

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

AN ORDER OF THE BOARD

NO. P.U. 31(2021)

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** an application by
8 Newfoundland and Labrador Hydro for approval of
9 a Second Amended and Restated Pilot Agreement for
10 the Optimization of Hydraulic Resources pursuant to
11 section 3(b)(iii) of the *EPCA* and sections 70 and 76
12 of the *Act*.
13
14

15 **WHEREAS** Newfoundland and Labrador Hydro (“Hydro”) is a corporation continued and
16 existing under the *Hydro Corporation Act, 2007*, is a public utility within the meaning of the *Act*,
17 and is also subject to the provisions of the *EPCA*; and
18

19 **WHEREAS** in Order No. P.U. 49(2018) the Board approved a Pilot Agreement for the
20 Optimization of Hydraulic Resources (“Pilot Agreement”) between Hydro and Nalcor Energy
21 Marketing (“NEM”); and
22

23 **WHEREAS** the Pilot Agreement allows:

- 24 (i) the purchase and import of low cost energy from off-island sources and the export
25 and sale of an offsetting amount of energy at another time when market prices are
26 higher relative to when the import occurred (“Ponding”); and
27 (ii) the sale of excess energy from the Island Interconnected System which would
28 otherwise be spilled (“Spill Energy”) to NEM which, in turn, can sell this energy
29 to external markets to generate additional revenues; and
30

31 **WHEREAS** in Order No. P.U. 49(2018) Hydro was directed to provide updates on its Ponding
32 and Spill Energy activities pursuant to the Pilot Agreement as part of its quarterly reporting to the
33 Board, and to provide a report with its application for approval of a final agreement for the
34 optimization of hydraulic resources addressing its experience in relation to the Pilot Agreement as
35 well as any measures taken to enhance the effectiveness of the Ponding and Spill Energy activities;
36 and
37

38 **WHEREAS** the Pilot Agreement was set to expire on the earlier of December 31, 2020, or upon
39 execution and approval by the Board of a final agreement for the optimization of hydraulic
40 resources; and

1 **WHEREAS** in Order No. P.U. 38(2020) an Amended and Restated Pilot Agreement for the
2 Optimization of Hydraulic Resources was approved with an expiration date of the earlier of (i) the
3 commissioning date as defined in the Power Purchase Agreement between Hydro and the Muskrat
4 Falls Corporation; or (ii) the date that a final agreement for the optimization of hydraulic resources
5 is executed and approved by the Board; and
6

7 **WHEREAS** on October 15, 2021 Hydro filed an application for approval of a Second Amended
8 and Restated Pilot Agreement for the Optimization of Hydraulic Resources (the “Application”)
9 which proposed to further extend the term of the Pilot Agreement with all other terms remaining
10 the same; and
11

12 **WHEREAS** the proposed expiration of the Application is the earlier of i) December 31, 2022 or
13 ii) the date that a final agreement for the optimization of hydraulic resources is executed and
14 approved by the Board; and
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16 **WHEREAS** the Application stated that Hydro and NEM believe that it remains premature to enter
17 into a final agreement for the optimization of hydraulic resources at this time as i) the re-
18 negotiation of the Muskrat Falls Power Purchase Agreement may have implications on the final
19 agreement; and ii) clarity is required on the direction from the Province of Newfoundland and
20 Labrador that Nalcor Energy Ltd. operations will move under Hydro, the implementation of which
21 is ongoing; and
22

23 **WHEREAS** the Application stated that the Pilot Agreement has been beneficial for Hydro’s
24 customers as demonstrated in the report filed with the Application and that approval of the
25 Application would enable Hydro to continue to capture opportunities to create value for its
26 customers from Ponding and Spill Energy activities on a pilot basis; and
27

28 **WHEREAS** the Application was copied to: Newfoundland Power Inc. (“Newfoundland Power”);
29 the Consumer Advocate, Dennis Browne, Q.C.; a group of Island Industrial customers: Corner
30 Brook Pulp and Paper Limited, NARL Refining Limited Partnership and Vale Newfoundland &
31 Labrador Limited; Teck Resources Limited; and Praxair Canada Inc.; and
32

33 **WHEREAS** on October 25, 2021 Newfoundland Power advised it did not have any comments on
34 the Application; and
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36 **WHEREAS** on October 29, 2021 Hydro filed a reply requesting that the Board approve the
37 Application as submitted; and
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39 **WHEREAS** no other comments were received by the Board; and
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41 **WHEREAS** the Board is satisfied that the Ponding and Spill Energy activities pursuant to the Pilot
42 Agreement have benefited Hydro’s customers and that approval of the Second Amended and
43 Restated Pilot Agreement would provide the opportunity for continued customer benefits and
44 therefore the Application should be approved and the established reporting requirements
45 continued.

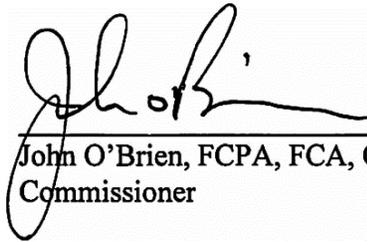
1 **IT IS THEREFORE ORDERED THAT:**
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- 3 1. The Second Amended and Restated Pilot Agreement for the Optimization of Hydraulic
4 Resources is approved.
5
6 2. Hydro shall continue to provide updates on its Ponding and Spill Energy activities as part of
7 its quarterly reporting to the Board during the period that the Second Amended and Restated
8 Pilot Agreement for the Optimization of Hydraulic Resources is in effect.
9
10 3. Hydro shall file, as part of its application for approval of a final agreement for the optimization
11 of hydraulic resources, a report summarizing its experience related to Ponding and Spill Energy
12 activities during the pilot period as well as any measures taken to enhance the effectiveness of
13 these activities.
14
15 4. Hydro shall pay all expenses of the Board arising from this Application.

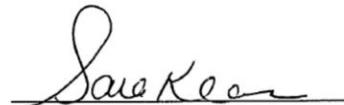
DATED at St. John’s, Newfoundland and Labrador, this 8th day of November, 2021.



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



John O'Brien, FCPA, FCA, CISA
Commissioner



Sara Kean
Assistant Board Secretary