

May 18, 2018

The Board of Commissioners of Public Utilities  
Prince Charles Building  
120 Torbay Road, P.O. Box 21040  
St. John's, NL  
A1A 5B2 Canada

**Attention: Ms. Cheryl Blundon**  
**Director Corporate Services & Board Secretary**

Dear Ms. Blundon:

**Re: 2017 General Rate Application – Response to RFIs – Cost of Service – Additional Information in Compliance with Board Order No. P.U. 2(2018) – Application regarding Confidential Information contained in Table 2 of Hydro's response to PUB-NLH-149**

Enclosed please find one (1) original plus thirteen (13) copies of Newfoundland and Labrador Hydro's (Hydro's) Application for an Order under the Rules of Procedure set for the 2017 General Rate Application whereby information contained in Table 2 of Hydro's response to PUB-NLH-149 is considered to be confidential and that the Intervenor's access to the confidential information is governed by the terms of the undertakings to be executed by the Intervenor's representatives prior to their receipt of that confidential information.

Should you have any questions, please contact the undersigned.

Yours truly,

**NEWFOUNDLAND AND LABRADOR HYDRO**



Michael S. Ladha  
Legal Counsel and Assistant Corporate Secretary  
MSL/skc

cc: Gerard Hayes - Newfoundland Power  
Paul Coxworthy - Stewart McKelvey  
Denis J. Fleming - Cox & Palmer  
ecc: Van Alexopoulos - Iron Ore Company  
Senwung Luk - Olthius Kleer Townshend LLP

Dennis Browne, Q.C. – Browne Fitzgerald Morgan & Avis  
Dean Porter - Poole Althouse

Benoît Pepin - Rio Tinto

**IN THE MATTER OF** the *Electrical Power Control Act, 1994*, R.S.N.L. 1994, Chapter E-5.1 (the *EPCA*) and the *Public Utilities Act*, R.S.N.L. 1990, Chapter P-47 (the *Act*) and regulations thereunder;

**AND IN THE MATTER OF** a General Rate Application by Newfoundland and Labrador Hydro to establish customer electricity rates for 2018 and 2019 filed on July 28, 2017, and subsequently revised on September 15, 2017, October 16, 2017, October 27, 2017 and November 27, 2017 (the *GRA*).

**TO:** The Board of Commissioners of Public Utilities (the Board)

The Application of Newfoundland and Labrador Hydro (Hydro) regarding Confidential Information contained in Table 2 of Hydro's response to PUB-NLH-149 states:

1. Hydro is a corporation continued and existing under the *Hydro Corporation Act, 2007*, S.N.L. 2007, Chapter H-17, is a public utility within the meaning of the *Act*, and is subject to the provisions of the *EPCA*.
2. The Board's procedural order issued in connection with the *GRA*, Order No. P.U. 30(2017) contains the Rules of Procedure for the *GRA* hearing. Paragraph 1(b) of the Rules of Procedure reads as follows:

*1(b) A party may apply to the Board requesting that a document or other information filed with the Board be considered confidential and not be released or released subject to conditions set by the Board.*

3. On April 6, 2018 Hydro filed responses to Requests for Information (“RFIs”) associated with its March 23, 2018 filing of Additional Information in the GRA.
  
4. On April 13, 2018 Hydro filed an application for an order of the Board that its responses to two of those RFI responses, including PUB-NLH-149, be considered confidential and that the Intervenor’s access to the confidential information be governed by the terms of an undertaking to be executed by the Intervenor’s representatives prior to the receipt of the confidential information. Hydro explained that its response to PUB-NLH-149 contains information relating to energy purchases made by Nalcor Energy Marketing Corporation (“NEM”) on behalf of Hydro from suppliers outside of the province and transmitted on the Maritime Link. Hydro submitted that it is necessary to withhold this commercially sensitive trading information from public distribution to protect the interests of its customers. Hydro noted that bilateral transactions that occur between energy traders are treated as highly confidential in the competitive energy markets and disclosure of information related to these transactions can be damaging to the parties. Disclosure would provide competitors with information that could prejudice Hydro’s ability to procure the most cost effective energy. Maintaining competition amongst energy suppliers is essential in order to achieve the lowest energy costs for Hydro’s customers. Disclosure of trading strategies and experiences would have the effect of impairing or removing competitive pricing, thereby potentially increasing ratepayer costs.

5. The Board's issued its order in respect of the confidentiality application, Order No. P.U. 13(2018) on May 10, 2018. The Board held that parties seeking a determination that certain information is confidential must "*demonstrate that there is a material risk that placing the information on the public record would cause harm*" and that in considering each such request the Board "*will assess whether the potential harm associated with the release of the information outweighs the interests of transparency and full disclosure and whether there are reasonable accommodations that can be made in the circumstances.*"

6. As regards Hydro's response to PUB-NLH-149, the Board stated at page 5, lines 9 to 28:

*The response to this RFI sets out information related to Hydro's purchases over the Maritime Link up to March 31, 2018. The Board agrees with Hydro that details in relation to each purchase, including the volume and average price paid, may provide competitors with information that could prejudice Hydro's ability to procure the most cost effective energy. This is clearly in the nature of sensitive commercial information, the release of which may damage the interests of the utility and rate payers in this province. The Board accepts Hydro's request to treat this detailed information as confidential and to require that it be released to the Intervenors' representatives only after the undertaking has been executed. The Board notes, however, that this response also includes other less detailed, aggregate data, which does not set out information related to pricing or volumes for each purchase. In particular, Table 2 is*

*an Expected Supply Scenario Test Year Price Variance Analysis which includes a comparison to Hydro's forecast savings filed in the Additional Cost of Service Information. The Board notes that the arguments made by Hydro in support of the confidentiality of its response to this RFI related primarily to concerns regarding pricing information and the prejudice to Hydro's ability to procure the most cost effective energy. Hydro did not address the harm that may result from the summary information in Table 2 which provides information related to the costs of monthly purchases compared to Hydro's previously filed forecast. As such the Board does not believe that Hydro has demonstrated that the information set out in Table 2 in this response should be treated as confidential. Nevertheless if Hydro continues to believe that the information in Table 2 should be considered to be confidential it may file a further application with supporting information. [Emphasis added.]*

7. Accordingly, the Board ordered that the response to PUB-NLH-149, with the exception of Table 2, shall be considered confidential and shall be released to the Intervenors' representatives upon the execution of the confidentiality undertaking proposed by Hydro. The Board further ordered that in the absence of a further confidentiality application, Hydro shall file the information included in Table 2 within ten days of the date of the Order.

8. Hydro now therefore brings this present application to request that the information contained in Table 2 of its response to PUB-NLH-149 be considered confidential and be released to the Intervenor's representatives upon the execution of the confidentiality undertaking proposed by Hydro.
  
9. Table 2 provides the daily actual price of purchases over the Maritime Link to March 31, 2018 compared against the daily forecast purchase price filed in Hydro's Summary Report – Additional Cost of Service Information. The information regards energy purchases made on behalf of Hydro by its marketing affiliate, NEM. NEM purchased the energy from suppliers outside the province and that energy was transmitted to Hydro on the Maritime Link. It is necessary to withhold this commercially sensitive trading information from public distribution to protect the interests of Hydro's customers.
  
10. The information contained in Table 2, when combined with existing industry knowledge, specifically information readily accessible by energy suppliers and competitors through the Open Access Same-Time Information System (Oasis), is information which can be used by such persons to deduce the average price per kilowatt hour paid by Hydro. It is reasonable to expect that energy suppliers, transacting within what is a highly competitive energy market, would use this information to make such deductions to determine what NEM was willing to pay for energy on an individual transaction basis. This detailed information with regard to energy purchases made by Hydro is therefore

commercially sensitive and must be withheld from public distribution to protect the interests of Hydro's customers.

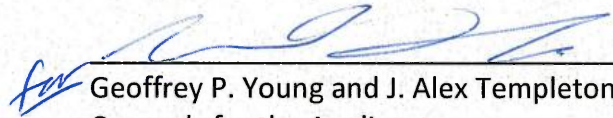
11. Disclosure of this information would provide competitors with information that could prejudice Hydro's ability to procure the most cost effective energy. For example, if a supplier was able to use the information in Table 2 to deduce what NEM was willing to pay for energy under a bilateral transaction with one company, then it would impair NEM's ability to negotiate a better price with other competitors.
12. Maintaining competition amongst energy suppliers is essential in order to achieve the lowest energy costs for Hydro's customers. Disclosure of information that can be used in combination with readily available industry knowledge to deduce trading strategies and experiences would have the effect of impairing or removing competitive pricing, thereby potentially increasing ratepayer costs.
13. While Hydro, as a fully regulated public utility, fully acknowledges the importance of transparency, it submits that there are, as recognized by the Board in Order No. P.U. 13(2018), exceptional circumstances where economic regulators such as the Board, acting prudently and in the public interest, should respect the business realities of the parties that appear before it or which are affected by its proceedings.

14. Hydro submits that the information contained in Table 2 of Hydro's response to PUB-NLH-149 is such an exceptional circumstance – where the public's interest in transparency is outweighed by the value to the parties and their customers if confidential business information is maintained. Further, Hydro submits that the present application is squarely within the contemplated circumstances that are to be afforded protection by paragraph 1(b) of the Rules of Procedure.
  
15. Together with its April 6, 2018 filing of RFI responses, Hydro filed an undertaking document to be executed by the Intervenor's' representatives prior to their receipt of confidential information. Hydro believes it to be reasonable to require that, before gaining access to the confidential information, the Intervenor's' representatives each execute the proposed undertaking document to assure the protection of the confidential information from disclosure. Meanwhile, this process will ensure that the Board and the parties will retain the opportunity to fully view and scrutinize the confidential information.
  
16. Hydro therefore applies for an Order under the Rules of Procedure set for this GRA whereby the information contained in Table 2 of Hydro's response to PUB-NLH-149 is considered to be confidential and that the Intervenor's' access to the confidential information is governed by the terms of the undertakings to be executed by the Intervenor's' representatives prior to their receipt of that confidential information.



DATED at St. John's, in the Province of Newfoundland and Labrador, this 18<sup>th</sup> day of May, 2018.

**NEWFOUNDLAND AND LABRADOR HYDRO**

  
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for Geoffrey P. Young and J. Alex Templeton  
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**IN THE MATTER OF** the *Electrical Power Control Act, 1994*, R.S.N.L. 1994, Chapter E-5.1 (the *EPCA*) and the *Public Utilities Act, R.S.N.L. 1990*, Chapter P-47 (the *Act*) and regulations thereunder;


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**AFFIDAVIT**

I, Renee Hodder, Professional Engineer, of St. John's in the Province of Newfoundland and Labrador, make oath and say as follows:

1. I am Manager, Resource and Production Planning, of Newfoundland and Labrador Hydro, the Applicant named in the attached Application.
2. I have read and understand the foregoing Application.
3. I have personal information of the facts contained therein, except where otherwise indicated, and they are true to the best of my knowledge, information and belief.

**SWORN** at St. John's in the Province of Newfoundland and Labrador, this 18<sup>th</sup> day of May, 2018, before me:

  
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Michael Ladha  
Barrister – Newfoundland and Labrador )

  
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Renee Hodder