

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

**AN ORDER OF THE BOARD**

**NO. P.U. 15(2020)**

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*, RSNL  
4 1990, Chapter P-47 (the “*Act*”), as amended,  
5 and regulations thereunder; and  
6

7 **IN THE MATTER OF** an application by  
8 Newfoundland and Labrador Hydro for approval  
9 to delay the filing of its general rate application  
10 pursuant to sections 70, 71 and 76 of the *Act*.  
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12

13 **Background**  
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15 On May 7, 2019, in Order No. P.U. 16(2019), the Board ordered that Newfoundland and  
16 Labrador Hydro (“Hydro”) should file its next general rate application by September 30, 2020  
17 for rates based on a 2021 test year. The Board acknowledged the uncertainty surrounding future  
18 customer rates as they relate to the Muskrat Falls Project and stated on page 61:  
19

20 In terms of Hydro’s next general rate application the Board acknowledges that there is a  
21 great deal of uncertainty as to a number of important factors that will have to be considered  
22 in the preparation of this application. In particular the Board notes that the commissioning of  
23 the Muskrat Falls Project will result in a material change to the forecast supply cost.  
24 Currently it is expected that 2021 will be the first full year of operation after the  
25 commissioning of Muskrat Falls. To ensure that this significant change can be addressed in a  
26 timely and orderly fashion Hydro should file its next general rate application by September  
27 30, 2020. To the extent that circumstances change Hydro may apply to the Board to alter this  
28 filing date.  
29

30 **Application**  
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32 On April 15, 2020 Hydro filed an application requesting the Board’s approval to delay the filing  
33 of its next general rate application and that the proposed rates be based on a 2021 test year and  
34 additional test years, if required (“Application”). The Application submitted that permitting  
35 Hydro to delay the filing of its next general rate application and to reflect multiple test years in  
36 the delayed filing would permit the orderly establishment of rates to be charged to Hydro’s  
37 customers, is consistent with regulatory efficiency, and is consistent with regulatory practice  
38 before the Board and the *EPCA*.

1 The Application proposed that Hydro’s general rate application be delayed from September 30,  
2 2020 to no later than nine months after the date upon which both the revised financial structure  
3 for the Muskrat Falls Purchase Power Agreement (“PPA”) and Government’s rate mitigation  
4 plan have been finalized and publicly communicated. According to the Application both the  
5 financial restructuring of the Muskrat Falls PPA and Government’s rate mitigation plan are  
6 required to determine the customer rates to be proposed in the next general rate application. The  
7 Application set out that Hydro would require a period of nine months to prepare its general rate  
8 application once the details of the revised financial structure and the rate mitigation plan are  
9 available as it will need to determine its financial requirements in developing its test year  
10 revenue requirements, cost of service studies, and proposed customer rates. The Application also  
11 noted that the Muskrat Falls Hydroelectric Generating Facility has been placed into care and  
12 maintenance mode as the result of a Notice of Force Majeure arising from the impact of the  
13 COVID-19 pandemic on Muskrat Falls Project construction. According to the Application the  
14 impact of this action on commissioning is yet to be ascertained.

15  
16 The Application proposed to continue to require 2021 as a test year for use in determining the  
17 2021 costs to be ultimately recovered from customers on the basis that it remains probable that  
18 Hydro will incur costs in 2021 as a result of the commissioning of the Muskrat Falls Project. In  
19 addition the Application submitted that Hydro should have the option to include additional test  
20 years as it is not yet clear whether the use of a 2021 test year for rate-setting would provide a  
21 reasonable opportunity for Hydro to recover forecast costs for 2022 and 2023.

22  
23 The Application was copied to Newfoundland Power Inc. (“Newfoundland Power”); the  
24 Consumer Advocate, Dennis Browne, Q.C.; a group of Island Industrial customers: Corner  
25 Brook Pulp and Paper Limited, NARL Refining Limited Partnership and Vale Newfoundland  
26 and Labrador Limited (the “Industrial Customer Group”); Labrador Interconnected Group; Iron  
27 Ore Company of Canada; Praxair Canada Inc.; and Teck Resources Limited.

28  
29 Requests for information (“RFIs”) were issued by the Board, Newfoundland Power, the  
30 Industrial Customer Group and the Consumer Advocate which were answered by Hydro on May  
31 6, 2020. The parties filed written submissions on May 12, 2020 and Hydro filed reply comments  
32 on May 15, 2020.

### 33 34 **Submissions**

35  
36 Newfoundland Power, the Industrial Customer Group and the Consumer Advocate advised that  
37 they did not object to the delay in the filing of Hydro’s general rate application, but both the  
38 Industrial Customer Group and the Consumer Advocate raised some concerns in relation to  
39 Hydro’s proposals. The Consumer Advocate submitted that, if the requested delayed filing of  
40 Hydro’s general rate application is approved, appropriate terms and conditions would be required  
41 to maintain regulatory oversight and transparency. The Industrial Customer Group submitted  
42 that, if the required information with respect to the rate mitigation plan and the renegotiation of  
43 the Muskrat Falls PPA is not received by September 30, 2020, Hydro should provide quarterly  
44 updates setting out when the required information would be received. According to the Industrial  
45 Customer Group the Board should reserve its decision on a new general rate application filing  
46 date and the determination of the date should be based upon Hydro’s quarterly updates, other  
47 relevant considerations and the submissions of the parties.

1 Newfoundland Power and the Industrial Customer Group also raised issues with respect to  
2 Hydro's proposal for a 2021 test year with additional test years if required. The Industrial  
3 Customer Group submitted that the Board should not pre-approve this request and that Hydro  
4 should be required to make the case for multiple test years in its general rate application based on  
5 relevant circumstances at the time of filing. Newfoundland Power submitted that it would be  
6 premature for the Board to direct the use of a 2021 test year and that the matter of an appropriate  
7 mechanism to provide for recovery of additional 2021 costs should be addressed when there is  
8 more certainty regarding the timing and magnitude of those costs and the financial impact on  
9 Hydro.

10  
11 The Industrial Customer Group also raised concerns in relation to the fact that Hydro is  
12 projecting that its 2021 earnings will be below the lower end of the range of its allowed rate of  
13 return on rate base primarily as a result of increased capital investments and increased borrowing  
14 since 2019. The Industrial Customer Group submitted that, if savings could not be found to  
15 offset the impact of these increases, this would not show a concerted effort to identify and  
16 implement saving opportunities. The Industrial Customer Group stated that timely general rate  
17 application filings and proceedings are the only means to gauge Hydro's cost saving efforts and  
18 that, if the filing of Hydro's general rate application is delayed, Hydro should be required to  
19 report in relation to its cost savings initiatives for 2020 and 2021, including quantification of the  
20 savings, any projected 2021 revenue deficiency, and the options for mitigating rate impacts.

21  
22 In its reply submission Hydro noted that the parties did not object to a delay in the filing of the  
23 general rate application. Hydro stated that its proposal to establish the timing for the filing of its  
24 next general rate application as a specific period of time following the finalization and public  
25 release of the Muskrat Falls PPA and Government's rate mitigation plan provides a framework  
26 and certainty regarding the filing. Hydro stated that, without this certainty, there is a risk that  
27 Hydro would prepare evidence that would then need to be revised or redeveloped at a later date.  
28 In response to the Industrial Customer Group's proposal of quarterly updates, Hydro submitted  
29 that it does not believe that such reports would be helpful or that it would have any information  
30 to provide. In relation to the suggestion that there should be additional reporting with respect to  
31 cost saving measures, Hydro stated that the provision of detailed information in the next general  
32 rate application regarding its actions to offset the impact of any increased costs would provide  
33 full and sufficient oversight and that it is through this process that the Board and parties can  
34 review and determine whether Hydro's costs are justified for recovery from customers. In  
35 relation to the 2021 test year, Hydro stated that it does not object to addressing its proposal of  
36 multiple test years, including the use of a 2021 test year, in the general rate application process.  
37 Hydro requested that the Board approve its proposal to delay the filing of its next general rate  
38 application to a date nine months from the receipt of the required information and allow Hydro to  
39 address the specifics regarding its proposed test years in the next general rate application.

#### 40 41 **Board Findings**

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43 The Board is satisfied that it is appropriate to delay the filing of Hydro's next general rate  
44 application beyond September 30, 2020 as there continues to be a great deal of uncertainty as to  
45 a number of important factors that will have to be considered in the preparation of this  
46 application. While the Board acknowledges the challenges associated with this uncertainty it  
47 does not believe that Hydro's proposed approach for the timing of its next general rate  
48 application is appropriate in the circumstances. Hydro's proposed timeframe is indefinite and

1 provides little certainty as to when the general rate application can be expected to be filed. In  
2 addition the proposed timing for the filing of the application depends on preconditions that are  
3 outside of its control and does not reflect other factors which may be relevant such as Hydro's  
4 financial circumstances and the date that the Muskrat Falls Project is commissioned. Given the  
5 ongoing uncertainties the Board does not believe it is appropriate to establish a timeline for the  
6 filing of Hydro's next general rate application at this time.

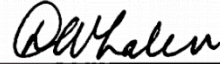
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8 In addition the Board believes that it would be premature to make a determination at this time as  
9 to the test year(s) to be used in determining customer rates given the lack of certainty in relation  
10 to the date upon which the general rate application will be filed. The legislation requires that  
11 wherever practicable customer rates should be based on forecast costs for the supply of power.  
12 The Board believes that this is an essential aspect of the regulatory framework which provides  
13 the appropriate incentives to the utility and contributes to regulatory certainty and efficiency. The  
14 Board acknowledges that the circumstances are extraordinary; however, if Hydro intends to seek  
15 recovery of increases in costs for 2021 it should endeavor to file its general rate application in  
16 advance of 2021 or should consider other regulatory mechanisms which may be available.  
17 Should Hydro intend to propose a test year which is not forward looking it should apply for such  
18 determination in advance of the filing of the general rate application to avoid unnecessary costs  
19 and promote regulatory efficiency.

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21 While Hydro's proposals with respect to the timing for its next general rate application or the test  
22 years to be used have not been accepted the Board believes that, to ensure proper supervision of  
23 the utility, the date for the filing of Hydro's general rate application should be established as  
24 soon as possible and that in the meantime there should be additional reporting. The Board will  
25 require that Hydro provide quarterly updates with respect to the filing of its next general rate  
26 application, beginning on September 30, 2020. These updates should include information with  
27 respect to projected 2021 cost increases and Hydro's plans to address these increases and should  
28 set out any information that Hydro has with respect to the timeframe for the commissioning of  
29 the Muskrat Falls Project, the financial restructuring of the Muskrat Falls PPA, and the  
30 completion of Government's rate mitigation plan. The Board will not order additional reporting  
31 specific to the cost saving measures identified and implemented by Hydro for 2020 and 2021 as  
32 the Board believes that the general rate application is the appropriate forum for the review of  
33 Hydro's cost savings initiatives.

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36 **IT IS THEREFORE ORDERED THAT:**

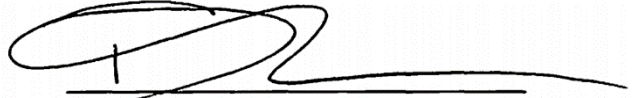
- 37  
38 1. Hydro is not required to file its general rate application on September 30, 2020 for rates  
39 based on a 2021 test year.  
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41 2. Hydro shall file quarterly updates with respect to the filing of its next general rate application  
42 beginning on September 30, 2020.  
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44 3. Hydro shall pay all expenses of the Board arising from this Application.

**DATED** at St. John's, Newfoundland and Labrador, this 27<sup>th</sup> day of May, 2020.



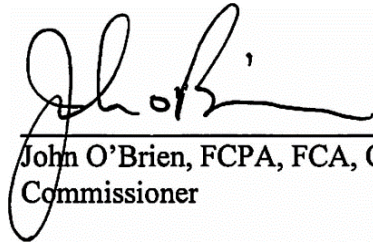
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Darlene Whalen, P. Eng., FEC  
Chair and Chief Executive Officer



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Dwanda Newman, LL.B.  
Vice-Chair



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John O'Brien, FCPA, FCA, CISA  
Commissioner



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Christopher Pike, LL.B., FCIP  
Commissioner



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Cheryl Blundon  
Board Secretary