

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

**AN ORDER OF THE BOARD**

**NO. P.U. 42(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** an Investigation and  
8 Hearing into Supply Issues and Power Outages  
9 on the Island Interconnected System; and  
10

11 **IN THE MATTER OF** the Near-Term  
12 Generation Adequacy Report filed by  
13 Newfoundland and Labrador Hydro on  
14 May 22, 2018; and  
15

16 **IN THE MATTER OF** an application from  
17 Newfoundland and Labrador Hydro requesting  
18 that portions of responses to two requests for  
19 information relating to the Near-Term Generation  
20 Adequacy Report be considered confidential.  
21  
22

23 **Background**  
24

25 On May 22, 2018 Newfoundland and Labrador Hydro (“Hydro”) filed its Near-Term Generation  
26 Adequacy Report with the Board.<sup>1</sup>  
27

28 On June 12, 2018 the Board issued requests for information (“RFIs”) to Hydro.  
29

30 On June 26, 2018 Hydro filed responses to the RFIs and advised that it would be filing an  
31 application for confidential treatment of PUB-NLH-001, PUB-NLH-004 and PUB-NLH-005.  
32 The confidentiality application was submitted to the Board on June 27, 2018.

---

<sup>1</sup> This report is filed semi-annually pursuant to the October 13, 2016 direction of the Board following the issuance of the Board’s report, *Investigation and Hearing into Supply Issues and Power Outages on the Island Interconnected System*, dated September 29, 2016.

1 On August 24, 2018 the Board issued Order No. P.U. 30(2018) requiring that, in the absence of a  
2 further application, Hydro file the information in the responses to PUB-NLH-001, PUB-NLH-  
3 004, and PUB-NLH-005.

4  
5 **Application**

6  
7 Hydro filed a response to PUB-NLH-005 and an application, dated September 19, 2018,  
8 requesting an Order under the Rules of Procedure set for the Board's Investigation and Hearing  
9 into Supply Issues and Power Outages on the Island Interconnected System, whereby portions of  
10 Hydro's replies to PUB-NLH-001 and PUB-NLH-004 in relation to its Near-Term Generation  
11 Adequacy Report be considered confidential ("the Application"). The Application requested that  
12 the Intervenor's access to the confidential information be governed by the terms of an  
13 undertaking to be executed by the Intervenor's representatives prior to their receipt of the  
14 information.

15  
16 The Application stated that Hydro, as a fully regulated public utility, acknowledges the  
17 importance of transparency but that there are exceptional circumstances where economic  
18 regulators should respect the business realities of the parties that appear before it or which are  
19 affected by its proceedings. The Application submitted that the information that is the subject of  
20 the Application is such an exceptional circumstance and that the public's interest in  
21 transparency is outweighed by the value to the parties and their customers if confidential  
22 business relationships and information is maintained. Further, Hydro submitted that the present  
23 application is squarely within the contemplated circumstances that are to be afforded protection  
24 by paragraph 2 of the Rules of Procedure as set out in Order No. P.U. 3(2014).

25  
26 The Application maintained that the practice of requesting and preserving confidentiality of  
27 certain commercially sensitive information is consistent with practices employed in other  
28 jurisdictions and cited a recent Nova Scotia Power filing with the Nova Scotia Utility and  
29 Review Board containing redacted dollar values and energy amounts that were deemed  
30 impactful upon Nova Scotia Power's competitive position.

31  
32 With respect to PUB-NLH-001 the Application noted that Order No. P.U. 30(2018) agreed that  
33 the contract between Nalcor Energy Marketing ("NEM") and Ontario Power Generation  
34 ("OPG") should not be released. The Application stated that the response to PUB-NLH-001  
35 contains information which was obtained from the contract. In particular this response to  
36 contains details directly related to (i) the amount of firm capacity, (ii) the time period of the  
37 contract, and (iii) the disposition strategy with respect to any excess energy arising from the  
38 contract. The Application submitted that the information is commercially sensitive and that the  
39 disclosure of the information would have a similar negative impact as the release of the  
40 contract itself.

41  
42 The Application also submitted that disclosure of this information would have a chill-effect  
43 upon the free-flow of information and could damage the trading relationship between NEM and  
44 OPG. The Application explained:

1 NEM and OPG entered into good faith negotiations with the understanding that both  
2 parties were contractually bound to hold the other's non-public information in  
3 confidence. If OPG's non-public information, which is subject to the non-disclosure  
4 agreement and which OPG has specifically asked NEM to keep in confidence, were to be  
5 released through this process, NEM's relationship with OPG would be jeopardized. OPG  
6 would be more hesitant to engage with NEM in any future opportunities. If they were to  
7 engage with NEM they would likely want to withhold information for fear of release.<sup>2</sup>  
8

9 In relation to PUB-NLH-004 the Application stated that the response contains a great deal of  
10 information about energy purchases made by Hydro. The Application submitted that  
11 information which would reveal the specifics of confidential contractual agreements should  
12 remain confidential. The Application stated that the redacted portions of the response provide  
13 details of the total cost of purchased energy and the savings associated with the displacement of  
14 thermal generation and gas turbine production by purchased energy.  
15

16 The Application claimed that the details in PUB-NLH-004, when combined with existing  
17 industry knowledge, is information which can be used by energy suppliers and competitors to  
18 deduce the average price per kilowatt hour paid by Hydro. The Application further argued that  
19 it is reasonable to expect that energy suppliers transacting in a highly competitive energy  
20 market would use this information to deduce what NEM was willing to pay for energy on an  
21 individual transaction basis.  
22

23 The Application emphasized that maintaining competition amongst energy suppliers is essential  
24 to achieve the lowest energy costs for Hydro's customers and that if an energy supplier was to  
25 discern the amount NEM was willing to pay for energy under a bilateral transaction with one  
26 company, it would impair NEM's ability to negotiate.  
27

28 The Application asserted that the detailed information within PUB-NLH-004 with regard to  
29 energy purchases made by Hydro, and the savings resulting from those purchases is  
30 commercially sensitive and must be withheld from public distribution to protect the interests of  
31 Hydro's customers.  
32

33 The Application was circulated to the Consumer Advocate, Mr. Dennis Browne, Q.C.;  
34 Newfoundland Power Inc.; a group of Island Industrial customers: Corner Brook Pulp and Paper  
35 Limited, NARL Refining Limited Partnership, and Vale Newfoundland and Labrador Limited;  
36 Teck Resources Ltd; Grand Riverkeeper Labrador Inc.; and Danny Dumaresque.  
37

38 On October 1, 2018 the Board submitted two RFIs, which were responded to by Hydro on  
39 October 9, 2018. No other RFIs were submitted.  
40

41 On October 17, 2018 Hydro filed a submission noting that the parties did not file comments and  
42 requested that the Application be approved as submitted.  
43

---

<sup>2</sup> PUB-NLH-001, page 2, lines 19-26

1 **Board Findings**  
2

3 In Order No. P.U. 30(2018) relating to PUB-NLH-001, PUB-NLH-004 and PUB-NLH-005 the  
4 Board stated, in relation to Hydro's claim that the RFI responses should be treated as confidential  
5 in their entirety:  
6

7 It is not enough for Hydro to demonstrate that some of the information contained in these  
8 responses is confidential. Only that information in relation to which it is shown that the  
9 potential harm associated with its release outweighs the interest in transparency and full  
10 disclosure will be considered confidential by the Board.<sup>3</sup>  
11

12 Following this Order, Hydro filed a response to PUB-NLH-005 and filed the Application  
13 requesting confidential treatment of selected portions of the remaining two RFI responses.  
14

15 The information in its responses to PUB-NLH-001 and PUB-NLH-004 which Hydro has applied  
16 to have treated as confidential pertains to energy pricing, contractual terms, and competitive  
17 strategy. The Board agrees that this information is of a commercially-sensitive nature. The Board  
18 finds that this information should be considered to be confidential on the basis that disclosure of  
19 this information could provide energy suppliers with competitive data and could negatively  
20 affect current as well as future energy negotiations and could prejudice Hydro's ability to  
21 procure the most cost effective energy. The Board is satisfied that the risk of harm associated  
22 with the release of this information outweighs the interest of transparency in the circumstances  
23 and that the confidentiality undertaking is a reasonable accommodation which would permit full  
24 disclosure to the parties.  
25

26  
27 **IT IS THEREFORE ORDERED THAT:**  
28

- 29 1. The redacted portions of Hydro's responses to PUB-NLH-001 and PUB-NLH-004 shall be  
30 considered to be confidential and shall be released to the Intervenor's representatives upon  
31 the execution of the confidentiality undertaking proposed by Hydro.  
32  
33 2. Hydro shall pay all expenses of the Board arising from this Application.

---

<sup>3</sup> Order No. P.U. 30(2018), page 3, lines 36-39

**DATED** at St. John's, Newfoundland and Labrador, this 29<sup>th</sup> day of November, 2018.



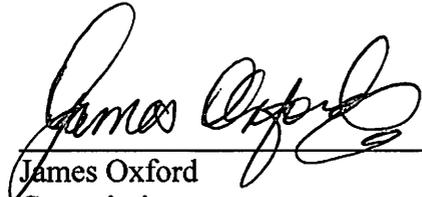
---

Darlene Whalen, P. Eng., FEC  
Chair & CEO



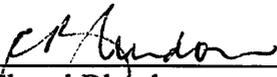
---

Dwanda Newman, LL.B.  
Vice-Chair



---

James Oxford  
Commissioner



---

Cheryl Blundon  
Board Secretary