for contractors to infer amounts budgeted for each package.

Hydro states that contingency and management reserve amounts are particularly sensitive because they signal Hydro's anticipated claim space and perceived uncertainty. According to Hydro, contingency and management reserve levels give bidders a direct view of Hydro's available financial buffer, undermining competitive tension by allowing contractors to price upwards. Hydro did not particularize why disclosure of the contingency amount, which is a normal and expected part of project costs and which has been regularly released in the past, would be harmful to its interests in this case. Hydro did not show how knowledge of the subtotal contingency and management reserve would undermine competitive tension.

To the extent that the subtotals for the construction costs or contingency and management reserve may "narrow the range of uncertainty"⁷ or allow contractors to "infer where Hydro may have limited flexibility or higher internal exposure"⁸ reducing competitive pressure the Board does not accept that this would be without public benefit. The Board also does not agree with Hydro when it states that public disclosure of the contingency and management reserve "...turns these risk management tools into market signals, increasing costs without improving transparency around project prudence or decision-making."⁹

Hydro's interest in confidentiality must be weighed against the need for openness and transparency of this information. Some of the information claimed to be confidential relates to significant issues in this matter, such as contingency and management reserve. The Board notes that this is the first application where Hydro has proposed a management reserve as an item in the budget of a capital project.¹⁰ The Board also notes the magnitude of the proposed contingency and management reserve for each project. It is not enough for Hydro or the Board to provide assurances that the elements of the costs associated with these significant projects have been fully reviewed and tested behind closed doors. In the Board's view, the need for

⁶ In Hydro's 2026 Capital Budget Application confidential treatment was requested for annual total project spending in its Major Capital Projects 5-Year plan.

⁷ Hydro's reply, March 9, 2026, page 5.

⁸ Ibid.

⁹ Ibid.

¹⁰ 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.

transparency with respect to this information outweighs the general concerns expressed by Hydro relating to the potential for the information to be used in a way which would harm its negotiating position or commercial interests. As a result, the Board does not accept the redaction of the subtotals for direct and indirect construction cost, escalation, interest during construction, contingency and management reserve.

Strategic Risks

Hydro claims confidential treatment of (i) certain strategic risks; (ii) the estimated costs associated with individual strategic risks; and (iii) the range of the total estimated costs of the strategic risks. The Board accepts that strategic risks and the estimated costs associated with the individual risks can be considered to be commercially sensitive information in some circumstances, though an assessment must also be made as to whether the interest in transparency outweighs the interest in confidentiality.

Hydro explains that it accepts disclosure of commonplace or obvious strategic risks but that it redacted individual strategic risks which would reveal a specific vulnerability that can be priced or exploited. Hydro did not provide an explanation of how each of the redacted risks would reveal a specific vulnerability. The Board notes that four of the five redacted risks for Bay D'Espoir 8 are risks that would be expected to be commonplace or obvious risks.¹¹ Applying Hydro's own approach, these items should be released. To the extent that there may be some small risk associated with the release of this information it is clearly outweighed by the interest in transparency with respect to the risks of the project. The Board agrees that there is one redacted strategic risk which may reveal a specific vulnerability and as a result the Board accepts that this strategic risk should be treated as confidential in this case.

In relation to the Avalon Combustion Turbine, the Board notes that while Hydro has redacted all of the strategic risks in one part of the report, it has in another part of the report released all of these risks.¹² As a result the Board does not accept the redacted strategic risks for the Avalon Combustion Turbine.

In terms of the cost estimate associated with each individual strategic risk, the Board accepts that this information should be treated as confidential on the basis that this information would provide specific information relating to the extent and costs of individual vulnerabilities associated with specific work that could possibly be exploited by a contractor. The Board believes that the interest in confidentiality outweighs the interest in the transparency of these cost estimates. The Board accepts the redaction of the individual cost estimates for each strategic risk.

In terms of the range of total estimated costs associated with the strategic risks, Hydro states that disclosure would signal the magnitude of Hydro's overall risk exposure and may allow contractors to increase premiums, add contingencies or harden negotiating positions. Hydro did not show how knowledge of the total estimate for all of the strategic risks could be of material

¹¹ Bates White Report, page 55, Table 6.

¹² Bates White Report, page 56, Table 7.

benefit to an individual contractor. To the extent this information could be of some value to contractors this must be balanced against the interest in transparency of this information. The overall risk associated with these two large multi-year projects is an important issue in this proceeding and may be the subject of review and discussion by the Board, the parties and the public. The Board believes that the interest in disclosure of the range of total estimated costs associated with strategic risks, without disclosure of the amounts associated with each individual risk, outweighs the general concerns expressed by Hydro as to the release of the information. As a result, the Board does not accept Hydro's redaction of the range of estimated costs associated with the strategic risks.

Conclusion

The Board has considered Hydro's claim for treating information in the Bates White Report as confidential as well as the submissions filed by the intervenors and Hydro's reply. Hydro argues that Canadian regulators consistently grant confidential treatment for contingency, risk allocations, reserve and engineering information, internal cost data, procurement and construction contract pricing, cost breakdowns and schedule specifics. In its reply, Hydro did not reference additional regulatory decisions in support of its position but referenced its earlier submissions on the issue of confidentiality.¹³ Hydro did not show how its earlier submissions or the regulatory decisions cited in those submissions establish the principles which might form the basis for its claims for confidentiality with respect to the Bates White Report. The Board does not find Hydro's other submissions and the cited regulatory decisions to be relevant or persuasive with respect to the specific information which is at issue here - opinion evidence and high-level cost and risk information.

The information which the Board finds to be commercially sensitive and should be treated as confidential is redacted in the Bates White Report, being sent by separate cover. The redacted Bates White Report will be publicly released on March 24, 2026.

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

Sincerely,



Colleen Jones

Assistant Board Secretary

CJ/

¹³ Hydro's 2026 Capital Budget Application, correspondence from Hydro dated August 18, 2025 and December 11, 2025

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