



Newfoundland and Labrador Hydro
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December 2, 2022

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

Attention: Ms. Cheryl Blundon
Director of Corporate Services and Board Secretary

Dear Ms. Blundon:

Re: Application for Approval of a Third Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources

Please find enclosed Newfoundland and Labrador Hydro's ("Hydro") Application for Approval of a Third Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources, which extends the term of the Second Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources ("Second A&R Pilot Agreement").

On December 18, 2018, the Board of Commissioners of Public Utilities ("Board") Issued Board Order No. P.U. 49(2018),¹ approving Hydro's application for approval of a Pilot Agreement for the Optimization of Hydraulic Resources ("Initial Pilot Agreement") between Hydro and Nalcor Energy Marketing ("NEM"). The Initial Pilot Agreement, as filed and approved, defined the term as ending on ". . . the earlier of (a) December 31, 2020 or (b) approval by the Board of the Final Agreement . . ."² As the re-negotiations of the Muskrat Falls Power Purchase Agreement, the issuance of a Final Report from the Commission of Inquiry Respecting the Muskrat Falls Project,³ and the Board's report on Rate Mitigation Options and Impacts⁴ could have implications for a Final Agreement, Hydro and NEM believed it would be premature to enter into and seek Board approval of a Final Agreement prior to December 31, 2020. Hydro applied for approval of the Amended and Restated Pilot Agreement ("A&R Pilot Agreement") which extended the term of the Initial Pilot Agreement to ". . . the earlier of (a) the Commissioning Date as defined in the Power Purchase Agreement between Hydro and Muskrat Falls Corporation or (b) approval by the Board of the Final Agreement . . ."⁵ The Board approved this extension on December 17, 2020 in Board Order No. P.U. 38(2020).⁶

¹ *Public Utilities Act*, RSNL 1990, c P-47, Board Order No. P.U. 49(2018), Board of Commissioners of Public Utilities, December 18, 2018.

² "An Application by Newfoundland and Labrador Hydro for approval of the Pilot Agreement for the Optimization of Hydraulic Resources, a Hydraulic Resources Optimization Deferral Account, and revised Rate Stabilization Plan rules," Newfoundland and Labrador Hydro, August 23, 2018, sch. 2, p. 2 of 4, part B, sec. 3.

³ "Muskrat Falls: A Misguided Project," Commission of Inquiry Respecting the Muskrat Falls Project, March 5, 2020.

⁴ "Reference to the Board – Rate Mitigation Options and Impacts – Muskrat Falls Project – Final Report," Board of Commissioners of Public Utilities, February 7, 2020.

⁵ "Application for Approval of an Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources," Newfoundland and Labrador Hydro, November 25, 2020, sch. 2, p. 2 of 4, part B, sec. 3.

⁶ *Public Utilities Act*, RSNL 1990, c P-47, Board Order No. P.U. 38(2020), Board of Commissioners of Public Utilities, December 17, 2020.

On October 15, 2021, Hydro filed an application proposing a further extension to the term of the A&R Pilot Agreement to “. . . the earlier of (a) December 31, 2022 or (b) approval by the Board of the Final Agreement . . .” All other terms of the A&R Pilot Agreement would remain the same. Hydro noted that the Initial Pilot Agreement, as continued under the A&R Pilot Agreement, had been beneficial for Hydro’s customers and requested approval of the extension to enable Hydro to continue to capture opportunities to create value for its customers from Ponding and the sale of Spill Energy on a pilot basis. The Board approved Hydro’s application on November 8, 2021 in Board Order No. P.U. 31(2021),⁷ and Hydro entered into the Second A&R Pilot Agreement.

Since the approval of the Initial Pilot Agreement in 2018, Hydro and NEM have worked together to create net gains⁸ that will benefit Hydro’s customers in accordance with a future Board Order regarding the appropriate allocation of these net gains.⁹ Hydro is now considering the implications on the agreement of the changing composition of the electricity system¹⁰ in Newfoundland and Labrador and the resulting activities involving external markets, to determine what type of agreement should follow.

While that analysis and review is underway, Hydro wishes to once again extend the pilot agreement through a Third Amended and Restated Pilot Agreement (“Third A&R Pilot Agreement”) to enable the continued creation of net gains through activities provided for in the Second A&R Pilot Agreement.

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
PUB Official Email

Consumer Advocate

Dennis M. Browne, KC, Browne Fitzgerald Morgan Avis & Wadden
Stephen F. Fitzgerald, Browne Fitzgerald Morgan Avis & Wadden
Sarah G. Fitzgerald, Browne Fitzgerald Morgan Avis & Wadden
Bernice Bailey, Browne Fitzgerald Morgan Avis & Wadden
Bernard M. Coffey, KC

Linde Canada Inc.

Sheryl E. Nisenbaum
Peter Strong

Newfoundland Power Inc.

Dominic J. Foley
Lindsay S.A. Hollett
Regulatory Email

Teck Resources Limited

Shawn Kinsella

Island Industrial Customer Group

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

⁷ *Public Utilities Act*, RSNL 1990, c P-47, Board Order No. P.U. 31(2021), Board of Commissioners of Public Utilities, November 8, 2021.

⁸ Details on the net gains achieved can be found in the Nalcor Energy Marketing Activities Reports filed each year by Hydro.

⁹ Hydro plans to file an application in the first quarter of 2023 which will propose that all gains currently in the Hydraulic Resources Optimization Deferral Account be transferred to the Supply Cost Variance Deferral Account to provide benefit to customers.

¹⁰ Muskrat Falls is now generating and was commissioned in 2021, the Labrador-Island Link is flowing energy, and there are ongoing deliveries of the Nova Scotia block.

Application for Approval of a Third Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources

December 2, 2022

An application to the Board of Commissioners of Public Utilities



IN THE MATTER OF the *Electrical Power Control Act, 1994*, RSNL 1994, Chapter E-5.1 (“EPCA”) and the *Public Utilities Act*, RSNL 1990, Chapter P-47 (“Act”), and regulations thereunder; and

IN THE MATTER OF an application by Newfoundland and Labrador Hydro (“Hydro”) pursuant to Section 3(b)(iii) of the *EPCA*, and Section 70 and 76 of the *Act*, for approval of a Third Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources.

To: The Board of Commissioners of Public Utilities (“Board”)

THE APPLICATION OF HYDRO STATES THAT:

A. Background

1. Hydro is a corporation continued and existing under *the Hydro Corporation Act, 2007*,¹ is a public utility within the meaning of the *Act*, and is subject to the provisions of the *EPCA*.
2. On August 23, 2018, Hydro filed an application for approval of a Pilot Agreement for the Optimization of Hydraulic Resources (“Initial Pilot Agreement”) between Hydro and Nalcor Energy Marketing (“NEM”).² The Pilot Agreement would facilitate the sale of excess energy from the Island Interconnected System that would otherwise be spilled (“Spill Energy”) and allow for the creation of additional value for customers through the use of Hydro’s reservoirs to undertake Ponding.³
3. Hydro’s application proposed that the Initial Pilot Agreement would expire on the earlier of December 31, 2020 or upon execution and approval by the Board of the longer-term agreement for the optimization of hydraulic resources (“Final Agreement”), which was under negotiation between Hydro and NEM at the time.

¹ *Hydro Corporation Act, 2007*, SNL 2007 c H-17.

² “An Application by Newfoundland and Labrador Hydro (Hydro) for approval of the Pilot Agreement for the Optimization of Hydraulic Resources, a Hydraulic Resources Optimization Deferral Account, and revised Rate Stabilization Plan rules,” Newfoundland and Labrador Hydro, August 23, 2018.

³ The purchase and import of low-cost energy from off-island sources to serve Hydro’s customers and the export and sale of an offsetting amount of energy at another time when market prices are higher relative to when the import occurred.

4. The Board approved Hydro's application on December 18, 2018 in Board Order No. P.U. 49(2018),⁴ noting that it was satisfied that the proposed Ponding activities as well as the sale of Spill Energy has the potential to benefit Hydro and its customers. The Board also noted that the Initial Pilot Agreement provides that NEM assume all financial responsibility and risk in the event there is no net gain from Ponding activities; this protects ratepayers from potential losses during the term of the Initial Pilot Agreement.
5. The Board further ordered that the Initial Pilot Agreement be in place for a minimum of one year. During that time frame Hydro was directed to provide updates on its Ponding and Spill Energy activities as part of its quarterly reporting to the Board.⁵ Hydro has provided these updates in its Quarterly Regulatory Reports to the Board, beginning in February 2019 with the report for the period ended December 31, 2018.⁶
6. On November 25, 2020, Hydro filed an application with the Board for approval of an Amended and Restated Pilot Agreement ("A&R Pilot Agreement").⁷ Hydro advised that as the re-negotiations of the Muskrat Falls Power Purchase Agreement, the issuance of a Final Report from the Commission of Inquiry Respecting the Muskrat Falls Project, and the Board's report on Rate Mitigation Options and Impacts could have implications for a Final Agreement, Hydro and NEM believed it would be premature to enter into and seek Board approval of a Final Agreement at that time. As without a Final Agreement, the Initial Pilot Agreement would expire on December 31, 2020, Hydro proposed to extend the term of the Initial Pilot Agreement to enable the continued creation of net gains through activities provided for in the Initial Pilot Agreement.
7. The Board approved Hydro's application on December 17, 2020 in Board Order No. P.U. 38(2020);⁸ the approved A&R Pilot Agreement provided for a term ending ". . . the earlier of

⁴ *Public Utilities Act*, RSNL 1990, c P-47, Board Order No. P.U. 49(2018), Board of Commissioners of Public Utilities, December 18, 2018.

⁵ *Ibid.*, p. 4/14–15.

⁶ "Quarterly Report for the period ended December 31, 2018," Newfoundland and Labrador Hydro, updated April 12, 2019 (originally filed February 14, 2019), sec. 1, sec. 5.3, p. 21.

⁷ "Application for Approval of an Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources," Newfoundland and Labrador Hydro, November 25, 2020.

⁸ *Public Utilities Act*, RSNL 1990, c P-47, Board Order No. P.U. 38(2020), Board of Commissioners of Public Utilities, December 17, 2020.

(a) the Commissioning Date as defined in the Power Purchase Agreement between Hydro and Muskrat Falls Corporation or (b) approval by the Board of the Final Agreement . . .”⁹

8. On October 15, 2021, Hydro filed an application proposing a further extension to the term of the A&R Pilot agreement to “. . . the earlier of (a) December 31, 2022 or (b) approval by the Board of the Final Agreement . . .” All other terms of the A&R Pilot Agreement would remain the same. Hydro noted that the Initial Pilot Agreement, as continued under the A&R Pilot Agreement, had been beneficial for Hydro’s customers and requested approval of the extension to enable Hydro to continue to capture opportunities to create value for its customers from Ponding and the sale of Spill Energy on a pilot basis.
9. The Board approved Hydro’s application on November 8, 2021 in Board Order No. P.U. 31(2021),¹⁰ and Hydro entered into the Second Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources (“Second A&R Pilot Agreement”).

B. Application

10. Since the approval of the A&R Pilot Agreement, Hydro had been monitoring progress with respect to the re-negotiation of the Muskrat Falls Power Purchase Agreement to determine any implications for a Final Agreement. Within this same period, the province of Newfoundland and Labrador announced that Nalcor Energy Ltd. operations will be moving under Hydro, and work is underway to implement this change.
11. The Initial Pilot Agreement, as continued under the A&R Pilot Agreement and Second A&R Pilot Agreement, has been beneficial for Hydro’s customers. This has been demonstrated in the NEM reports that have been filed with the Board to date; however, in light of the changing system,¹¹ Hydro is considering what should follow the pilot agreement. While that analysis and review is underway, Hydro wishes to once again extend the pilot agreement through a Third Amended and Restated Pilot Agreement (“Third A&R Pilot Agreement”).

⁹ “An Application by Newfoundland and Labrador Hydro for approval of the Pilot Agreement for the Optimization of Hydraulic Resources, a Hydraulic Resources Optimization Deferral Account, and revised Rate Stabilization Plan rules,” Newfoundland and Labrador Hydro, August 23, 2018, sch. 2, p. 2 of 4, part B, sec. 3.

¹⁰ *Public Utilities Act*, RSNL 1990, c P-47, Board Order No. P.U. 31(2021), Board of Commissioners of Public Utilities, November 8, 2021.

¹¹ Muskrat Falls is now generating and was commissioned in 2021, the Labrador-Island Link is flowing energy, and there are ongoing deliveries of the Nova Scotia block.

12. The proposed expiration of the Third A&R Pilot Agreement is the earlier of:
- (i) December 31, 2023;
 - (ii) Approval by the Board of an agreement to replace the Third A&R Pilot Agreement; or
 - (iii) Agreement by the parties to discontinue the Third A&R Pilot Agreement.

All other terms of the Second A&R Pilot Agreement remain the same.

13. Approval of this application will enable Hydro to continue to capture opportunities to create value for its customers from Ponding and the sale of Spill Energy on a pilot basis while considering what future agreements may be necessary, if any.
14. This application is in accordance with Hydro's mandate to ensure service is delivered to consumers in the province at the lowest possible cost consistent with reliable service.

C. Hydro's Request

15. Hydro requests that the Board approve the Third A&R Pilot Agreement, which extends the term of the Second A&R Pilot Agreement.

D. Communications

16. Communications with respect to this application should be forwarded to Shirley A. Walsh, Senior Legal Counsel, Regulatory for Hydro.

DATED at St. John's in the province of Newfoundland and Labrador this 2nd day of December 2022.

NEWFOUNDLAND AND LABRADOR HYDRO



Shirley A. Walsh
Counsel for the Applicant
Newfoundland and Labrador Hydro,
500 Columbus Drive, P.O. Box 12400
St. John's, NL A1B 4K7
Telephone: (709) 685-4973

Schedule 1

Third Amended and Restated Pilot Agreement





Newfoundland and Labrador Hydro
Hydro Place, 500 Columbus Drive
P.O. Box 12400, St. John's, NL
Canada A1B 4K7
t. 709.737.1400 | f. 709.737.1800
nlhydro.com

November 30, 2022

Via Email: rcollett@nlh.nl.ca

Newfoundland and Labrador Hydro
Hydro Place, 500 Columbus Drive
P.O. Box 12400, St. John's, NL A1B 4K7

Attention: Rob Collett

**Re: Third Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources
(Third A&R Pilot Agreement)**

As you are aware, Nalcor Energy Marketing Corporation (NEM) and Newfoundland and Labrador Hydro (Hydro) have entered into an interim Power Purchase Agreement effective June 29, 2018 (the NEM PPA). The NEM PPA provides for the purchase of energy and capacity from external markets to displace more costly generation at Hydro's thermal facilities, while maintaining Hydro's ability to provide reliable supply to its customers.

NEM and Hydro are in the process of reviewing what agreements may be necessary, for the optimization of hydraulic resources [] to, among other things, capture opportunities to create value for customers from the use of storage in Hydro's reservoirs, combined with the variability of energy pricing in external markets over time (Ponding) and to monetize energy in Hydro's reservoirs that would otherwise have been lost due to spill (Spill Energy).

NEM acknowledges that arrangements, by which Hydro might sell energy to NEM, are subject to the approval of the Board of Commissioners of Public Utilities (the Board).

The parties have recognized that the determinations regarding any future agreements will not be finalized in time to capture opportunities that may arise in the immediate term. In order to capture such opportunities, NEM is proposing a number of principles that will apply on a pilot basis in advance of any further agreement being finalized.

A. Energy Purchases from NEM (for Ponding)

1. **Ponding Imports.** As previously agreed, as of April 27, 2018, NEM shall sell and deliver to Hydro, and Hydro shall purchase and take delivery from NEM, energy for the purpose of Ponding (Ponding Imports). In return for delivering the Ponding Imports, Hydro shall pay to NEM the electricity purchase costs paid by NEM and all Actual Net Costs (as defined in Section

4, below) paid by NEM for the Pondering Imports, including all transmission losses to the Delivery Point (as defined in Section 8, below).

B. Energy Sales by Hydro of Spill Energy and Pondering Exports to NEM

2. **Board Approval for Sale.** NEM acknowledges and agrees that any arrangements by which Hydro might sell energy to NEM are subject to the approval of the Board. As such, NEM agrees to work cooperatively with Hydro to file an application with the Board on or before **December 5, 2022** (the Application).
3. **Pilot Period.** This Section B of the **Third** A&R Pilot Agreement is effective only as of the date of final approval by the Board of the Application and will expire on the earlier of:
 - (a) **December 31, 2023;**
 - (b) **approval by the Board of an agreement to replace the agreement; or**
 - (c) **agreement by the parties to discontinue the agreement.**
4. **Pondering Exports.** During the Pilot Period, NEM will schedule delivery of energy for the purpose of exports to the external market (Pondering Exports) and Hydro shall sell and deliver to NEM, and NEM shall purchase and take delivery from Hydro, the Pondering Exports, net of transmission losses, at the Delivery Point. NEM shall transfer to Hydro all actual revenues received by NEM for the Pondering Exports, net of all transmission losses and Actual Net Costs. Actual Net Costs include tariff charges and any other transmission provider or system operator fees, costs incurred or revenue received in relation to remedies sought as a result of curtailments, energy replacement costs due to cuts, curtailments or imbalances, and any other costs incurred or revenue received by NEM in conducting external markets activities.
5. **Spill Exports.** During the Pilot Period, should Hydro conclude that a situation resulting in Spill Energy is imminent, it may sell the Spill Energy to NEM for export to external markets. NEM shall pay Hydro all actual revenues received by NEM for the sale of such Spill Energy, net of all transmission losses and Actual Net Costs.
6. **Overhead/Mark-ups.** For purposes of this **Third** A&R Pilot Agreement, NEM shall include no overhead or mark-ups of any kind and at all times shall track and report to Hydro its actual costs and revenues associated with the Pondering and Spill Energy activities.
7. **Coordinated Activities.** During the Pilot Period, the parties will consult and coordinate their activities regarding amounts of energy to be delivered from off-island sources and to external markets for the purposes of Pondering. Hydro retains full operational control of its assets and all activities undertaken by NEM are subject to the principles outlined in Schedule A, Clause 1.2(e) of the NEM PPA, including the approval of the Production Plans by Hydro.

8. **Delivery Point.** The parties shall deliver and receive the Ponding Imports, Ponding Exports and Spill Energy at Bottom Brook or the Labrador-Quebec border, as applicable (the Delivery Point). For greater certainty, NEM or Hydro may deliver the Ponding Imports, Ponding Exports or Spill Energy, or any portion thereof, to either Bottom Brook or the Labrador-Quebec border and there may be deliveries to both points at any given time.
9. **Ponding Spill.** In the event that Ponding Imports are spilled from a Hydro reservoir and become unavailable for generation (Ponding Spill), unless it can be clearly demonstrated that such Ponding Spill was not due to the storing of such Ponding Imports, NEM shall reimburse Hydro for the cost of such Ponding Spill. Reimbursement for Ponding Spill will be based on combined purchase costs paid by Hydro for the most recent Ponding Imports purchases from NEM in descending order (most recent purchase to oldest purchase), aggregated to equal the total amount of Ponding Spill.
10. **Deferral Account.** During the Pilot Period, Hydro will track and hold any and all financial net gains resulting from Ponding and Spill Energy activities in a Board approved deferral account. Hydro will file a separate application for the Board's approval of the allocation of the net gains between Hydro and NEM. Such application will include a review of generally accepted utility practice and a recommendation by Hydro on the rationale for value sharing. NEM shall bear all financial responsibility and risk should a net gain fail to materialize from Ponding. In the event of a cumulative loss due to Ponding activities at the end of the Pilot Period, NEM will reimburse Hydro for the amount of cumulative loss.
11. **Use of Ponding Imports during the Pilot Period.** If, during the Pilot Period, Hydro requires previously purchased Ponding Imports for purposes of serving its customers, then Hydro shall provide NEM with notice of such requirement. The amount of Ponding Imports in Hydro's reservoir shall be reduced by the amount of Ponding Imports used to serve Hydro's customers and the deferral account shall be credited for this energy at a rate per kWh equal to the average purchase price of Ponding Imports in Hydro's reservoirs at the time.
12. **Termination.** Hydro shall have the right to terminate this **Third** A&R Pilot Agreement at any time, upon provision of one month's prior written notice to NEM. If the Board does not approve the Application, this **Third** A&R Pilot Agreement shall be terminated immediately upon issuance of such Board Order.
13. **No Impact on Reservoirs.** The parties shall cooperate to ensure that Ponding activities result in no cumulative impact on the amount of energy in Hydro's reservoirs upon expiry of this Agreement, or as soon as reasonably practicable following its expiry.

Please indicate your agreement with the foregoing by signing below and returning a copy to the undersigned.

Sincerely,

Greg Jones
General Manager
Nalcor Energy Marketing

Acknowledged and agreed.

Robert Collett,
Newfoundland and Labrador Hydro

Affidavit



IN THE MATTER OF the *Electrical Power Control Act, 1994*, RSNL 1994, Chapter E-5.1 ("*EPCA*") and the *Public Utilities Act*, RSNL 1990, Chapter P-47 ("*Act*"), and regulations thereunder; and

IN THE MATTER OF an application by Newfoundland and Labrador Hydro ("*Hydro*") pursuant to Section 3(b)(iii) of the *EPCA*, and Section 70 and 76 of the *Act*, for approval of a Third Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources.

AFFIDAVIT

I, Robert Collett, of St. John's in the province of Newfoundland and Labrador, make oath and say as follows:

1. I am Vice President, Engineering and NL System Operator for Newfoundland and Labrador Hydro, the applicant named in the attached application.
2. I have read and understand the foregoing application.
3. To the best of my knowledge, information, and belief, all of the matters, facts, and things set out in this application are true.

SWORN at St. John's in the)
Province of Newfoundland and)
Labrador this 2nd day of)
December 2022, before me:)



Commissioner for Oaths, Newfoundland and Labrador

KIMBERLEY DUGGAN
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2022.



Robert Collett, P. Eng.