

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

**AN ORDER OF THE BOARD**

**NO. P.U. 41(2018)**

1 **IN THE MATTER OF** the Electrical Power  
2 *Control Act, 1994*, SNL 1994, Chapter E-5.1  
3 (the “*EPCA*”) and the *Public Utilities Act*,  
4 RSNL 1990, Chapter P-47 (the “*Act*”), as  
5 amended, and regulations thereunder; and  
6

7 **IN THE MATTER OF** an application from  
8 Newfoundland and Labrador Hydro for  
9 approval of a Pilot Agreement for the  
10 Optimization of Hydraulic Resources, a  
11 Hydraulic Resources Optimization Deferral  
12 Account, and revised Rate Stabilization Plan  
13 rules; and  
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15 **IN THE MATTER OF** an application from  
16 Newfoundland and Labrador Hydro requesting  
17 that a portion of the response to a request for  
18 information relating to the above application  
19 be considered confidential.  
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22 **Background**

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24 Newfoundland and Labrador Hydro (“Hydro”) filed an application to the Board for approval of a  
25 Pilot Agreement for the Optimization of Hydraulic Resources, a Hydraulic Resources  
26 Optimization Deferral Account, and revised Rate Stabilization Plan rules, dated August 23, 2018  
27 (the “Pilot Agreement Application”).  
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29 On September 6, 2018 the Board submitted requests for information (“RFIs”). On September 11,  
30 2018 Newfoundland Power submitted RFIs.  
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32 Hydro responded to all the RFIs on September 20, 2018 except PUB-NLH-015.  
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34 **Application**

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36 On September 21, 2018 Hydro filed an application for an Order determining that a portion of the  
37 response to PUB-NLH-015 be considered to be confidential and that the Intervenor’s access to  
38 the confidential information be governed by the terms of an undertaking to be executed by the

1 Intervenor's representatives prior to their receipt of that confidential information (the  
2 "Application").

3  
4 The Application stated that Hydro, as a fully regulated public utility, acknowledges the  
5 importance of transparency but that there are exceptional circumstances where economic  
6 regulators should respect the business realities of the parties that appear before it or which are  
7 affected by its proceedings. The Application submitted that the information that is the subject of  
8 the Application is such an exceptional circumstance; that the public's interest in transparency is  
9 outweighed by the value to the parties and their customers if confidential business relationships  
10 and information are maintained.

11  
12 The Application explained that the information which is requested to be treated as confidential  
13 in PUB-NLH-015 relates to energy purchases made on behalf of Hydro by Nalcor Energy  
14 Marketing ("NEM") from energy suppliers outside the province. The Application stressed that  
15 bilateral transactions between energy traders are treated as highly confidential within energy  
16 markets and that their disclosure can be damaging to the parties.

17  
18 The Application added that disclosure of the information in question would provide  
19 competitors with information that could prejudice Hydro's ability to procure the most cost-  
20 effective energy. The Application asserted that it is necessary to withhold this commercially-  
21 sensitive trading information from public distribution to protect the interests of Hydro's  
22 customers.

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24 The Application was circulated to the Consumer Advocate, Mr. Dennis Browne, Q.C.;  
25 Newfoundland Power Inc.; a group of Island Industrial customers: Corner Brook Pulp and Paper  
26 Limited, NARL Refining Limited Partnership, and Vale Newfoundland and Labrador Limited;  
27 Teck Resources Ltd; and Praxair Canada Inc.

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29 On October 18, 2018 Hydro filed a submission noting that the parties did not file comments and  
30 requested that the Application be approved as submitted.

### 31 **Board Findings**

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34 The information in PUB-NLH-015 which Hydro has applied to have treated as confidential  
35 pertains to energy pricing and the Board agrees that the information in question is of a  
36 commercially-sensitive nature. The Board finds that this information should be considered to be  
37 confidential on the basis that disclosure of this information could provide energy suppliers with  
38 competitive data and could negatively affect current as well as future energy negotiations thereby  
39 potentially impairing Hydro's ability to procure the most cost effective energy.

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41 The Board is satisfied that the risk of harm associated with the release of this information  
42 outweighs the interest of transparency in the circumstances and that the confidentiality  
43 undertaking is a reasonable accommodation which would permit full disclosure to the parties.

1 **IT IS THEREFORE ORDERED THAT:**  
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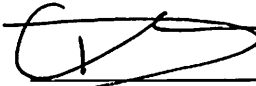
- 3 1. The redacted portion of Hydro's response to PUB-NLH-015 shall be considered to be  
4 confidential and shall be released to the Intervenor's representatives upon the execution of  
5 the confidentiality undertaking proposed by Hydro.  
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7 2. Hydro shall pay all expenses of the Board arising from this Application.

**DATED** at St. John's, Newfoundland and Labrador, this 29<sup>th</sup> day of November, 2018.



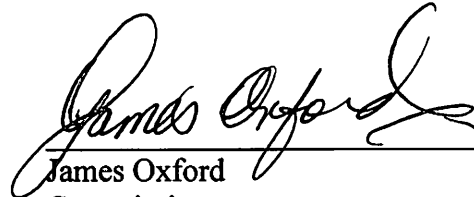
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Darlene Whalen, P. Eng., FEC  
Chair & CEO



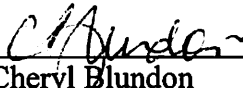
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Dwanda Newman, LL.B.  
Vice-Chair



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James Oxford  
Commissioner



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Cheryl Blundon  
Board Secretary