

August 28, 2025

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: Newfoundland and Labrador Hydro - Capital Budget Supplemental Application for the Approval of the Construction of Hydro's Long-Term Supply Plan for Southern Labrador – Order No. P.U. 12(2025) - Request for Reconsideration

On June 25, 2025, Newfoundland and Labrador Hydro ("Hydro") submitted a request for reconsideration of the Board of Commissioners of Public Utilities ("Board") Order No. P.U. 12(2025), pursuant to Section 28(1) of the *Board of Commissioners of Public Utilities Regulations, 1996 ("Regulations")*. Hydro's submission was that the Board's decision regarding Hydro's application for approval of Hydro's Long-Term Supply Plan for Southern Labrador included findings of fact that do not take into account important evidence and that materially impacted the outcome of the application for the long-term supply plan for Southern Labrador.

Prior to Board Order No. P.U. 12(2025), Hydro had fully engaged in the application review process, providing comprehensive responses to all inquiries from the Board and intervenors. This process, spanning four years, generated a substantial evidentiary record exceeding 2,300 pages of evidence. At the Board's request, Hydro retained a third-party expert to prepare and file an independently developed Integrated Resource Plan which assessed over 600 individual sensitivities, as well as a further independent analysis of the additional alternatives for reliable supply to Charlottetown and Pinsent's Arm that were posed by the Board.

As Hydro noted in many instances throughout the proceeding and, most recently, in its update to the Board filed on August 21, 2025, Hydro has completed all feasible enhancements to the mobile generating units currently serving Charlottetown.¹ These units have been in place as an interim solution since 2019. Hydro remains committed to ongoing inspections, routine maintenance, and seasonal preparations, including winterization of the units, to ensure continued service reliability.

Despite these efforts, Hydro remains concerned about the prolonged delay in implementing a long-term solution for Charlottetown and Pinsent's Arm, and the broader region. The current performance of the mobile units should not be interpreted as indicative of their long-term reliability. Sustained reliability depends on Hydro's ability to secure and maintain an adequate supply of mobile generating units. A

¹ "Long-Term Supply for Southern Labrador –Additional Update" Newfoundland and Labrador Hydro, August 21, 2025.

long-term supply solution is essential to address the limitations and risks associated with continued reliance on temporary generation.

Hydro maintains that the proposed regional interconnection is the least cost, safe, reliable, and environmentally responsible solution. Hydro believes that a reconsideration by the Board of its Order, that fully contemplates and correctly incorporates the substantive and persuasive evidence already on the record, is the most appropriate and expeditious path to providing least cost, safe, reliable, and environmentally responsible service for the customers in that area.

Regulatory Process

The Board responded to Hydro's Request for Reconsideration with correspondence to Hydro and the parties that had intervened or participated in the original application setting out a date for parties to file comments regarding Hydro's request, and a date for Hydro to file its reply. The original deadline for party comments was July 31, 2025; however, on July 29, 2025, the NunatuKavut Community Council ("NCC") requested an additional two weeks to prepare their submission. This request was granted and the schedule revised to require party comments by August 14, 2025, and Hydro's reply a week later on August 21, 2025.²

As of the August 14, 2025 deadline, comments were filed by NCC and Mary's Harbour Town Council. Newfoundland Power Inc. and the Island Industrial Customer Group both advised that they had no comments on Hydro's request. No comments or submissions were filed by any other party.

Party Comments

Hydro appreciates the engagement of both Mary's Harbour Town Council and NCC in this process and acknowledges the importance of ensuring that long-term energy planning for Southern Labrador reflects community priorities. However, both submissions contain legal and analytical errors that mischaracterize Hydro's request and the applicable statutory framework. This letter addresses those errors and reaffirms the validity of Hydro's reconsideration request.

Mary's Harbour Town Council

Hydro acknowledges the concerns raised by the Mary's Harbour Town Council regarding the long-term use of diesel generation and the desire for cleaner, more sustainable energy solutions. Hydro shares this commitment and has consistently stated that the proposed regional interconnection is not a diesel-only solution, but a platform for future renewable integration. The regional interconnection is designed to:

- Replace aging diesel assets with consolidated, modern, efficient generation;
- Enable future integration of renewable energy; and
- Improve reliability and reduce long-term cost.

² Hydro subsequently requested and was granted an extension to August 28, 2025.

Hydro also agrees that national and provincial net-zero goals must be considered in energy planning. Hydro's proposed solution is consistent with these goals:

- It consolidates generation to reduce emissions;
- It enables increased renewable integration through centralized control; and
- It avoids the need for continued investment in multiple aging diesel plants.

Hydro understands the Town Council's desire to avail of benefits that could arise from the Memorandum of Understanding between the governments of Newfoundland and Labrador and Quebec; however, the interconnection to the Labrador Interconnected System ("LIS") was identified as the highest cost alternative for southern Labrador communities. As noted throughout Hydro's filings in the application, as well as its Request for Reconsideration, Hydro and Midgard Consultants Inc. ("Midgard") have modeled LIS scenarios and found them to be economically unviable.

Other than stating that Hydro's proposed project had been "... discussed, studied and rejected – for valid and well-documented reasons" and that they did not see any substantial changes or new information in Hydro's submission to justify a change in the Board's decision, the Town Council did not make any substantive arguments regarding the basis for the reconsideration request itself.

NunatuKavut Community Council

NCC's correspondence of August 14, 2025 proposes three legal and procedural grounds in its argument against reconsideration of the Board's decision. NCC argues that Hydro's request fails legally and procedurally because it doesn't identify actual errors of fact or law, falls outside the Board's authority, and merely reargues prior submissions without meeting the formal requirements for a rehearing. More particularly:

- NCC asserts that Hydro's request for reconsideration is fundamentally flawed because it does not identify any actual errors of fact or law. Instead, NCC states that Hydro merely disagrees with how the Board weighed the evidence. NCC emphasizes that under well-established legal principles, such disagreements do not constitute legal errors. They argue that courts and administrative bodies are entitled to assign weight to evidence as they see fit, and differing interpretations or preferences do not justify overturning factual findings.
- NCC further argues that the Board lacks the authority under the *Public Utilities Act* and its regulations to entertain Hydro's request. Specifically, subsection 28(1) of the Regulations only permits rehearing applications based on clear errors of fact or law. NCC posits that since Hydro's request is based on alleged misinterpretation or undervaluation of evidence—not on demonstrable errors—the Board is not legally empowered to reconsider its decision.
- Finally, NCC submits that Hydro's request fails to meet the procedural requirements for a rehearing. NCC's claims that Hydro did not clearly state which findings of fact were erroneous or provide a brief statement of the alleged errors, as required by the regulations. Instead, they assert that Hydro simply reargued its original submissions, which is not a valid basis for reconsideration.

The underlying position of all of NCC's arguments pertains to whether or not there were errors in fact or law in the Board's decision, and whether Hydro's request for a reconsideration elucidated the findings of fact or of law Hydro claims to be erroneous along with a brief statement of the alleged error as required by the Regulations. Hydro's position is that its request for reconsideration clearly identified and described the errors in finding of fact in Board Order No. P.U. 12(2025).

The errors in findings of fact, as described in Hydro's Request for Reconsideration, are:

1) Increase in Project Costs to \$110.9 million

The Board concluded that it was likely that the proposed regional interconnection would not be the least-cost alternative until much later, and that there would be more scenarios where it was not least-cost, based on the increase in estimated costs to \$110.9 million.

However, in making this finding, the Board did not fully consider the updated multivariate sensitivity analysis provided by Midgard Consulting. This analysis, submitted in November 2023 and clarified in June 2025, demonstrates that the proposed project remains the least-cost option in 88% of modeled scenarios, and that the updated project cost remains within the sensitivity ranges considered in this analysis. The Board also did not appear to consider that cost increases would impact all options, not just the proposed project. The Board's reliance on earlier single-variable sensitivity modeling resulted in a finding that does not reflect the full evidentiary record.

2) Replacement of Diesel Generating Stations

The Board found that extending the life of the existing diesel plants in the region beyond 50 years could alter the least-cost analysis significantly and that the evidentiary record did not address the assumption of a 40-year life for diesel plants. These findings were based on generalized assumptions and, in the case of the assumption regarding the impact of extending the plant life beyond 50 years, lacked supporting engineering assessments. Hydro's modeling included a 50-year service life scenario, which still showed the regional interconnection as the preferred option in the majority of cases. The Board's conclusion also did not account for the operational risks and cost implications of continued reliance on aging infrastructure.

3) Renewable Generation

The Board's decision noted that the environmental impact of Hydro's proposal was an overriding issue, but focused solely on the lack of a specific renewable generation component. The Board's decision did not consider the full range of environmental benefits provided by the proposed project or the technical limitations of current renewable technologies in providing firm supply.

4) Interconnection with the Labrador Interconnected System

The Board found that Hydro had not adequately assessed the LIS option. The Board stated that certain details were not clear; however, that information had been repeatedly detailed in Hydro's evidence throughout the proceeding. Hydro and its expert Midgard had provided detailed cost estimates exceeding \$300 million, along with feasibility assessments showing that LIS remains the highest-cost alternative under current conditions. The Board's finding overlooked this evidence and did not reflect the economic and logistical challenges of LIS expansion in the near term. The Board also did not consider additional backup plant costs, whether regional or continued islanded community-based backup plants, which would be additive to the \$300 million estimate.

Errors in Finding of Fact

NCC's arguments are predicated on NCC's definition of error in fact. NCC states:

"An error of finding of fact is a mistake about a specific piece of information, a factual detail, or a circumstance related to a situation. Such an error must necessarily involve a mistaken belief about a material fact that could affect the outcome of a situation, such as the Application at issue in this matter."

This definition is unduly narrow. An error in finding of fact arises where the decision-maker misapprehends, disregards, or gives undue weight to material evidence in a manner that affects the outcome. In *R. v. Morrissey* (1995), 22 O.R. (3d) 514 (C.A.), the Ontario Court of Appeal held that misapprehension of testimony, including the failure to account for parts of the evidence that undermined the result, constituted a reviewable factual error.

The Supreme Court of Canada and the Federal Court of Canada have confirmed that similar errors can render tribunal decisions unreasonable: a tribunal that ignores key evidence or misapprehends the record commits a reviewable error (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 ("Vavilov"); *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* 1998 CanLII 8667 (FC) ("Cepeda-Gutierrez").

Specifically, within the *Vavilov* decision, the Supreme Court of Canada said, "The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it."³

The Federal Court of Canada, within the *Cepeda-Gutierrez* decision, found that while an adjudicator

"... is not required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it... the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts."⁴

The Court in *Cepeda-Gutierrez* determined that it may infer, from an agency's failure to mention some evidence in its reasons, that the agency made a decision that was not based on the evidence before it. This is particularly when the evidence is particularly important to the issues before the adjudicator.

Together, these authorities establish that where an administrative tribunal's findings rest on a misunderstanding, misapplication, or disregard of material evidence, the decision is impacted by an error of fact, and that warrants reconsideration or judicial intervention.

Hydro provided the background and context for its request for reconsideration and detailed the four particular areas where the Board's findings of fact do not take into account important evidence that is on the record.

Contrary to NCC's claim, Hydro's request clearly identifies:

- The specific findings of fact alleged to be erroneous;
- The nature of the alleged errors; and

³ *Vavilov*, at paragraph 126.

⁴ *Cepeda-Gutierrez*, at paragraphs 16 and 17.

- The supporting evidence that had been provided on the record of the proceeding, including updated modeling and cost analysis.

Board Jurisdiction

As discussed above, Hydro's arguments go beyond disagreement with how the Board weighed the evidence. In Hydro's Request For Reconsideration, Hydro has indicated instances where evidence was overlooked, or where decisive weight was given to certain evidence that was contradicted on the record. These clearly indicate errors of findings of fact, and in findings of fact that had a material impact on the outcome of the Board's decision.

NCC references *R v. George, 2017 SCC 38* ("George") and *Nelson (City) v. Mowatt, 2017 SCC 8* ("Mowatt") to argue that factual inferences and weighing of evidence are not legal errors. **While this is true in the context of appellate review, it does not apply to the Board's reconsideration powers.** Section 28(1) of the Regulations allows the Board to revisit findings of fact where evidence was overlooked or misinterpreted—regardless of whether a court would find a "legal error."

In providing this information Hydro has clearly met the procedural requirements for a rehearing. Hydro's arguments that the Board misapprehended or overlooked certain evidence, or gave decisive weight to certain evidence that was contradicted on the record, mean that the Board has the authority through section 28(1) of the Regulations to reconsider its decision.

Misapplication of Legal Standards

NCC's submission incorrectly applies judicial review standards to Hydro's reconsideration request. NCC relies on *Vavilov, George, and Mowatt* to argue that factual findings cannot be revisited. These cases govern appellate review by courts—not internal reconsideration by the administrative tribunals. For example, NCC cites *Vavilov* to argue that courts must defer to administrative decisions and avoid reweighing evidence. However, *Vavilov* applies to external judicial review, not to a tribunal's own reconsideration.

Hydro's request for reconsideration is not a judicial review application to an external body; it is a statutory reconsideration request under Section 28(1) of the Regulations, which empowers the Board to revisit its own findings of fact. The Board is not being asked to defer to itself; it is being asked to assess whether its own factual conclusions were materially flawed. The Board is not applying a "reasonableness" or "palpable and overriding error" standard to its own decision. Rather, it is exercising its statutory discretion to determine whether its findings were based on incomplete or erroneous factual premises.

NCC's attempt to import appellate standards into this internal reconsideration process is legally incorrect.

Other Considerations

The other considerations noted by NCC were not referenced by Hydro as grounds for its request for reconsideration as they were not findings of fact that gave rise to the Board's disallowance of Hydro's proposed project.

Delay in Long-Term Solution

As stated earlier in this submission, Hydro also has concerns with the delay in a long-term solution for Charlottetown and Pinsent's Arm, as well as the entirety of the region. Hydro maintains, that the proposed regional interconnection is the least cost, safe, reliable, environmentally responsible solution. Hydro asserts that a reconsideration by the Board of its Order to fully and accurately incorporate the substantive and persuasive evidence already on the record is the most appropriate and expeditious path to providing safe, reliable, environmentally responsible, least-cost service for the customers in that area.

Further, Hydro has completed all work that can reasonably be undertaken to reinforce the mobile generating units that have been acting as the interim solution for electrical service in Charlottetown since 2019.⁵ Hydro has and will continue with any necessary inspections and regular maintenance, including winterization of the units in advance of any winter season for which they are providing service.

The Charlottetown temporary mobile generation is functioning reliably at present; however, a long-term supply solution is required to address the concerns associated with long-term use of mobile generation in Charlottetown.

Duty to Consult

NCC further referenced the Board's finding that the duty to consult with NCC had not been met at the time of the Board's Order. Hydro did not reference that particular issue in its Request for Reconsideration as, again, it was not referenced by the Board as a contributor to the rejection of Hydro's proposal.

Hydro has acknowledged within the record of the proceeding that further information and discussion were needed to allow for fulsome consultation with NCC. However, Hydro notes that NCC filed a submission in the application on January 9, 2025 where they advised that they did not oppose the application, or object to Hydro's intention to seek full approval. NCC advised that they expected a fulsome and engaging environmental assessment process, and continued relationship building with Hydro to ensure adequate consultation and accommodation.

Midgard's June 2025 Letter

NCC argues that Midgard's June 2025 letter, filed with Hydro's Request for Reconsideration, is not properly before the Board. This is incorrect. The letter clarifies previously submitted evidence and does not introduce new material. It is entirely appropriate for the Board to consider this clarification in its reconsideration process.

Conclusion

Hydro's Request For Reconsideration is properly grounded in Section 28(1) of the Regulations, supported by extensive evidence, and identifies issues with specific findings of fact that materially impacted the Board's decision. Hydro's proposal was demonstrated to be the least-cost solution for safe, reliable, environmentally responsible service to Southern Labrador, and aligns with long-term goals of reliability, sustainability, and community partnership.

⁵ "Long-Term Supply for Southern Labrador – Service to Charlottetown – Additional Information," Newfoundland and Labrador Hydro, August 18, 2023.

Hydro respectfully submits that NCC's August 14, 2025 submission is grounded in an incorrect application of judicial review principles to a statutory reconsideration process, and a too-narrow definition of an error in finding of fact. Mary's Harbour Town Council's concerns, though sincerely held, do not reflect the technical and economic realities of the current energy landscape or the evidence on record.

Hydro requests reconsideration of Order No. P.U. 12(2025) on the basis that the Board's findings of fact did not fully or accurately account for critical evidence on the record. Hydro submits that the revised project cost of \$110.9 million remains within the sensitivity ranges analyzed by Midgard Consulting, whose updated multivariate analysis confirmed the proposed regional interconnection remains the least-cost option under all but highly improbable scenarios. The Board's conclusions regarding diesel plant life extensions and renewable integration did not reflect the low probability or technical infeasibility of alternatives, nor did they acknowledge Hydro's demonstrated commitment to renewable partnerships and other environmental benefits. Furthermore, the Board's concerns about the Labrador Interconnected System option overlooked comprehensive cost and reliability evidence showing it to be significantly more expensive and less viable. Hydro believes a rehearing under Section 28(1) of the Regulations is warranted to ensure a timely, cost-effective, and evidence-based resolution for Southern Labrador's long-term electricity supply.

Hydro remains committed to delivering safe, reliable, and cost-effective service to southern Labrador and to working collaboratively with all stakeholders, including NCC. Hydro therefore requests that the Board exercise its authority under Section 28(1) of the Regulations to reconsider its decision and approve the proposed regional interconnection project.

Further limited additional process may be helpful to fully address the material errors of fact identified above. As Hydro noted previously, Hydro is available to discuss any potential procedure that would best ensure a fulsome understanding of the record. For example, targeted Requests for Information could be issued, limited to the matters set out above, that would allow the Board to clarify the discrete factual issues that were misunderstood in the original decision.

Should you have any questions, or should the Board require any further clarification or additional material, please contact the undersigned.

Yours truly,

NEWFOUNDLAND AND LABRADOR HYDRO



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

ecc:

Board of Commissioners of Public Utilities

Board of Commissioners of Public Utilities

Jacqui H. Glynn
Ryan Oake
Board General

NunatuKavut Community Council

Jason T. Cooke, KC, Burchell Wickwire Bryson LLP
Sarah L MacLeod, Burchell Wickwire Bryson LLP

Labrador Interconnected Group

Senwung F. Luk, Olthuis Kleer Townshend LLP
Nicholas E. Kennedy, Olthuis Kleer Townshend LLP

Consumer Advocate

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

Newfoundland Power Inc.

Dominic J. Foley
Douglas W. Wright
Regulatory Email

Island Industrial Customer Group

Paul L. Coxworthy, Stewart McKelvey
Denis J. Fleming, Cox & Palmer
Glen G. Seaborn, Poole Althouse