

March 12, 2024

**VIA E-MAIL** [jgalarneau@pub.nl.ca](mailto:jgalarneau@pub.nl.ca)

Jo Galarneau  
Executive Director and Board Secretary  
The Board of Commissioners of Public Utilities  
Prince Charles Building  
120 Torbay Road, P.O. Box 21040  
St. John's, NL A1A 5B2

Dear Ms. Galarneau:

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

**Submissions of NunatuKavut Community Council**

We represent the NunatuKavut Community Council ("NCC"), an intervenor in the above-noted application before the Board of Commissioners of the Public Utilities (the "Board").

Please accept this letter as the submissions on behalf of NCC in relation to this application as requested in correspondence from the Board dated February 26, 2024.

**Background**

NCC relies on its submissions dated December 7, 2023 (enclosed for ease of reference) for a more fulsome background of this application.

We understand that the Board has requested these additional submissions further to the submissions of Newfoundland and Labrador Hydro ("Hydro") dated December 18, 2023, January 12, 2024, and February 13, 2024, wherein "Hydro requested approval of the proposed project conditional on fulfillment of the duty to consult and receipt of environmental approval" and provided additional information on same.

In its request for submissions dated February 26, 2024, the Board has requested comment from intervenors in this application on Hydro's revised request, as well as submissions on seven specific questions. NCC's response to the Board's request for submissions is set out below.

### **Submissions on behalf of NCC**

NCC relies on its submissions dated December 7, 2023 (enclosed for ease of reference). The most recent submissions from Hydro (dated December 18, 2023, January 12, 2024, and February 13, 2024) do not impact NCC's prior comments in this application.

In response to the seven specific questions posed by the Board, please find NCC's responses below:

- 1. Please confirm if previously submitted comments are not impacted by the revisited request and additional information filed. If previously submitted comments are impacted, please submit revised comments as needed.*

As stated above, NCC confirms that previously submitted comments are not impacted by the revisited request and additional information filed.

- 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 or 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 requirement should be required?*
- 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 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?*

NCC defers to the expertise of the Board and other intervenors in regard to the above-noted questions 2 to 6.

As stated in its prior submissions, NCC does not oppose Hydro's application, including its revised request for conditional approval. However, these next stages – notably,

environmental assessment, and engagement and fulfillment of the duty to consult and accommodate NCC – are important for NCC’s continued support.

*7. Should the matter be adjourned to allow Hydro and NCC to resolve the duty to consult issue? If so, for how long?*

NCC understands that it is Hydro’s position that it requires (at least) conditional approval from the Board to commence its environmental assessment and design stages in order to adequately consult and accommodate NCC.

At this time, NCC has not identified any specific impediments to providing Hydro with conditional approval on its application. However, NCC wishes to emphasize its position that the duty to consult and accommodate NCC must be met before the Board may provide full approval for this application.

As stated in its prior submissions, NCC recognizes that Hydro has made considerable efforts to address NCC’s concerns. There continues to be constructive conversation in this regard. NCC continues to be confident in the advancement of its relationship with Hydro and believes that it may get to the point where it may be able to support this project.

### **Conclusion**

NCC appreciates the opportunity to provide further submission to share its perspectives on this important matter.

All of which is respectfully submitted.

Yours very truly,

BURCHELL WICKWIRE BRYSON <sup>LLP</sup>



Jason Cooke, K.C.

Encl.

cc:

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December 7, 2023

**VIA E-MAIL** [jgalarneau@pub.nl.ca](mailto:jgalarneau@pub.nl.ca)

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**Submissions of NunatuKavut Community Council**

We represent the NunatuKavut Community Council ("NCC"), an intervenor in the above-noted application before the Board of Commissioners of the Public Utilities (the "Board").

Please accept this letter as the submissions on behalf of NCC in relation to this application.

**EXECUTIVE SUMMARY**

- NCC is the representative governing body for approximately 6,000 Inuit in south and central Labrador, many of whom reside in the Southern Labrador Communities that are directly affected by the proposed plans in this application.
- NCC has some concerns with this application, particularly in regard to its environmental impacts and the late engagement of NCC.
- Hydro has made considerable effort to address NCC concerns and there continues to be a constructive conversation in this regard. NCC is confident in the advancement of its relationship with Hydro and believes that it may get to the point where it may be able to support this project in short order.

- NCC does not oppose Hydro's application at this time. However, the next stages in this project are important to NCC's continued support.
- Hydro must ensure that its duty to consult and accommodate NCC is met. NCC submits that the Board may only proceed to approve this project if Hydro's consultation is adequate.
- Hydro must ensure that integration of renewable energy is a high priority, and that penetration of renewable energy into the Southern Labrador Micro-Grid takes place as soon as possible in the development of the project.
- Hydro must support NCC involvement, participation, and ownership of renewable projects and community-led energy projects.

## **BACKGROUND**

### **The Original Application**

As the Board is aware, this application was first submitted by Newfoundland and Labrador Hydro ("Hydro") on July 16, 2021. Briefly, the application requests approval of significant capital expenditures for a major generation and transmission project which will change the way in which power is supplied in several communities in southern Labrador – Port Hope Simpson, Charlottetown and Pinsent's Arm, St. Lewis, and Mary's Harbour and Lodge Bay (the "Southern Labrador Communities").

In its original application, Hydro proposed that a new interconnected system (referred to as the Southern Labrador Micro-Grid) be created with a new large diesel generating plant in a central community – Port Hope Simpson – and associated transmission infrastructure (including approximately 130 km of 25 kV distribution lines) to interconnect the other Southern Labrador Communities in phases over time as the existing diesel units are decommissioned. The total capital cost was \$72.6 million with full interconnection to take place by 2045.

The schedule for this application was paused at Hydro's request on November 16, 2021.

In correspondence dated April 7, 2022, the Board stated that further information was required before the schedule for the application could be resumed. The Board requested further analysis of alternatives and highlighted gaps in the analysis with respect to diesel generating station replacement, backup generation, and climate policy and technological change.

In addition, the Board provided the following:

In particular, the Application proposes the construction of a new diesel plant with an expected life of 50 years, at a time when there is a clear shift toward clean renewable energy and the reduction of the use of fossil fuel. The Board notes that the provincial government's recently released renewable energy plan specifically identifies pursuing renewable energy development in regulated electricity-isolated

diesel-powered systems as an action item, including supporting Indigenous involvement/participation/ownership of renewable projects, and community-led projects.

Further to the Board's correspondence, Hydro engaged Midgard Consulting Inc. ("Midgard") to carry out an independent analysis. In its report dated March 31, 2023 (the "Midgard Report"), Midgard recommended that Hydro proceed with the full interconnection of the Southern Labrador Communities and the establishment of a regional diesel generating station at one time, rather than the initially proposed phased implementation.

In addition, Midgard recommended that Hydro pursue power purchase agreements, particularly with Indigenous stakeholders, to integrate renewable energy sources into the system. Midgard emphasized the importance of Indigenous involvement in renewable energy projects and recommended that Hydro actively support and engage Indigenous groups in the procurement of renewable energy supplies. This approach aligns with federal policies that favor Indigenous-led development of renewable energy projects, contributing to the growth of Indigenous communities, and fostering a more inclusive energy sector, which is consistent with Hydro's existing strategy for the integration of renewable energy.

### **NCC Recognized as Intervenor**

NCC is the representative governing body for approximately 6,000 Inuit in south and central Labrador, many of whom reside in the Southern Labrador Communities and are directly affected by the proposed plans in this application.

NCC first contacted the Board regarding this application on November 4, 2021. At that time, NCC expressed its "serious concerns" with the application, which included the following:

- Hydro did not consult or engage with NCC regarding the application until about November 2021. NCC should have been engaged at the beginning of the process, not several months after the application had been submitted.
- Hydro's lack of engagement was in direct contravention to the spirit and intent of the agreement between Nalcor Energy (predecessor to Hydro) and NCC.
- Hydro's application did not contemplate the commercial energy planning process currently underway between Nunacor (NCC's business development arm) and Hydro.
- Hydro's support and development of diesel infrastructure is at complete odds with provincial renewable energy plans.

Further to the above, and after becoming aware that Hydro had submitted the Midgard Report and intended to amend this application, NCC requested recognition as an intervenor in this application on May 26, 2023. As stated in NCC's correspondence, there

is no question that regulatory decisions and plans that are developed in this application will be applicable to NCC and its citizens. NCC required intervenor status to ensure appropriate and fulsome engagement in this proceeding.

The Board approved NCC as an intervenor in correspondence dated June 6, 2023.

### **The Revised Application**

In its revised application, submitted on May 31, 2023, Hydro proposes to proceed with the regional diesel generating station with immediate interconnection of all four systems in the Southern Labrador Communities as recommended by Midgard. In its revised application, the proposed project had a total budget of \$86.4 million and estimated service date of 2027 – this has since been increased to \$87.9 million with the proposed project being placed in service in 2028.

Following two rounds of Requests for Information on this revised application, the Board is seeking written submissions from the parties and the community. Please accept this letter as the submissions on behalf of NCC in relation to this application.

### **SUBMISSIONS ON BEHALF OF NCC**

As set out in its first correspondence to the Board on November 4, 2021 and as reflected in its Requests for Information submitted on June 20, 2023 and October 24, 2023, NCC has some concerns about the proposed project.

A significant concern of NCC is the impact that a large diesel plant will have on the environment and its communities. Hydro is seeking to implement further fossil fuel infrastructure in Canada's vulnerable northern and Indigenous communities. NunatuKavut Inuit are already experiencing the effects of climate change in their communities.

Upon review of the application materials, it remains somewhat unclear to NCC how the development of a large regional diesel plant meets the recent legislative amendments to the province's *Electrical Power Control Act* requiring that power be provided in an environmentally responsible manner.

NCC understands Hydro's position that it must balance a number of factors in its mandate to provide power to its customers. However, it remains troublesome to review a proposed that provides for renewable energy penetration at an undetermined point in the future with no renewable energy developments underway at this time (see Hydro's responses to Requests for Information PUB-NLH-067 and NCC-NLH-008).

In addition, in its response to Request for Information NCC-NLH-019, Hydro states:

As stated by Midgard, Hydro also has an obligation to comply with all provincial and federal legislation, including environmental legislation; these requirements are not mutually exclusive. To Hydro's knowledge, the federal Clean Electricity Regulations currently under development will represent the most stringent



environmental legislation governing electricity generation in Canada. Based on the current draft of the regulations and messaging from Environment and Climate Change Canada, Hydro fully expects that rural, isolated systems will be exempt from the Clean Electricity Regulations.

If this project were to be found exempt from the *Clean Energy Regulations*, NCC hopes that Hydro will nonetheless uphold the spirit and intent of “the most stringent environmental legislation” with its development and construction of this project.

NCC’s concerns for the environmental repercussions of this project are somewhat compounded by the lack of early and appropriate engagement with NCC. NCC has been leading community-based research to better understand energy security needs across its territory and is best positioned to help guide decision-making on projects that have significant impacts on its communities.

NCC submits that Hydro should have engaged and consulted with NCC far in advance of submitting this application. In not engaging or consulting NCC until months following the submission of this application, Hydro failed to take early advantage of the incredible opportunity to introduce renewable energy options in NunatuKavut communities by supporting Indigenous involvement, participation, and ownership of renewable projects and community-led projects at the most initial development stages of this project.

Notwithstanding the above, NCC understands the needs and energy insecurity being experienced by its citizens. In addition, Hydro has made considerable effort to address NCC concerns and there continues to be a constructive conversation in this regard. NCC is confident in the advancement of its relationship with Hydro and believes that it may get to the point where it may be able to support this project in short order. As such, NCC will not oppose this application being approved at this time.

However, the next stages are important for NCC’s continued support.

NCC is a rights-holder, not a stakeholder. NCC, on behalf of NunatuKavut Inuit, asserts and holds Aboriginal, Treaty, and Constitutional rights, titles, and interests over its traditional territory in central and southern Labrador. There is no question that the proposed project fundamentally affects NCC, its citizens, and its communities.

The *Constitution Act, 1982* affirms that, before suffering an adverse effect to their known or credibly claimed rights caused by Crown conduct, Aboriginal peoples are entitled to consultation with the Crown and, in appropriate circumstances, to accommodation. No matter who the Crown’s duty rests with, the duty must be met.

In its role as a Crown corporation and proponent of this project, Hydro has a duty to consult and accommodate NCC prior to making decisions or taking action that might undermine or impair its asserted rights. Hydro does not contest this and has committed to adequate consultation and accommodation with NCC regarding the project, including management of the project in a manner that mitigates impact to NCC and its citizens. We understand that Hydro expects to provide further specifications and details as it navigates the pending environmental assessment process.

It is NCC's position that the Board may also have a duty and the authority to apply and ensure that its decisions are in compliance with the *Constitution Act, 1982*. NCC submits that the Board can determine whether Hydro's duty to consult has been fulfilled and cannot approve a project where this duty has not been met.

Further to the above, NCC will not oppose this application at this stage. However, this is conditional on the following items being addressed:

- Hydro must ensure that its duty to consult and accommodate NCC is met. NCC submits that the Board may only proceed to approve this project if Hydro's consultation is adequate.
- Hydro must ensure that integration of renewable energy is a high priority, and that integration of renewable energy into the Southern Labrador Micro-Grid takes place as soon as possible and to the greatest extent possible.
- Hydro must support and prioritize NCC involvement, participation, and ownership of renewable projects and community-led energy projects.

NCC looks forward to working further with Hydro to address the above.

## **CONCLUSION**

NCC is very cognizant of the importance of providing the Southern Labrador Communities with a long-term source of reliable power as soon as possible. This is especially the case for Charlottetown and Pinsent's Arm, which have been served by mobile gensets since a fire rendered the Charlottetown Diesel Generating Station inoperable in October 2019.

In addition, NCC is aware of the potential for increased costs to rate payers, which include NunatuKavut Inuit, that are expected with the development of this project. NCC relies on the expertise and submissions provided by Newfoundland Power dated November 30, 2023 on this point.

As stated above, NCC does not oppose the application at this time. NCC expects a fulsome and engaging environmental assessment process, which prioritizes renewable energy development and integration. In addition, NCC looks forward to continued relationship building with Hydro to ensure that it is adequately consulted and accommodated through the development, construction, and operation of the project.

Given the recent legislative amendments, it appears that the Board's decision may set a precedent for how Hydro may interpret and perform its mandate with a new emphasis on environmental responsibility. The results of this application are significant to NCC and all people of Labrador. NCC values the opportunity to share its perspectives on this important matter.

All of which is respectfully submitted.

Yours very truly,

BURCHELL WICKWIRE BRYSON<sup>LLP</sup>

A handwritten signature in blue ink that reads "J T Cooke". The signature is written in a cursive style with a large, stylized initial "J".

Jason T. Cooke, K.C.

cc:

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