

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

AN ORDER OF THE BOARD

NO. P.U. 2(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
6

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
11

12 **IN THE MATTER OF** an application from
13 the Consumer Advocate to delay the schedule for
14 Newfoundland and Labrador Hydro’s general
15 rate application until additional information is filed.
16

17
18 **Application**
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20 On January 4, 2018 the Consumer Advocate, Dennis Browne, Q.C. (the “Consumer Advocate”)
21 filed an application to delay the schedule for Newfoundland and Labrador Hydro’s (“Hydro”)
22 general rate application, including settlement discussions, negotiations, the filing of issues lists
23 and witness lists, the motions day, and the commencement of public hearings, until certain
24 additional information is filed by Hydro (the “Application”).
25

26 As a result of the Application the Board advised the parties to Hydro’s general rate application
27 that, with the exception of the motions day set for January 19, 2018, the general rate application
28 schedule, including the settlement discussions and the start of the public hearing, would be delayed
29 pending a decision on the Application.
30

31 Hydro filed its response to the Application on January 12, 2018.
32

33 Newfoundland Power Inc. (“Newfoundland Power”) and a group of industrial customers: Corner
34 Brook Pulp and Paper Limited, NARL Refining LP and Vale Newfoundland and Labrador Limited
35 (the “Industrial Customer Group”) filed comments on January 15, 2018. The Labrador
36 Interconnected Group and Iron Ore Company of Canada advised that they would not be filing
37 comments.

1 The Consumer Advocate filed a reply submission on January 18, 2018.

2
3 **Submissions**

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5 In the Application the Consumer Advocate set out a number of specific concerns with Hydro's
6 proposed cost of service study and Off-Island Purchases Deferral Account. To address these
7 concerns the Consumer Advocate requested that Hydro be required to file the following
8 information:

- 9
10 i) A 2019 test year cost of service study based on the expected supply scenario with off-
11 island purchases over the Labrador-Island Link ("LIL") and the Maritime Link ("ML").
12 ii) A supply cost adjustment mechanism to complement the cost of service study and
13 protect it from uncertainties arising from off-island purchases.
14 iii) Hydro's power procurement plan for off-island purchases over the LIL and ML.
15 iv) Hydro's plan for sales of power over the LIL and ML.
16 v) A vetting program for both sales and purchases over the LIL and ML that will enable
17 the parties and the Board to determine if customers are receiving optimum value.
18 vi) An open access transmission tariff with supporting explanation and argument.
19 vii) A wholesale power rate for Newfoundland Power that better reflects marginal costs.
20

21 The Consumer Advocate argued that it is not possible for customers, the parties and the Board to
22 make an informed judgement and a reasonable decision on the appropriateness of the proposed
23 cost of service study and Off-Island Purchases Deferral Account because the record is not
24 complete. According to the Consumer Advocate all parties are entitled to have accurate forecasts
25 of Hydro's revenue requirements, cost allocations and balances that might accumulate in any
26 account set up for rate mitigation purposes. In the Consumer Advocate's opinion the additional
27 information should be provided by Hydro in the interests of regulatory efficiency and procedural
28 fairness. The Consumer Advocate also stated that there is no precedent in this jurisdiction for the
29 rate mitigation proposed by Hydro and that there is precedent and Board jurisdiction to require
30 utilities to file additional information. The Consumer Advocate concluded:

31
32 ...without the additional information required herein, the PUB could not reasonably comply
33 with the above-referenced provisions of the *Electrical Power Control Act, 1994*. The GRA
34 lacks certainty, is vague and has been described by our own expert as "fictitious". It is
35 difficult to appreciate how the PUB could be alive to the issues based on the generalities and
36 without specific evidence. In terms of outcomes, there can be no reasonable outcome given
37 the lack of transparency.¹
38

39 In its reply submission Hydro submitted that "the Consumer Advocate's Application is
40 inappropriate, without regulatory precedent, premature, prejudicial to Hydro, and ignores the very
41 purpose of holding a hearing on a general rate application."² Hydro submitted that the assertion
42 that there is insufficient information on the record with respect to the off-island purchases and the
43 proposed Off-Island Purchases Deferral Account generally is incorrect. In reply to the specific
44 deficiencies identified by the Consumer Advocate Hydro identified the relevant evidence that has

¹ Application, page 7.

² Hydro's submission, page 2.

1 been provided as part of the record, including evidence addressing: i) why its proposed deferral
2 account is consistent with regulatory precedent, ii) future rate increases, iii) the disposition of the
3 Off-Island Purchases Deferral Account, iv) deferral account calculations with respect to off-island
4 purchases from recapture energy from Churchill Falls, under two different fuel forecast scenarios,
5 v) deferral account definition, and vi) benefits to be accounted for in the proposed deferral account.
6 Hydro submitted that it has also filed expert evidence which provides regulatory support for its
7 proposal. According to Hydro the hearing of its general rate application provides the best
8 opportunity for the Board to assess Hydro's evidence on these matters and any issues raised by
9 intervenors.

10
11 With respect to the specific information requested by the Consumer Advocate to be filed by Hydro
12 in advance of the commencement of the settlement negotiations and hearing, Hydro stated that the
13 general rate application should be allowed to proceed in the normal course. Hydro set out the
14 reasons as to why it believes the requested cost-of-service study and revenue requirement impacts,
15 as well as other information related to off-island purchases and sales and Newfoundland Power's
16 wholesale rate should not or could not be provided. According to Hydro providing a 2019 cost of
17 service study based on the expected supply scenario would require the allocation of the
18 transmission operating and maintenance costs of the LIL and the Labrador Transmission Assets
19 ("LTA") but the functionalization and classification of these costs will not be determined until
20 completion of the planned cost of service methodology review hearing later in 2018. In addition,
21 a cost of service approach for classification and allocation of off-island power purchases would
22 have to be determined which would be impacted by whether the off-island purchases are firm or
23 non-firm. Hydro also noted that it would need to revise a number of other items in the cost of
24 service study, including the Holyrood conversion rate, the Holyrood capacity factor, the impact on
25 Holyrood fuel inventory used in rate base, and the test year No. 6 fuel consumption. With respect
26 to the open access transmission tariff Hydro noted that OC2017-380 directs the Board to approve,
27 on an interim basis, the transmission tariff to be filed by Hydro. Hydro submitted that, if the
28 Consumer Advocate believes that Hydro cannot legally recover the operating and maintenance
29 costs for the LIL and LTA from the savings from off-island purchases during pre-commissioning
30 period then the Consumer Advocate should present legal argument to the Board in the general rate
31 application proceeding.

32
33 Hydro submitted that the Application is not in the interest of regulatory efficiency and estimated
34 that the total delay to comply with the Application would be approximately six months. In addition
35 Hydro noted the possible material impact of any delay in the general rate application proceeding
36 on other Hydro proceedings in 2018 to 2020 to permit the implementation of revised customer
37 rates in 2020 to coincide with the projected in-service date for the Muskrat Falls project.

38
39 Hydro summarized its submission as follows:

40
41 Hydro submits that the Board has ample and sufficient evidence on the record to test the
42 reasonableness of Hydro's proposals and to render a decision upon the completion of the
43 hearing. The Consumer Advocate's Application seeks to have Hydro's proposal
44 predetermined. The Consumer Advocate has had full opportunity to question Hydro's GRA
45 and to provide competing information on the record. The Consumer Advocate will also (as
46 will all parties) have the opportunity to challenge Hydro's proposals as part of the GRA
47 hearing.

1 Hydro submits that it is entitled to have the Board hear its case, as filed, and that it should
2 not be forced to refile its GRA with proposals and frame its proposals in a fundamentally
3 different way than it has proposed in the application currently before the Board. Hydro has
4 filed an application before the Board seeking remedies that it deems to be appropriate based
5 on the evidence it has filed. Allowing the Consumer Advocate's Application would
6 essentially strip Hydro of its right to file an application that it seeks; rather it would force
7 Hydro to file an application and seek remedies that the Consumer Advocate deems
8 appropriate. With all due respect to the Consumer Advocate, Hydro's GRA is not the
9 Consumer Advocate's application, and it is not for the Consumer Advocate to dictate to
10 Hydro how to manage the company or what relief it should seek from the Board.³
11

12 In its submission Newfoundland Power stated that it agreed with many of the observations in the
13 Application regarding (i) the sufficiency of the evidence filed in support of the Off-Island
14 Purchases Deferral Account and (ii) the hazards associated with a test year forecast that does not
15 reflect the costs Hydro expects to incur. With respect to the Off-Island Purchases Deferral Account
16 Newfoundland Power submitted that the evidence filed by Hydro is not supported by detailed,
17 complete and current information regarding the timing and amount of anticipated rate increases.
18 Newfoundland Power also submitted that it is unclear whether the Off-Island Purchases Deferral
19 Account conforms to provincial Cabinet directives, specifically OC2013-343 which governs
20 recovery of Muskrat Falls costs. With respect to the test year cost of service Newfoundland Power
21 noted that the supply cost forecast used by Hydro in determining the 2018 and 2019 revenue
22 requirements reflect the continued use of No. 6 fuel at the Holyrood Thermal Generating Station
23 as if the island remained electrically isolated from the North American grid. According to
24 Newfoundland Power, the use of test year costs for rate setting that do not reflect Hydro's actual
25 expectation regarding the cost of supply "is a significant departure from the cost of service
26 standard, regulatory practice in this jurisdiction, and the power policy of the Province."⁴
27

28 Newfoundland Power also submitted that Hydro's assertion of its right to be heard is a serious
29 issue for both the Board and for Newfoundland Power's customers. Hydro has the evidentiary
30 burden and the right to determine what evidence it presents in support of applications before the
31 Board. According to Newfoundland Power this is a routine aspect of regulatory management by
32 the utility and consistent with the findings of the Newfoundland and Labrador Court of Appeal. If
33 the Board determines, following the hearing, that the evidence is insufficient to support Hydro's
34 proposals, those proposals should not be approved. Newfoundland Power summarized its position
35 as follows:
36

- 37 1. the evidence filed in support of the OIPDA does not appear to provide sufficient
38 information in relation to the timing and amount of future customer rate increases
39 associated with the Muskrat Falls project to be approved by the Board;
- 40 2. the Board should, in the circumstances, give due regard to Hydro's assertion of its right
41 to proceed with its 2017 GRA as filed; and
- 42 3. any consequences of Hydro choosing to proceed with the 2017 GRA at this time should
43 be borne exclusively by Hydro and not by Newfoundland Power's customers.⁵

³ Hydro's submission, page 15.

⁴ Newfoundland Power's submission, page 3.

⁵ Ibid, page 4.

1 The Industrial Customer Group stated that it shared many of the concerns of the Consumer
2 Advocate regarding the Off-Island Purchases Deferral Account, and noted that Hydro has also not
3 sufficiently addressed specific concerns raised in its requests for information (“RFIs”) to Hydro or
4 by the Grant Thornton Financial Consultants report. The Industrial Customer Group did not state
5 a position on the specific deficiencies in Hydro’s evidence asserted by the Consumer Advocate or
6 on Hydro’s reply to these assertions, reserving their right and opportunity to do so as part of the
7 general rate application proceeding. However, in the context of the need for rate certainty, the
8 Industrial Customer Group noted the possible six-month delay in the general rate application time
9 indicated by Hydro in order to provide the additional information. It was suggested that this
10 additional information, if required, would be tantamount to an amended filing, and would likely
11 result in amended RFI responses and expert pre-filed evidence and additional RFIs, which would
12 not be a model for regulatory efficiency. The Industrial Customer Group submitted:

13
14 The IIC Group have raised above their concerns for rate certainty. After due consideration,
15 the IIC Group are of the view that delay of the current GRA, to allow for the filing of the
16 additional information requested by the Consumer Advocate, would raise the real prospect
17 of an extended period under interim rates and consequent rate uncertainty in 2018 and likely
18 extending into 2019.

19
20 If deficiencies in Hydro’s GRA evidence asserted by the Consumer Advocate are borne out
21 in the GRA hearing, it is Hydro that bears the risk of its OPDA proposal not being approved.
22 The IIC Group trusts that Hydro, in expressing its position that the GRA should proceed
23 based on the evidentiary record filed to date, is prepared to address the possibility of its
24 OPDA proposal ultimately not being approved in a full hearing process, so that its non-
25 approval would not give rise to a prolonged period of rate uncertainty, under interim rates.⁶
26

27 In reply the Consumer Advocate referenced Hydro’s comment that the “Consumer Advocate has
28 had full opportunity to question Hydro’s GRA and to provide competing information on the
29 record”.⁷ The Consumer Advocate stated that, while the Consumer Advocate may have been given
30 this “opportunity”, Hydro has not provided the information requested. The Consumer Advocate
31 also argued that Hydro’s application for rates in excess of the actual anticipated cost of service
32 standard in order to accumulate funds to pay for Muskrat Falls is contrary to OC2013-343. The
33 Consumer Advocate stated:

34
35 The Consumer Advocate’s position is that the matter of paying for Muskrat Falls energy
36 cannot be the subject matter of this GRA. The Consumer Advocate believes that a
37 comprehensive assessment of rate mitigation plans for Muskrat Falls is an important matter,
38 but one that should be undertaken separately and involve Hydro, Newfoundland Power and
39 all Intervenors.⁸
40

41 The Consumer Advocate submitted that, even in the absence of OC2013-343, Hydro’s application
42 would still violate the cost of service standard and that sufficient information to assess the actual
43 anticipated costs would still be sought. The Consumer Advocate acknowledged that requiring
44 Hydro to file the information requested may delay the proceeding as Hydro claims. The Consumer
45 Advocate concluded:

⁶ The Industrial Customer Group’s submission, page 3.

⁷ The Consumer Advocate’s reply, page 5.

⁸ Ibid, page 6.

1 Hydro has put forward an incomplete application seeking financial relief from ratepayers.
2 Intervenor find the application wanting. This is not an acceptable standard of practice before
3 our Public Utilities Board. The Public Utilities Board needs to call this utility to order now,
4 grant the delay requested so Hydro is able to provide the reasonable requirements which
5 intervenors have stated are essential before proceeding. A delay at this juncture is much
6 preferred over another 4-year ordeal such as that experienced with Hydro's 2013 GRA.⁹
7

8 **Board Findings**

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10 The Board agrees with Hydro that it is entitled to have its case heard as filed and that it should not
11 be forced to refile its general rate application with different proposals or frame its proposals in a
12 fundamentally different way. This does not mean however that Hydro should not be required to
13 provide the information which is found to be reasonable and necessary for the Board and the
14 intervenors to understand and assess its proposals. Despite the significant exchange of information
15 to date the Consumer Advocate submitted that there is inadequate information on the record to
16 properly assess Hydro's proposals. Both Newfoundland Power and the Industrial Customer Group
17 shared some of the Consumer Advocate's concerns. The question to be answered by the Board in
18 this Application is whether Hydro should be required to file additional information at this stage of
19 the proceeding given that the RFI process is complete and the public hearing was scheduled to
20 begin at the end of January.

21
22 In 2018 the Island Interconnected system will be interconnected to the North American grid and
23 will no longer be considered an isolated system. With the commissioning of both the LIL and ML
24 expected in mid-2018, energy can be purchased from off-island sources to supply the Island
25 Interconnected system. This will fundamentally change how the Island Interconnected system is
26 supplied as well as the costs of supply. The revenue requirement and cost of service proposed in
27 Hydro's general rate application does not reflect this fundamental change in how the Island
28 Interconnected system will be supplied. Instead the 2018 and 2019 test year revenue requirements,
29 cost of service studies and rates are based on an isolated scenario with the net savings associated
30 with off-island purchases proposed to be placed in a deferral account to be used for future rate
31 mitigation.
32

33 The Board acknowledges Hydro's submission in relation to the information which has been
34 provided in support of its proposals, including the estimated net savings resulting from the
35 purchase of recapture energy. According to Hydro sufficient evidence has been provided to hold a
36 hearing and permit the Board to reach a determination on the Off-Island Purchases Deferral
37 Account. However, Hydro did not provide information related to the 2018 and 2019 test year
38 revenue requirements, cost of service studies or rates for the expected supply scenario. In particular
39 the proposed test year revenue requirements do not reflect the impacts of off-island purchases on
40 production at the Holyrood Thermal Generating Station, including the implications for the
41 Holyrood fuel conversion rate, capacity factor, fuel inventory and No. 6 fuel consumption. While
42 Hydro argued that the Consumer Advocate had a full opportunity to question Hydro's general rate
43 application and to provide competing information on the record, the Board notes that much of the
44 related evidence was not filed in July with the Application. In particular the proposed Off-Island
45 Purchases Deferral Account and supporting company evidence was filed on September 15, 2017

⁹ The Consumer Advocate's submission, page 7.

1 and Hydro's expert evidence was filed on December 4, 2017. Further the Board notes that Hydro
2 did not provide the information requested by the Consumer Advocate in relation to the impact on
3 rates of the savings associated with the off-island purchases or the 2019 cost of service study based
4 on the expected supply scenario.¹⁰

5
6 The Board shares the concerns expressed by Hydro, Newfoundland Power and the Industrial
7 Customer Group in relation to further delays in this proceeding. Nevertheless the Board believes
8 that additional information relating to the expected supply scenario would be helpful in assessing
9 the reasonableness of Hydro's proposals in the general rate application. In the absence of
10 information regarding the implications of the forecast off-island purchases in the test years on costs
11 and rates the Board believes that it may be difficult to appreciate the implications of Hydro's
12 decision to base the 2018 and 2019 revenue requirements and cost of service studies on an isolated
13 island scenario. The Board believes that this information would contribute to a better
14 understanding of Hydro's proposals and would assist in the consideration of these proposals. The
15 Board is satisfied that the requested 2019 test year cost of service based on the expected supply
16 scenario should be provided. In addition Hydro should provide a 2019 revenue requirement based
17 on the expected supply scenario as well as information related to rates and the impacts of revising
18 the fuel forecast to reflect the fall 2017 update. As 2018 is also a test year the same information
19 should be provided for 2018.

20
21 The Board appreciates the challenges set out by Hydro in its submission in relation to providing a
22 test year cost of service study to reflect the expected supply scenario. In particular 2018 and 2019
23 are transition years and the currently approved cost of service study may not adequately account
24 for the significant changes in the system. Nevertheless the Board is satisfied that reasonable
25 assumptions can be made by Hydro with a view to reflecting the circumstances which are
26 anticipated for 2018 and 2019. Hydro should develop a revenue requirement and cost of service
27 study for 2018 and for 2019 to reflect the expected supply scenario using reasonable assumptions
28 with supporting information in relation to those assumptions.

29
30 With respect to the other information requested by the Consumer Advocate, the Board is concerned
31 that requiring production could contribute to further delays in the general rate application process,
32 especially given that some of the requested information may not be immediately available or may
33 take some time to produce. In the circumstances the Board is not persuaded that compelling the
34 production of all of the requested information would contribute to the Board's understanding of
35 Hydro's general rate application proposals. In particular the Board does not believe that a
36 procurement plan for off-island purchases, a plan for sales over the LIL and ML, or a vetting
37 program for sales and purchases over the LIL and ML would be of assistance in evaluating the
38 general rate application proposals. The Board notes that the forecast purchases and sales over the
39 LIL and ML should be set out as a part of the expected supply scenario reflected in the 2018 and
40 2019 revenue requirements and cost of service studies to be filed. With regard to the open access
41 transmission tariff the Board understands that some of this information may soon be filed as part
42 of a separate application.¹¹ With respect to the wholesale power rate for Newfoundland Power the
43 Board believes that changes to reflect marginal costs are properly addressed in the cost of service

¹⁰ CA-NLH-025 and CA-NLH-062, as revised.

¹¹ The Board has been informally advised that an application from the Newfoundland and Labrador System Operator for approval of an open access transmission tariff in accordance with OC2017-380 will be filed shortly.

1 and rate design review scheduled for later in 2018. In relation to a supply cost adjustment
2 mechanism it is within Hydro's purview to determine whether such a mechanism is appropriate
3 and the Board expects that Hydro will address this issue in the information to be filed.
4

5 The Board will direct Hydro to file 2018 and 2019 revenue requirements and cost of service studies
6 based on the expected supply scenario, setting out the assumptions which were made and the
7 support for those assumptions. The information filed should reflect the expected supply scenario
8 as relates to:
9

- 10 i) off-island purchases and sales over the LIL and ML;
 - 11 ii) the allocation of the operating and maintenance costs of the LIL and the LTA;
 - 12 iii) the classification and allocation of off-island power purchases;
 - 13 iv) the Holyrood fuel conversion rate;
 - 14 v) the Holyrood capacity factor; and
 - 15 vi) Holyrood fuel inventory used in rate base.
- 16

17 In addition Hydro should provide information in relation to customer rates as well as the impact
18 of revising the fuel price to reflect the fall 2017 update.¹² Hydro should also address whether
19 deferral accounts or other mechanisms would be necessary or appropriate to address uncertainties
20 related to expected supply costs in 2018 and 2019.
21

22 The Board recognizes that this Application has delayed the scheduled start of the hearing of
23 Hydro's general rate application and that production of additional information may result in further
24 delays. Nevertheless the Board is satisfied that, in the circumstances, additional information
25 should be filed. The Board believes that a process and schedule for the hearing of the general rate
26 application can be established which will minimize the resulting delays. For example, the hearing
27 may be scheduled to begin before the additional information is filed to address the issues which
28 are not directly related to the new information. These issues may include aspects related to revenue
29 requirement, cost of service, regulatory accounting, a rate of return automatic adjustment
30 mechanism, rural rates, and Labrador rates. In addition, questions and evidence related to the new
31 information can be addressed in the hearing thereby avoiding the significant delays associated with
32 additional RFIs and written expert evidence. Once the additional information is filed Hydro and
33 the intervenors will have an opportunity during the hearing to address the substantive issues
34 associated with Hydro's proposal to base the 2018 and 2019 test year revenue requirements and
35 cost of service studies and rates on an isolated island scenario, including whether Hydro's
36 proposals are in accordance with government directives and legislative requirements.

¹² The information related to the updated fuel forecast should be similar to the information provided in NP-NLH-102 and NP-NLH-103, as revised.

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

- 3 1. Hydro shall file forecast 2018 and 2019 revenue requirements and cost of service studies
4 based on the expected supply scenario, setting out the basis and support for the forecasts and
5 assumptions used and including information related to customer rates and the updated fuel
6 price forecast, in accordance with the findings of the Board in this Order.
7
8 2. Hydro shall pay all expenses of the Board arising from this Application.
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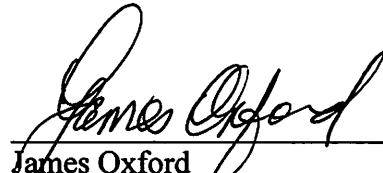
DATED at St. John's, Newfoundland and Labrador, this 26th day of January, 2018.



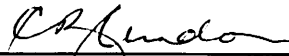
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