

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

AN ORDER OF THE BOARD

NO. P.U. 18(2018)

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
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7 **IN THE MATTER OF** a general rate
8 application by Newfoundland and Labrador
9 Hydro to establish customer electricity rates
10 for 2018 and 2019; and
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12 **IN THE MATTER OF** Order No. P.U. 13(2018)
13 relating to Newfoundland and Labrador Hydro’s
14 request that its responses to two requests for
15 information be considered confidential; and
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17 **IN THE MATTER OF** an application by
18 Newfoundland and Labrador Hydro requesting
19 that the information contained in Table 2 of Hydro’s
20 response to PUB-NLH-149 be considered confidential.
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23 **Background**
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25 On July 28, 2017 Newfoundland and Labrador Hydro (“Hydro”) filed its 2017 general rate
26 application with the Board of Commissioners of Public Utilities (the “Board”). In Order No. P.U.
27 30(2017) the Board established that the Consumer Advocate, Dennis Browne, Q.C., (the
28 “Consumer Advocate”); Newfoundland Power Inc. (“Newfoundland Power”); a group of Island
29 Industrial customers: Corner Brook Pulp and Paper Limited, NARL Refining Limited Partnership,
30 and Vale Newfoundland and Labrador Limited (the “Industrial Customer Group”); the
31 communities of Sheshatshiu, Happy Valley-Goose Bay, Wabush, and Labrador City (the
32 “Labrador Interconnected Group”) and the Iron Ore Company of Canada (“IOC”) are intervenors
33 in this proceeding.
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35 On April 6, 2018 Hydro filed responses to two requests for information (“RFIs”) on a confidential
36 basis and requested that the Intervenors’ representatives be required to execute a confidentiality
37 undertaking document prior to their receipt of the responses. On May 10, 2018 the Board issued
38 Order No. P.U. 13(2018) finding that the responses to the two RFIs should be considered

1 confidential with the exception of Table 2 in PUB-NLH-149 and the contract between NEM and
2 Hydro in CA-NLH-254. On May 22, 2018 Hydro filed the contract between NEM and Hydro in
3 CA-NLH-254.

4 5 **Application**

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7 On May 18, 2018 Hydro filed an application for an order of the Board that Table 2 of Hydro's
8 response to PUB-NLH-149 be considered confidential and that the Intervenor's access to the
9 confidential information be governed by the terms of the undertaking to be executed by the
10 Intervenor's representatives prior to their receipt of this confidential information (the
11 "Application").

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13 Hydro explained that Table 2 provides the daily actual price of purchases over the Maritime Link
14 to March 31, 2018 compared against the daily forecast purchase price filed in Hydro's Summary
15 Report – Additional Cost of Service Information. Hydro stated that it is necessary to withhold this
16 commercially sensitive trading information from public distribution to protect the interests of
17 Hydro's customers. Hydro explained that the information contained in Table 2, when combined
18 with existing industry knowledge, specifically information readily accessible by energy suppliers
19 and competitors through the Open Access Same-Time Information System (Oasis), is information
20 which can be used to deduce the average price per kilowatt hour paid by Hydro. According to
21 Hydro parties desiring to see all information published on Oasis can become registered users by
22 paying a small fee and meeting registration criteria. Hydro submitted that disclosure of the
23 information in Table 2 would provide competitors with information that could prejudice Hydro's
24 ability to procure the most cost effective energy. Hydro argued that the public's interest in
25 transparency is outweighed by the value to the parties and their customers of maintaining
26 confidentiality and further the present application is squarely within the contemplated
27 circumstances that are afforded protection by paragraph 1(b) of the Rules of Procedure for this
28 matter. In Hydro's view it is reasonable to require that, before gaining access to the confidential
29 information, the Intervenor's representatives execute the undertaking document proposed in the
30 April 6, 2018 filing to assure the protection of the confidential information from disclosure. Hydro
31 submitted that this will ensure that the Board and the parties will retain the opportunity to fully
32 view and scrutinize the confidential information.

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34 On May 29, 2018 the Consumer Advocate and the Board issued RFIs in relation to the
35 Application. Hydro filed responses to these RFIs on June 4, 2018.

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37 On June 7, 2018 Newfoundland Power and the Industrial Customer Group advised that they had
38 no comments on the Application.

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40 On June 11, 2018 Hydro filed a reply submission.

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42 The Board did not receive any other submissions.

43 44 **Board Findings**

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46 As discussed in Order No. P.U. 13(2018), while transparency and full disclosure are of paramount
47 importance to the regulatory process, there are occasions where it is necessary to restrict access to

1 information, for example where it is commercially sensitive. Based on the information provided
2 in the responses to the RFIs if the costs incurred by Hydro for purchases over the Maritime Link
3 as provided in Table 2 were made publicly available it would be possible for Oasis users to derive
4 an estimate of the price incurred by Hydro for purchases over the Maritime Link. The Board finds
5 that the information contained in Table 2 should be considered to be confidential on the basis that
6 disclosure of this information would provide competitors with information that could prejudice
7 Hydro's ability to procure the most cost effective energy. The Board is satisfied that the risk of
8 harm associated with the release of this information outweighs the interest of transparency in the
9 circumstances and that the confidentiality undertaking is a reasonable accommodation which
10 would permit full disclosure to the parties.


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13 **IT IS THEREFORE ORDERED THAT:**


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1. Table 2 in Hydro's response to PUB-NLH-149 shall be considered confidential and shall be released to the Intervenor's representatives upon the execution of the confidentiality undertaking.
2. Hydro shall pay all expenses of the Board arising from this Application.

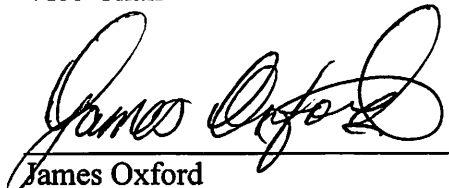
DATED at St. John's, Newfoundland and Labrador, this 14th day of June, 2018.



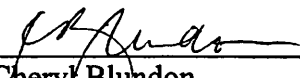
 Darlene Whalen, P. Eng.
 Chair & CEO



 Dwanda Newman, LL.B.
 Vice-Chair



 James Oxford
 Commissioner



 Cheryl Blundon
 Board Secretary