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March 25, 2026

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

Attention: Mike McNiven
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 – Phase Two – Confidential Information – Further Submissions

On March 19, 2026, the Board of Commissioners of Public Utilities (“Board”) provided correspondence wherein they detailed their conclusions regarding the information contained within the Bates White Economic Consulting, LLC (“Bates White”) Expert Report – Phase Two (“Bates White Report”) that should remain confidential. In doing so, the Board considered the previous submissions provided by Newfoundland and Labrador Hydro (“Hydro”), as well as the comments provided by Newfoundland Power Inc. (“Newfoundland Power”) and the Consumer Advocate.

The Board accepted Hydro’s submissions and the proposed redactions related to various types of information. Specifically, future dates, critical path indicators, and explicit schedule float will continue to be redacted. Additionally, the Board accepted that the commercial sensitivity of detailed cost information for specific work packages supports its continued confidentiality. Likewise, the Board accepts that the estimated costs associated with individual risks, as well as certain strategic risks, can be considered commercially sensitive and should be considered confidential.

However, the Board stated that it was not persuaded that various other information that Hydro had identified as commercially sensitive presented a significant enough risk wherein the implications of releasing that information outweighed the importance of transparency and openness in a regulatory proceeding. While Hydro believes that all the information it had requested remain confidential presents a risk of financial harm, or harm to Hydro’s competitive or negotiating position, and therefore harm to ratepayers, Hydro is most concerned with the release of contingency amounts, direct and indirect construction costs, escalation and interest during construction (“IDC”), and management reserve.

Hydro, on March 24, 2026, advised the Board of its intention to provide the Board with further clarification regarding the grounds for its previous requests for confidential treatment of certain information in the Bates White Report. Hydro requested that the information it previously requested be redacted in the Bates White Report continue to be treated as confidential, and that the report not be posted with the Board’s indicated redactions as set out in that correspondence.

Hydro provides herein additional context and support for the confidentiality of the information noted above. This is intended to supplement Hydro’s earlier submissions and to further particularize the harm that could reasonably arise from public disclosure of the information. Hydro will also provide details of

regulatory decisions from a number of Canadian jurisdictions supporting this position. Hydro requests that the Board consider this additional information and expand the scope of the confidentiality to protect against the harm that could reasonably arise from its public disclosure.

Contingency and Management Reserve

These aspects of Hydro's cost estimates, if released, would reveal Hydro's assessment of project risk and claim exposure; signal Hydro's tolerance for risk realization; and provide a practical benchmark against which contractors may calibrate bids, claims strategies, and change order behaviour.

Public disclosure of these amounts would allow contractors to infer Hydro's perceived vulnerability or flexibility, undermine Hydro's competitive leverage by revealing financial reserves available to absorb overruns, encourage upward pricing, harden positions in negotiations, inflate claims, and increase the likelihood that contingencies are consumed rather than preserved.

Subtotals of Cost Categories

The Board expressed concern that Hydro did not adequately explain how subtotals could enable reverse engineering of detailed costs. Hydro submits that this risk crystallizes when high-level subtotals are combined with other publicly available inputs, including:

- Disclosed escalation factors;
- IDC assumptions; and
- Project schedules and in-service dates.

Together, these allow reasonably sophisticated contractors to back-calculate the base cost timing, escalation exposure, and implied contingency headroom. This is especially concerning when procurement is ongoing or forthcoming.

Disclosure of direct and indirect cost subtotals narrows the envelope within which contractors price their work, reducing uncertainty that normally disciplines competitive bids.

IDC

When combined with publicly known capital budgets or escalation assumptions, IDC can be used to infer Hydro's anticipated construction duration, expected cash flow curves, and float and critical path sensitivity.

Escalation

Escalation assumptions reflect Hydro's assessment of market volatility, supply-chain risk, design development and procurement timing. Disclosure of escalation subtotals or factors could signal how Hydro expects inflationary pressures to manifest and inform contractors how aggressively to price risk premiums. This could encourage front-loading or strategic delay.

Considering the Whole

As Hydro has previously noted, redaction of certain pieces of a cost estimate without redaction of others can allow contractors to determine redacted line items, allowing for extrapolation of package budgets and contingency levels. Depending on what is redacted and what is released, it may even be possible for rudimentary math to provide visibility of the confidential information. For example, if the Board were to

confirm that contingency should be kept confidential, in order to maintain that confidentiality, the base cost subtotal would also need to be redacted at the very least.

Regulatory Precedent

Utilities in British Columbia and Ontario have repeatedly requested confidentiality of this information because of the risks that the release of the information could significantly prejudice a utility's negotiating position to the detriment of ratepayers. The regulators in those jurisdictions have agreed and have approved the continued confidentiality of the information of contingency, reserve, escalation, IDC, and aggregate cost information in major capital project applications. A number of examples are provided herein.

British Columbia Utilities Commission ("BCUC")

Across multiple Certificate of Public Convenience and Necessity proceedings, the process by which utilities in British Columbia obtain the necessary approvals to proceed with the construction or operation of a public utility plant or system, the BCUC has granted confidential treatment for detailed and aggregate cost information, including contingency, reserves, escalation, IDC, and cost category subtotals, where disclosure could prejudice negotiations or competitive outcomes.

- **Bridge River 1 (Units 1 to 4) Replacement Project and the Bridge River Transmission Project**

The BCUC approved confidential filing of capital cost estimates covering direct construction costs, indirect construction costs, contingency and project reserves, escalation, IDC, and capital overhead. Detailed breakdowns, particularly project reserve composition and contingency-related information, were consistently redacted to protect BC Hydro's negotiating position. The BCUC accepted that disclosure could prejudice procurement and future change order negotiations.¹

- **1L243 Transmission Load Increase (Highland Valley Copper)**

The BCUC expressly granted confidentiality over cost estimates, expenditure breakdowns, escalation-related special reserves, and project reserve composition.²

The project reserve itself is an unredacted element of the otherwise redacted cost table,³ and is comprised of the p-90 and p-50 contingency and loadings, and the special reserve. The dollar figures for these elements are redacted, and notably, footnote 27 defines special reserve as follows:

Special Reserve is synonymous with Management Reserve in the AACE International Recommended Practice 10S-90, which is defined as "an amount added to an estimate to allow for discretionary management purposes outside of the defined scope of the

¹ "British Columbia Hydro and Power Authority – Application for Certificates of Public Convenience and Necessity for the Bridge River Projects: Bridge River 1 Units 1 to 4 Generator Replacement Project – Decision and Order C-6-22," British Columbia Utilities Commission, October 11, 2022, p. 87 of 98 (PDF), <https://www.ordersdecisions.bcuc.com/bcuc/decisions/en/521298/1/document.do>.

² "British Columbia Hydro and Power Authority – Application for a Certificate of Public Convenience and Necessity for the 1L243 Transmission Load Increase Highland Valley Copper Project – Procedural Order G-156-24," British Columbia Utilities Commission, June 7, 2024, <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/item/522301/index.do>.

³ "British Columbia Hydro and Power Authority – Application for a Certificate of Public Convenience and Necessity for the 1L243 Transmission Load Increase Highland Valley Copper Project," British Columbia Hydro and Power Authority, May 23, 2024, p. 3-19, https://docs.bcuc.com/documents/proceedings/2024/doc_77349_b-1-bch-1l243-transmissionloadincrease-highlandvalleycopper-project-application-public.pdf.

Project, as otherwise estimated. It may include amounts that are within the defined scope, but for which management does not want to fund as contingency or that cannot be effectively managed using contingency.”⁴

BCUC approves the special reserve, as part of the project reserve, and permits the confidentiality of the amount of the special reserve, as well as certain of the risks that are accounted for in the special reserve.

- **Mainwaring Substation Upgrade**

BC Hydro’s request to redact cost tables in their entirety, including direct and indirect costs, contingency, escalation, IDC, and reserves, was accepted without objection from intervenors and approved by BCUC.⁵

- **Lower Mainland Reactive Power Reinforcement**

Based on the proposed timing of completion of the project, BC Hydro had requested discrete time limits for the confidential information, including direct and indirect costs, contingency, escalation, IDC, and reserves, be kept confidential. However, as BC Hydro’s overall application was denied, the BCUC directed that the information be kept confidential until the BCUC determines otherwise.⁶

Ontario Energy Board (“OEB”)

In a series of nuclear and large infrastructure proceedings, the OEB accepted that contingency, reserve, escalation, and aggregate cost information constitutes commercially sensitive information.

- **Ontario Power Generation (“OPG”) – EB-2016-0152**

The OEB granted confidential treatment for contingencies, aggregate construction costs, and costs for contracted or purchased work, noting that disclosure would prejudice OPG’s negotiation position and interfere with existing and future commercial relationships. The OEB accepted that even aggregate figures could enable counterparties to infer negotiating flexibility.⁷

The OEB emphasized that the objective of confidentiality in such cases is not to shield utilities from scrutiny, but to prevent the regulatory process from inflating project costs.

Hydro respectfully submits that confidentiality of the amounts of contingency and management reserve does not impede public understanding where the purpose, methodology, governance, and approval controls for contingency and reserves are disclosed; intervenors subject to confidentiality undertakings

⁴ “British Columbia Hydro and Power Authority – Application for a Certificate of Public Convenience and Necessity for the 1L243 Transmission Load Increase Highland Valley Copper Project,” British Columbia Hydro and Power Authority, May 23, 2024, p. 3-23, f.n. 27, https://docs.bcuc.com/documents/proceedings/2024/doc_77349_b-1-bch-1l243-transmissionloadincrease-highlandvalleycopper-project-application-public.pdf.

⁵ “British Columbia Hydro and Power Authority – Application for a Certificate of Public Convenience and Necessity for the Mainwaring Substation Upgrade Project – Decision and Order C-4-22,” British Columbia Utilities Commission, August 16, 2022, https://docs.bcuc.com/documents/other/2022/doc_67475_c-4-22-bch-mainwaring-project-cpcn-decision.pdf.

⁶ “British Columbia Hydro and Power Authority – Application for a Certificate of Public Convenience and Necessity for the Lower Mainland Reactive Power Reinforcement Project – Decision and Order G-20-24,” British Columbia Utilities Commission, January 24, 2024, https://docs.bcuc.com/documents/other/2024/doc_75781_g-20-24-bch-cpcn-reactive-power-reinforcement-decision.pdf.

⁷ “Decision on Confidential Filings and Procedural Order No. 3,” Ontario Energy Board, November 1, 2016.

retain full access; and the Board retains ongoing prudence oversight. Transparency of process, not necessarily the disclosure of specific numbers, can be sufficient to achieve accountability while avoiding unnecessary cost risk. This is particularly true when all the information is available to the Board and to the intervenors to an application to rigorously test the evidence, and when the context of the confidential information remains available to the public.

Differences Between Proceedings

The Board noted that Hydro has not historically sought confidentiality for cost elements, including contingency, in its routine annual capital budget applications, nor has Newfoundland Power. Hydro cannot comment on Newfoundland Power's determinations regarding confidentiality of its information; however, Hydro respectfully submits that the distinction between Hydro's major capital projects and annual Capital Budget Applications ("CBA") supports rather than undermines its position herein.

Annual CBAs are generally standard maintenance or investment level filings that involve numerous smaller projects (in comparison to the 2025 Build Application⁸) with less procurement risk than larger, more complex and/or costly major projects.

The procurement for the 2025 Build Application is more complicated and with less competition and therefore less commercial leverage for Hydro than the smaller capital works projects that are contained within the annual CBAs, due to the lack of availability of experienced contractors and vendors for the proposed scopes of work in the 2025 Build Application.

As a result, the risk that disclosure of cost categories in those applications could be used strategically by market participants is more limited.

Hydro submits that the absence of redactions in routine applications should not be treated as precedent against confidentiality where circumstances differ materially. Regulatory bodies have held that confidentiality is assessed contextually; the Board's March 19, 2026 correspondence notes that a claim for confidential treatment of information must always demonstrate that it is necessary and appropriate in the circumstances.

Hydro, therefore, respectfully asks the Board to accept the redactions to the Bates White Report as Hydro has proposed.

Inconsistencies in Redaction

The Board noted that some information that Hydro had redacted was not redacted in other areas of the report. While this can perhaps cause some confusion, apparent inconsistencies should also be considered on a case-by-case basis. At times, the difference may be the context. Information that is commercially sensitive when described one way may be benign when described differently. Of course, at times, the inconsistency in redaction could be an error. Inconsistency does not always mean that the proposed redactions should be denied and public disclosure permitted, particularly if harm remains demonstrable.

The Board stated that "In relation to the Avalon Combustion Turbine, the Board notes that while Hydro has redacted all of the strategic risks in one part of the report, it has in another part of the report released all of these risks. As a result the Board does not accept the redacted strategic risks for the

⁸ "2025 Build Application – Bay d'Espoir Unit 8 and Avalon Combustion Turbine," Newfoundland and Labrador Hydro, March 21, 2025.

Avalon Combustion Turbine.” Hydro has reviewed the report and determined that the inconsistency was an oversight. Hydro does not believe that this inconsistency should mean that the proposed redactions should be denied and not considered on their own merits.

Conclusion

Hydro respectfully submits that regulatory precedent across Canada supports confidential treatment of contingency, cost subtotals, IDC, escalation, and management reserve in major capital project applications where disclosure would likely prejudice procurement outcomes, weaken negotiating positions, and ultimately expose ratepayers to increased costs.

Hydro further submits that the redactions in the Bates White Report, and discussed above, are justified by the scale, timing, and commercial sensitivity of the projects at issue, and are fully consistent with a principled, case-by-case consideration of whether the information is likely to (i) cause undue financial harm; (ii) harm the utility’s competitive or negotiating position; or (iii) interfere with contractual obligations. Hydro believes that transparency and openness must be the goal; however, if disclosure would result in ultimately higher costs for the ratepayer, that must be balanced against the extent of the transparency to ensure that the disclosure does not inadvertently compromise value for customers.

As noted in its March 24, 2026 correspondence, Hydro requests that the Bates White Report continue to be treated as confidential pending the Board’s review of this supplementary information and for a reasonable period thereafter to allow Hydro to consider whether the Board’s determination on this submission has any implications for next steps.

Hydro has not provided a version of the Bates White Report with this correspondence, reflecting the above submissions, in the interests of time and also to avoid an increasing number of different redacted versions of the report. If the Board should accept any of Hydro’s submissions above and agree to further redactions in addition to those applied to the report provided to Hydro and the intervenors on March 19, 2026, Hydro will apply the redactions and provide the Board a copy at that time.

Should you have any questions, please contact the undersigned.

Yours truly,

NEWFOUNDLAND AND LABRADOR HYDRO



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