

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

AN ORDER OF THE BOARD

NO. P.U. 27(2020)

1 **IN THE MATTER OF** the *Electrical*
2 *Power Control Act, 1994*, SNL 1994,
3 Chapter E-5.1 (the “*EPCA*”) and the *Public*
4 *Utilities Act*, RSNL 1990, Chapter P-47 (the
5 “*Act*”), as amended, and regulations
6 thereunder; and
7

8 **IN THE MATTER OF** an application by
9 Newfoundland and Labrador Hydro for an
10 Order that the provision of electric vehicle
11 charging services is not subject to the
12 legislative authority of the province and
13 does not require an approved rate, toll, or
14 charge.
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17 **Background**
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19 On December 19, 2019 Newfoundland and Labrador Hydro (“Hydro”) filed a supplemental capital
20 budget application for approval of a proposed capital expenditure of \$2,059,400 to build the
21 province’s first electric vehicle (“EV”) fast charging network, which would include the
22 construction and installation of both Level 3 Direct Current Fast Chargers and Level 2 Chargers
23 in 14 locations across the island between St. John’s and Port aux Basques. In the supplemental
24 capital budget application Hydro also committed to filing a further application in 2020 regarding
25 the consideration it intends to recover from EV owners for the charging services.
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27 In Order No. P.U. 7(2020) the Board approved the proposed project and also ordered that the costs
28 associated with this project should not be included in Hydro’s regulated rate base and should not
29 be recovered from its customers.
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32 **Application**
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34 On June 26, 2020 Hydro filed an application for an Order that the provision of EV charging
35 services is not subject to the legislative authority of the province and does not require an approved
36 rate, toll or charge (the “Application”). Hydro advised that construction and installation of the
37 Level 2 and 3 chargers is currently on schedule for completion by the end of 2020. Equipment
38 tenders relating to the project have been awarded, the 28 chargers have been delivered and local

1 construction of the 14 electrical cabinets is nearing completion.¹ Hydro plans to issue a civil and
2 electrical tender in the near future with construction at the first site targeted for early September
3 2020. This Application completes the undertaking Hydro made in its December 19, 2019
4 supplemental capital budget application regarding the consideration it intends to recover from EV
5 owners for charging services.

6
7 The Application was copied to: Newfoundland Power Inc. (“Newfoundland Power”); the
8 Consumer Advocate, Dennis Browne, Q.C.; Hydro’s Island Industrial Customers: Corner Brook
9 Pulp and Paper Limited, NARL Refining Limited Partnership, Vale Newfoundland and Labrador
10 Limited; a group of Labrador towns and communities including Wabush, Labrador City, Happy
11 Valley-Goose Bay and Sheshatshiu; Iron Ore Company of Canada; Praxair Canada Inc.; and Teck
12 Resources Limited.

13
14 On July 10, 2020 the Board and Newfoundland Power filed requests for information which were
15 answered by Hydro on July 21, 2020.

16
17 Newfoundland Power filed comments on the Application on July 28, 2020. Hydro filed a reply
18 submission on August 4, 2020.

19
20 The Application sets out Hydro’s position that the provision of EV charging services is a service
21 beyond the meter, is not a service that is intended to be governed by the legislation and is, therefore,
22 not a regulated service. Hydro referenced regulatory practices with respect to EV charging services
23 in Canada and the United States, noting that the area is a developing one but that there are
24 consistencies in interpretations by various regulators. Hydro stated:

25
26 ... the general industry viewpoint is that the provision of EV charging services does not
27 attract the usual concerns of a monopoly that form the basis for utility regulation.
28 Additionally, EV charging services are not considered to be distribution and sale of
29 electricity to customers and are not regulated in the normal course. The Act and the EPCA
30 govern the production, transmission, and distribution of power in the province of
31 Newfoundland and Labrador and the services necessary to provide adequate power to
32 consumers in the province at the lowest possible cost consistent with reliable service. The
33 legislation is not concerned with the use of that power by the consumer (i.e., the activities
34 beyond the meter).²

35 36 37 **Comments and Submissions**

38
39 Newfoundland Power noted that Hydro confirmed that the revenues and operating costs associated
40 with the supplemental capital budget project will not be included in its test year revenue
41 requirement determinations but that it would seek recovery from customers of operating and
42 maintenance costs related to the provision of EV charging services in the future if the services
43 provided by these facilities were determined to contribute to the provision of least-cost reliable
44 service. Newfoundland Power also noted Hydro’s response to NP-NLH-002 which stated that, if
45 costs associated with the provision of EV charging services were approved to be recovered in

¹ PUB-NLH-001

² Application, page 4, paragraph 16

1 customer rates, the Board would have oversight of the recovery of these costs and revenues and
2 that the review of revenues does not necessarily require the Board to exercise jurisdiction over
3 rates for EV charging services. Newfoundland Power stated that, while it does not oppose the
4 Application, approval of the Application should not preclude any future assessment of providing
5 EV charging services, including the potential customer benefits and costs of EV charging services.
6 Newfoundland Power also noted that matters related to the provision of EV charging services,
7 including customer benefits and costs, will be further assessed as part of the utilities' joint
8 electrification, conservation and demand management plan.

9
10 In its reply submission Hydro reiterated its position that the provision of an EV charging service
11 is not a service that is intended to be governed by legislation, is a service beyond the meter, and is
12 not a regulated service. Hydro also stated that its position is generally consistent with industry
13 practice in Canada and with the interpretation of the legislation and power policy of the province.
14 According to Hydro approval of the Application will provide certainty and clarity to other
15 organizations seeking to provide EV charging services with respect to compensation for these
16 services and would serve to promote further electrification and non-utility investment in EV
17 infrastructure in the province.

18 19 20 **Board Findings**

21
22 Hydro requests that the Board issue an order that the provision of EV charging services is not
23 subject to the legislative authority of the province and does not require an approved rate, toll or
24 charge.

25
26 The *Act* and the *EPCA* govern the production, transmission, and distribution of power and the
27 services necessary to provide adequate power to consumers at the lowest cost consistent with
28 reliable service.³ The *Act* prohibits a public utility from charging or receiving compensation for a
29 service without Board approval of its schedule of rates, tolls and charges. Service is defined
30 broadly and includes a product or commodity provided by a public utility. In addition a public
31 utility must satisfy numerous other obligations, including the filing of applications with respect to
32 capital spending and the abandonment of plant and facilities, and is subject to the general
33 supervision of the Board.

34
35 The legislation defines a public utility as a person engaged in the “production, generation, storage,
36 transmission, delivery or provision of electric power or energy, water or heat, directly or indirectly,
37 to or for the public or a corporation for compensation”. This definition seems to contemplate that
38 a public utility delivers electrical energy through a distribution network to a metering point.
39 According to Hydro its responsibility, and the Board’s regulatory mandate, ends at this metering
40 point. It describes EV charging and other consumer uses of electricity as services “after the meter”.
41 Hydro submits that the Board does not regulate after the meter services offered by entities like the
42 Port of St. John’s which provides electricity to berthed ships and campgrounds that offer access to
43 electrical connections to recreational vehicle owners. The Board notes that, if the providers of such
44 services or EV charging services were considered to be public utilities providing a regulated

³ Section 101, *Public Utilities Act (Newfoundland) (Re)*, 1998 CanLII 18064 (NL CA), paragraphs 20 and 21

1 service, they would be subject to the supervision of the Board as well as the specific regulatory
2 requirements set out in the legislation, including the filing of capital budgets.

3
4 When considering whether EV charging services are subject to the requirements of the *Act* the
5 Board must consider how the provisions of the legislation apply to this developing technology
6 which was not contemplated when the legislation was enacted. In making this assessment, the
7 Board is cognizant that the Newfoundland and Labrador Court of Appeal has stated that the Board
8 must advance provincial legislative policy, must apply “generally accepted sound public utility
9 practice” and must avoid a “literal and technocratic interpretation” of the legislation.⁴ In addition
10 the Supreme Court of Canada has stated that as a general rule, “... the words of an Act are to be
11 read in their entire context and in their grammatical and ordinary sense harmoniously with the
12 scheme of the Act, the object of the Act, and the intention of Parliament.”⁵

13
14 It is widely accepted that public utilities are subject to regulation to address concerns related to the
15 provision of monopoly services.⁶ Based on the evidence filed in this Application EV charging
16 services do not raise these types of concerns. The information provided by Hydro is that there are
17 currently 24 charging stations with 57 Level 2 charging outlets on the island of Newfoundland.⁷
18 In addition owners of EVs may also install infrastructure in their own homes to charge EVs. While
19 Hydro will be the sole provider of Level 3 charging service at this time, its goal is to promote EV
20 ownership in the province.⁸ The rates Hydro intends to charge for Level 3 charging services will
21 be at the same level as the fees charged in Nova Scotia and New Brunswick.⁹ The Board accepts
22 Hydro’s submission that it intends to promote electrification and EV ownership and will not
23 preclude competitors from entering the EV charging service market.

24
25 The Board notes that other provinces have also recently addressed issues related to the regulation
26 of EV charging services.¹⁰

- 27 • The Ontario Energy Board staff issued a bulletin that the ownership of operation of an EV
28 charging station, and the selling of EV charging service from the facility, do not constitute
29 distribution or retailing.
- 30 • The Nova Scotia Utility and Review Board found that an EV charging service is not a
31 regulated service since the assets used are not integral to the production, transmission,
32 delivery and furnishing of electrical energy.

⁴ Section 101, *Public Utilities Act (Newfoundland) (Re)*, 1998 CanLII 18064 (NL CA), paragraphs 17 and 18

⁵ *Bell Express Vu Limited Partnership v. Rex*, 2002 SCC 42 at paragraph 26

⁶ Section 14.1, *Electrical Power Control Act, 1994*, SNL1994, Chapter E-5.1 gives Hydro a legal monopoly with respect to the supply of power or energy to a retailer or industrial customer on the island.

⁷ PUB-NHL-006 “Electric Charging and Alternative Fuelling Stations Locator,” Natural Resources Canada, September 4, 2018. https://www.nrcan.gc.ca/energy-efficiency/energy-efficiency-transportation-and-alternative-fuels/electric-charging-alternative-fuelling-stationslocator-map/20487#/analyze?country=CA®ion=CA-NL&fuel=ELEC&ev_levels=2, accessed September 14, 2020

⁸ PUB-NHL-006

⁹ NP-NLH-001

¹⁰ The Alberta Utilities Commission has initiated but not yet concluded a review of electric vehicle charging infrastructure and services.

- 1 • The New Brunswick Energy and Utilities Board (“NBEUB”) disallowed the proposed
2 budget for the utility to expand its network of EV charging stations finding that it was not
3 within its core business.¹¹
- 4 • In Québec recent legislative amendments allow Government to set rates for EV charging
5 services and allow the Régie de l’énergie to consider the revenues required by the utility
6 to offer EV charging services.¹²
- 7 • The British Columbia Utilities Commission (“BCUC”) found that regulation of EV
8 charging services is not required to protect the public interest unless the services are
9 provided by an entity that would otherwise be considered to be a public utility. The BCUC
10 recommended that EV charging services offered by persons other than public utilities be
11 exempt from regulation but that there be oversight of EV charging services provided by
12 regulated utilities as it may help to mitigate ratepayer risk and potential impact on exempt
13 utilities.

14
15 While these approaches respond to unique circumstances in each province, it seems that the
16 provision of EV charging services has generally been viewed a service which is different than a
17 traditional or core utility service.

18
19 Based on the evidence provided the Board is satisfied that the regulation of the provision of EV
20 charging services in this province is not required at this time to protect the public interest or to be
21 consistent with sound public utility practice. The Board believes that the provisions of the *Act* and
22 the *EPCA* in their entire context and in the grammatical and ordinary sense, and considering the
23 object and intention of the legislation, do not require that the Board approve rates, tolls or charges
24 for the provision of EV charging services. The Board does not believe that in the circumstances
25 EV charging services are public utility services which should be subject to the requirements set
26 out in the *Act*. The Board does not make a finding as to whether EV charging services are subject
27 to the legislative authority of the province but finds the Board’s approval of a rate, toll or charge
28 for EV charging services at this time is not required.

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31 **IT IS THEREFORE ORDERED THAT:**

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- 33 1. The provision of electric vehicle charging services does not require Board approval of a rate,
34 toll, or charge at this time.
- 35
- 36 2. Hydro shall pay all expenses of the Board arising from this Application.

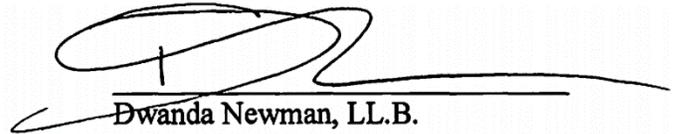
¹¹ In the same proceeding, NBEUB approved New Brunswick Power’s inclusion of rates for electric vehicle charging services without commenting specifically on these rates.

¹² Statutes of Québec 2018, Chapter 25

DATED at St. John's, Newfoundland and Labrador, this 14th day of September 2020.



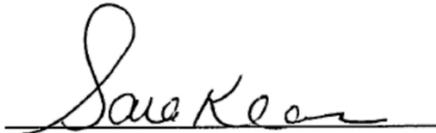
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