

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

AN ORDER OF THE BOARD

NO. P.U. 30(2023)

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

7 **IN THE MATTER OF** an application by Newfoundland
8 and Labrador Hydro for approval of an extension of
9 the Third Amended and Restated Pilot Agreement
10 for the Optimization of Hydraulic Resources pursuant
11 to section 3(b)(iii) of the **EPCA** and sections 70 and 76
12 of the **Act**.
13
14

15 **WHEREAS** Newfoundland and Labrador Hydro (**“Hydro”**) is a corporation continued and existing
16 under the **Hydro Corporation Act, 2007**, is a public utility within the meaning of the **Act**, and is
17 also subject to the provisions of the **EPCA**; and
18

19 **WHEREAS** in Order No. P.U. 49(2018) the Board approved a Pilot Agreement for the Optimization
20 of Hydraulic Resources (**“Pilot Agreement”**) between Hydro and Nalcor Energy Marketing
21 (**“NEM”**); and
22

23 **WHEREAS** in Order No. P.U. 38(2020) the Board approved an Amended and Restated Pilot
24 Agreement for the Optimization of Hydraulic Resources with an expiration date of the earlier of
25 (i) the commissioning date as defined in the Power Purchase Agreement between Hydro and the
26 Muskrat Falls Corporation; or (ii) the date that a final agreement for the optimization of hydraulic
27 resources is executed and approved by the Board; and
28

29 **WHEREAS** in Order P.U. 31(2021) the Board approved a Second Amended and Restated Pilot
30 Agreement for the Optimization of Hydraulic Resources with an expiration of the earlier of i)
31 December 31, 2022; or ii) the date that a final agreement for the optimization of hydraulic
32 resources is executed and approved by the Board; and
33

34 **WHEREAS** in Order P.U. 35(2022) the Board approved a Third Amended and Restated Pilot
35 Agreement for the Optimization of Hydraulic Resources (**“Third A&R Pilot Agreement”**) with an

1 expiration of the earlier of i) December 31, 2023; (ii) approval by the Board of an agreement to
2 replace the Third A&R Pilot Agreement; or (iii) agreement by the parties to discontinue the Third
3 A&R Pilot Agreement; and

4
5 **WHEREAS** on November 21, 2023 Hydro filed an application for approval of an extension to the
6 previously approved Third A&R Pilot Agreement with an expiration of the earlier of i) December
7 31, 2024; (ii) approval by the Board of an agreement to replace the Third A&R Pilot Agreement;
8 or (iii) agreement by the parties to discontinue the Third A&R Pilot Agreement, with all other
9 terms of the Third A&R Pilot Agreement remaining the same (the “Application”); and

10
11 **WHEREAS** the Application stated that Hydro is requesting extension of the Third A&R Pilot
12 Agreement as the details of the implementation of the Government of Newfoundland and
13 Labrador’s rate mitigation plan, and the impacts of the pending legislation regarding the
14 amalgamation of Hydro and Nalcor Energy may have implications for any new agreement; and

15
16 **WHEREAS** the Application stated that the approval of this Application will enable Hydro to
17 continue to capture opportunities to create value for its customers from ponding and the sale of
18 spill energy on a pilot basis while considering what future agreements may be necessary; and

19
20 **WHEREAS** the Application was copied to: Newfoundland Power Inc. (“Newfoundland Power”);
21 the Consumer Advocate, Dennis Browne, KC; a group of Island Industrial customers: Corner Brook
22 Pulp and Paper Limited, Braya Renewable Fuels (Newfoundland) GP Inc. and Vale Newfoundland
23 & Labrador Limited (“Industrial Customer Group”); Teck Resources Limited; and Linde Canada
24 Inc.; and

25
26 **WHEREAS** on November 29, 2023 Newfoundland Power advised they did not have any comments
27 on the Application; and

28
29 **WHEREAS** no other comments were received by the Board; and

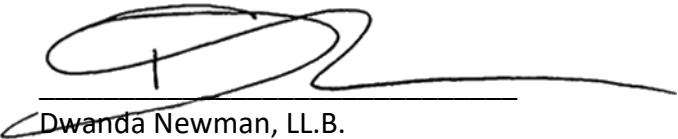
30
31 **WHEREAS** on December 1, 2023 Hydro filed a reply requesting that the Board approve the
32 Application as submitted; and

33
34 **WHEREAS** the Board is satisfied that an extension of the Third Amended and Restated Pilot
35 Agreement should be approved to enable Hydro to continue to capture opportunities to create
36 value for customers from its ponding and spill energy activities.

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

- 3 1. The extension of the Third Amended and Restated Pilot Agreement for the Optimization of
4 Hydraulic Resources to the earlier of i) December 31, 2024; (ii) approval by the Board of an
5 agreement to replace the agreement; or (iii) agreement by the parties to discontinue the
6 agreement, is approved.
7
8 2. Hydro shall continue to provide updates on its ponding and spill energy activities as part of its
9 monthly reporting to the Board during the period that the extended Third Amended and
10 Restated Pilot Agreement for the Optimization of Hydraulic Resources is in effect.
11
12 3. Hydro shall file, as part of its application for approval of a final agreement for the optimization
13 of hydraulic resources or upon discontinuance of the agreement, a report summarizing its
14 experience related to ponding and spill energy activities during the pilot period as well as any
15 measures taken to enhance the effectiveness of these activities.
16
17 4. Hydro shall pay all expenses of the Board arising from this Application.

DATED at St. John's, Newfoundland and Labrador, this 12th day of December 2023.


Dwanda Newman, LL.B.
Vice-Chair


Christopher Pike, LL.B., FCIP
Commissioner


Jo-Anne Galarneau
Executive Director and Board Secretary