

NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

AN ORDER OF THE BOARD

NO. P.U. 34(2010)

1 **IN THE MATTER OF** the *Electrical Power*
2 *Control Act, 1994*, SNL 1994, Chapter E-5.1 (the
3 “*EPCA*”) and the *Public Utilities Act*, RSNL 1990,
4 Chapter P-47 (the “*Act*”) as amended, and
5 Regulations thereunder;

6
7 **AND**

8
9 **IN THE MATTER OF** an application by
10 Newfoundland and Labrador Hydro (“*Hydro*”)
11 for the approval to install pipe blinds or
12 other secure devices in the Holyrood Thermal
13 Generating Station to prevent hazardous
14 substances from entering confined spaces
15 ensuring a safe work environment (the “*Application*”),
16 pursuant to Section 41(3) of the *Act*.

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18
19 **Background**

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21 Section 41(3) of the *Act* requires that a public utility not proceed with the construction, purchase
22 or lease of improvements or additions to its property where:

- 23 a) the cost of construction or purchase is in excess of \$50,000; or
24 b) the cost of the lease is in excess of \$5,000 in a year of the lease, without prior
25 approval of the Board.

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27 In Order No. P. U. 1(2010), issued January 22, 2010, the Board approved, *inter alia*, Hydro’s
28 2010 Capital Budget of \$52,775,000. Supplementary 2010 capital expenditures were approved
29 by the Board in:

- 30
31 (i) Order No. P. U. 16(2010) in the amount of \$14,800,000 for the construction of a
32 terminal station at Long Harbour and an extension to transmission line TL-208 to
33 be recovered from Vale Inco; and
34 (ii) Order No. P. U. 21(2010) in the amount of \$693,800 to be added to the
35 Allowance for Unforeseen items; and
36 (iii) Order No. P. U. 26(2010) in the amount of \$120,400 for the replacement of the
37 fuel tank at the Bay D’Espoir; and
38 (iv) Order No. P. U. 29(2010) in the amount of \$467,900 for the replacement of Diesel
39 Generating Unit 565 and associated switchgear at Little Bay Islands.

1 Application

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3 On October 19, 2010 Hydro applied to the Board requesting approval of a 2010 supplemental
4 capital expenditure of \$1,804,300 for the installation of pipe blinds or other secure devices to
5 prevent hazardous substances from entering confined spaces where an employee or contractor
6 may be required to work.

7
8 In the Application Hydro advised that in August 2009 the *Occupational Health and Safety Act*
9 *and Regulations, 2009* (NLR 70/09) were promulgated under the *Occupational Health and*
10 *Safety Act*. Part XXVII, Section 514(c) of those Regulations concerning Confined Space Entry
11 states that a confined space shall be entered only where pipes and other supply lines whose
12 contents are likely to create a hazard are blanked off. According to the Application there is
13 currently no pipe blind or double block and bleed system within the Holyrood Thermal
14 Generating Station that complies with the *Occupational Health and Safety Regulations, 2009*.

15
16 The scope of the proposed project is to install pipe blinds or other secure devices (such as double
17 block and bleed valves) where an employee or contractor is required to enter a confined space
18 that may be subject to the possibility of having hazardous substances enter. The project will
19 isolate 80 confined space locations in various locations throughout the Holyrood Thermal
20 Generating Station. This will require installation of pipe blinds at approximately 255 points of
21 entry. The project is proposed as a multi-year project.

22
23 In support of its Application Hydro filed a report "Confined Space Isolations – Holyrood
24 Thermal Generating Station" which sets out the existing system details and the project
25 justification, including a budget estimate and project schedule. Hydro also advised in the letter to
26 the Application that the project was not included in Hydro's 2011 Capital Budget Application
27 "...as it should start as soon as possible to guarantee a safe work environment and to fully meet
28 OH&S compliance regulations...". (NLH, Cover letter, Application)

29
30 On October 20, 2010 copies of the Application were circulated to the Consumer Advocate,
31 Newfoundland Power Inc. and Hydro's Industrial Customers. Newfoundland Power advised on
32 October 28, 2010 that they would not be commenting on the Application.

33
34 Requests for information were issued to Hydro by the Industrial Customers and the Consumer
35 Advocate, which were answered by Hydro on November 16, 2010. On November 23, 2010 the
36 Consumer Advocate and the Industrial Customers filed final comments. Hydro filed a response
37 submission on December 6, 2010.

38 Submissions

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41 In the evidence to the Application Hydro stated that at present 40 of the 80 confined space
42 locations identified for this project are vessels that are subject to inspection by the Boiler and
43 Pressure Vessel Inspector. (IC-NLH-7) These vessels are not currently being inspected as
44 required having been granted a waiver from inspection requirements for 2009 by the
45 Government inspector. In his submission the Consumer Advocate supports Hydro's evidence
46 that failure to complete this work on 40 vessels at Holyrood, including the deaerator, deaerator
47 storage, main blowdown tanks, main stream drums, continuous blow down tanks and the air
48 condensate tanks, would prevent these vessels from being inspected yearly by the Boiler and

1 Pressure Vessel Inspector as required by the Department of Government Services. The only
2 alternative in the absence of the project would be to request a waiver for exemption from the new
3 regulations. The Consumer Advocate recommends that the work necessary to allow for the
4 inspection of these 40 confined space locations should be approved by the Board.

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6 In regards to the remaining 40 confined spaces included in the project the Consumer Advocate
7 states that is not clear that this work must be done as proposed in order to provide a safe work
8 environment. The Consumer Advocate questions the basis for Hydro's selection of 80 confined
9 spaces and 255 points of entry which require pipe blinds or other secure devices, stating:

10
11 *"Neither Hydro's Application nor its answers to Requests for Information provide a means to*
12 *determine whether Hydro's assessment as to which piping and other supply lines had contents*
13 *likely to create hazards versus those which did not, was reasonable."* (CA, Final Submission, pg.
14 3)
15

16 The Consumer Advocate also states that the new regulations are not ordering or requiring Hydro
17 or any other employer or operator to undertake work to blank off pipes or other supply lines that
18 may exist in or near confined spaces within the facility. According to the Consumer Advocate
19 the regulations require that Hydro only allow entry into a confined space when certain conditions
20 have been met, including a written assessment of the hazards relating to the confined space and
21 consideration of whether there are sources containing hazardous substances which may need to
22 blocked off or disconnected prior to entry.

23
24 In light of the record in this proceeding the Consumer Advocate submits that the Board should
25 approve only the expenditure for the 40 confined spaces required to be inspected by the Boiler
26 and Pressure Vessel Inspector, and should not approve the work and expenditure for the
27 remaining 40 confined spaces as requested by Hydro.

28
29 In their submission the Industrial Customers raise concerns with Hydro's responses to some of
30 the Requests for Information and, in particular, the lack of any specific criteria or guidance for
31 assessors. According to the Industrial Customers, when Hydro was asked to provide the
32 complete detailed scope, criteria, instructions and other information used by the assessors to
33 determine whether Holyrood work areas were a "confined space" for the purposes of the new
34 regulations, Hydro responded by referring to the wording of the new regulations without
35 providing the requested information. The Industrial Customers also state that Hydro did not
36 provide any documentation to support its position that the process of assessment was verified by
37 the Holyrood Work Protection Code Issuing Authority.

38
39 The Industrial Customers submit that *"...the only spaces in respect of which Hydro has provided*
40 *any meaningful explanation for their being assessed as "confined spaces" covered by the new*
41 *Regulation are the forty vessels subject to inspection by the Boiler and Pressure Vessel*
42 *inspector."* (IC, Final Submission, pg. 2) For this reason, the Industrial Customers argue, the
43 Application should only be approved in relation to the work proposed for the 40 of the 80
44 confined space locations identified as vessels pursuant to IC-NLH-7, subject to Hydro providing
45 revised costing for this work only.

46
47 In its reply submission Hydro addressed two specific issues raised in the submissions of the
48 Consumer Advocate and the Industrial Customers, suggesting that the points raised are erroneous

1 and appear to be based upon a misunderstanding of the purposes of the applicable provisions of
2 the *Occupational Health and Safety Regulations, 2009*.

3 The first issue relates to the suggestion that no criteria or guidance was provided to the assessors
4 for the purpose of identifying the materials as hazardous. Hydro states that whether a material is
5 hazardous in a confined space depends on the circumstances and a combination of other factors,
6 which must be considered as part of the assessment. According to Hydro, "*Judgment is required*
7 *by employees familiar with the confined spaces and processes in question, the materials*
8 *involved, and the nature of the work that would be carried out in each such location. These*
9 *assessments were carried out for each such location covered in the proposal.*" (NLH response to
10 Intervenor Submissions, pg. 1) Hydro refers to the Spectacle Blind Survey included with the
11 Application, and reconfirmed the roles of the Holyrood Work Protection Code Issuing Authority
12 and the Occupational Health and Safety Committee.
13

14 With respect to the suggestion that only 40 of the 80 confined space locations should be
15 approved based on the evidence, Hydro submits that this is based on an incorrect inference that
16 the principal purpose of this project is, or should be, to ensure that the inspections can be carried
17 out by the Boiler and Pressure Inspector viewing the pressure vessels. Hydro argues that the
18 remaining 40 locations also fit the criteria of the *Occupational Health and Safety Regulations,*
19 *2009* with the only difference being that Hydro employees and contractors enter those spaces to
20 carry out general maintenance inspections and work but that Government inspectors do not
21 normally inspect these spaces. Hydro states that the criteria applied was the same regardless of
22 who was expected to enter the space.
23

24 Hydro also argues that it is required by law under the *Occupational Health and Safety Act* to
25 provide a safe workplace for its employees, contractors and government officials who work in
26 the Holyrood Thermal Generating Station and that the proposed project is to make the necessary
27 physical changes to its workplace to comply with the legislation.
28

29 **Decision**

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31 This project is justified by Hydro on the basis of workplace safety and compliance with the new
32 *Occupational Health and Safety Regulations, 2009*. Based on the evidence the Board accepts
33 Hydro's position that this project should proceed on that basis.
34

35 With respect to the position of both the Consumer Advocate and the Industrial Customers
36 regarding the lack of criteria or guidance provided to the assessors the Board is not persuaded
37 that this should be a determining factor as to whether this project should be approved. Section
38 511.(1) of the *Occupational Health and Safety Regulations* require Hydro to perform an
39 assessment of the work area to determine whether it contains a confined space (as defined by the
40 *Regulations*) which, according to the Application, has been completed. The results of this
41 assessment were filed with the Application. Based on this assessment 80 locations (representing
42 255 points of entry) within the Holyrood Thermal Generating station meet the confined space
43 criteria of s. 511(1).
44

45 The Board also finds no basis on which to approve confined space isolation for only 40 of the 80
46 locations identified as suggested by both the Consumer Advocate and the Industrial Customers.
47 These 40 locations include only those required to be inspected by the Boiler and Pressure

1 Inspector. According to Hydro the criteria applied for all confined spaces were the same
2 regardless of who might be required to enter the confined space. This is, in the Board's view, the
3 only approach that can be taken in this circumstance where the justification is worker safety for
4 all those who may, as part of their job function, be required to enter those confined spaces. This
5 includes Hydro workers, contractors and government inspectors.

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7 The Board notes as well Hydro's evidence that both North Atlantic Refining Limited and Corner
8 Brook Pulp and Paper Limited use similar pipe blind and double block and bleed valves when
9 isolating confined spaces. A number of other electrical generating plants in North America
10 responding to Hydro's survey also use pipe blinds as well as isolation valves when isolating
11 confined spaces. There do not appear to be any viable alternatives that will provide Hydro with
12 the ability to control the isolation of hazardous substances while employees, contractors or
13 government officials work in confined spaces. The Board acknowledges that the expenditure
14 approval being requested is significant but, in the context of legislative requirements and worker
15 safety, is one that should be approved.

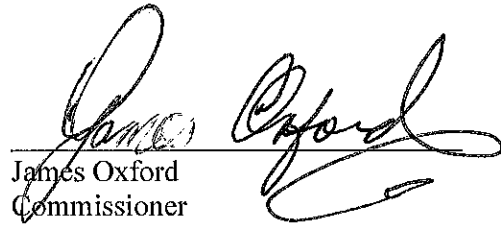
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18 **IT IS THEREFORE ORDERED THAT:**

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21 1. The proposed supplementary 2010 capital expenditure of \$1,804,300 for the installation
22 of pipe blinds or other secure devices to prevent hazardous substances from entering
23 confined spaces at the Holyrood Thermal Generating Station is approved.
24
25 2. Hydro shall pay all expenses of the Board arising from this Application.

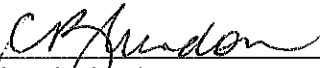
Dated at St. John's, Newfoundland and Labrador, this 17th day of December, 2010.



Darlene Whalen, P.Eng.
Vice-Chair



James Oxford
Commissioner



Cheryl Blundon
Board Secretary