

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

AN ORDER OF THE BOARD

NO. P.U. 20(2015)

1 **IN THE MATTER OF** the *Electrical Power Control*
2 *Act, 1994*, SNL 1994, Chapter E-5.1 (the “*EPCA*”)
3 and the *Public Utilities Act*, RSNL 1990, Chapter P-47
4 (the “*Act*”), and regulations thereunder; and
5

6 **IN THE MATTER OF** an application by Teck Resources
7 Limited for approval of an amendment to the rules and
8 regulations relating to service provided by Newfoundland
9 and Labrador Hydro.
10
11

12 **Background**
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14 On May 28, 2015 Teck Resources Limited (“Teck”) filed an application, pursuant to sections 71
15 and 76 of the *Act*, seeking approval of an amendment to the rules and regulations which relate to
16 the service provided to Teck by Newfoundland and Labrador Hydro (the “Application”). Teck
17 has been an industrial customer of Newfoundland and Labrador Hydro (“Hydro”) since January
18 17, 2006 as owner and operator of the Duck Pond Mine.
19

20 In Order No. P.U. 1(2006) the Board approved interim rates and interim rules and regulations for
21 service to Teck, which differed from those applicable to the other island industrial customers,
22 specifically with respect to the demand charges, based on the expected nature of Teck’s
23 operations in 2006 during construction, commissioning and testing. The interim rules allowed
24 Teck to pay demand charges based on its highest demand in that month as opposed to its highest
25 firm demand in that year, as is the case for Hydro’s other industrial customers. The rules and
26 regulations for Hydro’s provision of service to Teck, set out in its service agreement with Hydro
27 (the “Service Agreement”), were approved on a final basis by the Board in Order No. P.U.
28 1(2007). The Service Agreement provides that, commencing in 2007, Teck would transition to
29 the same demand charge structure in place for other industrial customers. Teck has continued to
30 receive service from Hydro since 2007 under this Service Agreement.
31

32 **The Application**
33

34 The Application requests approval to suspend article 2.02 of the Service Agreement, which sets
35 out that declarations of Power on Order may not provide for a decrease to take effect other than
36 on January 1st the following year. This amendment would permit Hydro to accept Teck’s
37 October 3, 2014 declaration of Power on Order and adjust Teck’s demand charges payable for
38 the period July to December 2015.

1 According to the Application Teck's Duck Pond Operations will cease mining and milling
2 operations on June 30, 2015 due to the exhaustion of all mineable reserves. From January 1 to
3 June 30, 2015 the Duck Pond Mill is expected to maintain the same throughput levels attained in
4 2014 and thereafter the site will only be operating an office type environment with a reduced
5 workforce until the demolition of buildings takes place, which is expected to be in the fall of
6 2016.

7
8 Teck states that Hydro has been aware, for some period of years, that the Duck Pond Mine
9 operations, and concomitantly, Teck's Power on Order (Demand) and Power Consumption,
10 would be phased down in or about 2015. On October 3, 2014 Teck formally advised Hydro that
11 its Power on Order required in 2015 would be 9500 kW per month from January to June; 3400
12 kW per month from July to September; and 1600 kW per month from October to December. On
13 November 4, 2014 Hydro advised that the declared amounts of Power on Order were contrary to
14 the Service Agreement and that Hydro did not have the authority to unilaterally amend the
15 Service Agreement as it had been approved by the Board.

16
17 Teck states that, in planning to extend its operations into 2015, it relied upon Hydro having
18 previously accepted, without question or comment, its projections that its Power on Order would
19 phase down in 2015. Teck submits that:

- 20
21 i) it has acted as a responsible industrial customer of Hydro, providing, in 2013, timely
22 notice to Hydro of its projection of a significant phase down in its Power on Order in
23 the course of 2015;
24 ii) failing to give effect to Teck's declaration that it will be phasing down its Power on
25 Order in 2015 would unfairly and unreasonably penalize Teck for acting as a
26 responsible employer and economic actor in the Province and would be inequitable
27 given the prior and timely notice to Hydro of the expected phase down;
28 iii) there is no fair or reasoned basis for treating Teck's planned phase down of
29 operations in 2015 differently from the planned phase in of its operation in 2006,
30 with respect to allowing for modification of Hydro's conventional demand charge
31 methodology to reasonably accommodate a planned phasing in to a stable level of
32 Power on Order;
33 iv) any financial or operational planning concerns of Hydro are mitigated by the timely
34 notice to Hydro of the projected phase down; and
35 v) the financial impact to Teck of not granting the requested relief would be substantial
36 and out of proportion to any detriment to Hydro.

37
38 Teck states that the total additional demand charges payable to Hydro using the 9500 kW annual
39 demand would be approximately \$280,000 under currently approved interim rates, and \$400,000
40 under the rates Hydro proposes in its most recent Interim Rate Application. Teck submits that, in
41 light of its actual Power on Order for the period July 2015 to December 2015 being a mere
42 fraction of the notional Power on Order imposed by Hydro's conventional demand charge
43 methodology, these additional demand charges would represent a patently unfair and
44 unjustifiable cost to Teck. The Application requests relief from the continuing imposition of
45 Hydro's conventional demand charge methodology for the period July 1, 2015 to December 31,
46 2015.

1 The Application was circulated to: Hydro, Newfoundland Power Inc. ("Newfoundland Power");
2 the Consumer Advocate, Mr. Thomas Johnson; Vale Newfoundland and Labrador Limited;
3 Corner Brook Pulp and Paper Limited; and NARL Refining Limited Partnership.
4

5 Requests for information were issued by Newfoundland Power to Teck and Hydro, which were
6 answered on June 15, 2015. On June 19, 2015 Hydro, Newfoundland Power and the Consumer
7 Advocate filed comments with the Board. On June 23, 2015 Teck filed a reply submission.
8

9 **Submissions**

10
11 Hydro submits that that Application should be denied and proposes to apply the terms of the
12 Service Agreement in a manner consistent with closures of other island industrial customers.
13 Hydro explains that Clause 2.02 of the Service Agreement does not provide for a decrease in
14 Power on Order during a calendar year and submits that not allowing a reduction during a
15 calendar year is reasonable and appropriate. Hydro states:
16

17 *Demand charges provide for the recovery of capacity-related costs. The capacity costs*
18 *incurred by Hydro to serve Industrial Customers are the result of investing in*
19 *transmission and generation assets to meet forecast system peak requirements. The*
20 *forecast system costs associated with meeting an Industrial Customer's load are based*
21 *upon that Industrial Customer's maximum annual demand requirement (i.e., their Power*
22 *on Order). On the Island Interconnected System, peak load occurs during the winter*
23 *season. However, capacity costs are recovered from customers on an annual basis*
24 *through monthly demand charges because the system has been sized to meet the*
25 *customers' coincident peak. Allowing an Industrial Customer to pay reduced demand*
26 *charges for a portion of the year subsequent to the establishment of that Industrial*
27 *Customer's annual peak does not provide for full recovery of the capacity costs incurred*
28 *to serve that customer. For this reason, the Service Agreements do not permit Industrial*
29 *Customers to reduce their Power on Order until the conclusion of the full calendar year.¹*
30

31 Hydro states that the practice of allowing a new customer to gradually ramp up its Power on
32 Order is different from allowing a reduction in Power on Order as a new customer going through
33 ramp up has yet to establish its expected peak load requirement and therefore the amount of cost
34 burden put on the system by that customer has not been established. Hydro further notes that
35 increases in Power on Demand are permitted under Clause 2.02.
36

37 Hydro submits that the Application is effectively requesting forgiveness of recovery of the
38 capacity costs which reflect the maximum demand requirement already established in 2015.
39 Hydro states that if the Application was to be approved the Board should also approve a deferral
40 account to facilitate the recovery of the lost revenue from the other Island Interconnected
41 customers.
42

43 Newfoundland Power submits that it would be consistent with regulatory practice for the Board
44 to enforce the Service Agreement without amendment. Newfoundland Power states that there is
45 no justification in the evidence that Newfoundland Power's customers should bear any portion of
46 the costs and that the Board should deny the Application.

¹ Hydro Submission, page 2.

1 The Consumer Advocate states that the Application should be denied and supports the comments
2 of Newfoundland Power.

3
4 In its reply submission Teck states that Hydro has not provided any data to support its position
5 that it is necessary to maintain a monthly demand of 9500 kW to achieve full recovery of
6 capacity costs incurred to service Teck in 2015 when Teck's actual demand will fall significantly
7 below this level for the last 6 months of 2015. Teck submits that it would be unreasonable for the
8 Board to accept this position in the absence of evidence from Hydro. Teck sets out its monthly
9 demand for the period of 2008 to March 2015 which shows:

- 10
11 i) Teck's monthly demand stayed in a fairly narrow band between 8,500 and 10,000
12 kW throughout each year, up to 2014;
13 ii) in most years, Teck's peak load occurred in November or December, not during the
14 first 6 months of the year; and
15 iii) Teck's actual monthly demand in January and February 2015 has remained below the
16 9500 kW requested by Teck in the fall of 2014.

17
18 Teck submits that its pattern of demand is inconsistent with any suggestion that it is attempting
19 to avoid the capacity costs incurred to serve it throughout 2015.

20
21 Teck also submits that there were no long-term capital investments made by Hydro to meet
22 Teck's demand that would not have been otherwise incurred to ensure the overall integrity of the
23 Isolated Island system and that there was sufficient notice to Hydro to provide ample opportunity
24 for Hydro to adjust and mitigate against any shorter-term costs that may have been attributable to
25 Teck's demand.

26
27 Teck submits that, if Hydro can demonstrate incremental capacity costs in respect of actual
28 service provided or will be provided to Teck in 2015 that will not be recovered by Hydro at the
29 levels of monthly demand requested by Teck to be effective July 1, 2015, the appropriate result
30 would be to adjust the monthly demand to the level necessary to effect Hydro's required
31 recovery.

32 33 **Board Findings**

34
35 In Order No. P.U. 1(2007) the Board approved the Service Agreement executed by Hydro and
36 Teck setting out the terms of the provision of service by Hydro to Teck. The relevant provisions
37 of the Service Agreement are:

- 38
39 2.02 Subject to Clause 2.06, the Customer shall declare to Hydro in writing, not later
40 than October 1 of each calendar year, its amount of Power on Order for the
41 following calendar year. Such declarations may provide for an Amount of Power
42 on Order to apply throughout the calendar year, or may provide for one or more
43 successive increases at specified times during the calendar year, but subject to
44 Clause 2.05, may not provide for a decrease other than a decrease to take effect
45 on January 1st of the following calendar year. The amount of Power on Order
46 shall in no event be greater than 15,000 kilowatts.

- 1 2.05 If the Customer obtains a new source of electric generation such that it can
2 decrease or eliminate the amount of Power it requires from Hydro, then, provided
3 the Customer gives Hydro thirty-six Month's written notice of the reduction, the
4 Customer may reduce or eliminate its Amount of Power on Order and its Billing
5 Demand effective on the date that the new generation is to go into service as
6 indicated in that written notice.
7
- 8 3.02 Subject to Clauses 2.05 and 2.06 and Article 10, the Customer's Billing
9 Demands, which shall each be charged at the applicable rates as approved by the
10 Board, shall comprise the following:
11 a) the Billing Demand for Firm Power, which in each Month shall be
12 either
13 i) the Amount of Power on Order,
14 ii) the lesser of 75% of the Amount of Power on Order for the
15 prior calendar year and, the Amount of Power on Order for the
16 prior calendar year less 20,000 kW,
17 or
18 iii) the Maximum Demand taken up to that time in that calendar
19 year less any Interruptible Demand, if applicable,
20 whichever is greatest; and
21 b) the maximum Interruptible Demand for that Month.
22
- 23 15.01 Except, where otherwise specifically provided in this Agreement and only to the
24 extent so provided, all previous communications between the parties to this
25 Agreement, either oral or written, with reference to the subject matter of this
26 Agreement, are hereby abrogated and this Agreement shall constitute the sole and
27 complete agreement of the parties hereto in respect of the matters herein set forth.
28
- 29 15.02 At any time during the currency of this Agreement, the Customer may terminate
30 it by giving to Hydro two years previous notice in writing of its intention so to do.
31
- 32 15.03 Any amendment, change or modification of this Agreement shall be binding upon
33 the parties hereto or either of them only if such amendment, change or
34 modification is in writing and is executed by each of the parties to this Agreement
35 by its duly authorized officers or agents in accordance with its regulations or by-
36 laws.
37
- 38 15.04 Subject to Article 10, if the Customer voluntarily or forcibly abandons its
39 operations, commits an act of bankruptcy or liquidates its assets, then there shall
40 forthwith, become due and payable to Hydro by the Customer, as stipulated and
41 liquidated damages without burden or proof thereof, a lump sum equal to:
42 (a) 0.85 of its then current Billing Demand for Firm Power, at the Firm
43 Power Demand charge, multiplied by 24
44 plus
45 (b) any remaining amounts payable pursuant to Article 3 of the
46 Interconnection Contribution Agreement.
47

48 The Board finds that the provisions of the Service Agreement are clear that the Power on Order
49 cannot be decreased throughout the year. This Service Agreement was executed by Hydro and
50 Teck and was approved by the Board in Order No. P.U. 1(2007). The Board notes that this
51 Service Agreement is consistent with the service agreements that are in place for Hydro's other

1 industrial customers. The Board finds that there is no question that Hydro's interpretation of the
2 Service Agreement is correct and that Hydro gave Teck notice of its position in November of
3 2014. The Board also notes that, according to NP-NLH-005, Hydro has taken the same approach
4 in dealing with the Power on Order for permanent closures of other industrial customers.
5

6 The Board notes that Hydro is obligated under the *Act* to provide service which is safe and
7 adequate and just and reasonable. The capacity costs incurred by Hydro to serve industrial
8 customers are the result of Hydro's necessary investment in transmission and generating assets to
9 meet forecast annual peak requirements for those customers. These costs are recovered annually
10 through the monthly demand charges to each industrial customer based on their declared Power
11 on Order.
12

13 Teck argues that it provided timely notice of its phase down and that, because its actual Power on
14 Order for the period July 2015 to December 2015 is a mere fraction of the notional Power on
15 Order, the additional demand charges would represent a patently unfair and unjustifiable cost.
16 Teck submits that Hydro's approach would result in additional demand charges to Teck of
17 \$280,000 to \$400,000 and that Hydro has not provided any data to demonstrate that the higher
18 monthly demand is necessary for full recovery of capacity costs. As the Applicant, the onus is on
19 Teck to demonstrate that the Service Agreement should be changed. The Board finds that Teck
20 did not justify a change to the provisions of the Service Agreement at this time. In particular,
21 Teck did not demonstrate that the provisions of the approved Service Agreement are unfair or
22 unreasonable or that there has been a change in circumstances warranting an amendment to the
23 Service Agreement.
24

25 Teck submits that it relied upon the fact that Hydro accepted without question or comment its
26 projections that its Power on Order would phase down in the course of 2015. The Board notes
27 that Hydro provided notice to Teck in November 2014 of its position. The Board does not accept
28 that it was reasonable for Teck, a corporate party to a clear and unambiguous Service
29 Agreement, to act in reliance on Hydro's silence, especially given that the Service Agreement
30 sets out that any change must be in writing and signed by the parties.
31

32 The Board is satisfied that Hydro's treatment of Teck's reduction in Power on Order is in
33 accordance with the terms of the Service Agreement and that Teck has not justified the proposed
34 amendment to the Service Agreement.
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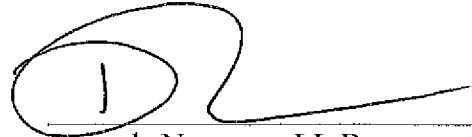
37 **IT IS THEREFORE ORDERED THAT:**
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- 39 1. The Application to amend the Service Agreement between Teck Resources Limited and
40 Newfoundland and Labrador Hydro is denied.

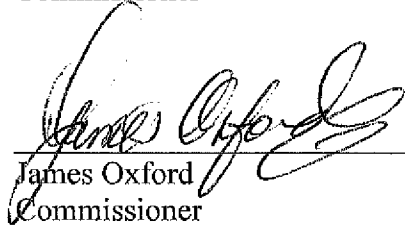
DATED at St. John's, Newfoundland and Labrador, this 30th day of June, 2015.



Darlene Whalen, P.Eng.
Vice-Chair



Dwanda Newman, LL.B.
Commissioner



James Oxford
Commissioner



Cheryl Blundon
Board Secretary