Q. **Reference: Volume 1, pages. 127, 151; OC2013-343; NLR 120/13**

Provide a crosswalk identifying each statutory provision, Order in Council, exemption order, contract, Board order, or other legal instrument relied on by Hydro to support its position that Muskrat Falls Project costs are recoverable from Island Interconnected System customers without Board disallowance, reduction, or prudence adjustment. Provide the crosswalk in table form, with columns for instrument, section/order reference, cost category, Hydro's interpretation of Board authority, recovery mechanism, and whether Hydro considers allocation, rate design, deferral treatment, carrying charges, reporting, or audit conditions to remain within the Board's authority. Specifically:

a) map each dollar of the $780.4 million 2027 Test Year Muskrat Falls supply cost to one of the three enumerated payment categories in OC2013-343 clause 1(a)-(c), and identify any residual amount outside all three;

b) confirm whether Hydro agrees that NLR 120/13 s. 2(2)(a) limits the exemption to the *Public Utilities Act* and *EPCA* Part II only, leaving *EPCA* Part I (ss. 3-4) in full force;

c) confirm the date on which the OC2013-343 clause 3(b) commissioning condition was satisfied.

A. **a)** The 2027 Test Year Muskrat Falls supply cost is entirely composed of expenditures made directly to one of the parties listed in clause 1 of Order in Council OC2013-343 and falls, in its entirety, under clause 1(a) to (c) of the Order in Council. It is Newfoundland and Labrador Hydro's ("Hydro") opinion that the request for a further categorization based on the individual entities is not necessary for a satisfactory understanding of the matters to be considered in the 2026 General Rate Application as required by the *Board of Commissioners of Public Utilities Regulations, 1996*.

b) Hydro confirms that the wording of section 2(2)(a) of NLR 120/13 limits the exemption to the *Public Utilities Act ("Act")* and Part II of the *Electrical Power and Control Act, 1994*

("EPCA"). However, Hydro maintains that the continuing applicability of Part I of the *EPCA* does not confer any specific authority on the Board of Commissioners of Public Utilities ("Board") to review or disallow exempt Muskrat Falls costs.The Muskrat Falls Project Exemption Order ("Exemption Order") was made by the Lieutenant-Governor Order in Council in OC2013-342 under the authority of section 5.2 of the *EPCA* and section 4.1 of the *Act*. Paragraph 4(1) of the Exemption Order exempts Hydro from the application of the *Act* and Part II of the *EPCA* in respect of expenditures, payments, and compensation paid to the Muskrat Falls Corporation and the Labrador-Island Link ("LIL") parties, and in respect of activities related to the power and energy provided by Muskrat Falls Corporation and the transmission services provided by the LIL parties.[1]

The Exemption Order does not specify an exemption from Part I of the *EPCA*. That Part includes section 3, which declares the power policy of the province, including policies that would normally apply to rate setting, and section 4, which requires the Board to implement the section 3 policies, "i*n carrying out its duties and exercising its powers under this Act or under the Public Utilities Act.*"

Section 3 of the *EPCA* by itself does not confer any power or responsibility on the Board concerning implementation of the declared policies. Section 4 does, but it is qualified by the statement that the policies are to be implemented by the Board "*in carrying out its duties and exercising its powers…under the Public Utilities Act.*" Where the Board has no duty that it can carry out or power that it can exercise under the *Act*, because the Exemption Order exempts the described matters from the application of that *Act*, it cannot implement the policies in respect of those matters. The Board retains the power to implement the policies for other matters but not in respect of anything that has been exempted from its jurisdiction as defined in the *Act*.

[1] The Lieutenant-Governor in Council also issued Order in Council OC2013-343 under the authority of section 5.1 of the *EPCA*. It directed the Board to adopt a policy that payments made by Hydro to the Muskrat Falls Corporation and the LIL parties, to which the Exemption Order applies, "*shall be included as costs, expenses or allowances, without disallowance, reduction or alteration of those amounts, in Newfoundland and Labrador Hydro's cost of service calculation in any rate application and rate setting process, so that those costs, expenses or allowances shall be recovered in full by Newfoundland and Labrador Hydro in Island interconnected rates charged to the appropriate classes of ratepayers.*"

The scope of the exemptions from the *Act* provided for by the Exemption Order, and the OC2013-343 direction to the Board, are not affected by the continuing application of sections 3 and 4 of Part I of the *EPCA*.

c) Order in Council OC2022-120 amended the wording of OC2013-343, separating the wording in 3(b) to permit Hydro to begin recovery of the Muskrat Falls Project payments that Hydro is making under the Muskrat Falls Power Purchase Agreement ("PPA") as of the commissioning of the Muskrat Falls Hydroelectric Generating Facility ("Muskrat Falls Plant") and the Labrador Transmission Assets, and recovery of the payments related to the LIL as of the commissioning of that asset, which costs would be recovered through rates charged to Island Interconnected System customers without disallowance as set out in the Order in Council. The Muskrat Falls Plant was commissioned in November 2021, with Release for Service achieved on November 25, 2021, at which point Hydro began payment under the Muskrat Falls PPA. The LIL was commissioned on April 14, 2023, and Hydro began payments under the Transmission Funding Agreement in May 2023.