

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

AN ORDER OF THE BOARD

NO. P.U. 27(2014)

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 regulations
5 thereunder; and
6

7 **IN THE MATTER OF** Newfoundland and Labrador
8 Hydro's applications for an order of the Board fixing
9 and determining its:

- 10 (a) 2011 average rate base; and
11 (b) 2012 average rate base.
12
13

14 **Background**
15

16 On August 8, 2012 Hydro filed its 2013 Capital Budget Application seeking, among other things,
17 an order of the Board fixing and determining its average rate base for 2011 at \$1,493,218,000. In
18 Order No. P.U. 4(2013) the Board deferred consideration of Hydro's application for approval of
19 its proposed 2011 rate base. The Board stated at page 19:
20

21 *The Board is not in a position at this time to make a final determination on Hydro's average*
22 *rate base for 2011. There are still outstanding issues before the Board with respect to 2011*
23 *expenditures included in the Allowance for Unforeseen Items which will affect the final*
24 *calculation of the 2011 average rate base. The Board will address this matter in a separate*
25 *Order to be issued.*
26

27 The outstanding issues relate to two projects: the procurement and installation of diesel units at
28 the Charlottetown diesel plant, and the restoration of electrical service to the Baie Verte
29 Peninsula following a snow and ice storm.
30

31 On August 5, 2013 Hydro filed its 2014 Capital Budget Application seeking, among other things,
32 an order of the Board fixing and determining its average rate base for 2012 at \$1,526,051,000.
33 The Board stated in Order No. P.U. 42(2013) at page 32:
34

35 *The Board finds that in the circumstances the 2012 average rate base should not be*
36 *approved until the noted expenditures have been fully reviewed and interested parties have*
37 *had a full opportunity to comment on them. In addition the 2011 rate base must also be*
38 *approved and the relevant evidence in relation to the 2011 average rate base is not a matter*
39 *of record in this Application. As such, the Board will not approve the proposed 2012*

1 *average rate base at this time. The Board will address Hydro's 2012 average rate base and*
2 *deferred charges as well as the 2011 average rate base and deferred charges in a separate*
3 *process. This process will bring the two matters together and allow all of the relevant*
4 *evidence to be reviewed by interested parties and the Board. Hydro's 2013 capital spending*
5 *in relation to the Black Tickle diesel plant restoration will also be addressed in this process.*
6 *The parties will have an opportunity to provide further evidence and make submissions*
7 *ensuring that these important matters are addressed in a full and comprehensive manner.*
8

9 The noted 2012 expenditures relate to two projects: the upgrade of the Cat Arm access road and
10 the fire restoration project at the Black Tickle diesel plant. The Board approved the expenditures
11 in relation to the Cat Arm access road project in Order No. P.U. 24(2012) but ordered that these
12 expenses could not be included in rate base until Hydro demonstrated that to do so would be
13 consistent with generally accepted sound public utility practice. On March 4, 2014, following the
14 provision of further information in relation to the Cat Arm access road project, the Board advised
15 Hydro that the capital expenditures associated with this project could be included in the
16 calculation of the 2012 rate base.
17

18 On March 5, 2014 the Board wrote Newfoundland Power Inc. ("Newfoundland Power"), the
19 Consumer Advocate, the Industrial Customer Group (Corner Brook Pulp and Paper Limited,
20 North Atlantic Refining Limited, and Teck Resources Limited), Vale Newfoundland and
21 Labrador Limited and Praxair Canada Inc. to advise as to the schedule of dates for the
22 consideration of Hydro's applications for fixing and determining of its 2011 and 2012 rate base.
23 The Consumer Advocate and the Industrial Customer Group filed requests for information on
24 March 21, 2014 which were answered by Hydro on March 31, 2014. Hydro filed further
25 evidence on April 7, 2014. The Consumer Advocate, the Industrial Customer Group and
26 Newfoundland Power filed comments on April 14, 2014. Hydro filed its reply on April 17, 2014.
27 Vale Newfoundland & Labrador Limited and Praxair Canada Inc. did not file requests for
28 information or submissions.
29

30 **Submissions**

31

32 Newfoundland Power states that it does not have detailed submissions regarding the specific
33 capital expenditures at issue and references the submissions it made in Hydro's 2014 Capital
34 Budget application. Newfoundland Power submits that Hydro's rate base should include all of
35 those capital expenditures that have been shown to be prudent and reasonably incurred in the
36 fulfillment of Hydro's obligation to provide service to its customers. Newfoundland Power also
37 references its correspondence dated December 17, 2012 which states:
38

39 *Newfoundland Power believes Sections 41, 64 and 78 of the Act all support current*
40 *regulatory practice before the Board. However, they should not, and do not, operate in a*
41 *way that would result in a capital expenditure which is reasonably and prudently incurred in*
42 *the fulfillment of a utility's obligation to serve its customers under the Act being excluded*
43 *from the utility's rate base. Such a result would be confiscatory and inconsistent with a*
44 *purposeful interpretation of the Act.*
45

46 Newfoundland Power states that it believes that prior approval of an expenditure under section
47 41 is not required before the expenditure can be included in rate base and that overspending of

1 the Allowance for Unforeseen Items is not a contravention of section 41 of the *Act*, whether or
2 not it relates to a single project or multiple projects.

3
4 The Consumer Advocate submits that he does not oppose the inclusion into rate base of
5 expenditures in relation to the Charlottetown diesel plant, storm repairs in Baie Verte and the
6 Black Tickle diesel plant. He does, however, raise concerns with the manner in which the Black
7 Tickle project proceeded, stating:

8
9 *The Consumer Advocate does not take issue with the initial work that was carried out on an*
10 *emergency basis to restore service. Clearly, that work was manifestly urgent such that any*
11 *delay would have serious negative consequences. However, in the view of the Consumer*
12 *Advocate, when Hydro went beyond the initial emergency work, it does not appear that the*
13 *situation was urgent to the point of rendering engagement of the regulatory process as*
14 *impossible or impractical. The regulatory process is flexible enough to allow an expedited*
15 *process in keeping with the time sensitiveness of the situation, where circumstances warrant.*

16
17 The Consumer Advocate submits that he expects that in similar situations in the future it will be
18 more difficult to justify the inclusion of such expenditures in rate base.

19
20 The Industrial Customer Group submits that the Board must carefully scrutinize a project
21 completed without the prior approval of the Board to ensure it was urgent, reasonable and
22 necessary. While the Industrial Customer Group requests that the Board consider the evidence
23 presented by Hydro on each of the projects, specific reference is made to the Black Tickle
24 project at page 4:

25
26 *The Island Industrial Customer's [sic] believe that the process, particularly in light of the*
27 *extended timeline from March, 2012 was improper and that an Application for Board*
28 *Approval of a Capital Project should have been made prior to September, 2012.*

29
30 The Industrial Customer Group does not believe that Hydro has established that the Black Tickle
31 expenditures were urgent, reasonable and necessary beyond the initial work to restore power and
32 obtain temporary mobile generation. Further the Industrial Customer Group suggests that the
33 Board should be hesitant to include in rate base any expenditure which does not properly fall
34 within the Guidelines with respect to the Allowance for Unforeseen Items. The Industrial
35 Customer Group states at page 5:

36
37 *Simply put, the Island Industrial Customer's [sic] would submit that it would be "fair and*
38 *just" to exclude any such expenditures from the appraised value of property of Hydro*
39 *pursuant to section 78(3)(a)(iii) of the Act to ensure the integrity of the entire regulatory*
40 *scheme is maintained.*

41
42 In its reply submission Hydro submits that it believes that the Board has jurisdiction and that it
43 should exercise its discretion so as to include these expenditures in rate base. Hydro suggests that
44 the Board's discretion to exclude amounts from the rate base pursuant to section 78(3)(b)(iii) of
45 the *Act* is circumscribed by the language of this provision. Hydro states at page 5:

46
47 *That is, the Board's power to exclude prudently incurred amounts expended for used and*
48 *useful assets pertain to the financial impact of those investments not being borne by the*

1 utility; allowing a return on these amounts can be seen to be unfair to the ratepayer and a
2 windfall to the utility.
3

4 Hydro argues that the Island Industrial Customers' submission is incorrect and that it invites the
5 Board to commit an error of law by suggesting that the Board should be hesitant to include
6 expenditures which do not fall within the Guidelines. Hydro states, at page 1 of its April 7, 2014
7 evidence:

8
9 *Each of these projects was undertaken as a result of unforeseen events requiring immediate*
10 *action by Newfoundland and Labrador Hydro ("Hydro") to provide safe and reliable*
11 *service to its customers. Due to the urgency of the circumstances presented, Hydro*
12 *concluded it was appropriate to utilize the Allowance for Unforeseen Items component of the*
13 *capital budget (the "Unforeseen Allowance") to proceed with each project.*
14

15 Hydro states that the intervenors do not show evidence or argue that the expenditures were
16 unnecessary or were more than required. Hydro notes that the Consumer Advocate and
17 Newfoundland Power do not submit that the costs should be excluded from rate base. Hydro
18 suggests that, since the costs do not impact the Industrial Customers Group's rates, the Board
19 should give these comments little weight. Hydro states at page 7 of its submission:

20
21 *Where used and useful and [sic] assets are acquired or constructed by a utility for the*
22 *service of customers at prudent costs, the Board ought to include them in rate base.*
23 *Excluding from a utility's rate base used and useful assets that it has invested in and*
24 *installed to provide reasonable and adequate service to customers amounts to a confiscatory*
25 *action by the regulator and provides a windfall to the customers.*
26

27 *Obviously, alignment with and adherence to the Board's Guidelines is the preferable course*
28 *of action and, in hindsight, some of the actions taken by Hydro can be alleged to have not*
29 *fallen squarely within the Guidelines' requirements. However, there is no proof or allegation*
30 *of a lack of good faith in these regards.*
31

32 Hydro notes that there is a presumption of managerial good faith and submits that it would be
33 neither fair nor just to exclude these expenditures from rate base.
34

35 **Board Findings**

36
37 The Board has reviewed the information provided in support of Hydro's proposed 2011 and 2012
38 rate base and will address these matters separately below. The Board does not view the failure of
39 Hydro to seek the prior approval of these expenditures as determinative of the rate base issue and
40 will instead look to the circumstances surrounding each project to determine if the expenditures
41 were reasonable and prudent and should be added to rate base. When making this determination
42 the Board will consider all of the circumstances at the time, including whether the approach that
43 was taken was reasonable and necessary and the expenditures were lowest possible cost
44 consistent with reliable service.

1 2011 Rate Base
2

3 The Board's financial consultants, Grant Thornton, verified the calculation of Hydro's proposed
4 2011 rate base but commented in its September 28, 2012 report at page 3:
5

6 *In 2011 the Company included \$2,001,920 in capital assets that were included in the*
7 *"Allowance for Unforeseen Events" which the Board viewed as unauthorized expenditures.*
8 *On April 16, 2012 the Board directed the Company to make an application within the next*
9 *30 days to remedy the breaches. An application was not filed by Hydro within 30 days.*
10 *Currently it remains uncertain if these costs can be included in the 2011 rate base.*
11

12 The \$2,001,920 in capital assets referenced by Grant Thornton relates to two projects: the
13 procurement and installation of diesel units at the Charlottetown diesel plant, and the restoration
14 of electrical service to the Baie Verte Peninsula following a snow and ice storm.¹ Hydro did not
15 make application for prior approval of the Board for these expenditures, instead proceeding
16 under the Allowance for Unforeseen Items.
17

18 The Board accepts Hydro's proposed 2011 rate base as verified by Grant Thornton with the
19 exception of the amounts related to the Charlottetown diesel plant and Baie Verte storm damage
20 which are discussed below.
21

22 *Charlottetown Diesel Plant*
23

24 In the calculation of its 2011 rate base Hydro includes capital asset purchases related to the
25 procurement and installation of diesel units at the Charlottetown diesel plant to meet customer
26 load requirements in 2011 and to increase the firm generation capacity. Specifically Hydro
27 relocated a spare 545 kW diesel generator to the Charlottetown diesel plant and also ordered a
28 new 910 kW mobile diesel generator. The total capital expenditure associated with this work was
29 \$1,481,500.
30

31 The Charlottetown diesel plant serves approximately 200 customers, including a shrimp plant
32 that operates in the summer. In 2009 and 2010 Hydro met the summer peak load by relocating a
33 1,825 kW mobile diesel unit from L'Anse au Loup for the summer season. In December 2010
34 one of the two 250 kW diesel units at the Charlottetown plant failed and was removed from
35 service. In early 2011 Hydro became concerned that relocating the 1,825 kW mobile diesel unit
36 from L'Anse au Loup to Charlottetown would present a risk to service reliability for customers
37 in L'Anse au Loup. Further in March 2011 the second 250 kW diesel unit at the Charlottetown
38 plant failed and was removed from service. Also in March 2011 Hydro was advised that the
39 shrimp plant anticipated start up in May, a month earlier than usual.
40

41 On April 27, 2011 Hydro filed a report with the Board in relation to the Charlottetown diesel
42 plant expenditures and the use of the 2011 Allowance for Unforeseen Items. In this report Hydro
43 sets out that the two 250 kW diesel units that failed were 23 and 29 years old with 108,607 and

¹ In its response to CA-NLH-002 filed on March 31, 2014 Hydro advised that the \$2,001,920 quoted by Grant Thornton reflects a transcribing error of \$1,000 in the information provided by Hydro, which showed the cost of the Charlottetown project being \$1,482,520 rather than the correct amount of \$1,481,520.

1 118,568 unit operating hours and five overhauls. Hydro states its diesel generator unit
2 replacement criteria at page 13 of the report as follows:

3
4 *A diesel unit shall be replaced after it has accumulated 100,000 hours of operation and has*
5 *had the diesel engine refurbished four times. Diesel engines are normally refurbished every*
6 *20,000 hours of operation.*

7
8 In addition Hydro states that it determined in January/February 2011, based on the summer loads
9 in L'Anse au Loup, that removing the 1,825 kW mobile diesel unit from L'Anse au Loup for the
10 summer would leave a shortfall in generating capacity in that community.

11
12 On May 25, 2011, in response to requests for information from the Board, Hydro explains that it
13 considered three options at the time to meet the 2009 summer peak in Charlottetown and that
14 relocating the L'Anse au Loup unit was considerably less costly and did not compromise
15 reliability for customers.

16
17 On March 5, 2012 Hydro provided a further report in relation to the Charlottetown diesel plant
18 expenditures advising that the 2011 work was completed at a cost of \$1,481,500. Hydro explains
19 that it was preparing an estimate for the work to be done in 2012 which would be the subject of a
20 supplemental capital budget application. Hydro also acknowledges that this matter did not
21 proceed in accordance with the Guidelines and apologizes.

22
23 The Board wrote Hydro on April 16, 2012 noting concerns in relation to the Charlottetown diesel
24 plant expenditures and directing Hydro to make application within 30 days to address the issues.
25 Hydro did not file an application and instead wrote the Board on May 30, 2012 to advise that in
26 its view an application could not be made and further that it is not necessary. Hydro states at
27 page 6:

28
29 *In Hydro's view, preventing a utility from including a used and useful asset in rate base*
30 *because of a judgement made by a utility which differs from the Board's as to the degree of*
31 *urgency for a diesel generation addition to meet load would be harsh to say the very least,*
32 *and under the present circumstances, would amount to a confiscatory regulatory action.*

33
34 Hydro explains at page 6 that:

35
36 *Due to a confluence of an earlier than expected spring start-up of the Charlottetown shrimp*
37 *plant and increasing load in L'Anse au Loup, rendering the mobile diesel unavailable for*
38 *Charlottetown, Hydro determined that insufficient time existed to make an application for*
39 *approval of the Charlottetown generation project as a supplemental capital item.*

40
41 On November 16, 2012 Hydro wrote the Board stating that it was Hydro's view that the Board
42 can consider the merits of inclusion in rate base without Hydro making a separate application for
43 approval of this amount at an earlier time. Hydro explains the circumstances of the
44 Charlottetown expenditures and states at page 12:

45
46 *In Hydro's view, the Charlottetown project fit the description of an unforeseen item. It was a*
47 *generation addition required to address the additional load indicated by a fish plant*
48 *customer to be needed. This was relatively sudden and unexpected but the timing of*

1 *addressing this need was complicated considerably by diesel unit failures and the fact that*
2 *an option of relocating mobile diesel units from L'Anse au Loup to address the*
3 *Charlottetown capacity shortfall became unfeasible due to higher than expected load growth*
4 *on the L'Anse au Loup system.*

5
6 Hydro states in evidence filed April 7, 2014 at pages 4-5:

7
8 *Given the urgent circumstances to meet the May 2011 customer load requirements, Hydro*
9 *immediately proceeded with a project to increase the firm generation capacity and replace*
10 *the capacity of the two generators that failed (and subsequently retired) at the Charlottetown*
11 *diesel plant.*

12
13 *Hydro arranged the delivery of a spare 545 kW diesel generator from Hydro's depot in*
14 *Bishop's Falls to replace the two 250 kW units and ordered a new 910 kW mobile diesel*
15 *generator. A net present value (NPV) analysis determined the purchase of a new 910 kW unit*
16 *was the least cost alternative to supply the load requirement.*

17
18 Hydro reports that a 910 kW diesel unit was determined to be of sufficient size for the
19 Charlottetown system and could be used if needed at other isolated systems. Hydro evaluated the
20 three alternatives of purchase, lease to own or rent of the 910 kW diesel unit.

21
22 The Board notes that Hydro applied in its 2008 Capital Budget application for approval of
23 expenditures in the amount of \$594,700 to replace the two 250 kW generating units at the
24 Charlottetown diesel plant with a single 725 kW unit. Hydro explained that both of the 250 kW
25 units required replacement by 2010 to meet Hydro's diesel generator unit replacement criteria
26 which requires that a diesel unit be replaced after 100,000 hours and four overhauls. By 2010
27 both of these units would have four overhauls and in excess of 100,000 hours. Also forecast peak
28 load was expected to exceed firm capacity. The Board approved the proposed capital
29 expenditures in Order No. P.U. 30(2007). Hydro did not proceed with the approved expenditures
30 and reported in its 2009 Capital Expenditures and Carryover Report that a further assessment of
31 the long-term suitability of the existing generation plant was required due to increased demand
32 associated with the shrimp plant and that this assessment would be completed for the 2011
33 Capital Budget. In its 2011 Capital Plan Hydro reported that it decided to delay the replacement
34 of the plant until 2013 to enable all alternatives to be considered. It is notable that Hydro stated
35 in its 2008 Capital Budget application at page B-123:

36
37 *Analysis suggests that the optimal solution for Charlottetown would be three 725 kW units*
38 *and the single 300 kW unit. This would provide enough firm generation to adequately serve*
39 *load, for most if not all of the year, with only two of the three 725 kw units available at any*
40 *time. The 300 kW unit would be used to shoulder the dispatching steps between placing more*
41 *than one 725 kW unit online at any given time thus maintaining efficient loading on all*
42 *online units. The effect would be increased fuel efficiency, reduced emissions and reduced*
43 *operating costs.*

44
45 According to Hydro's own criteria the two units that failed in the winter of 2010/2011 should
46 have been replaced by 2010. Both units exceeded the recommended operating hours and number
47 of overhauls. In addition the Board notes that it was winter before Hydro made a determination

1 that the 1,825 kW diesel unit could not be moved to Charlottetown for the summer even though
2 Hydro states that this determination was made based on the summer 2010 loads.

3
4 The Board concludes that the urgent need to take action in the spring of 2011 in relation to the
5 Charlottetown diesel plant was caused by Hydro's failure to address expected and foreseeable
6 events and to follow its own criteria for replacement of diesel generators. Hydro did not address
7 the known issues in Charlottetown on a timely proactive basis and as a result was left to address
8 urgent requirements with few alternatives. The Board notes that the only alternatives considered
9 were the purchase, lease or rent of the 910 kW unit which was available at the time. Further,
10 Hydro does not show how longer term system considerations and system planning was addressed
11 as a part of its decision making process, especially given its earlier determination as to the
12 optimal solution for Charlottetown.

13
14 The Board finds that Hydro did not demonstrate that the approach that was taken was reasonable
15 and necessary and that the expenditures were least cost. Hydro did not present evidence in
16 relation to other potential approaches that may have been available had earlier action been taken
17 to address the known issues. The Board notes that the approach proposed and approved in
18 Hydro's 2008 Capital Budget to obtain a 725 kW unit was forecast to cost about \$600,000.
19 Hydro reports that the total expenditures for the work completed in Charlottetown in 2011 were
20 \$1,481,500. Hydro has not demonstrated that the approach which was taken was based on proper
21 planning and that the expenditures were prudent. The Board is therefore not satisfied that all of
22 the 2011 expenditures associated with increasing generating capacity in Charlottetown should be
23 added to the 2011 rate base. Based on the evidence the Board will allow Hydro to include
24 \$600,000 in rate base in relation to the Charlottetown expenditures, which is the amount that was
25 previously approved by the Board to meet the requirements on the system based on Hydro's own
26 planning criteria.

27
28 *Baie Verte Storm Restoration*

29
30 In its proposed 2011 rate base Hydro includes capital asset purchases of \$519,400 related to the
31 restoration of electrical service to the Baie Verte Peninsula as a result of a snow and ice storm. In
32 October 2011 the Baie Verte Peninsula experienced extreme weather conditions resulting in
33 extensive damage to the distribution assets in the Baie Verte area. Restoration efforts
34 commenced immediately using the Allowance for Unforeseen Items. Hydro, with the assistance
35 of Newfoundland Power, repaired the distribution system damage and service to all customers
36 was restored on October 30, 2011.

37
38 The Board is satisfied that the Baie Verte expenditures were properly incurred using the
39 Allowance for Unforeseen Items and that the expenditures were reasonable and necessary and
40 the lowest possible cost consistent with reliable service. While Hydro should have at the time
41 applied to the Board to top up the Allowance for Unforeseen Items the Board finds that the
42 expenditures in relation to Baie Verte were prudent and should be added to the 2011 rate base.

1 2012 Rate Base
2

3 Grant Thornton verified the calculation of Hydro's proposed 2012 rate base but explained in its
4 September 20, 2013 report that the proposed 2012 rate base includes capital asset purchases of
5 \$1,374,000 relating to a fire restoration project at the Black Tickle diesel plant which had not
6 been approved by the Board and that inclusion of these costs in rate base was uncertain.
7

8 On March 14, 2012 a fire at the Black Tickle diesel plant caused significant damage and an
9 extended outage for the 105 customers of the community. Following the fire Hydro commenced
10 work to temporarily repair one unit at the plant, restoring power to the community 41 hours after
11 the initial outage. On March 20, 2012 a mobile generator was placed in service and on March 26,
12 2012 a second unit at the plant was operationalized. Hydro subsequently determined that it was
13 necessary to restore the plant and remove the mobile units from the site prior to the end of the
14 shipping season and to do so it would restore the plant to its pre-fire condition. Hydro did not
15 seek prior approval of the Board for these expenditures, instead proceeding under the Allowance
16 for Unforeseen Items.
17

18 On March 20, 2012 Hydro wrote the Board to advise that it carried out work at the diesel
19 generating plant in Black Tickle on an emergency basis as the result of a fire. Hydro stated that it
20 was still assessing the damage and that it would advise as to the scope of work and estimated
21 costs upon completion of this assessment. Hydro did not file an update until September 27, 2012
22 when it submitted its application to top up the Allowance for Unforeseen Items. In its report
23 Hydro explained that it was able to make one of the damaged generating units operational on a
24 temporary basis and that, due to the unpredictable reliability of the damaged systems, a mobile
25 generator was delivered. Hydro describes the project as including refurbishment of the plant to
26 pre-fire condition. Hydro explains that in May 2012 the fish plant in Black Tickle announced that
27 it was closing, reducing the forecast load from 520 kW to 250 kW. As a result of the change in
28 forecast load Hydro revised its plan in relation to the mobile units.
29

30 On October 12, 2012 Hydro filed answers to information requests from the Board. In relation to
31 the drop in load with the closure of the fish plant, Hydro advises in PUB-NLH-3 that it did not
32 consider re-sizing the plant capacity based on the revised load. According to Hydro the generator
33 sets for all three existing diesel units remained salvageable after the fire, and the time required to
34 obtain and install new units of a more appropriate size would leave the community at risk of not
35 having reliable power. Hydro states that restoration to pre-fire condition, due to the condition of
36 the units, was the obvious least cost option for rapid restoration of safe reliable power. The
37 requests for information also addressed the issue of fire protection at the Black Tickle diesel
38 plant. In 2012, when the fire occurred, the Black Tickle diesel plant did not have fire
39 suppression. In PUB-NLH-2 Hydro explains that after the fire it did consider installing a fire
40 suppression system but that, mainly due to timing, it was decided to restore to pre-fire condition.
41 Hydro notes that fire protection would require additional space in the plant which was an
42 additional risk to project completion, stating:
43

44 *Hydro's current approach to fire protection in diesel plants is to consider installation of fire*
45 *protection systems over time in remote diesel plants as other generation expansion projects*
46 *are completed and with consideration of the risk ranking for the plant in question, utilizing*
47 *the risk ranking matrix provided with the 2011 Hatch Diesel Plant Fire Protection Study.*

1 *Hydro is reviewing this approach, with consideration being given to including projects to*
2 *add fire protection in plant, with the highest risk ranking first, in the long term plan for*
3 *diesel plants.*
4

5 On January 3, 2013 the Board directed Hydro to file a further report in relation to the Black
6 Tickle expenditures. On April 1, 2013 Hydro filed a report explaining that, because there was
7 insufficient time to procure equipment to match the new load forecast, the existing assets were
8 restored. Hydro reports that there were concerns in relation to the challenges of providing power
9 to Black Tickle via portable units. In relation to the issue of fire protection Hydro reports that it
10 was considered but, due to space requirements in the plant and the need to focus on getting the
11 plant functioning prior to the shipping season closing, it was decided to defer adding fire
12 protection. Hydro states at page 12:

13
14 *Due to the strong concerns of ensuring that reliable power could be restored to Black Tickle*
15 *prior to the winter of 2013, there was a conscious decision made to proceed without*
16 *consideration of the short falls of generation not matching the future load and no fire*
17 *suppression being added.*
18

19 On September 9, 2013 Hydro filed an application to top up the 2013 Allowance for Unforeseen
20 Items after the Black Tickle fire restoration expenditures. In support of the application Hydro
21 provided a further report on October 10, 2013 in relation to the Black Tickle diesel plant fire
22 restoration, setting out the total project cost as \$1,786,364 with insurance proceeds of \$274,801,
23 for a net cost of \$1,417,031. Hydro explains that the work involved restoration to pre-fire
24 condition and included emergency response, mobilization of mobile generation, refurbishment of
25 the interior and generating equipment and demobilization of the mobile generation.
26

27 In Order No. P.U. 31(2013), issued October 25, 2013, the Board denied Hydro's application to
28 add an amount to the 2013 Allowance for Unforeseen Items for the Black Tickle fire restoration
29 expenditures as the expenditures were under review by the Board.
30

31 On March 31, 2014 Hydro answered further requests for information in relation to its proposed
32 2012 rate base. In response to CA-NLH-004 Hydro sets out its position that the capital
33 expenditures in relation to the Black Tickle fire restoration project were made to provide safe
34 and reliable service to the customers of Black Tickle and the project was completed in a least
35 cost manner consistent with reliable service. Hydro concludes that the capital expenditures were
36 prudent and the effects of the refurbishment are used and useful to provide utility service and the
37 Board is empowered to include the capital expenditures in rate base. In response to IC-NLH-008
38 Hydro states the mobile units installed outside the diesel plant are not designed to withstand the
39 harsh winter of coastal Labrador and that significant snowfall posed a risk to the reliability of
40 supply. Further Hydro explains that the lead time required for delivery so that commissioning
41 would occur before the end of the shipping season presented a risk to the security of supply if the
42 project was not started immediately. Hydro states:
43

44 *The early onset of winter in Labrador, the relatively short shipping season and potential*
45 *risks to the temporary power supply of Black Tickle were all considered when deciding that*
46 *the repair to the Black Tickle plant was in accordance with the conditions of the Capital*
47 *Budget Guidelines on Allowance for Unforeseen Items.*

1 In evidence filed on April 7, 2014 Hydro states at page 8:
2

3 *The commissioning of the restored plant and removal of the mobiles from the site were*
4 *required prior to the end of the shipping season in Labrador. If the project was not started*
5 *immediately, the lead time required for delivery of many of the components in order to have*
6 *commissioning occur before the end of the shipping season also presented a risk to security*
7 *of supply. The decision was made to begin a project to restore the plant to its pre-fire*
8 *condition and to not include any additional upgrades in the scope of work. Once the project*
9 *commenced, work directly flowing from the emergency restoration effort continued without*
10 *pause to ensure that safe, adequate and reliable service could be provided to customers.*
11

12 Hydro states in submissions filed on April 17, 2014 at page 3:
13

14 *There was no period of time during this project to pause, reflect upon next steps, and to*
15 *apply to the Board for a capital project to restore the plant. Moreover, applying to the Board*
16 *for consideration of a do-nothing approach or of various project alternatives would have*
17 *been a meaningless exercise. The task at hand was to restore the plant to safe and reliable*
18 *state, work which commenced immediately after the fire was extinguished and did not cease*
19 *until months later.*
20

21 The Board accepts that Hydro was required to take immediate action following the fire on March
22 14, 2012 and that capital expenditures were necessary to meet its obligation to serve customers in
23 Black Tickle. The Board also accepts that the short shipping season required that the work be
24 completed as quickly as possible. However, the Board finds that Hydro has not demonstrated that
25 there was insufficient time for it to address the change in load as a result of the closure of the fish
26 plant and to install fire suppression. Hydro advises that it did not consider resizing the plant and
27 states that restoration to pre-fire condition, due to the condition of the units, was the obvious
28 least cost option for rapid restoration of safe reliable power. Hydro did not provide evidence in
29 relation to the costs, timelines and risks associated with alternative approaches. Hydro did not
30 install fire protection as part of this project despite the fact that Hydro had determined that fire
31 protection should be installed in its remote diesel plants. Hydro did not provide evidence as to
32 the costs, timelines and risks associated with alternative options to install fire suppression at the
33 same time as this work.
34

35 The Board accepts that Hydro was required to incur capital expenditures following the fire at the
36 Black Tickle diesel plant but finds that Hydro has not provided sufficient evidence to
37 demonstrate that the amount of the expenditures were reasonable and necessary and lowest
38 possible cost consistent with reliable service. Hydro's decision to restore to pre-fire condition
39 without reflecting the change in load or installing fire suppression may have been appropriate
40 but, without evidence in relation to alternatives, the Board is unable to make that determination.
41 The Board finds that, without supporting information in relation to the costs and risks associated
42 with alternative approaches, it is not in a position to determine that the proposed expenditures or
43 some other amount should be included in rate base. Therefore the Board will not include the
44 Black Tickle fire restoration expenditures in Hydro's 2012 rate base.

1 Summary of Board Findings
2

3 The Board will fix and determine Hydro's proposed 2011 rate base except that only \$600,000 of
4 the \$1,481,500 capital asset purchases to increase generation capacity at the Charlottetown diesel
5 plant will be included.
6

7 The Board will approve the proposed 2012 rate base without the Black Tickle expenditures.
8

9 When Hydro applies for approval of its 2013 rate base it may propose to include both 2012 and
10 2013 expenditures in relation to the Black Tickle fire restoration project, providing evidence
11 demonstrating that the expenditures were reasonable and necessary in the circumstances.
12

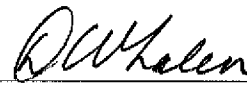
13
14 **IT IS THEREFORE ORDERED THAT**
15

- 16 1. Pursuant to Section 78 of the *Act* Newfoundland and Labrador Hydro's rate base for the
17 year ending December 31, 2011 is hereby fixed and determined at \$1,492,777,250.
18
19 2. Pursuant to Section 78 of the *Act* Newfoundland and Labrador Hydro's rate base for the
20 year ending December 31, 2012 is hereby fixed and determined at \$1,524,482,500.

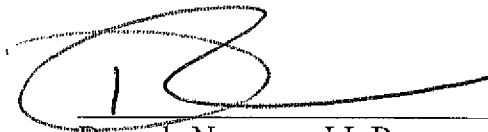
DATED at St. John's, Newfoundland and Labrador this 18th day of July, 2014.



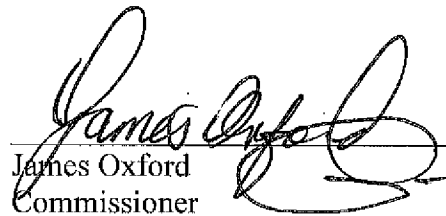
Andy Wells
Chair & Chief Executive Officer



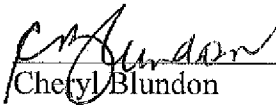
Darlene Whalen, P.Eng.
Vice-Chair



Dwanda Newman, LL.B.
Commissioner



James Oxford
Commissioner



Cheryl Blundon
Board Secretary