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November 16, 2023

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

Attention: Jo-Anne Galarneau
Executive Director and Board Secretary

Re: Application for Approval of the Terms of a Capacity Assistance Agreement between Newfoundland and Labrador Hydro and Corner Brook Pulp and Paper Limited

Please find enclosed an application for approval of the terms of a Capacity Assistance Agreement ("CAA") between Newfoundland and Labrador Hydro ("Hydro") and Corner Brook Pulp and Paper Limited ("CBPP") ("Application"). This Application is filed for approval of the Board of Commissioners of Public Utilities in accordance with Sections 70(1) and 71 of the *Public Utilities Act*¹ which require a public utility to obtain approval of the schedule of rates, tolls, and charges before charging, demanding, collecting or receiving compensation for a service, as well as approval of the rules and regulations relating to that service.

Discussion regarding the proposed terms of a new CAA between Hydro and CBPP is provided in Schedule 1 to the Application. The proposed terms, detailed in a Term Sheet, are provided in Schedule 2.

Should you have any questions, please contact the undersigned.

Yours truly,

NEWFOUNDLAND AND LABRADOR HYDRO

Shirley A. Walsh
Senior Legal Counsel, Regulatory
SAW/kd

Encl.

ecc:

Board of Commissioners of Public Utilities
Jacqui H. Glynn
Cheryl Blundon
PUB Official Email

Linde Canada Inc.
Sheryl E. Nisenbaum
Peter Strong

Teck Resources Limited
Shawn Kinsella

¹ *Public Utilities Act*, RSNL 1990, c P-47, ss. 70(1) and 71.

Jo-Anne Galarneau
Board of Commissioners of Public Utilities

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Consumer Advocate

Dennis M. Browne, KC, Browne Fitzgerald Morgan & Avis
Stephen F. Fitzgerald, Browne Fitzgerald Morgan & Avis
Sarah G. Fitzgerald, Browne Fitzgerald Morgan & Avis
Bernice Bailey, Browne Fitzgerald Morgan & Avis

Newfoundland Power Inc.

Dominic J. Foley
Lindsay S.A. Hollett
Regulatory Email

Island Industrial Customer Group

Paul L. Coxworthy, Stewart McKelvey
Denis J. Fleming, Cox & Palmer
Dean A. Porter, Poole Althouse

Application for Approval of the Terms of a Capacity Assistance Agreement

Newfoundland and Labrador Hydro and Corner Brook
Pulp and Paper Limited

November 16, 2023

An application to the Board of Commissioners of Public Utilities



IN THE MATTER OF the *Electrical Power Control Act*, RSNL 1994, Chapter E-5.1 (“*EPCA*”) and the *Public Utilities Act*, RSNL 1990, Chapter P-47 (“*Act*”) and regulations thereunder;

AND IN THE MATTER OF an application for the approval, pursuant to Sections 70(1) and 71 of the *Act*, of the terms of a Capacity Assistance Agreement (“*CAA*”) between Newfoundland and Labrador Hydro (“*Hydro*”) and Corner Brook Pulp and Paper Limited (“*CBPP*”) (“*Application*”).

To: The Board of Commissioners of Public Utilities (“Board”)

THE APPLICATION STATES THAT:

A. Background

1. Hydro, a corporation continued and existing under the *Hydro Corporation Act, 2007*,¹ is a public utility within the meaning of the *Act*, and is subject to the provisions of the *EPCA*.
2. CBPP has been considered a public utility under certain sections of the *Act* such that applications have historically been made for approval by the Board for the rates applicable to capacity and energy sales from CBPP to Hydro.
3. CBPP has hydroelectric generating capability to provide most, but not all, of its own electricity generation needs and which, from time to time, enable it to provide electrical capacity to Hydro.
4. Hydro and CBPP were parties to a Second Amended and Restated CAA for up to 105 MW of capacity assistance which expired on April 30, 2023.² The Second Amended and Restated CAA provided a reduction in the overall Island electrical system demand during peak hours and periods of system constraint and was approved by the Board in Board Order No. P.U. 4(2021).³

¹ *Hydro Corporation Act, 2007*, SNL 2007 c H-17.

² Pending approval of the proposed terms of the new CAA, CBPP has agreed to provide capacity assistance to Hydro under the same terms that had been approved in Board Order No. P.U. 4(2021).

³ *Public Utilities Act*, RSNL 1990, c P-47, Board Order No. P.U. 4(2021), Board of Commissioners of Public Utilities, January 26, 2021.

5. Hydro and CBPP have had substantial discussions regarding the terms of a new, long-term CAA. They have agreed upon the terms of an agreement described herein, and more particularly discussed in Schedule 1 attached hereto, and detailed in the Term Sheet attached as Schedule 2, for which approval of the Board is requested.

B. Hydro and CBPP Capacity Assistance Agreement

6. CBPP proposes to provide Hydro with up to 90 MW in the winter period, and 50 MW in the summer period, over a 15-year term. The maximum amount in the winter period may be increased as tested and agreed upon by the parties, as noted in both Schedule 1 and Schedule 2 attached hereto. This year-round capacity assistance is an increase from the previous CAAs which had capacity assistance only through the winter periods from November to April.
7. The proposed terms have stronger test requirements in advance of winter, as well as more stringent reporting and outage approval requirements for CBPP generation. These terms are discussed and noted in Schedules 1 and 2 to this Application.
8. The penalty clauses proposed for this CAA stipulates that the fixed fee payable to CBPP is reduced by \$250,000 each time there is a failure to provide the contracted capacity assistance; after three failures Hydro has the unilateral right to terminate the contract. This is sufficiently substantive to incentivize CBPP to provide the requested capacity assistance, without penalizing to an extent that there would be no benefit to CBPP to provide future capacity assistance.
9. The proposed terms also stipulate that any capacity assistance provided does not reduce any firm energy committed by CBPP under a Cogeneration or other agreement.
10. The proposed terms would allow Hydro to make up to 30 calls of CBPP with a total available assistance of 180 hours included in the fixed fee rate charged by CBPP. An additional 90 hours (or maximum 30 calls) can be made at a fee of \$0.25 cents per kW per hour. The fixed fee per year is \$80 per kW. Based on 90 MW, the total fixed fee per year is \$7.2 million.
11. Entering into a new CAA based on these proposed terms would allow Hydro to ensure reliable service to customers during peak hours and periods of system constraint without incurring the higher costs associated with additional generation. It also provides increased flexibility, on a cost-effective basis, for Hydro to deal with unanticipated generation or load events that may

otherwise require the implementation of a customer outage program to affect peak load management in order to maintain system integrity.

12. Discussion regarding the proposed terms of a new CAA is provided in Schedule 1 attached hereto.
13. The Term Sheet, agreed upon by both Hydro and CBPP, is attached hereto as Schedule 2.

C. Order Sought

14. Hydro hereby requests that the Board make an Order approving the proposed terms of a new CAA between Hydro and CBPP as provided in Schedule 2 to this Application.

D. Communications

15. Communications with respect to this Application should be forwarded to Shirley A. Walsh, Senior Legal Counsel, Regulatory for Hydro.

DATED at St. John's in the province of Newfoundland and Labrador this 16th day of November 2023.

NEWFOUNDLAND AND LABRADOR HYDRO



Shirley A. Walsh
Counsel for the Applicant
Newfoundland and Labrador Hydro
500 Columbus Drive, P.O. Box 12400
St. John's, NL A1B 4K7
Telephone: (709) 685-4973

Schedule 1

Evidence



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1.0 Background

Capacity Assistance Agreements (“CAAs”) provide increased generation to the Island electrical system during peak hours and periods of system constraint and can provide substantial benefit to Newfoundland and Labrador Hydro (“Hydro”) by the inclusion of the available assistance in its operating reserves.

Hydro and Corner Brook Pulp and Paper Limited (“CBPP”) have been parties to CAAs for a number of years. The Second Amended and Restated CAA was approved by the Board of Commissioners for Public Utilities (“Board”) in Board Order No. P.U. 4(2021)¹ with the following terms:

Table 1: Summary of Second Amended and Restated CAA

Capacity	Rate Structure	Conditions
Up to 105 MW in the following increments: <ul style="list-style-type: none"> ● 20 MW ● 40 MW ● 60 MW ● 90 MW ● 105 MW 	<p>Fixed \$4.75 per kW per month for each of November through April for a total of \$2,992,500.</p> <p>Variable For capacity assistance up to and including 90 MW, a minimum of \$0.20 per kW per hour to a maximum of \$0.26 per kW per hour for the maximum assistance provided as determined on the following sliding scale:</p> <ol style="list-style-type: none"> i. 0 to 7.5 GWh/Winter Period – 90% of GTVC;² ii. Greater than 7.5 GWh/Winter Period – 80% of GTVC. <p>For capacity assistance over 90 MW, the variable rate fee is based on the greater of (i) 80% of the previous month’s GTVC plus \$0.06/kWh, or (ii) a predetermined rate of \$0.26/kWh, but which shall not exceed \$0.32/kWh.</p>	<ul style="list-style-type: none"> ● Notification Period: 10 minutes ● Interruption Period: 4 hours (minimum) to 6 hours (maximum) ● Maximum Number of Curtailments: 2 per day, 60 per winter ● Total Assistance Period: 250 hours per winter ● Penalties: Three Strike Clause³ ● Expiry: April 30, 2023 ● Test: Annually

¹ *Public Utilities Act*, RSNL 1990, c P-47, Board Order No. P.U. 4(2021), Board of Commissioners of Public Utilities, January 26, 2021.

² GTVC means the previous month’s Gas Turbine Variable Cost as provided on CBPP’s monthly invoice and expressed as a cost per kWh.

³ If the customer fails to provide the requested capacity assistance, the fixed fee is reduced by 50% in the first instance. For the second failure to provide capacity assistance, the fixed fee is reduced by a further 25%. If the customer fails to provide capacity assistance three times during the winter, 100% of the fee is forfeited.

1 That agreement expired on April 30, 2023.⁴ Hydro and CBPP have now agreed upon new terms for a
2 long-term CAA, the details of which are set out in Section 1.1.

3 **1.1 Proposed Terms of the Capacity Assistance Agreement**

4 In the proposed terms for the new CAA, attached to the application as Schedule 2, Hydro and CBPP
5 propose an agreement that is in effect not just during the winter months, but all year long. The available
6 capacity will be up to 90 MW in the winter⁵ (or other amount as noted in the paragraph below) and
7 50 MW in the summer,⁶ with up to 30 calls and a maximum of 180 hours included in the fixed price of
8 \$80 per kW for the yearly guaranteed maximum. The fixed prices of the previous CAAs did not include
9 any calls or hours; all were charged based on the variable rate. An additional 30 calls and 90 hours may
10 be available for \$0.25 per kW per hour. Schedule 2 contains a table that summarizes these proposed
11 terms in a similar fashion to Table 1.

12 In addition to certainty surrounding the cost, the proposed terms have stronger test requirements in
13 advance of winter, as well as more stringent reporting and outage approval requirements for CBPP's
14 generation fleet. As noted in Schedule 2, the capacity assistance test will be completed in September or
15 October of each year. CBPP and Hydro will identify a one-day window during which the test can be
16 completed. Hydro will make a call for capacity for up to four hours during this window. The amount of
17 capacity provided will be the maximum contracted amount of capacity assistance for that winter (or
18 some lesser amount if agreed to by both parties.) After the test, the terms stipulate that failure to
19 provide the amount of requested capacity or to provide the capacity for the time and duration required
20 will result in a penalty of \$250,000. Three such failures will result in Hydro having the unilateral right to
21 terminate. The amount of the penalty is an incentive for CBPP to ensure that the amount of requested
22 capacity or the duration of the capacity provided meets Hydro's request, without penalizing CBPP to the
23 point where there is no incentive to provide future capacity assistance.

⁴ CBPP has agreed to provide capacity assistance to Hydro under the same terms that had been approved in Board Order No. P.U. 4(2021), pending approval of the proposed terms of the new CAA.

⁵ The winter is defined as being from November 1 to April 30.

⁶ The summer is defined as being from May 1 to October 31.

1 The parties propose to maintain the agreement for a 15-year term; the fixed price per kW will escalate
2 annually in line with the percentage change over the previous 12 months in the “All-items” Consumer
3 Price Index for Canada,⁷ with a minimum increase of 0% and a maximum of 2.5%.⁸

4 The parties have also agreed that in the event of a call for capacity assistance, CBPP will continue to
5 provide all committed firm energy under the Cogeneration Power Purchase Agreement⁹ in addition to
6 any amount of capacity assistance requested.

7 Throughout Hydro’s *Reliability and Resource Adequacy Study Review* proceeding, Hydro’s ongoing
8 resource planning processes provide an in-depth analysis of system requirements over the next ten
9 years. These processes consider which assets should be maintained and if new assets are required to
10 ensure Hydro has the right energy mix to reliably meet present and future demands. Net-zero goals and
11 the resulting decarbonization of the province and economy have resulted in a higher load forecast for
12 Hydro than was initially contemplated in 2018 when the primary consideration was new asset
13 integration (Labrador-Island Link (“LIL”)/Muskrat Falls); as such, there are now two significant issues
14 facing Hydro:

- 15 1) New asset integration and reliability impacts; and
- 16 2) Load growth requirements associated with decarbonization.

17 As Hydro has noted in recent filings with the Board, Hydro has determined that, consistent with good
18 utility practice, there is a need for reliable backup generation.¹⁰ Hydro is in the process of developing an
19 expansion plan that considers many different generation options and has committed to have the units at
20 the Holyrood Thermal Generating Station available until 2030, or until such time that sufficient
21 alternative generation is commissioned, adequate performance of the LIL is proven, and generation
22 reserves are met.

⁷ Statistics Canada. Table 18-10-0005-01 Consumer Price Index, annual average, not seasonally adjusted,
<<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1810000501>>.

⁸ The annual adjustments will begin January 1, 2025.

⁹ Newfoundland and Labrador Hydro-Corner Brook Pulp and Paper Limited Exemption Order, NLR 96/00,
<<https://www.canlii.org/en/nl/laws/regu/nlr-96-00/latest/nlr-96-00.html>>.

¹⁰ "Reliability and Resource Adequacy Study - 2022 Update," Newfoundland and Labrador Hydro, October 3, 2022.

1 Hydro agrees with the proposed terms of a new CAA as an exercise of prudence and caution in planning
2 and preparedness. It ensures the availability of capacity assistance to increase system reliability pending
3 the determination, approval, and installation of reliable backup generation for the Island, and allows
4 Hydro to achieve certainty in the availability of this option, as well as in cost stability of the capacity
5 assistance for a defined period of time.

6 Availing of capacity assistance from CBPP, as proposed in Schedule 2, represents a savings for Hydro as
7 compared to the cost of additional generation. Capacity assistance also provides increased flexibility on
8 a cost-effective basis for Hydro to deal with unanticipated generation or load events that may otherwise
9 require the implementation of a customer outage program to affect peak load management in order to
10 maintain system integrity. The fee proposed by CBPP is meant to compensate for the degree of business
11 risk in providing capacity assistance, such as lost production time.

12 **2.0 Conclusion**

13 Hydro believes the proposed terms for a new CAA provided in Schedule 2 are consistent with Hydro's
14 commitment to provide its customers with least-cost, reliable service, in an environmentally responsible
15 manner. The certainty, year round, of the available capacity assistance will assist Hydro with ensuring
16 the stability and reliability of its system while it determines and executes the next steps for the future of
17 the system.

Schedule 2

Term Sheet

Capacity Assistance Agreement



Term Sheet – Capacity Assistance Agreement

This Term Sheet contains certain terms and conditions of a potential Capacity Assistance Agreement (“CAA”) between Newfoundland and Labrador Hydro (“Hydro”) and Corner Brook Pulp and Paper (“CBPP”). Such terms and conditions shall be incorporated into a final CAA, which will be drafted between the parties and will be similar in format to the most recent CAA that was in place between Hydro and CBPP dated May 4, 2021.

Contracted Capacity	Rate Structure	Conditions
<p><u>Winter (Nov 1–Apr 30)</u> Up to 90 MW (or another higher amount as tested and agreed by the parties) in the following increments:</p> <ul style="list-style-type: none"> • 20 MW • 30 MW • 60 MW • 90 MW • Other if tested and agreed <p><u>Summer (May 1–Oct 31)</u></p> <ul style="list-style-type: none"> • 20 MW • 50 MW 	<p><u>Fixed</u> \$80 per kW per year for the maximum capacity contracted. 90 MW x \$80 = \$7,200,000 The fixed fee will be adjusted annually, starting January 1, 2025, according to the percentage change over 12 months in the “All-items” Consumer Price Index for Canada. The minimum adjustment will be 0% and the maximum adjustment will be 2.5%.</p> <p><u>Variable</u> The variable fee will not apply to the first 180 hours/30 calls. An additional 90 hours/30 calls to be made available at \$0.25 per kW per hour.</p>	<ul style="list-style-type: none"> • Notification Period: 10 minutes • Interruption Period: 4 hours (minimum) to 6 hours (maximum) • Maximum Number of Curtailments: 2 per day, 30 per year • Total Assistance Period: 180 hours per year • Penalties: Reduced payment by \$250,000 per failure occurrence; after three failures Hydro has the right to terminate the contract. • Expiry: 15 years • Test: Test to be completed in September or October of each year. CBPP and Hydro identify a one-day window for which the test can be completed. Hydro will make a call for capacity during this window for up to four hours. The amount of capacity provided will be the maximum contracted amount of capacity assistance for that winter (or lower amount as agreed to by both parties).

Operational Considerations:

- CBPP Operations to participate operational calls with Hydro as required. CBPP must submit a daily Generation Status Report in advance of Hydro's system call.
- CBPP to provide at the end of the year a report on their generation fleet.
- Planned Outages - Units not to be taken down for planned maintenance during winter period without prior approval from Hydro. CBPP to provide an annual maintenance plan to Hydro in February of each year for the upcoming year and provide monthly updates to this annual plan.

Link to Cogeneration:

In the event of a call for capacity assistance, CBPP will continue to provide all committed firm energy from the Cogeneration Power Purchase Agreement (“Cogen PPA”) in addition to any amount of capacity assistance requested.

Penalties and Frazil Ice:

Subject to the exceptions listed below, in the event that Hydro makes a Capacity Assistance Request and CBPP fails to provide the amount of capacity requested or for the time and duration requested, there will be a penalty of \$250,000. If there are three penalties applied during the annual period November 1 through to October 31 of the following year, Hydro has the right to terminate the contract.

Reporting Penalties:

- CBPP must submit a daily Generation Status Report in advance of Hydro's system call. Failure to provide **three** Generation Status Reports between the period of November 1 to October 31 each year will result in a penalty as long as Hydro provided written notice to CBPP each time a Generation Status Report was not received. Hydro will use reasonable discretion in providing official notice if Generation Status Reports are not received under extenuating circumstances.
- CBPP to provide notice in change of fleet status as soon as practical if it changes from the morning Hydro system call. There will be no penalty for unplanned or forced outages if advance notice is provided to Hydro. If Hydro was not aware of the unplanned or forced outage and makes a Capacity Assistance Request for an amount of capacity that CBPP cannot provide then it will result in a penalty. If units become unavailable for an extended period of time (longer than 7 days) then the capacity assistance fee will be adjusted for that period for the lower number of MW available for those days.
- A failure by CBPP to provide less than the total amount of capacity assistance requested plus the amount of Firm Capacity Committed as defined in the Cogen PPA will result in a penalty.
- CBPP shall notify Hydro's Energy Control Centre when it is experiencing an Ice Condition Event that may impact its ability to fulfill its obligation under this agreement. CBPP shall also notify Hydro's Energy Control Centre when the Ice Condition Event has cleared. CBPP is not obligated to provide capacity assistance during an Ice Condition Event. If Hydro makes a Capacity Assistance Request and CBPP has not notified Hydro then there will be a penalty. CBPP shall use all reasonable efforts to remedy the Ice Condition Event as quickly as possible and shall resume compliance with its obligations hereunder as soon as reasonably possible upon termination of the Ice Condition Event.

Miscellaneous:

- During summer or winter, if CBPP can provide more capacity than the maximum contracted amount or for longer than six hours and Hydro would like to purchase the capacity then there will be a variable payment for this extra capacity at \$0.20 per kW per hour.
- Extended Duration Capacity Assistance as contemplated in the prior Second Amended and Restated CAA will remain in the new agreement, the variable payment for Extended Duration Capacity Assistance will be at \$0.20 per kW per hour.

Invoicing and Payment:

- CBPP shall render its accounts quarterly, at the end of January, April, July and October, and Hydro will, within twenty (20) days after the date of receiving such account, make payment in lawful money of Canada at the appointed office of CBPP or by means of direct deposit into a Canadian bank account of CBPP. Any amounts in arrears or overdue to CBPP after expiration of such twenty (20) days shall bear interest, before and after judgment, at the prime rate of the Bank of Montreal plus 2% annually until such balance is paid. The prime rate of the Bank of Montreal is the annual rate so established and announced by such bank at its head office in Canada as an annual rate of interest for demand loans payable in Canadian dollars in Canada.

Capacity:

- Hydro will only make a Capacity Assistance Request to address the capacity requirements of the system and not to address energy needs. Hydro will provide CBPP a copy of the capacity assistance report filed annually with the Board and will meet (if requested) with CBPP to review the contents of the report and discuss areas of operational improvements.
- Hydro will utilize the CAA with CBPP to maintain sufficient online reserves to maintain the reliability of the Island Interconnected System. Hydro shall not request that a Capacity Assistance Period start until Hydro has placed in service all its own available hydroelectric generation sources, requested Newfoundland Power Inc. to maximize their hydraulic generation, requested other independent power producers to maximize generation and recalled eligible non-firm power sales to external markets that can serve Island demand. Hydro shall have the sole and absolute discretion to decide the starting and loading of its thermal generating fleet.

Early Termination:

- In the event that CBPP has decided or is required to implement material and substantial changes in their operation, such that the continuation of the CAA would not be practicable, then CBPP shall have the unilateral right to terminate the CAA upon nine months prior notice to Hydro.
- In the event that there are material and substantial changes in Hydro's operations such that continuation of the CAA is not required then Hydro shall have the unilateral right to terminate the CAA upon nine months prior notice to CBPP.

Affidavit



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

AND IN THE MATTER OF an application for the approval, pursuant to Sections 70(1) and 71 of the *Act*, of the terms of a Capacity Assistance Agreement (*"CAA"*) between Newfoundland and Labrador Hydro (*"Hydro"*) and Corner Brook Pulp and Paper Limited (*"CBPP"*) (*"Application"*).

AFFIDAVIT

I, Dana Pope, of St. John's in the province of Newfoundland and Labrador, make oath and say as follows:

- 1) I am Vice President, Regulatory Affairs and Stakeholder Relations (Acting), Newfoundland and Labrador Hydro, the applicant named in the attached Application.
- 2) I have read and understand the foregoing Application.
- 3) To the best of my knowledge, information, and belief, all of the matters, facts, and things set out in this Application are true.

SWORN at St. John's in the)
province of Newfoundland and)
Labrador this 16th day of)
November 2023 before me:)



Commissioner for Oaths, Newfoundland and Labrador



Dana Pope, CPA (CA), MBA

SAMANTHA KEATS
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2027