

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

AN ORDER OF THE BOARD

NO. P.U. 5(2015)

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
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7 **IN THE MATTER OF** an investigation and hearing
8 into supply issues and power outages on the
9 Island Interconnected system; and
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11 **IN THE MATTER OF** a motion by Grand Riverkeeper
12 Labrador, Inc. for an Order directing Newfoundland
13 and Labrador Hydro to provide full and complete
14 responses to certain Requests for Information.
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16
17 **Motion**

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19 On December 22, 2014 Grand Riverkeeper Labrador, Inc. filed a motion asking that
20 Newfoundland and Labrador Hydro (“Hydro”) be ordered to provide full and complete
21 responses to information requests GRK-NLH-21, 24, 45, 46, 57, 60, 63, 66, 67, 69, and 74 and
22 that deadlines for Grand Riverkeeper Labrador, Inc. be suspended until the responses are filed.
23

24 On January 6, 2015 Hydro provided responses to GRK-NLH-60 and 67.
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26 On January 7, 2015 Grand Riverkeeper Labrador, Inc. filed supplemental pleadings in relation to
27 GRK-NLH-60 asking that Hydro be ordered to provide full and complete responses.
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29 On January 9, 2015 the Board wrote to the parties in the matter to advise that the motion filed on
30 December 22, 2014 would be considered together with the October 23, 2014 request by Hydro
31 that the Board confirm that Hydro is not required to answer GRK-NLH-63.
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33 On January 14, 2015 Hydro filed submissions in relation to the Grand Riverkeeper Labrador,
34 Inc. motion and provided revised responses to GRK-NLH-21 and 24.
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36 On January 19, 2015 the Consumer Advocate filed a submission.
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38 On January 21, 2015 Grand Riverkeeper Labrador, Inc. filed a submission and also filed further
39 supplementary requests for information GRK-NLH-93 to 100.

1 On January 22, 2015 Hydro filed further comments in relation to the January 21, 2015 Grand
2 Riverkeeper Labrador, Inc. submission and asked that the Board disregard the newly filed
3 requests for information.

4
5 On January 22, 2015 Grand Riverkeeper Labrador, Inc. filed an amended submission with
6 changes in relation to GRK-NLH-21. No changes were made in relation to the other requests for
7 information and the additional requests for information filed with the earlier submission were not
8 withdrawn.

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10 The Board did not receive any other submissions in relation to the Grand Riverkeeper Labrador,
11 Inc. motion.

12 13 14 **Board Findings**

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16 The Board will address below the motion and the parties' submissions and the Board's findings
17 with respect to the following requests for information:

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19 GRK-NLH-21 and 24
20 GRK-NLH-45, 46 and 57
21 GRK-NLH-60 and 63
22 GRK-NLH-66, 69 and 74

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24 It is not necessary to address GRK-NLH-67 since subsequent to the motion, Hydro answered this
25 question and Grand Riverkeeper Labrador, Inc. did not challenge the response which was filed.

26 27 28 GRK-NLH-21 and 24

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30 In the motion filed on December 22, 2014 Grand Riverkeeper Labrador, Inc. submits that
31 Hydro's responses to GRK-NLH-21 and 24 fail to answer the questions. In relation to GRK-
32 NLH-21 Grand Riverkeeper Labrador, Inc. states that the response should state if there would be
33 no implications for the water management agreement in the event of an unfavourable ruling in
34 the Quebec litigation and should explain why. In relation to GRK-NLH-24 Grand Riverkeeper
35 Labrador, Inc. states that Hydro did not confirm the affirmations in the preamble or explain how
36 the water management agreement could have its desired effect.

37
38 Hydro, in its January 14, 2015 submission, provides a revised response to GRK-NLH-21 and
39 GRK-NLH-24 for information, including an explanation of what might happen in the case of an
40 unfavourable ruling in the Quebec litigation in relation to the flow of water down the Churchill
41 River and the timing of energy.

42
43 The Consumer Advocate states in his January 19, 2015 submission that the revised replies filed
44 by Hydro respond to the questions.

1 Grand Riverkeeper Labrador, Inc. advises in its submissions filed January 21, 2015 that GRK-
2 NLH-21 is suspended and that further information is sought by way of the supplementary
3 requests for information filed (GRK-NLH-93 to 96). In an amended submission filed on January
4 22, 2015 Grand Riverkeeper Labrador, Inc. changes this position and asks that Hydro be ordered
5 to provide a full and complete response to GRK-NLH-21. Grand Riverkeeper Labrador, Inc.
6 submits that the revised response filed by Hydro is vague and ambiguous and that, based on the
7 January 22, 2015 letter from Hydro, it is no longer clear that a more complete response could be
8 obtained by means of follow-up requests for information. In relation to GRK-NLH-24 Grand
9 Riverkeeper Labrador, Inc. reiterates that the response does not confirm the affirmations in the
10 preamble or explain how the water management agreement could have its desired effect in the
11 event of an unfavourable ruling in the Quebec litigation. Grand Riverkeeper Labrador, Inc.
12 clarifies that it is not asking Hydro to comment on the validity of the claims but asks Hydro to
13 confirm or correct the summary of the nature of the Hydro-Quebec claims. The revised
14 submissions do not change this position.

15
16 In Order No. P.U. 41(2014) the Board denied Hydro's challenge to GRK-NLH-21 and 24 to the
17 extent that the responses address the availability of a reliable and adequate supply of power to
18 the Island Interconnected system associated with the risks of scenarios outlined. The Board
19 found that the consequences of an unfavourable ruling in relation to the Quebec litigation may be
20 relevant to the issue of reliable and adequate power on the Island Interconnected system and that,
21 to the extent that the information requested relates to the implications on the power available on
22 the Island Interconnected system, some aspects may be relevant. The revised answers to GRK-
23 NLH-21 and 24 provide a short explanation as to the impact of an unfavourable ruling in the
24 Quebec litigation and the alternatives available for Hydro. The Board finds this explanation
25 adequate for the purposes of this review and answers the issue which the Board found in Order
26 No. P.U. 41(2014) should be addressed in the response. Therefore the Board does not accept the
27 motion of Grand Riverkeeper Labrador, Inc. with respect to GRK-NLH-21 and 24.

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30 GRK-NLH-45, 46 and 57

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32 Grand Riverkeeper Labrador, Inc. argues in its motion that the responses filed by Hydro to GRK-
33 NLH-45, 46 and 57 are non-responsive.

34
35 Hydro submits that it has provided an appropriate response to GRK-NLH-45, 46 and 57 and
36 explains that a progressive failure of the North Spur would have a similar impact to a dam
37 breach. Hydro also notes that the responses make reference to GRK-NLH-44, which sets out
38 Hydro's options in the event of a dam breach. Hydro further notes its response to PUB-NLH-210
39 in relation to the Independent Engineer's report for the Lower Churchill Project.

40
41 The Consumer Advocate states that, in relation to GRK-NLH-45, 46 and 57, detailed technical
42 information or reports are not required but Hydro should answer the specific question of whether
43 any studies have been completed and if not why, whether Hydro or its parent company has
44 evaluated the risk of retrogressive spreads, downhill progressive landslides or "*bottleneck slides*"
45 at the North Spur site, and whether there has been an independent third party review.

1 Grand Riverkeeper Labrador, Inc. submits on January 21, 2015 that these requests are primarily
2 of a “yes” or “no” nature which would not require the production of detailed technical
3 information.

4
5 In Order No. P.U. 41(2014) the Board found that GRK-NLH-45 and 46 seek very specific
6 information in relation to the technical issues associated with the North Spur which is beyond the
7 scope of the investigation but, to the extent that the information sought may relate to issues
8 associated with the risks to the adequate and reliable supply on the Island Interconnected system
9 and how these risks have been addressed, this information may be relevant. The Board clarified
10 that it was not necessary for Hydro to provide detailed technical information or reports related to
11 engineering and construction issues but rather should direct its responses to the risks and
12 consequences to the Island Interconnected system of the scenarios and issues raised. In relation
13 to GRK-NLH-57 the Board found that the requested information may be relevant to the issue of
14 assessment of risk and that the response should address the consequences regarding the
15 availability of a reliable and adequate supply of power to the Island Interconnected system. The
16 Board agrees with Grand Riverkeeper Labrador, Inc. and the Consumer Advocate that Hydro
17 should provide further information in relation to these requests. The Board accepts the motion of
18 Grand Riverkeeper Labrador, Inc. in relation to GRK-NLH- 45, 46 and 57.

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21 GRK-NLH-60 and 63

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23 On July 7, 2014 Hydro filed a motion challenging certain requests for information filed by
24 Danny Dumaresque and Grand Riverkeeper Labrador, Inc. on the basis that the questions were
25 outside the scope of the proceeding. While the motion was under consideration Grand
26 Riverkeeper Labrador, Inc. filed supplementary requests for information.

27
28 On October 1, 2014 Hydro wrote the Board in relation to two of the supplementary requests for
29 information submitting that these requests for information were subject to the Board’s
30 determination in Hydro’s July 7, 2014 motion.

31
32 On October 3, 2014 Grand Riverkeeper Labrador, Inc. wrote the Board asking that Hydro’s
33 request be disregarded and submitting that Hydro cannot argue that the two identified
34 supplemental requests for information are outside of the scope of the investigation.

35
36 On October 16, 2014 the Board issued Order No. P.U. 41(2014) in relation to the requests for
37 information from Grand Riverkeeper Labrador, Inc. challenged by Hydro but did not address the
38 two supplementary requests for information.

39
40 On October 21, 2014 Grand Riverkeeper Labrador, Inc. wrote the Board re-numbering and
41 providing further comments on the two supplementary requests for information. In relation to
42 GRK-NLH-60 Grand Riverkeeper Labrador, Inc. states that, since the request speaks directly to
43 the risks to the Island Interconnected system, it should be allowed. In relation to GRK-NLH-63,
44 Grand Riverkeeper Labrador, Inc. states that there is nothing in Order No. P.U. 41(2014) to
45 support Hydro’s request to disallow this request. According to Grand Riverkeeper Labrador, Inc.

1 it “requests that NLH explain its understanding of contractual provisions it has already tabled
2 as evidence.”
3

4 On October 23, 2014 Hydro advised that it intended to provide a response to GRK-NLH-60 but
5 reiterated its objection with respect to GRK-NLH-63, stating:
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7 *...the GRK has requested Hydro to provide a legal interpretation of a provision of the*
8 *Muskrat Falls Power Purchase Agreement in the context of a widely stated hypothetical*
9 *involving the “unavailability of the power and energy foreseen under the Water*
10 *Management Agreement in the event of a judicial decision modifying, abrogating or*
11 *interfering with the expected operation of said Agreement”. In its Motion Order the*
12 *Board stated that “questions that are too broad or detailed so as to be unhelpful and*
13 *potentially burdensome to produce should not be allowed”. Hydro respectfully submits*
14 *that without knowing the specific terms of or impact of any hypothetical judicial decision*
15 *it is unable to provide a reasoned response to RFI GRK-NLH-63 and furthermore that*
16 *the question calls for a legal interpretation that would need to be fully analysed in the*
17 *specific context and cannot be properly or helpfully answered in the case of a vague*
18 *hypothetical situation.*
19

20 On October 25, 2014 Grand Riverkeeper Labrador, Inc. wrote the Board submitting that GRK-
21 NLH-63 is a reasonable question. Grand Riverkeeper Labrador, Inc. agrees that the request is
22 hypothetical but states that it is not vague, as claimed by Hydro. According to Grand
23 Riverkeeper Labrador, Inc. the relevance of the question posed was recognized by the Board in
24 Order No. P.U. 41(2014) when the Board acknowledged that the consequences of an
25 unfavourable ruling in the Quebec litigation may be relevant to the issue of reliable and adequate
26 power on the Island Interconnected system. Grand Riverkeeper Labrador, Inc. states:
27

28 *The RFI does ask Hydro to explain its interpretation of one aspect of the Muskrat Falls*
29 *PPA. Given the central role of that PPA in providing reliable and adequate power on the*
30 *Island Interconnected System and presuming that Hydro understands the contract,*
31 *requesting an interpretation is, in our view, entirely reasonable.*
32

33 On January 7, 2015, following Hydro’s response to GRK-NLH-60, Grand Riverkeeper Labrador,
34 Inc. filed supplemental pleadings asking that Hydro be required to provide full and complete
35 responses to the second and last bullets of GRK-NLH-60. Grand Riverkeeper Labrador, Inc.
36 submits that the request does not seek detailed technical information but requests Hydro’s
37 estimate of the likelihood of the risks occurring. Further Grand Riverkeeper Labrador, Inc.
38 submits that Hydro misunderstood the last bullet of the question and clarifies that it seeks
39 information related to Hydro’s inability to provide the expected power and energy to the Island
40 in the event of an unfavourable ruling in the Quebec litigation.
41

42 Hydro explains in its January 14, 2015 submission in relation to GRK-NLH-60 that, as is the
43 case for all of its dams, it has not assigned a forced outage probability to events concerning the
44 integrity of the Muskrat Falls reservoir. Further Hydro explains that it does not assign forced
45 outage probabilities to matters of contractual interpretation and does not believe that forced
46 outage rates would be meaningful in such regard. Hydro did not provide additional comments in
47 relation to GRK-NLH-63 in its submission.

1 In his January 19, 2015 submission the Consumer Advocate states that Hydro should file a
2 revised response to GRK-NLH-60 containing the clarification set out in its response. The
3 Consumer Advocate agrees with Hydro that GRK-NLH-63 seeks a legal interpretation and is
4 beyond the scope of this investigation.

5
6 Grand Riverkeeper Labrador, Inc. submits that Hydro's response to GRK-NLH-60 should be
7 restated in a revised response to the request for information. Grand Riverkeeper Labrador, Inc.
8 did not provide additional comments in relation to GRK-NLH-63 in its submission.

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10 The Board agrees with Grand Riverkeeper, Labrador, Inc. and the Consumer Advocate that
11 Hydro should file a revised response to GRK-NLH-60 and therefore accepts the motion filed by
12 Grand Riverkeeper Labrador, Inc. in relation to GRK-NLH-60. With respect to GRK-NLH-63
13 the Board agrees with Hydro that the question calls for Hydro to provide an interpretation in
14 relation to the provisions of the power purchase agreement, which the Board does not believe
15 would be relevant or useful in this proceeding. The Board denies the Grand Riverkeeper
16 Labrador, Inc. motion with respect to GRK-NLH-63 and will not require Hydro to respond to
17 this request.

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20 GRK-NLH-66, 69 and 74

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22 Grand Riverkeeper Labrador, Inc. submits in its motion filed on December 22, 2014 that the
23 information requested in GRK-NLH-66, 69 and 74 was not provided. In relation to GRK-NLH-
24 74 Grand Riverkeeper Labrador, Inc. submits that it is important to understand the reliability
25 implications of an outage longer than two weeks, should one occur.

26
27 Hydro submits that its responses to GRK-NLH-33 and PUB-NLH-299 are fully responsive to
28 GRK-NLH-66 and confirms that it does not have a worst-case planning estimate in excess of two
29 weeks. In relation to GRK-NLH-69 Hydro notes that it responded to the question in relation to a
30 two-week outage. To be of further assistance Hydro provides a further explanation in its
31 submission that on average in excess of 1,400 GWh of energy would be in storage in Hydro's
32 on-Island reservoirs which, assuming no inflows, would be sufficient to generate 1,000 MW for
33 a period of approximately two months. In relation to GRK-NLH-74 Hydro notes that it
34 responded using the assumption of a two-week outage. Hydro further submits that to be of
35 further assistance it will prepare and file additional information on energy availability.

36
37 The Consumer Advocate notes that Hydro confirms in its submission that it does not have a
38 worst case planning estimate in excess of two weeks and submits that given this clarification
39 Hydro should file a revised reply to GRK-NLH-66 and 69 which confirms this and no further
40 information would be required. The Consumer Advocate notes that Hydro clarifies in its
41 submission that it would be filing additional information on energy availability and further states
42 that he does not have any submission in relation to GRK-NLH-74.

43
44 Grand Riverkeeper Labrador, Inc. submits that Hydro's response to GRK-NLH-66 and 69 should
45 be restated in a revised response and reserves the right to file further requests for information
46 upon the filing of further information by Hydro in relation to GRK-NLH-74.

1 The Board agrees with Grand Riverkeeper Labrador, Inc. and the Consumer Advocate that
2 Hydro should file revised responses to GRK-NLH- 66 and 69 and notes that Hydro has agreed in
3 its submission to file additional information in relation to GRK-NLH-74. This information
4 should also be filed as a revision to responses to the request for information. The Board therefore
5 accepts the motion of Grand Riverkeeper Labrador, Inc. in relation to GRK-NLH-66, 69 and 74.
6
7

8 **IT IS THEREFORE ORDERED THAT:**
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- 10 1. The motion of Grand Riverkeeper Labrador, Inc. for an Order requiring Hydro to provide
11 full and complete responses to GRK-NLH-21, 24 and 63 is hereby denied.
12
13 2. The motion of Grand Riverkeeper Labrador, Inc. for an Order requiring Hydro to provide
14 full and complete responses to GRK-NLH-45, 46, 57, 60, 66, 69, and 74 is hereby
15 approved.

DATED at St. John's, Newfoundland and Labrador this 17th day of February 2015.

Andy Wells
Chair & Chief Executive Officer

Darlene Whalen, P.Eng.
Vice-Chair

Dwanda Newman, LL.B.
Commissioner

James Oxford
Commissioner

Cheryl Blundon
Board Secretary