

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

AN ORDER OF THE BOARD

NO. P.U. 30(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
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7 **IN THE MATTER OF** an Investigation and
8 Hearing into Supply Issues and Power Outages
9 on the Island Interconnected system; and
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11 **IN THE MATTER OF** the Near-Term
12 Generation Adequacy Report filed by
13 Newfoundland and Labrador Hydro on
14 May 22, 2018; and
15

16 **IN THE MATTER OF** an application from
17 Newfoundland and Labrador Hydro requesting
18 that its responses to three requests for information
19 relating to the Near-Term Generation Adequacy
20 Report be considered confidential.
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22

23 **Background**
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25 On May 22, 2018 Newfoundland and Labrador Hydro (“Hydro”) filed its Near-Term Generation
26 Adequacy Report with the Board.¹
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28 On June 12, 2018 the Board issued requests for information (“RFIs”) to Hydro.
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30 On June 26, 2018 Hydro filed responses to the RFIs except that it advised that it would be filing
31 an application for confidential treatment of PUB-NLH 001, PUB-NLH-004 and PUB-NLH-005.

¹ This report is filed semi-annually pursuant to the October 13, 2016 direction of the Board following the issuance of the Board’s report, *Investigation and Hearing into Supply Issues and Power Outages on the Island Interconnected System*, dated September 29, 2016.

1 **Application**

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3 On June 27, 2018 Hydro filed an application for approval that its responses to PUB-NLH 001,
4 PUB-NLH-004 and PUB-NLH-005 be considered confidential and that the intervenors' access to
5 the confidential information be governed by the terms of an undertaking to be executed by the
6 intervenors' representatives prior to their receipt of the information (the "Application").

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8 The Application was circulated to the Consumer Advocate, Mr. Dennis Browne, Q.C., (the
9 "Consumer Advocate"); Newfoundland Power Inc. ("Newfoundland Power"); a group of Island
10 Industrial customers: Corner Brook Pulp and Paper Limited, NARL Refining Limited
11 Partnership, and Vale Newfoundland and Labrador Limited (the "Industrial Customer Group");
12 Teck Resources Ltd; Grand Riverkeeper Labrador Inc.; and Danny Dumaresque.

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14 The Application stated that Hydro, as a fully regulated public utility, acknowledges the
15 importance of transparency but that there are exceptional circumstances where economic
16 regulators should respect the business realities of the parties that appear before it. The
17 Application submitted that the documents that are the subject of the Application are such
18 exceptional circumstances; that the public's interest in transparency is outweighed by the value
19 to the parties and their customers if confidential business relationships and information is
20 maintained. The Application further submitted that the Rules of Procedure established in Order
21 No. P.U. 3(2014) affords protection to this information and that substantially similar
22 commercially sensitive information was treated as confidential by the Board in Order Nos. P.U.
23 13(2018) and P.U. 18(2018).

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25 According to the Application, the responses to PUB-NLH-001 and PUB-NLH-005 contain
26 information with regard to contractual arrangements made between Hydro's marketing affiliate,
27 Nalcor Energy Marketing Corporation ("NEM"), and energy suppliers outside the province
28 which are the subject of confidentiality agreements and are commercially sensitive to the parties
29 to those arrangements. The Application submitted that disclosure of this information would
30 have a chill-effect upon the free-flow of information and could damage the trading relationship
31 between NEM and its counter parties.

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33 In relation to PUB-NLH-004, the Application stated that the response contains information with
34 regard to energy purchases made on behalf of Hydro by NEM. The Application explained that
35 NEM purchased the energy from energy suppliers outside the province and the energy was
36 transmitted to Hydro on the Maritime Link. According to the Application it is necessary to
37 withhold this commercially sensitive trading information from public distribution to protect the
38 interests of Hydro's customers. The Application submitted that the energy purchase and sale
39 information pertains to a combination of energy spot market transactions and bilateral energy
40 transaction activity. According to the Application the spot markets provide an indication of
41 what bulk traded electricity is worth at particular times but the bilateral transactions that occur
42 between energy traders are treated as highly confidential in the competitive energy markets and
43 their disclosure could be damaging to the parties. The Application submitted that disclosure
44 would provide competitors with information that could prejudice Hydro's ability to procure the
45 most cost effective energy and maintaining competition amongst energy suppliers is essential in
46 order to achieve the lowest energy costs for Hydro's customers.

1 No submissions in relation to the Application, apart from Hydro's, were received by the Board.

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3 On July 18, 2018 Hydro filed a submission noting that the parties did not file comments and
4 submitting therefore that the Application be approved.

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6 **Board Findings**

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8 The Board acknowledges that there was no opposition to this Application and that it was Hydro's
9 position that in the circumstances the Application should be approved. Nevertheless the Board
10 must satisfy itself that it is appropriate to treat the responses to PUB-NLH-001, PUB-NLH-004,
11 and PUB-NLH-005 as confidential, even in the absence of opposition to the Application. As the
12 Board has previously stated, transparency and full disclosure are essential for effective regulation
13 to ensure the full participation of the parties and to maintain public trust in the regulatory
14 process. As explained by the Board:

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16 A party seeking a determination that certain information is confidential must demonstrate
17 that there is a material risk that placing the information on the public record would cause
18 harm. In considering such a request the Board will assess whether the potential harm
19 associated with the release of the information outweighs the interest of transparency and
20 full disclosure and whether there are reasonable accommodations that can be made in the
21 circumstances.²

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23 According to the Application, the responses to PUB-NLH-001 and PUB-NLH-005 contain
24 commercially sensitive information related to confidential contractual arrangements, the
25 disclosure of which could damage the trading relationship between the parties. The Board agrees
26 that there is some information set out in these responses which should not be released; for
27 example, the contract attached to PUB-NLH-001 is the subject of a confidentiality provision.
28 However, the Board believes that there is also a great deal of information in these responses
29 which Hydro did not demonstrate should be treated as confidential. In particular, the Application
30 did not show that the harm associated with the release of the information related to the amount of
31 available recapture energy to supply the Island Interconnected system, or to the capacity and
32 energy deliverable across the Maritime Link, outweighed the interest in transparency and full
33 disclosure of this important information. Further, while the details in relation to the purchases
34 and any associated contracts may be confidential, the Board believes that there may be
35 information which could be released, such as the information related to the amount of power and
36 the identity of the supplier. It is not enough for Hydro to demonstrate that some of the
37 information contained in these responses is confidential. Only that information in relation to
38 which it is shown that the potential harm associated with its release outweighs the interest in
39 transparency and full disclosure will be considered confidential by the Board. Based on the
40 information filed, it is not possible for the Board to make a finding as to the particular
41 information which should be considered confidential and that which should be released. As such
42 the Board will not approve Hydro's request for confidential treatment of its responses to PUB-
43 NLH-001 and PUB-NLH-005 at this time.

² Order No. P.U. 13(2018), page 4

1 In relation to PUB-NLH-004 the Application submitted that this response contains information
2 with regard to energy purchases made by Hydro, the disclosure of which could prejudice
3 Hydro's ability to procure the most cost effective energy. The Application explained:

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5 For example, if information related to what NEM was willing to pay for energy under a
6 bilateral transaction with one company was made public (an energy transaction could
7 have a duration as short as an hour and could be negotiated as little as 45 minutes before
8 the hour of flow), then it would impair NEM's ability to negotiate a better price with
9 other competitors.³

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11 According to the Application disclosure of trading strategies and experiences would have the
12 effect of impairing competitive pricing which may increase costs for ratepayers. The Board notes
13 that this RFI response does not set out specific details in relation to the pricing and volumes of
14 the purchases over the Maritime Link. While certain aspects of the information provided in this
15 response may be sensitive, Hydro did not address why the rest of the information or summary
16 information should not be disclosed. Further, the Board believes that the information requested
17 in relation to the use of the Maritime Link is of significant importance for ratepayers, in
18 particular as relates to the system impacts and savings. The Board finds that Hydro has not
19 demonstrated that the potential for harm in the release of all of the information in this response
20 outweighs the interest in transparency and full disclosure in relation to these matters.

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22 In the Board's view a party applying for confidential treatment of information has a high
23 threshold to meet to establish that information should be treated as confidential and not released
24 to the public. Hydro argued that, in this case, the public's interest in transparency is outweighed
25 by the value of confidentiality to the parties and their customers. The Board does not agree and
26 reiterates the importance of transparency and full disclosure in all matters before the Board. In
27 particular, the Board believes that all three RFI responses relate to important issues in the
28 operation of the Island Interconnected system and as such there is a significant interest in
29 transparency and full disclosure. Further, the Board believes that the information which is the
30 subject of this Application is substantially different than the information considered confidential
31 in Order Nos. P.U. 13(2018) and P.U. 18(2018), which set out detailed pricing and volume
32 information in relation to purchases over the Maritime Link. The Board finds that Hydro did not
33 meet the threshold required to show that the potential harm associated with the release of all of
34 the information in the responses to PUB-NLH-001, PUB-NLH-004, and PUB-NLH-005
35 outweighs the interest of transparency and full disclosure. Hydro will be required to file these
36 responses with the Board and the parties within thirty days of this Order, unless Hydro files a
37 further application demonstrating that certain information in the responses should be considered
38 confidential.

³ Application, page 3

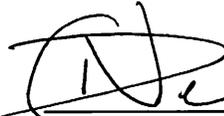
1 **IT IS THEREFORE ORDERED THAT:**
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- 3 1. In the absence of a further application, Hydro shall file the information in the responses to
4 PUB-NLH-001, PUB-NLH-004 and PUB-NLH-005 within thirty days of the date of this
5 Order.
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7 2. Hydro shall pay all expenses of the Board arising from this Application.

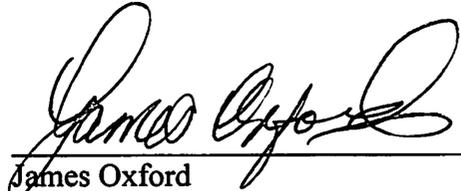
DATED at St. John's, Newfoundland and Labrador, this 24th day of August, 2018.



Darlene Whalen, P. Eng., FEC
Chair & CEO



Dwanda Newman, LL.B.
Vice-Chair



James Oxford
Commissioner



Cheryl Blundon
Board Secretary