

March 19, 2024

Board of Commissioners of Public Utilities
Prince Charles Building
120 Torbay Road, P.O. Box 21040
St. John's, NL A1A 5B2

Attention: Jo-Anne Galarneau
Executive Director and Board Secretary

Re: Newfoundland and Labrador Hydro – 2021 Capital Budget Supplemental Application Approval of the Construction of Hydro's Long-term Supply Plan for Southern Labrador – Request for Submissions – Hydro's Reply

On December 18, 2023, Newfoundland and Labrador Hydro ("Hydro") filed its submissions to party comments on Hydro's application for the approval of construction of Hydro's long-term supply plan for southern Labrador ("Application").¹ In that submission and the subsequent filings on January 12, 2024 and February 13, 2024, in response to requests for clarification from the Board of Commissioners of Public Utilities ("Board"), Hydro requested approval of the proposed project under the condition that the construction and commissioning portions of the project would not proceed pending Hydro's confirmation that the duty to consult with NunatuKavut Community Council ("NCC") has been met and the environmental approval received.

On February 26, 2024, the Board provided the opportunity for intervenors to the Application to provide submissions. The Board requested that the parties specifically address the following questions:

1. Please confirm if previously submitted comments are not impacted by the revised request and additional information filed. If previously submitted comments are impacted, please submit revised comments as needed.
2. Should the Board grant conditional approval as proposed by Hydro to allow it to proceed with the proposed project?
3. If the proposed conditional approval is granted, should the Board approve Hydro's request to recover all costs of the project from customers with the risk that the conditions may not be met or that changes to the project may subsequently be required?
4. Should the Board approve recovery of only certain costs, for example only pre-construction costs, estimated to be \$9.6 million?
5. If the proposed conditional approval is granted, with or without full or partial cost recovery, should Hydro be required to provide updated project and cost information before it proceeds to the construction phase? If so, what additional reporting requirements should be required?

¹ "Long-Term Supply for Southern Labrador," Newfoundland and Labrador Hydro, rev. October 5, 2023 (originally filed July 16, 2021).

6. Should the Board grant approval of only part of the project and recovery of the associated costs at this time so that Hydro would be required to file a subsequent application for the balance of the project? If so, what portion of the project should be approved at this time?
7. Should the matter be adjourned to allow Hydro and NCC resolve the duty to consult issue? If so, for how long?

NCC Submissions

NCC advised that Hydro's submissions regarding approval with conditions had not impacted the NCC's previously filed comments. NCC again stated that they did not oppose Hydro's Application, including the request for conditional approval. NCC confirmed that the environmental assessment and the engagement and fulfillment of the duty to consult are important for NCC's continued support. NCC did not identify any impediments to proceeding with approval of the project under the stipulated conditions, but deferred to the Board and other intervenors regarding the specific procedural questions posed by the Board.

Newfoundland Power Submissions

Newfoundland Power Inc. ("Newfoundland Power") also filed a response to the Board's questions. Newfoundland Power likewise noted that Hydro's submissions regarding approval with conditions had not impacted their previously filed comments. Newfoundland Power's submissions regarding approval were limited to their previous comments regarding approval of the proposed project itself and were not specific to approval under conditions; however, with respect to approval of full cost recovery with the risk that conditions not be met or changes to the project would subsequently be required, Newfoundland Power cited the provisions of the Capital Budget Application Guidelines ("Guidelines")² regarding multi-year projects and stated their opinion that the Guidelines provide sufficient direction to Hydro and the Board in establishing a process by which to assess multi-year capital projects, consistent with Hydro's January 12, 2024 and February 13, 2024 filings.

Hydro Submissions

Hydro has previously addressed the issues in the Board's questions 3–6. Specifically, Hydro noted that approval of the proposed project with conditions would allow Hydro to proceed with the work necessary to meet the duty to consult, receive environmental approval, and maintain the current schedule that is necessary to complete the project and provide safe, reliable, least-cost, environmentally responsible service to the region. An Order with conditions would, when the conditions were met, allow Hydro to proceed with completing the proposed project without further delay. As noted by Hydro, on-time completion would be contingent on there being no substantive changes to costs or scope as a result of the continued work and analysis or from meeting the conditions. In the event of material changes, further submissions and approvals would be pursued with the Board, consistent with the existing Guidelines and legislation. Hydro further notes that if the proposed approval with conditions is granted—with costs of the proposed project to be recovered from customers—and the conditions are not met, the only costs that will have been expended and would be recoverable from customers are the initial pre-construction costs estimated at \$9.6 million. In that sense, the approval with conditions and the partial recovery options appear to be practically similar.

² "Capital Budget Application Guidelines (Provisional)," Board of Commissioners of Public Utilities, December 20, 2021.

With respect to the Board's final two questions, Hydro has previously noted the substantial risk of further delays to the project related to additional process. In Hydro's January 12, 2024 submission, Hydro noted that:

If only partial approval were provided and further process was necessary after the initial, non-construction work, there would be substantial risk to the schedule currently in place to complete the project, further delaying service to the region and likely increasing the project costs due to the delay.³

Hydro believes that its request for approval with conditions allows the Board to continue to have visibility on the project while removing the risk of unnecessary procedural steps that could cause delay. This would not preclude the possibility of necessary additional process if there were substantive or material changes to scope or costs, which is the case with any capital application filed with and approved by the Board. There is always the risk that after the Board approves a capital application, the scope or costs will change in a material way. As Hydro has indicated through examples in previous filings, Hydro would then advise the Board of these changes. Hydro reiterates its suggestion from the February 13, 2024 submission that:

The Board has the ability to provide an Order that is specific to the scope and costs proposed in Hydro's application, with a direction that if the scope materially changes or if costs increase by more than a certain percentage, Hydro would be required to provide information justifying those changes or costs before the Board will permit the continued implementation of the Order and/or before the Board will allow recovery of the costs associated with the increase in scope or magnitude of the project.⁴

Hydro has substantial concerns regarding the Board's final question in particular. The Board asked the parties if the matter should be adjourned to allow Hydro and NCC to resolve the duty to consult issue. With respect, adjourning the issue will, in fact, prevent Hydro from meeting the duty to consult. As Hydro has previously explained, Hydro needs to proceed with detailed engineering and award the environmental assessment consultant contract, design consultant contract, and genset tender to enable the compilation of the information necessary to proceed effectively through the environmental assessment process, as well as the ongoing discussions and consultation with NCC. Without this information, Hydro cannot provide the detailed information necessary to allow NCC to determine if the proposed project would have impacts to their asserted rights or for Hydro to determine if and how to address those impacts. If the matter were to be adjourned, Hydro would be unable to proceed with any aspects of the project.

Public Comments – Mary's Harbour Town Council

The Mary's Harbour Town Council also filed comments on the Application on February 29, 2024, reiterating their objection to the proposed project. They cited concerns that expenditures would be made for the pre-construction stage, with the project then denied. They further reiterated their concerns that Hydro's proposed project is not least cost, in comparison to interconnection to the Labrador Interconnected System.

³ "Newfoundland and Labrador Hydro – 2021 Capital Budget Supplemental Application Approval of the Construction of Hydro's Long-term Supply Plan for Southern Labrador – Request for Further Information – Reply," Newfoundland and Labrador Hydro, January 12, 2024, p. 2.

⁴ "Newfoundland and Labrador Hydro – 2021 Capital Budget Supplemental Application Approval of the Construction of Hydro's Long-Term Supply Plan for Southern Labrador – Request for Further Clarification – Reply," Newfoundland and Labrador Hydro, February 13, 2024, p. 2.

Hydro has done fulsome analysis of the proposed project in comparison to an exhaustive number of alternatives, including interconnection to the Labrador Interconnected System.⁵ Hydro's analysis included sensitivity analysis of over 600 scenarios, taking into account the entire lifecycle cost of each alternative, and concluded with full confidence that the regional diesel generating station is the least-cost solution for reliable supply for the southern Labrador region, and is in accordance with all federal and provincial environmental legislation. Hydro's evidence has confirmed that the proposed project is the least-cost solution necessary to provide safe, reliable, and environmentally responsible service to the region.

In the event of future interconnection to the Labrador Interconnected System, the regional diesel generating station would still be required as a dependable generation solution to ensure the continuous supply of electricity for southern Labrador communities, providing reliable backup in the event that the interconnecting radial transmission line were to become unavailable. The construction of the regional diesel generating station does not preclude the future construction of an interconnection to the Labrador Interconnected System, should such an interconnection become warranted and justified to supply future industrial load growth in the area.

Conclusion

The evidence supports Hydro's proposal of the construction of a regional diesel generating station with a 25 kV interconnected system as the recommended solution for the long-term supply of southern Labrador. This solution is in line with Hydro's mandate to provide power at the lowest possible cost, consistent with reliable service, in an environmentally responsible manner.

Based on the foregoing, and on the substantial submissions previously filed, Hydro respectfully requests that the Board approve the application with conditions as proposed.

Should you have any questions, please contact the undersigned.

Yours truly,

NEWFOUNDLAND AND LABRADOR HYDRO



Shirley A. Walsh
Senior Legal Counsel, Regulatory
SAW/kd

ecc:

Board of Commissioners of Public Utilities
Jacqui H. Glynn
Board General

NunatuKavut Community Council
Jason T. Cooke, KC, Burchell Wickwire Bryson LLP
Sarah L MacLeod, Burchell Wickwire Bryson LLP

Labrador Interconnected Group
Senwung F. Luk, Olthuis Kleer Townshend LLP
Nicholas E. Kennedy, Olthuis Kleer Townshend LLP

Consumer Advocate
Dennis M. Browne, KC, Browne Fitzgerald Morgan & Avis
Stephen F. Fitzgerald, Browne Fitzgerald Morgan & Avis
Sarah G. Fitzgerald, Browne Fitzgerald Morgan & Avis
Bernice Bailey, Browne Fitzgerald Morgan & Avis

Newfoundland Power Inc.
Dominic J. Foley
Lindsay S.A. Hollett
Regulatory Email

Island Industrial Customer Group
Paul L. Coxworthy, Stewart McKelvey
Denis J. Fleming, Cox & Palmer
Dean A. Porter, Poole Althouse

⁵ *Supra*, f.n. 1, sch. 1, sec. 4.5, p. 7.