



Newfoundland and Labrador Hydro
Hydro Place, 500 Columbus Drive
P.O. Box 12400, St. John's, NL
Canada A1B 4K7
t. 709.737.1400 | f. 709.737.1800
nlhydro.com

February 26, 2026

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

Attention: Colleen Jones
Assistant Board Secretary

Re: Newfoundland and Labrador Hydro – 2025 Capital Budget Supplemental Application – Application for the Purchase and Installation of Bay d’Espoir Unit 8 and Avalon Combustion Turbine – Bates White Report – Confidential Information

The expert consultants retained by the Board of Commissioners of Public Utilities (“Board”), Bates White Economic Consulting, LLC, have analyzed the 2025 Build Application and, on February 3, 2026, placed their report entitled “*Expert Report of Vincent Musco and Collin Cain*” on the record before the Board (“Bates White Report”). The Board provided Newfoundland and Labrador Hydro (“Hydro”) with a version containing redactions proposed by the Board to address Hydro’s concerns regarding commercially sensitive information and requested Hydro’s review of the redactions prior to the release of the report. Hydro believes that further information, in addition to that redacted by the Board, is necessary. Hydro has forwarded a version of the Bates White Report to the Board’s legal counsel under separate cover.

Hydro understands the Board has concerns about the transparency of the information on the record. Hydro understands that transparency is important to enable a regulator to build public trust, ensure accountability in monopoly services, and to foster fair, evidence-based decision-making. Transparency confirms that the regulator acts in the public interest, rather than in the interest of the utility. It instills confidence that decisions regarding rates and services are fair.

However, protecting commercially sensitive information is a necessary exception to transparency that has been recognized repeatedly by Canadian utility regulators: information may be withheld when disclosure could (i) cause undue financial loss or gain, (ii) harm a party’s competitive or negotiating position, or (iii) interfere with contractual obligations. Hydro’s customers ultimately bear the cost of impaired procurement competitiveness. Maintaining confidentiality is therefore an act in the public interest, not contrary to it.

Hydro’s position with respect to the categories and types of information that should be redacted and publicly withheld has not changed from the position Hydro has detailed and provided support for in a number of previous filings. Hydro notes that the use of non-disclosure agreements has ensured that the intervenors to the application have full access to all the information filed on the record.

Hydro also understands the importance of releasing the Bates White Report to the general public in advance of the Board’s Order on the Additional Early Execution Application¹ or the 2025 Build Application, and has

¹ “Additional Early Execution Capital Work – Bay d’Espoir Unit 8 and Avalon Combustion Turbine,” Newfoundland and Labrador Hydro, December 12, 2025.

done its utmost to complete the review as quickly as possible while also meeting other vital deadlines, both internal and those imposed by the Board in other matters.

In the redacted Bates White Report provided by Hydro, Hydro continues to request redaction of the following information for the following reasons.

Detailed Direct and Indirect Construction Costs (Combustion Turbine and Bay d’Espoir Unit 8)

- **Reveals Hydro’s internal cost structures** for specific work packages, enabling bidders to tailor their pricing upward to meet (or nearly meet) the known budget. Canadian regulators accept that suppliers’ awareness of a utility’s specific requirements and internal cost data reduces competitive pressure and increases pricing.
- **Facilitates claim-seeking behaviour:** Knowledge of budget room within specific scopes incentivizes contractors to pursue change orders or claims to access known value within a project.
- **Enables inference of other cost components**, even if subtotals are disclosed. Where there are few work packages, releasing one component allows extrapolation of other sensitive components.

If disclosed, this information could result in increased bid prices, weakened negotiating position, and inflated project costs borne directly by customers.

Contingency and Management Reserve (Percentages and Dollar Values)

- **Contingency reflects Hydro’s internal assessment of risk**, including quantified exposure. Disclosing this lets contractors evaluate precisely how much financial “buffer” Hydro expects to need—and price or negotiate accordingly.
- **Management Reserve identifies strategic or unforeseen risk allowances**, which, if known, act as clear targets for claims or expanded scope requests.
- Regulators (Nova Scotia Utility and Review Board, Ontario Energy Board, and British Columbia Utilities Commission) consistently maintain confidentiality for contingency, risk allocation and reserve information because disclosure distorts competitive procurement and increases customer costs.

If disclosed, this information could result in increased frequency and value of change requests, strategic claims behaviour, inflated contractor pricing, and competitive disadvantage in negotiations.

Risk Information: Assumptions, Risk Registers, QRA² Outputs, and Cost/Schedule Risk Profiles

- Risk assessments reveal specific vulnerabilities, probabilities, cost exposures, schedule sensitivities, and the location or nature of risks within the project.
- Disclosure allows a contractor to understand precisely where Hydro expects difficulty and price accordingly—a significant, recognized harm in multiple regulatory decisions.
- Risk registers and QRA outputs also allow parties to reverse-engineer contingency levels, even when those numbers are redacted.

Release of this information could result in higher bids for high-risk scopes, reduced ability to enforce contract performance, and increased exposure to claims.

² Quantitative Risk Analysis (“QRA”).

EPCM³ Consultant Costs and Hydro Project Management Costs

- These categories reveal internal cost structures and price expectations directly related to current and future negotiations with engineering and project management service providers.
- Disclosure would undermine Hydro's position in future contract negotiations, allowing vendors to anchor pricing based on publicly known Hydro spending.

Hydro has also redacted wording within the Bates White Report that characterizes certain aspects of Hydro's planned project or related estimates. Conclusions drawn by consultants that speak to, for example, costs being under or overestimated, is information that could be useful to contractors in negotiations.

The decisions from other Canadian regulators referenced in our previous filings emphasize the same point: where disclosure of detailed cost, risk, or contingency information could negatively affect procurement outcomes, increase customer costs, or harm the utility's negotiating position, confidentiality is justified and required.

The redacted information, if released, would materially impact Hydro's ability to secure competitive pricing, maintain a strong negotiating position with contractors, and manage claims risk during project execution. Canadian regulators protect such information because its disclosure allows bidders to tailor pricing to known budgets and risk allowances, reduces competitive pressure, and increases the likelihood of inflated bids or strategic claims. This would lead directly to higher project costs for customers. Hydro has released all information that can be disclosed without compromising procurement integrity, while continuing to protect only that which is commercially sensitive and whose disclosure would result in undue financial harm.

If the Board does not agree at this time with Hydro's positions or proposed redactions, Hydro requests that the Board proceed as it has done in the past and post the report with Hydro's redactions while noting the Board will continue to review and determine if further redactions should be removed. This will allow the Additional Early Execution process and the Build Application process to continue without delay, particularly in light of a likely settlement agreement regarding the Additional Early Execution combustion turbine expenditures. Hydro would then request that the Board proceed with a formal decision regarding the requested confidential information, including seeking party comments, if necessary. Hydro would request that if a decision is reached, the Board not proceed with releasing an unredacted version without Hydro having had notice and the opportunity to review the decision.

Should you have any questions, please contact the undersigned.

Yours truly,

NEWFOUNDLAND AND LABRADOR HYDRO



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

ecc:

Board of Commissioners of Public Utilities
Jacqui H. Glynn
Board General

³ Engineering, Procurement and Construction Management ("EPCM").