

**NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

AN ORDER OF THE BOARD

NO. P.U. 12(2016)

1 **IN THE MATTER OF** the Electrical Power
2 Control Act, 1994, SNL 1994, Chapter E-5.1
3 (the “EPCA”) and the Public Utilities Act,
4 RSNL 1990, Chapter P-47 (the “Act”), as
5 amended, and regulations thereunder; and
6

7 **IN THE MATTER OF** an investigation
8 and hearing into supply issues and power
9 outages on the Island Interconnected
10 system; and
11

12 **IN THE MATTER OF** a motion by
13 Newfoundland and Labrador Hydro for
14 a determination that certain Requests for
15 Information filed by Grand Riverkeeper
16 Labrador, Inc. are outside the scope of
17 the proceeding; and
18

19 **IN THE MATTER OF** a motion by Grand
20 Riverkeeper Labrador, Inc. for an order directing
21 Newfoundland and Labrador Hydro to provide
22 full and complete responses to certain Requests
23 for Information.
24

25
26 **Motion by Newfoundland and Labrador Hydro**
27

28 On January 19, 2015 Newfoundland and Labrador Hydro (“Hydro”) filed a motion requesting
29 that the Board determine that a number of requests for information (“RFIs”) filed by Grand
30 Riverkeeper Labrador, Inc., GRK-NLH-087 through 092, are outside the scope of the
31 proceeding.
32

33 On February 18, 2016 in response to an inquiry from the Board, Grand Riverkeeper Labrador,
34 Inc. filed a submission in relation to the Hydro motion.
35

36 On March 14, 2016 Hydro filed a reply submission.
37

38 The Board did not receive any other submissions in relation to Hydro’s motion.

1 **Motion by Grand Riverkeeper Labrador, Inc.**

2
3 On November 26, 2015 Grand Riverkeeper Labrador, Inc. filed a motion requesting that Hydro
4 be ordered to provide full and complete responses to GRK-NLH-093, 100, 104, 105, 107, and
5 115 through 121 and that deadlines for Grand Riverkeeper Labrador, Inc. be suspended until the
6 responses are filed.

7
8 On December 22, 2015 Hydro filed a submission in relation to the Grand Riverkeeper Labrador,
9 Inc. motion.

10
11 On January 30, 2016 Grand Riverkeeper Labrador, Inc. filed a reply submission.

12
13 The Board did not receive any other submissions in relation to the Grand Riverkeeper Labrador,
14 Inc.'s motion.

15
16 **Background**

17
18 Following power outages and supply issues on the Island Interconnected system in late
19 December 2013 and early January 2014 the Board began an investigation. On February 19, 2014
20 the Board issued Order No. P.U. 3(2014) which identified the intervenors and set out the process
21 to be followed in the matter, stating at page 3:

22
23 *WHEREAS the Board has considered the lists of issues, submissions, written comments and*
24 *presentations and has determined that it is appropriate and necessary to address how Hydro*
25 *and Newfoundland Power will ensure adequacy and reliability on the Island Interconnected*
26 *system over the short, medium and long-term, which will require analysis of the adequacy*
27 *and reliability of the system after the commissioning of the Muskrat Falls generating facility*
28 *and the Labrador Island Link;*

29
30 On October 10, 2014 the Board advised the parties that the investigation would be divided into
31 two phases. Phase One would deal with the immediate reliability issues for the Island
32 Interconnected system prior to interconnection with Muskrat Falls. Reliability issues post
33 Muskrat Falls interconnection would be addressed in Phase Two.

34
35 On October 31, 2014 the Board advised the parties of the issues to be considered in each phase
36 of the investigation. In relation to the scope of Phase Two the Board stated:

37
38 *Phase Two will focus on the implications of the interconnection with Muskrat Falls on*
39 *reliability and adequacy of the Island Interconnected system. The following issues are*
40 *expected to be addressed in this phase of the proceeding:*

- 41
42 *1. the impact of the interconnection with Muskrat Fall on the Island Interconnected*
43 *system;*
44 *2. Island Interconnected system structure and operations;*
45 *3. the impact of the Maritime Link, including the availability of power over the Maritime*
46 *Link; and*
47 *4. risk management.*

1 The motions of Hydro and Grand Riverkeeper Labrador, Inc. relate to RFIs filed in Phase Two of
2 the investigation.

3 4 **Submissions and Board Findings**

5
6 This is the fourth order issued by the Board in relation to challenged RFIs and/or Hydro's
7 responses to RFIs.¹ In Order No. P.U. 41(2014) the Board stated:

8
9 *The use of requests for information is accepted practice for the Board and, with few*
10 *exceptions, the Board's procedures provide for direct filing of requests for information to*
11 *a party. Issues of relevance, usefulness or information availability related to specific*
12 *requests are dealt with on objection or motion from the responding party. The Board*
13 *expects that intervenors will only ask questions that are relevant and that the responding*
14 *party will strive to answer all questions fully and adequately. However, efficient*
15 *regulatory process sometimes requires the Board to rule on whether certain information*
16 *requests should be struck on the basis that they may be considered to be outside the scope*
17 *of the proceeding or that the costs and time associated with the production of the*
18 *information are not in line with the potential usefulness of the information to be produced.*
19 *Often the value or usefulness of certain information to the Board in a matter is difficult to*
20 *assess in the absence of the production of the information.*

21
22 The Board's position on the Quebec litigation, the relevance of the technical details of the
23 Muskrat Falls Project and the design specifications of the North Spur have been clearly
24 determined and outlined for the parties. The Board has required responses to RFIs with respect to
25 the Quebec litigation insofar as they may impact on the reliability of the Island Interconnected
26 system. The Board's jurisdiction under the *Muskrat Falls Project Exemption Order* (Regulation
27 120/13) is constrained and the Board does not have jurisdiction to review the design,
28 engineering, planning, construction, commissioning, ownership, operation, maintenance,
29 management and control of Muskrat Falls. The Board has stated that information which goes to
30 the risk of the timely delivery of reliable and adequate power to the Island Interconnected system
31 is relevant to the investigation and should be produced. In Order No. P.U. 41(2014), the Board
32 also stated:

33
34 *The Board acknowledges that it is sometimes difficult to make this distinction and further that some*
35 *parties may be interested in the most detailed information available. Each request for information*
36 *must be considered in all of the circumstances, balancing the interests of full disclosure and*
37 *participation with an efficient process and the potential for undue burden on the parties.*

38
39 The Board will address each challenged RFI consistent with its prior determinations as set out
40 below.

41 42 GRK-NLH-087 through 090

43
44 Hydro states that GRK-NLH-087 through 090 are in relation to the Muskrat Falls development
45 and are clearly out of the scope of the proceeding. Hydro submits that Grand Riverkeeper

¹ Order No. P.U. 41(2014), Order No. P.U. 5(2015) and Order No. P.U.13(2015).

1 Labrador, Inc has not appropriately taken into account the Board's previous rulings on the risks
2 related to the North Spur or the engineering and construction issues associated with the Muskrat
3 Falls Project. Hydro states:

4
5 *Each of GRK-NLH-087 to 091 specifically request exactly the type of information which*
6 *the Board has ruled would not be relevant or useful in this proceeding. GRK-NLH-087*
7 *requests information in relation to engineering studies dealing with the incorporation of*
8 *specific features to ensure the long-term stability of the North Spur. GRK-NLH-088*
9 *requests information in relation to engineering studies which addressed the solution for the*
10 *North Spur. GRK-NLH-089 requests information in relation to the potential liquefaction of*
11 *sensitive silt/clay in specified circumstances. GRK-NLH-089 requests information in*
12 *relation to communications regarding stability studies. GRK-NLH-090 requests Reports*
13 *that are technical studies related to the Muskrat Falls dam and the North Spur. This*
14 *information is specific to the work to be done to stabilize the North Spur which the Board*
15 *has already ruled would not be relevant or useful in this proceeding (Order P.U. 41 (2014)*
16 *page 27).*
17

18 Hydro submits that these RFIs do not request information regarding the risks associated with the
19 North Spur which may impact the provision of the reliable and adequate provision of power after
20 interconnection which the Board has stated may be relevant.

21
22 Grand Riverkeeper Labrador, Inc. submits that the information requested in GRK-NLH-087
23 through 090 consists of normal requests for details with respect to statements made in Hydro's
24 evidence. Grand Riverkeeper Labrador, Inc. further submits that the RFIs do not request
25 technical information, but precise references to documents that Hydro has referred to in its
26 evidence. Grand Riverkeeper Labrador, Inc. states that GRK-NLH-087-090 are similar to GRK-
27 NLH-055, which requested details about statements about the North Spur. Grand Riverkeeper
28 Labrador, Inc. notes that the Board rejected Hydro's motion that GRK-NLH-055 was outside the
29 scope of the proceeding.

30
31 In reply, Hydro states that requiring responses to GRK-NLH-087 though 090 will act to
32 complicate the public review and the responses would not be relevant or helpful to the Board in
33 making its final determinations.

34
35 The Board has been clear that copies of detailed technical information will not be required.
36 GRK-NLH-087 through 090 request identification, or lists, of previous studies, reports and
37 correspondence along with titles, authors and dates. The Board finds that the requested
38 information goes to the technical aspects of the risks and issues associated with the North Spur.
39 In accordance with the Board's previous orders, the Board finds that the requested information, a
40 list of reports and dates, would not be of assistance to the Board in dealing with the matters
41 within the scope of the investigation. The Board accepts Hydro's motion with respect to GRK-
42 NLH-087 through 090.

1 GRK-NLH-091

2
3 Grand Riverkeeper Labrador, Inc. acknowledged that GRK-NLH-091 requested copies of
4 technical studies and, in recognition of the Board's previous statements and Orders, withdrew
5 this RFI.

6
7 GRK-NLH-092

8
9 Grand Riverkeeper Labrador, Inc. states that Hydro's motion essentially provides the
10 information requested in GRK-NLH-092. Grand Riverkeeper Labrador, Inc. requests that Hydro
11 provide that information in a formal RFI response.

12
13 Hydro acknowledges Grand Riverkeeper Labrador, Inc's request for Hydro to provide the
14 information contained in its motion in a formal RFI response.

15
16 The Board accepts Grand Riverkeeper Labrador, Inc's request that the information contained in
17 Hydro's motion should be filed as a formal RFI response.

18
19 GRK-NLH-093

20
21 Grand Riverkeeper Labrador, Inc. submits that Hydro's response to GRK-NLH-093 fails to
22 answer the question. Grand Riverkeeper Labrador, Inc. states that the information requested in
23 GRK-NLH-093 is substantially different from that requested in GRK-NLH-021 and that
24 essentially GRK-NLH-093 requests elaboration of the response provided to GRK-NLH-021.
25 Grand Riverkeeper Labrador, Inc. further states that Hydro's response ignores its explicit request
26 to (i) indicate whether Hydro has analysed whether Hydro-Quebec's interpretation of the
27 Churchill Falls Power Contract would limit the Independent Coordinator's ability to respect
28 Hydro's delivery requirements, and (ii) provide said analysis or explain on what basis Hydro has
29 been able to conclude that it will not impact system reliability.

30
31 Hydro states that it has already addressed the issue of the impact of water flows to the best extent
32 possible and that it is unable to comment on hypothetical potential scenarios arising from the
33 outcome of litigation. Hydro notes that the Board has previously accepted the adequacy of
34 Hydro's response to GRK-NLH-021 in Order No. P.U. 5(2015).

35
36 Grand Riverkeeper Labrador, Inc. notes that GRK-NLH-093 does not require any examination of
37 hypotheticals and states that Hydro should not be allowed to avoid responding to a yes-or-no
38 question or producing the document should it exist.

39
40 The Board notes that GRK-NLH-093 requests an explanation of a statement made in relation to
41 water flows in response to GRK-NLH-021. The Board has reviewed GRK-NLH-021 in two
42 previous orders. In Order No. P.U. 41(2014) the Board denied Hydro's challenge to this RFI and
43 found that the consequences of an unfavorable ruling in relation to the Quebec litigation may be
44 relevant to the issue of reliable and adequate supply of power to the Island Interconnected
45 system. In Order No. P.U. 5(2015) the Board stated that Hydro's response to GRK-NLH-021
46 provided a short explanation as to the impact of an unfavorable ruling and alternatives available

1 for Hydro. The Board found that the explanation was adequate for the purposes of this review
2 and answered the issues identified by the Board in Order No. P.U. 41(2014). The Board remains
3 satisfied that the issue of the impact of an unfavorable ruling in the Quebec litigation on the
4 water flows of the Churchill River has been sufficiently addressed and does not require further
5 elaboration. The Board does not accept the motion of Grand Riverkeeper Labrador, Inc. with
6 respect to GRK-NLH-093.

7
8 GRK-NLH-100
9

10 Grand Riverkeeper Labrador, Inc. argues that the reference by Hydro to the responses provided
11 to GRK-NLH-098 and 099 are not relevant to GRK-NLH-100 as they do not state the basis on
12 which Hydro has determined that the probability of risk of failure of the Muskrat Falls dam is
13 negligible and do not provide the supporting documentation to support this conclusion. Grand
14 Riverkeeper Labrador, Inc. further argues that the reference to GRK-NLH-044, GRK-NLH-096
15 and GRK-NLH-097 are also not relevant as GRK-NLH-100 is not concerned with the options
16 available to Hydro in the event of a dam breach.
17

18 Hydro submits that it has provided an appropriate response to GRK-NLH-100. Hydro notes that
19 the citation to GRK-NLH-100 confirms that the Muskrat Falls dam was being designed similar to
20 all other Hydro dam facilities. In GRK-NLH-099 Hydro has stated that its determination of the
21 risk of failure being negligible is based on Hydro's understanding of principles associated with
22 the engineering design of large-scale dams.
23

24 Hydro further notes that the Board has previously ordered that the Phase Two review would not
25 include a review of detailed technical and engineering information related to the Muskrat Falls
26 and submits that Grand Riverkeeper Labrador, Inc is attempting to turn the Phase Two inquiry
27 into a review which the Board has stated it is not carrying out.
28

29 The Board finds that Hydro's response to GRK-NLH-100, which refers to its response to GRK-
30 NLH-099, provides the basis for Hydro's determination that the probability of the risk of failure
31 of the dam is negligible. In relation to Grand Riverkeeper Labrador Inc.'s request for supporting
32 documentation for Hydro's determination, the Board finds, consistent with its previous orders,
33 that it is not necessary for Hydro to provide detailed technical information or reports related to
34 engineering and construction issues. The Board does not accept the motion of Grand Riverkeeper
35 Labrador, Inc. with respect to GRK-NLH-100.
36

37 GRK-NLH-104
38

39 Grand Riverkeeper Labrador, Inc. states that Hydro's response to GRK-NLH-104, which relies
40 on a citation from Order No. P.U. 41(2014), takes the Board's comments out of context. Grand
41 Riverkeeper Labrador, Inc. acknowledges that the Board has previously denied certain RFIs
42 which would require Hydro to carry out quantitative analysis of hypothetical scenarios and
43 produce new data. Grand Riverkeeper Labrador, Inc. states that GRK-NLH-104 does not require
44 analysis or data but an elaboration on reliability implications in the event of a decision in support
45 of Hydro-Quebec's interpretation. Grand Riverkeeper Labrador, Inc. states that this RFI "*relates*
46 *to the implications on the power available on the Island Interconnected system if the results of*

1 *the Quebec litigation are unfavorable*” and a response would “*address consequences regarding*
2 *the availability of a reliable and adequate supply of power to the Island Interconnected system*
3 *associated with the risks of the scenarios outlined.*” Grand Riverkeeper Labrador, Inc. submits
4 that this is clearly in line with the Board’s statements in Order No. P.U. 41(2014).
5

6 Hydro disagrees with Grand Riverkeeper Labrador, Inc’s statement that Hydro took the Board’s
7 statements out of context. Hydro states that the Board’s prior order was not premised solely on
8 the issue of the preparation of quantitative analysis or data. Hydro submits that it is completely
9 inappropriate to have Hydro attempt to elaborate on the implications of hypothetical eventualities
10 which Hydro does not support and which pre-judge the litigation.
11

12 Grand Riverkeeper Labrador, Inc. states that, as justification of its refusal to provide responses to
13 the RFIs, Hydro quotes the first and third paragraphs of Order No. P.U. 15(2014). Grand
14 Riverkeeper Labrador, Inc. submits Hydro omitted to reference the paragraph of Order No. P.U.
15 15(2014) which indicates the Board’s openness to hearing evidence regarding the implications of
16 risks with respect to the Island Interconnected System.
17

18 Grand Riverkeeper Labrador, Inc. states that the RFIs clearly fall within the subject matter
19 recognized by the Board when granting intervenor status to Grand Riverkeeper Labrador, Inc.
20 and that Hydro did not appeal that decision at that time. Grand Riverkeeper Labrador, Inc. states
21 that Hydro is now barred by “issue estoppel” and “laches” from disputing that finding now.
22

23 Grand Riverkeeper Labrador, Inc. also quotes from February 26, 2015 correspondence from the
24 Board to Messrs. Penny and Vardy as support that the Muskrat Falls project is relevant to the
25 proceeding insofar as it affects reliability on the Island Interconnected System.
26

27 GRK-NLH-104 requests that Hydro confirm certain effects of an unfavorable ruling in relation
28 to the Quebec litigation on the operation of the Water Management Agreement and explain the
29 implications for the reliability of Muskrat Falls deliveries to Hydro. As previously stated, the
30 Board is satisfied that Hydro’s response to GRK-NLH-021 provided an adequate explanation as
31 to the impact of an unfavorable ruling and alternatives available for Hydro. The Board finds that
32 the response to GRK-NLH-021 addresses the timing of when energy is produced at Muskrat
33 Falls. The Board is satisfied that the issue of the impact of an unfavorable ruling in the Quebec
34 litigation on energy production from Muskrat Falls has been sufficiently addressed for the
35 purposes of this review and does not require further elaboration. The Board does not accept the
36 motion of Grand Riverkeeper Labrador Inc. with respect to GRK-NLH-104.
37

38 GRK-NLH-105 and 107

39

40 Grand Riverkeeper Labrador, Inc. submits that Hydro’s reliance on the Board’s comments in
41 Order No. P.U. 41(2014) are not relevant to this RFI as the hypothetical scenarios bear directly
42 on the reliability of the Island Interconnected System after the Muskrat Falls interconnection and
43 that no quantitative analysis is requested.
44

45 Hydro states that these hypothetical scenarios clearly illustrate why it is inappropriate for Hydro
46 to be asked to evaluate the outcome of hypothetical situations. Hydro states that it would

1 seriously unduly complicate and protract the inquiry and that it is inappropriate to require Hydro
2 to do so.

3
4 In reply, Grand Riverkeeper Labrador, Inc. states that the correct and appropriate question of
5 whether hypothetical situations should be addressed is one of relevance and submits that the
6 matters explored in its challenged questions are clearly relevant. Grand Riverkeeper Labrador,
7 Inc. cites the following passage from Order No. P.U. 15(2014) as support for the relevance of the
8 RFIs:

9
10 *The Board notes that Grand Riverkeeper Labrador, Inc.'s reply submission states its*
11 *intent is to ensure that the Board's review of the adequacy and reliability of the system*
12 *after commissioning of the Muskrat Falls generating facility and the Labrador Island*
13 *Link takes into account the various risks associated with the unavailability of some or all*
14 *of the planned energy and capacity from Muskrat Falls. The Board is satisfied that this*
15 *stated interest may fall within the issues to be addressed in this investigation and hearing*
16 *and that Grand Riverkeeper Labrador, Inc. should be granted intervenor status on this*
17 *basis.*

18
19 Grand Riverkeeper Labrador, Inc. submits that the analysis required to answer its RFIs is not
20 strictly a "hypothetical" since it is one of two possible outcomes. Hydro's analysis is based on
21 the courts accepting Nalcor's interpretation of the renewal contract, which is neither more nor
22 less hypothetical than the courts accepting Hydro-Quebec's interpretation. Grand Riverkeeper
23 Labrador, Inc. further submits that the Board will have to issue its report not knowing the
24 outcome of the litigation, therefore the Board can not presume that Nalcor or Hydro-Quebec will
25 prevail. Grand Riverkeeper Labrador, Inc. states that there is considerable evidence on the record
26 based on the assumption that Nalcor's interpretation is correct but for the Board to draw
27 conclusions about the implications of other possible outcomes, the production of evidence
28 regarding Hydro's perspective is required. Grand Riverkeeper Labrador, Inc. also states that it is
29 clear in law that an expert can be obliged to consider hypothetical scenarios, insofar as they are
30 relevant to the matter at issue.

31
32 The Board notes that Hydro's response to GRK-NLH 105 and 107 states "Please see Hydro
33 response to GRK-NLH-104." The Board has determined that the issue in GRK-NLH-104, which
34 related to the timing of energy production at Muskrat Falls, has been sufficiently addressed for
35 the purposes of this review and a further response is not required. GRK-NLH-105 and 107
36 request information as to how energy from the Churchill Falls plant will be apportioned in
37 certain situations. It is not clear that the requested information, apportionment of Churchill Falls
38 energy in certain situations, would be of assistance to the Board in dealing with the matters
39 within the scope of the investigation. The Board does not accept Grand Riverkeeper Labrador
40 Inc.'s motion with respect to GRK-NLH- 105 and GRK-NLH-107.

41
42 GRK-NLH-115 through GRK-NLH-117

43
44 Grand Riverkeeper Labrador, Inc. submits that Hydro has been asked in each of these RFIs to
45 confirm whether a particular type of study has been carried out and that a clear answer to these
46 questions should be provided.

1 In relation to its request for Hydro to provide a copy of these reports, Grand Riverkeeper
2 Labrador, Inc. states that Hydro, by making an assertion that the risk of failure at the North Spur
3 is negligible, made any evidence that would contradict this statement relevant and admissible.
4 Further, Grand Riverkeeper Labrador, Inc. states that its expert, Dr. Stig Bernander, requires
5 access to these documents to prepare his testimony. Grand Riverkeeper Labrador, Inc. states that
6 should the Board decide these documents do not need to be produced, Hydro should, at a
7 minimum, be required to identify the studies, the reasons for completing the studies and provide
8 the title, author, and date of the studies.

9
10 Hydro submits that it does not believe that it is appropriate or useful to confirm if a particular
11 type of study has not been carried out. Hydro also does not agree that its reference to the risk of
12 failure at North Spur in anyway has changed the Board's finding or has now rendered relevant
13 and admissible evidence that would contradict or put into question its validity.

14
15 In relation to Grand Riverkeeper Labrador, Inc.'s expert requiring the requested documents to
16 prepare his testimony, Hydro submits that the Board has ordered that issues regarding the
17 construction of the Muskrat Falls facility and the North Spur are not matters within the scope of
18 the proceeding.

19
20 Grand Riverkeeper Labrador, Inc. states that the Board's prior decisions on contested RFIs, if
21 read as a whole, provide a clear indication of the Board's judgement with regard to the relevance
22 of issues related to the North Spur in the present proceeding. Grand Riverkeeper Labrador, Inc.
23 states:

24
25 *The Board considers the issue to be relevant, insofar as it speaks to the "assessment of*
26 *risk" with regard to the "availability of a reliable and adequate supply of power to the*
27 *Island Interconnected system". At the same time, it has declined to order the production*
28 *of technical engineering data.*

29
30 Grand Riverkeeper Labrador, Inc. submits that the individual RFIs must be reviewed in light of
31 the Board's prior decisions.

32
33 GRK-NLH-115 requests that, further to Hydro's response to GRK-NLH-045, Hydro confirm that
34 no progressive failure analysis has been carried out in relation to the North Spur. In its response
35 to GRK-NLH-045 Hydro has provided a list of the studies that have been completed and
36 explained the approach that has been taken to prevent progressive failure of the North Spur. The
37 Board is satisfied that the information provided is sufficient and reasonable within the
38 parameters of the Board's investigation and jurisdictional constraints and that copies of the
39 completed reports are not required. The list of completed studies also provides the information
40 requested in GRK-NLH-116 and GRK-NLH-117. The Board does not accept Grand Riverkeeper
41 Labrador Inc.'s motion in relation to GRK-NLH-115, GRK-NLH-116 and GRK-NLH-117.

42
43 GRK-NLH-118 through 121

44
45 Grand Riverkeeper Labrador, Inc. submits that Hydro's response to GRK-NLH-118 was a
46 transparent attempt to avoid responding to the RFIs. Grand Riverkeeper Labrador, Inc. states that
47 these RFIs are not a repeat of GRK-NLH-047, which requested copies of studies concerning soil

1 structure and soil properties at the North Spur. Hydro has not responded, and has provided no
2 valid reason for not responding, to the yes-or-no answer of what information was provided to the
3 Independent Engineer. Grand Riverkeeper Labrador, Inc. submits that Hydro has made this
4 information relevant by presenting the Independent Engineer's report regarding risk analyses
5 carried out regarding the Muskrat Falls project. Grand Riverkeeper Labrador, Inc. repeats that
6 these documents are required for its expert to prepare his testimony.
7

8 Hydro states that the information requested in these RFIs is clearly the type of information that
9 the Board has already consistently ruled out of scope for the Phase Two inquiry. Hydro submits
10 that presenting the Independent Engineer's report in response to an RFI cannot bring into scope
11 issues already consistently determined to be outside of scope by the Board. Hydro disagrees with
12 Grand Riverkeeper Labrador, Inc.'s statement that its response to PUB-NLH-021 does not
13 include the North Spur among risks for the project which have been successfully mitigated.
14

15 Grand Riverkeeper Labrador, Inc. states that, in its responses to GRK-NLH-098 through 100,
16 Hydro has affirmed that the risk of failure of the Muskrat Falls is negligible and there is no need
17 to mitigate against such a risk. Grand Riverkeeper Labrador, Inc. further states that it
18 understands that the Board's jurisdiction is highly constrained given the Muskrat Falls
19 Exemption Order but nonetheless the Board cannot avoid deciding whether to accept or reject
20 Hydro's affirmation that the probability of failure of the North Spur is negligible. Grand
21 Riverkeeper Labrador, Inc. submits that the question of the possibility or likelihood of failure of
22 the Muskrat Falls dam is directly relevant to the inquiry and states:
23

24 *At the end of the day, the Board will have to decide whether or not the Island*
25 *Interconnected System must maintain readiness for a scenario involving the failure of the*
26 *Muskrat Falls dam. If it concludes that Hydro's zero-probability assessment is correct, it*
27 *may well decide to authorize the eventual decommissioning of Holyrood. If not, and no*
28 *other back-up plan can be designed, such decommissioning may be impossible. This is*
29 *without doubt one of the key questions before the Board in the proceeding.*
30

31 Grand Riverkeeper Labrador, Inc. submits case law to support the right to reply (or refute)
32 evidence adduced by the moving party and requests full responses to its RFIs.
33

34 GRK-NLH-118 through 121 request details and copies of information relating to the North Spur
35 as well as confirmation of whether this information had been provided to the independent
36 engineer, MWH Canada. The Board addressed this issue in Order No. P.U. 14(2014) and found
37 that specific information in relation to the technical issues associated with the North Spur at the
38 Muskrat Falls Project site was beyond the scope of the proceeding. The Board finds that GRK-
39 NLH-118 through 121 request detailed technical information that is neither relevant nor required
40 for the Board's investigation. The Board does not accept Grand Riverkeeper Labrador Inc.'s
41 motion in relation to GRK-NLH-118 through 121.

1 **IT IS THEREFORE ORDERED THAT:**
2

- 3 1. The motion of Hydro for an Order determining that GRK-NLH-087-090 are outside the
4 scope of the proceeding is hereby accepted.
5
6 2. The motion of Hydro for an Order determining that GRK-NLH-092 is outside the scope of
7 the proceeding is hereby denied.
8
9 3. The motion of Grand Riverkeeper Labrador, Inc. for an Order requiring Hydro to provide full
10 and complete responses to GRK-NLH-093, GRK-NLH-100, GRK-NLH-104, GRK-NLH-
11 105, GRK-NLH-107 and GRK-NLH-115 through to GRK-NLH-121 is hereby denied.

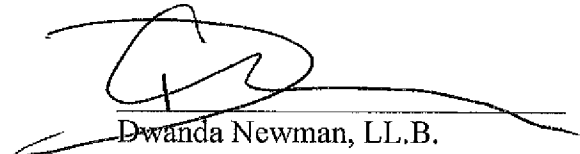
DATED at St. John's, Newfoundland and Labrador this 22nd day of April 2016.



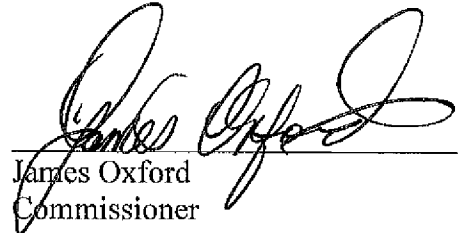
Andy Wells
Chair & Chief Executive Officer




Darlene Whalen, P.Eng.
Vice-Chair



Dwanda Newman, LL.B.
Commissioner



James Oxford
Commissioner


Cheryl Blundon
Board Secretary