

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

**AN ORDER OF THE BOARD**

**NO. P.U. 29(2020)**

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*, RSNL  
4 1990, Chapter P-47 (the “*Act*”), as amended,  
5 and regulations thereunder; and  
6

7 **IN THE MATTER OF** an Application by  
8 Newfoundland and Labrador Hydro for the  
9 disposition of the balance in a deferral account  
10 approved in Order No. P.U. 3(2020) for savings  
11 associated with a firm energy purchases from  
12 Corner Brook Pulp and Paper Limited.  
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14

15 **Background**  
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17 In Order No. P.U. 35(2019) the Board approved a firm energy power purchase agreement (“Firm  
18 Energy PPA”) between Newfoundland and Labrador Hydro (“Hydro”) and Corner Brook Pulp and  
19 Paper Limited (“CBPP”). In this order the Board found that purchases pursuant to the Firm Energy  
20 PPA combined with economic purchases via the Maritime Link would offset generation at the  
21 Holyrood Thermal Generating Station while at the same time supporting Hydro’s hydrological  
22 storage position for the winter 2019-2020. The Board was satisfied that the costs of purchases  
23 pursuant to the Firm Energy PPA were favourable as compared to generation at the Holyrood  
24 Thermal Generating Station. In Order No. P.U. 3(2020), the Board approved a Firm Energy Power  
25 Purchase Deferral Account (“Deferral Account”) for savings associated with the Firm Energy  
26 PPA.  
27

28 **Application**  
29

30 On July 24, 2020 Hydro filed an application requesting the Board’s approval of the disposition of  
31 the balance in the Deferral Account in the amount of \$1,475,512 (the “Application”). The  
32 Application stated that this amount was calculated based on the difference between the cost of  
33 purchases under the Firm Energy PPA and the cost of generation at the Holyrood Thermal  
34 Generating Station.  
35

36 The Application proposed that the balance in the Deferral Account be applied to the Newfoundland  
37 Power RSP Current Plan balance to ensure that customers of Newfoundland Power Inc.  
38 (“Newfoundland Power”) would not be disadvantaged as a result of the Firm Energy PPA. The

1 Application stated that applying the balance of the Deferral Account to the Newfoundland Power  
2 RSP Current Plan Balance is consistent with Order No. 43(1976) and Order No. 20(1977) (the  
3 “1976-1977 Orders”). In Order No. 43(1976) the Board approved the terms for the sale of the  
4 distribution assets of Bowater Power Company Limited (“Bowater Power”, now CBPP) and also  
5 ordered that all energy generated by Bowater Power, surplus to its own requirements, be sold to  
6 Newfoundland Light and Power Ltd. (“Light and Power”, now Newfoundland Power). In Order  
7 No. 20(1977) the Board approved that Bowater Power sell its surplus firm power to Light and  
8 Power and its surplus secondary power to Hydro. According to the Application there have been no  
9 firm energy sales from CBPP to Newfoundland Power in many years. In terms of secondary  
10 energy, Hydro has since 1978 charged a firming-up charge to convert secondary energy purchases  
11 from CBPP to meet the firm energy requirements of Newfoundland Power. The Application stated  
12 that the savings from firm-up purchases under a secondary energy agreement with CBPP are a  
13 direct flow through to the customers of Newfoundland Power.  
14

15 The Application was copied to Newfoundland Power; the Consumer Advocate, Dennis Browne,  
16 Q.C.; a group of Island Industrial customers: CBPP, NARL Refining Limited Partnership  
17 (“NARL”) and Vale Newfoundland and Labrador Limited (“Vale”); a group of Labrador towns  
18 and communities including Wabush, Labrador City, Happy Valley-Goose Bay and Sheshatshiu;  
19 and Teck Resources Limited.  
20

21 Requests for information (“RFIs”) were issued by the Board, and NARL and Vale which were  
22 answered by Hydro on August 19, 2020. Newfoundland Power filed a written submission on  
23 August 26, 2020. On the same date, a joint written submission was filed by NARL and Vale, while  
24 CBPP filed its own separate submission. Hydro filed a reply submission on August 31, 2020.  
25

## 26 **Submissions**

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28 Newfoundland Power advised that it supported the Firm Energy PPA because power purchases  
29 under the agreement would benefit the Island Interconnected system by offsetting generation at  
30 Holyrood and minimizing overall supply costs. Newfoundland Power explained that it had  
31 originally expressed concern when Hydro requested the Board’s approval of the Firm Energy PPA  
32 because this agreement would potentially result in less savings for Newfoundland Power  
33 customers as a result of the loss of purchases of secondary energy while the Firm Energy PPA was  
34 in effect. Newfoundland Power submitted that the disposition of the Deferral Account balance of  
35 \$1,475,512 to the Newfoundland Power RSP Current Plan balance was reasonable and should be  
36 approved as it ensures Newfoundland Power’s customers are not disadvantaged as a result of the  
37 loss of potential savings from purchases of secondary energy.  
38

39 CBPP, a party to the Firm Energy PPA, submitted that the *EPCA* changed the legal ownership and  
40 transactions required to enact a power sale and also changed the substance and content of the  
41 earlier contracts and agreements previously approved by the Board. According to CBPP  
42 transactions can no longer occur as contemplated by those contracts and agreements (e.g., firm  
43 power sales from CBPP direct to Newfoundland Power) and, as such, any guidance provided by  
44 those contracts regarding the distribution of benefits is of little or no relevance. In CBPP’s view,  
45 the rights to the benefits from secondary power transactions are of no relevance in this matter as  
46 the power sale was not a secondary sale and would not have been completed as a secondary sale.

1 CBPP submitted that the Board should make a determination that is consistent with the *EPCA* and  
2 the power policy of the Province and takes no position in this regard.

3  
4 NARL and Vale submitted that the savings realized as a result of the Firm Energy PPA should be  
5 allocated using the same methodology as if the Firm Energy PPA was included in the definition  
6 of the (Revised) Energy Supply Cost Variance Deferral Account (“ESCVDA”). This would result  
7 in the balance in the Deferral Account being allocated to all customers within the Island  
8 Interconnected system based on comparative energy ratios. They stated that Hydro’s response to  
9 PUB-NLH-002 makes it clear that Hydro viewed the Firm Energy PPA as part of its planning and  
10 efforts to secure hydrological energy in storage for the Island Interconnected system and, as such,  
11 it falls within the objectives of the ESCVDA. They submitted that Hydro’s proposal to allocate the  
12 savings in the Deferral Account to Newfoundland Power is not mandated by the 1976-1977 Orders,  
13 and the Board has full jurisdiction to allocate the balance in the Deferral Account as it deems fit.  
14 In the alternative, if the Board determined that it was bound by the 1976-1977 Orders, they  
15 submitted that the 1976-1977 Orders should be amended to be consistent with the *EPCA*, including  
16 the power policy of the Province. NARL and Vale stated:

17  
18 With respect, Board Orders which are almost a half a century old, reflective of a very  
19 different utility and regulatory landscape which has been fundamentally altered in form  
20 and substance by the *EPCA* and the regulatory scheme enacted under the power policy  
21 established by the *EPCA*, should not be allowed to dictate anomalous or absurd regulatory  
22 results.<sup>1</sup>  
23

24 NARL and Vale submitted that the savings should be allocated in the same manner as if the Firm  
25 Energy PPA was included in the ESCVDA and that the Board has the jurisdiction to amend the  
26 ESCVDA. They submitted that this allocation would be the most consistent with the power policy  
27 established by the *EPCA* and with generally accepted sound utility practice, as tested before the  
28 Board.

29  
30 In its reply submission Hydro noted that the Firm Energy PPA could have the effect of reducing  
31 secondary energy purchases from CBPP in the future to the detriment of Newfoundland Power.  
32 Hydro stated that the debate in this Application focuses on how the savings in the Deferral Account  
33 should be shared. The question is whether Hydro is bound by the 1976-1977 Orders to apply the  
34 savings to Newfoundland Power exclusively or whether the savings should be shared as if the Firm  
35 Energy PPA was included as a source in the ESCVDA. Hydro stated that there is merit in the  
36 position of NARL and Vale that the savings in the Deferral Account should be shared by all  
37 customers on the Island Interconnected system, as if the Firm Energy PPA was included in the  
38 definition of the ESCVDA as an energy source. Hydro also stated that, there is merit in  
39 Newfoundland Power’s submission that the savings in the Deferral Account should be allocated  
40 to Newfoundland Power to ensure that its customers are not negatively impacted by a potential  
41 reduction in future secondary energy purchases. Hydro stated that, under normal circumstances in  
42 which no Board Order exists setting the conditions for the disposition of benefits for power  
43 purchases, Hydro would propose to share the Holyrood fuel savings that result from the lower cost  
44 power purchases among all customers of the Island Interconnected system. However, Hydro stated  
45 that this is not the case because it is bound by the 1976-1977 Orders. Hydro stated that it agreed

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<sup>1</sup> NARL and Vale submission, page 4.

1 with the comments of the Island Industrial customers that the 1976-1977 Orders may be outdated  
2 and must be read in light of the subsequently enacted *EPCA*. Hydro also noted that it is within the  
3 Board's authority to deviate or vary from these orders, and should the Board decide to share the  
4 savings, Hydro has no objection. Hydro advised in its submission that similar purchases from  
5 CBPP are possible and likely in the future and asked the Board to provide clarification on the issue  
6 of fairness in potential cost savings to Hydro's customers.  
7

## 8 **Board Findings**

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10 The Firm Energy PPA was approved in Order No. P.U. 35(2019) on the basis that the purchases  
11 pursuant to the agreement would offset generation at the Holyrood Thermal Generating Station  
12 and the costs of these purchases were favourable. As stated by Hydro it has an obligation to source  
13 least-cost reliable power for the whole of its customer base, rather than on an individual customer  
14 basis. Hydro submitted:

15  
16 For Hydro to have ignored the opportunity to enter into the Firm Energy PPA with CBPP,  
17 the purpose of which was to supplement Hydro's efforts to secure hydrological storage for  
18 winter 2019-2020 via economic purchase over the Maritime Link to supplement or offset  
19 generation at the Holyrood Thermal Generating Station, would have been an abdication of  
20 Hydro's responsibility.<sup>2</sup>  
21

22 The question to be addressed in this Application is which customers should share in the savings  
23 which flowed from this agreement. Hydro acknowledged in the Application that the savings  
24 associated with the Firm Energy PPA do not flow directly through to customers of Newfoundland  
25 Power as do the savings from firmed-up purchases under its secondary energy agreement with  
26 CBPP. On this basis, to ensure that Newfoundland Power's customers would not be disadvantaged,  
27 Hydro proposed that the savings that resulted from the Firm Energy PPA should be applied to the  
28 benefit of Newfoundland Power. Hydro acknowledged that it could be argued that the savings  
29 should be shared by all customers on the Island Interconnected system but stated that it believes  
30 that it is at present bound by the 1976-1977 Orders.  
31

32 Since the 1976-1977 Orders were issued the power policy of the Province has changed and the  
33 provisions of the *EPCA* have been amended so that Hydro has the exclusive right to sell electrical  
34 power or energy to Newfoundland Power. While the 1976-1977 Orders approved the sale of  
35 surplus power from Bowater Power to Light and Power, in accordance with the legislation, firm  
36 and secondary energy sales to serve the Island Interconnected system now flow through Hydro.<sup>3</sup>  
37 The Board concludes that, in light of the legislative changes, Hydro is not bound by the 1976-1977  
38 Orders with respect to the sale of CBPP's surplus firm power to Newfoundland Power. While  
39 Hydro suggested that flowing the savings of the Firm Energy PPA to Newfoundland Power would  
40 provide an end-result that is consistent with the current treatment of secondary energy sales, Hydro  
41 did not demonstrate that this is required. In the absence of such a requirement, variances associated  
42 with power purchases on the Island Interconnected system would normally flow through to the  
43 customers on the system. As explained by Hydro:

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<sup>2</sup> Hydro's submission page 2.

<sup>3</sup> Section 14.1(1)(a).

1 Under normal circumstances in which no Board Order exists which sets forth the conditions  
2 for the disposition of benefits for power purchases, Hydro would propose to share among  
3 all Island Interconnected customers the Holyrood fuel savings that result from the lower  
4 cost power purchases.<sup>4</sup>  
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6 This approach is consistent with generally accepted sound public utility practice which provides  
7 that the costs and benefits of supplying customers on a system should be allocated to those  
8 customers. Based on the information which was provided the Board sees no reason why the savings  
9 associated with the Firm Energy PPA should not be allocated to the Island Interconnected system  
10 in accordance with usual practice and generally accepted sound public utility practice.  
11

12 The Board notes that if the savings associated with the Firm Energy PPA are now directed to be  
13 flowed through to Island Interconnected customers using the ESCVDA, the savings would be  
14 allocated and dispersed on the basis of the 2020 energy ratios. Since the savings relate to firm  
15 energy purchases in 2019 the Board believes that the 2019 energy ratios should be used to allocate  
16 the savings to customers on the Island Interconnected system. As such the Board will direct that  
17 the amount of the savings associated with the Firm Energy PPA should be shared among all Island  
18 Interconnected customers in a manner consistent with the fuel cost allocation methodology in the  
19 RSP using the 2019 energy ratios and be applied to the 2020 RSP Current Plan balances.  
20

21 In terms of future agreements which may be approved for firm energy purchases from CBPP the  
22 Board believes that the variances associated with these purchases should be flowed through the  
23 ESCVDA in the same way that other energy variances on the Island Interconnected system are  
24 treated. As the variances associated with the Firm Energy PPA are not included in the approved  
25 definition of the ESCVDA, Hydro will be required to file revised language for this account for the  
26 approval of the Board.

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<sup>4</sup> PUB-NLH-004, page 2.

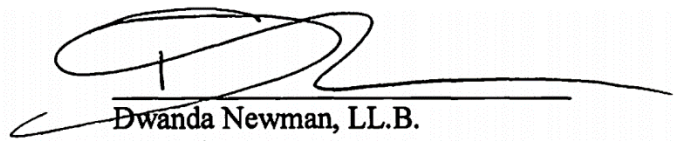
**IT IS THEREFORE ORDERED THAT:**

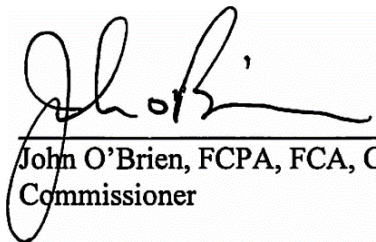
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1. The balance of \$1,475,512 in the Firm Energy Power Purchase Deferral Account shall be shared among all Island Interconnected customers in a manner consistent with the fuel cost allocation methodology in the RSP using the 2019 energy ratios and be applied to the 2020 RSP Current Plan balances.
2. Hydro shall file for the approval of the Board a revised definition of the ESCVDA to provide for the flow through of variances associated with future agreements which may be approved for firm energy purchases from CBPP.
3. Hydro shall pay all expenses of the Board arising from this Application.

**DATED** at St. John's, Newfoundland and Labrador, this 30<sup>th</sup> day of October, 2020.

  
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Darlene Whalen, P. Eng., FEC  
Chair and Chief Executive Officer

  
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Dwanda Newman, LL.B.  
Vice-Chair

  
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John O'Brien, FCPA, FCA, CISA  
Commissioner

  
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Cheryl Blundon  
Board Secretary