

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

AN ORDER OF THE BOARD

NO. P.U. 35(2022)

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 Third 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**.
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15 **WHEREAS** Newfoundland and Labrador Hydro (“Hydro”) is a corporation continued and existing
16 under the **Hydro Corporation Act, 2007**, is a public utility within the meaning of the **Act**, and is
17 also subject to the provisions of the **EPCA**; and
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19 **WHEREAS** in Order No. P.U. 49(2018) the Board approved a Pilot Agreement for the Optimization
20 of Hydraulic Resources (“Pilot Agreement”) between Hydro and Nalcor Energy Marketing
21 (“NEM”); and
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23 **WHEREAS** in Order No. P.U. 38(2020) the Board approved an Amended and Restated Pilot
24 Agreement for the Optimization of Hydraulic Resources (“A&R Pilot Agreement”) with an
25 expiration date of the earlier of (i) the commissioning date as defined in the Power Purchase
26 Agreement between Hydro and the Muskrat Falls Corporation; or (ii) the date that a final
27 agreement for the optimization of hydraulic resources is executed and approved by the Board;
28 and
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30 **WHEREAS** in Order P.U. 31(2021) the Board approved a Second Amended and Restated Pilot
31 Agreement for the Optimization of Hydraulic Resources (“Second A&R Pilot Agreement”) with an
32 expiration of the earlier of i) December 31, 2022 or ii) the date that a final agreement for the
33 optimization of hydraulic resources is executed and approved by the Board; and
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35 **WHEREAS** on December 2, 2022 Hydro filed an application for approval of a Third Amended and
36 Restated Pilot Agreement for the Optimization of Hydraulic Resources (“Third A&R Pilot

1 Agreement”) which proposed all terms remain the same as the Second A&R Pilot Agreement
2 except a proposed expiration of the earlier of (i) December 31, 2023; (ii) approval by the Board
3 of an agreement to replace the Third A&R Pilot Agreement; or (iii) agreement by the parties to
4 discontinue the Third A&R Pilot Agreement (the “Application”); and
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6 **WHEREAS** the Application stated that the Pilot Agreement, continued under the A&R Pilot
7 Agreement and Second A&R Pilot Agreement, has been beneficial for Hydro’s customers, but
8 Hydro is considering the implications of the changing electricity system and proposing to extend
9 the pilot agreement until it can determine what type of future agreement is needed; and
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11 **WHEREAS** the Application stated approval of the Third A&R Pilot Agreement will enable Hydro
12 to continue to capture opportunities to create value for its customers from Ponding and the sale
13 of Spill Energy while Hydro is considering what future agreements may be necessary, if any; and
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15 **WHEREAS** the Application was copied to: Newfoundland Power Inc. (“Newfoundland Power”);
16 the Consumer Advocate, Dennis Browne, K.C.; a group of Island Industrial customers: Corner
17 Brook Pulp and Paper Limited, Braya Renewable Fuels (Newfoundland) GP Inc. and Vale
18 Newfoundland & Labrador Limited (“Industrial Customer Group”); Teck Resources Limited; and
19 Linde Canada Inc.; and
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21 **WHEREAS** on December 8, 2022 Newfoundland Power and the Industrial Customer Group
22 advised they did not have any comments on the Application; and
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24 **WHEREAS** no other comments were received by the Board; and
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26 **WHEREAS** on December 12, 2022 Hydro filed a reply requesting that the Board approve the
27 Application as submitted; and
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29 **WHEREAS** the Board is satisfied that the Ponding and Spill Energy activities pursuant to the Pilot
30 Agreement have benefited Hydro’s customers and that the Third Amended and Restated Pilot
31 Agreement should be approved; and

1 **IT IS THEREFORE ORDERED THAT:**

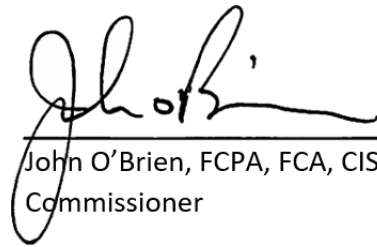
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1. The Third Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources is approved.
2. Hydro shall continue to provide updates on its Ponding and Spill Energy activities as part of its quarterly reporting to the Board during the period that the Third Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources is in effect.
3. Hydro shall file, as part of its application for approval of a final agreement for the optimization of hydraulic resources or upon discontinuance of the agreement, a report summarizing its experience related to Ponding and Spill Energy activities during the pilot period as well as any measures taken to enhance the effectiveness of these activities.
4. Hydro shall pay all expenses of the Board arising from this Application.

DATED at St. John’s, Newfoundland and Labrador, this 16th day of December 2022.



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



John O'Brien, FCPA, FCA, CISA
Commissioner



Christopher Pike, LL.B., FCIP
Commissioner



Assistant Board Secretary