

1 Q. **Reference: Application, 2024 Capital Budget Overview, page 1**

2 It is stated

3 Hydro is committed to investing in capital in a manner which meets its legislated
4 mandate to provide reliable service at the lowest possible cost, and to provide
5 service and facilities which are reasonably safe and adequate, and just and
6 reasonable, in an environmentally responsible manner.

7 a) How does Hydro define “reliable service” at the generation, transmission and
8 distribution levels?

9 b) How does Hydro define “lowest possible cost”?

10 c) How does Hydro define “reasonably safe”?

11 d) How does Hydro define “reasonably adequate”?

12 e) How does Hydro define “just and reasonable”?

13 f) How does Hydro define “environmentally responsible manner”?

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16 A. a) Newfoundland and Labrador Hydro (“Hydro”) strives to provide electrical service to its
17 customers that meets its mandate and complies with good utility practice. To measure its
18 performance, Hydro uses reliability metrics such as:

19 • Weighted Capability Factor: A reliability indicator for generation assets that measures
20 the percentage of the time that a unit or a group of units is available to supply power at
21 maximum continuous rating. The measure is used for Hydro’s thermal, gas turbine, and
22 hydroelectric generation. This measure is weighted to reflect the differences in
23 generating unit capacity, such that larger units have a greater impact on the measure.

24 • Derated Adjusted Forced Outage Rate: A performance metric that measures the
25 percentage of the time that a unit or group of units is unable to generate at its
26 maximum continuous rating due to forced outages or unit deratings. This measure
27 applies only to Hydro’s thermal and hydroelectric generation. This measure is weighted

- 1 to reflect the differences in generating unit capacity, such that larger units have a
2 greater impact on the measure.
- 3 • Utilization Forced Outage Probability: A performance metric that measures the
4 probability that a generating unit or group of units will encounter a forced outage and
5 not be available when required. This measure applies only to Hydro’s gas turbine
6 generating units.
 - 7 • Derated Adjusted Utilization Forced Outage Probability: A performance metric that
8 measures the probability that a generating unit or group of units will encounter a forced
9 outage and not be available when required or will be unable to generate at its maximum
10 continuous rating due to deratings. This measure applies only to Hydro's gas turbine
11 generating units.
 - 12 • Transmission-System Average Interruption Duration Index: A reliability indicator for bulk
13 transmission assets that measures the average duration of outages in minutes per
14 delivery point.
 - 15 • Transmission-System Average Interruption Frequency Index: A reliability indicator for
16 bulk transmission assets that measures the average frequency of outages per delivery
17 point.
 - 18 • Transmission-System Average Restoration Index: A reliability indicator for bulk
19 transmission assets that measures the average duration per transmission interruption.
 - 20 • Distribution System Average Interruption Duration Index (“SAIDI”) and System Average
21 Interruption Frequency Index (“SAIFI”): Reliability indicators that measure the duration
22 and frequency of service interruptions to Hydro’s isolated and interconnected systems.
 - 23 • End-Consumer SAIDI and SAIFI: Reliability indicators that measure the duration and
24 frequency of service interruptions to all end-consumers of electricity in the province
25 who are supplied by Hydro, other than Hydro’s Industrial customers.
 - 26 • Under-Frequency Load Shedding Events: measures the number of events in which
27 shedding of customer load is required to counteract the loss of generation capacity.

1 Hydro sets targets and reports its performance on these metrics to the Board of
2 Commissioners of Public Utilities (“Board”) as part of its Quarterly Regulatory Reports¹ and
3 Quarterly Reports on the Performance of Generating Units.² Where possible, Hydro
4 compares its performance to that of an Electricity Canada benchmark to ensure its
5 performance is aligned with good utility practice.

6 **b)** Hydro does not define “lowest possible cost” in isolation. Section 3(b)(iii) of the *Electrical*
7 *Power Control Act, 1994*³ (“EPCA”) requires Hydro to manage and operate its production,
8 transmission, and distribution facilities in a manner that results in power being delivered to
9 consumers at the lowest possible cost consistent with reliable service and in an
10 environmentally responsible manner. As a result, Hydro does not define “lowest possible
11 cost” to be necessarily the most inexpensive option. When making capital investment
12 decisions, Hydro strives to achieve the appropriate balance between cost, reliability, and
13 environmental responsibility to provide reliable service to customers as economically as
14 possible.

15 **c)** The term “reasonably safe” was reviewed by the Newfoundland and Labrador Court of
16 Appeal in *Newfoundland Light and Power Co. Ltd. v. Furlong Estate*, 2005 NLCA 25 (CanLII).
17 Justice Welsh determined that the “reasonably safe” standard is consistent with the
18 requirement “to take proper precautions against injury,” as referenced in a previous
19 Supreme Court of Canada decision.⁴ However, it is a lower standard than one requiring “the
20 greatest possible care” and “every possible precaution,” Justice Welsh found this to also be
21 consistent with the specific requirements set out in Section 44 of the *Public Utilities Act*⁵
22 (“Act”) for a utility to maintain its equipment.

23 **d)** The dictionary definition of adequate is “satisfactory or acceptable in quality or quantity”.
24 The term “reasonably adequate” is utilized in the *Act* to describe the level of service the
25 Utility is required to provide. Qualifying the term adequate with “reasonably”, in

¹ Hydro’s Quarterly Regulatory Reports can be accessed at
<<http://pub.nl.ca/indexreportspages/quarterlyregulatory.php>>.

² Hydro’s Quarterly Report on Performance of Generating Units can be accessed at
<<http://pub.nl.ca/indexreportspages/12MonthRollingAverage.php>>.

³ *Electrical Power Control Act, 1994*, SNL 1994, c E-5.1.

⁴ 1976 CanLII 160 (SCC), [1977] 1 S.C.R. 500, <<https://canlii.ca/t/1z6fm>>.

⁵ *Public Utilities Act*, RSNL 1990, c P-47.

1 consideration of Justice Welsh’s determination in the Court of Appeal case, referenced in
2 part c) of this response, would indicate that Hydro is required to provide service that is
3 satisfactory or acceptable, without needing to reach the standard of the greatest possible
4 service.

5 e) The interpretation of legislation should include the liberal interpretation of the language
6 that best ensures the underlying purpose of the legislation is met.⁶ The plain language
7 definition of “just” includes “fair” and the definition of “reasonable” includes “fair,”
8 “practical,” and “not excessive.” In the context of the provision stipulating that the utility
9 must provide service and facilities that are “. . . reasonably safe and adequate and just and
10 reasonable. . .” Hydro’s interpretation of the phrase is that service must be fair and practical
11 in the context of being reasonably safe and adequate.

12 Hydro believes this is consistent with the discussion of the phrase, in the context of
13 Section 80 of the *Act*, by the Newfoundland and Labrador Court of Appeal in Section 101 of
14 the *Public Utilities Act (Newfoundland) (Re)*, 1998 CanLII 18064 (NL CA), wherein Justice
15 Green stated:

16 This statutory entitlement of the utility to earn a "just and reasonable" return is
17 the linguistic touchstone for the balancing exercise. This phrase emphasizes the
18 fairness aspect, both to the utility, in earning sufficient revenues to make its
19 continued investment worthwhile and to maintain its credit rating in financial
20 markets, and to the consumer, in obtaining adequate service at reasonable
21 rates. It also emphasizes the need for a tempering of each interest group's
22 economic imperative by consideration of the interests of the other.⁷ [Emphasis
23 added]

24 f) Hydro has always been focused on being environmentally and socially responsible,
25 committed to sustaining a diverse and healthy environment while providing safe and
26 reliable service. This has meant managing risk and minimizing the impact on the
27 environment of the actions Hydro takes to generate and provide its electricity and taking
28 steps to provide sustainable electricity and encourage energy conservation. Hydro believes

⁶ *Interpretation Act*, RSNL 1990, c I-19, s. 16, and Section 101 of the *Public Utilities Act (Newfoundland) (Re)*, 1998 CanLII 18064 (NL CA), para. 22.

<<https://canlii.ca/t/27pwh>>.

⁷ Section 101 of the *Public Utilities Act (Newfoundland) (Re)*, 1998 CanLII 18064 (NL CA), para. 23.

<<https://canlii.ca/t/27pwh>>.

1 that this is consistent with the provision now added to the power policy of the province to
2 ensure that a utility is environmentally responsible while providing least-cost, reliable
3 service with service and facilities that are reasonably safe and adequate.