



Newfoundland and Labrador Hydro
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November 21, 2023

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: Application for Approval of the Extension of the 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 the extension of the previously approved Third Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources ("Third A&R 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 Since that time, Hydro has applied for and received approval to extend the Initial Pilot Agreement with certain amendments.³

Since the approval of the Initial Pilot Agreement in 2018, Hydro and NEM have worked together to create net gains⁴ that will benefit Hydro's customers.⁵ Hydro is now considering the implications on the agreement of the changing composition of the electricity system⁶ in Newfoundland and Labrador and the resulting activities involving external markets, to determine what type of agreement should follow. The details of the implementation of the Government of Newfoundland and Labrador's rate mitigation

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 (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 The Amended and Restated Pilot Agreement was approved in *Public Utilities Act*, RSNL 1990, c P-47, Board Order No. P.U. 38(2020), Board of Commissioners of Public Utilities, December 17, 2020; the Second Amended and Restated Pilot Agreement was approved in *Public Utilities Act*, RSNL 1990, c P-47, Board Order No. P.U. 31(2021), Board of Commissioners of Public Utilities, November 8, 2021; and the Third Amended and Restated Pilot Agreement was approved in *Public Utilities Act*, RSNL 1990, c P-47, Board Order No. P.U. 35(2022), Board of Commissioners of Public Utilities, December 16, 2022.

⁴ Details on the net gains achieved can be found in the NEM Activities Reports filed each year by Hydro.

⁵ Hydro had planned to file an application in the first quarter of 2023 that would 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. Hydro has delayed that application pending completion of the discussions and analysis regarding the agreement that would follow the pilot agreement.

⁶ Muskrat Falls is now generating and was commissioned in 2021, the Labrador-Island Link was commissioned in April 2023, and there are ongoing deliveries of the Nova Scotia Block.

plan, and the impacts of the pending legislation regarding the amalgamation of Hydro and Nalcor Energy may also have implications for any new agreement.

While the analysis and review is underway, Hydro wishes to once again extend the pilot agreement to December 31, 2024 to enable the continued creation of net gains through activities provided for in the Third 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
Cheryl Blundon
PUB Official Email

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

Linde Canada Inc.

Sheryl E. Nisenbaum
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Newfoundland Power Inc.

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Teck Resources Limited

Shawn Kinsella

Island Industrial Customer Group

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

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

November 21, 2023

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 Sections 70 and 76 of the Act, for approval of an extension of the Third Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources (“Third A&R Agreement”).

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 Initial 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

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.

for the optimization of hydraulic resources, which was under negotiation between Hydro and NEM at the time.

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 timeframe, 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 reporting to the Board beginning in February 2019 with the "Quarterly Report for the period ended December 31, 2018."⁶
6. Since the approval of the Initial Pilot Agreement, Hydro has applied for amendments to and extensions of that agreement on three occasions, the most recent on December 2, 2022.⁷ In that application, Hydro noted that the Initial Pilot Agreement, as continued under the subsequent amended and restated agreements, had been beneficial for Hydro's customers. However, in light of the changing system, Hydro was considering what should follow the pilot agreement. While that review was underway, Hydro wished to once again extend the pilot agreement through a Third A&R Pilot Agreement.
7. The proposed expiration of the Third A&R Pilot Agreement, as approved by the Board in Order No. P.U. 35(2022), was the earlier of:
 - (i) December 31, 2023;

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), tab 1, sec. 5.3, p. 21.

⁷ "Application for Approval of a Third Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources," Newfoundland and Labrador Hydro, December 2, 2022; approved in *Public Utilities Act*, RSNL 1990, c P-47, Board Order No. P.U. 35(2022), Board of Commissioners of Public Utilities, December 16, 2022.

- (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.

B. Application

8. Throughout 2023, Hydro has continued to consider the type of agreement that should follow the pilot agreement. The details of the implementation of the Government of Newfoundland and Labrador's rate mitigation plan, and the impacts of the pending legislation regarding the amalgamation of Hydro and Nalcor Energy may have implications for any new agreement. Therefore, Hydro wishes to, once again, extend the pilot agreement. The proposed expiration would be the earlier of:

- (i) December 31, 2024;
- (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 Third A&R Pilot Agreement remain the same.

9. 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.
10. 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 in an environmentally responsible manner.

C. Hydro's Request

11. Hydro requests that the Board approve the extension of the Third A&R Pilot Agreement to the earlier of:
- (i) December 31, 2024;
 - (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.

D. Communications

12. 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 21st day of November 2023.

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

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 Sections 70 and 76 of the *Act*, for approval of an extension of the Third Amended and Restated Pilot Agreement for the Optimization of Hydraulic Resources ("*Third A&R Agreement*").

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 21st day of November 2023, 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, 2027.



Robert Collett, P. Eng.