

April 15, 2019

Board of Commissioners of Public Utilities  
Prince Charles Building  
120 Torbay Road, P.O. Box 21040  
St. John's, NL A1A 5B2

Attention: Ms. Cheryl Blundon  
Director of Corporate Services & Board Secretary

Dear Ms. Blundon:

**Re: Application to Delay the Filing of Newfoundland and Labrador Hydro's Next General Rate Application**

Please find attached Newfoundland and Labrador Hydro's ("Hydro") application for delay in the filing of its next General Rate Application ("GRA").

On May 7, 2019, the Board of Commissioners of Public Utilities ("Board") issued Order No. P.U. 16(2019) setting out its determination and decisions with respect to Hydro's 2017 GRA ("2017 GRA Order"). In the 2017 GRA Order, the Board directed Hydro to file its next GRA no later than September 30, 2020 for rates based on a 2021 Test Year.

In the time since the 2017 GRA Order was issued, the Board has completed its Rate Mitigation Options and Impacts Reference Report ("Rate Mitigation Options Report"). The Board indicated that the Government of Newfoundland and Labrador's rate mitigation plan and associated policy issues should be reflected in Hydro's next GRA. Additionally, the Government of Newfoundland and Labrador and the Government of Canada have announced a plan to negotiate a financial restructuring of the Muskrat Falls Purchase Power Agreement.

As noted in the attached application, Hydro requires the above-noted information to prepare a GRA filing that would reasonably reflect the costs that Hydro will incur in providing electrical service to its customers for use in determining proposed customer rates. Hydro estimates that approximately nine months will be required to prepare its GRA filing subsequent to receiving the required information and, for those reasons, requests Board approval of a delay in the filing of the next GRA to a date no later than nine months from the date upon which the necessary information is available.

Should you have any questions, please contact the undersigned.

Yours truly,

**NEWFOUNDLAND AND LABRADOR HYDRO**



Shirley A. Walsh  
Senior Legal Counsel, Regulatory  
SAW/sk

Encl.

cc: **Newfoundland Power**  
Gerard M. Hayes

**Consumer Advocate**  
Dennis M. Browne, Q.C, Browne Fitzgerald Morgan & Avis

**Industrial Customer Group**  
Paul L. Coxworthy, Stewart McKelvey  
Denis J. Fleming, Cox & Palmer

**Praxair Canada Inc.**  
Sheryl E. Nisenbaum

ecc: **Board of Commissioners of Public Utilities**  
Jacqui Glynn  
PUB Official Email

**Newfoundland Power**  
Kelly C. Hopkins  
Regulatory Email

**Consumer Advocate**  
Stephen F. Fitzgerald, Browne Fitzgerald Morgan & Avis  
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Bernice Bailey, Browne Fitzgerald Morgan & Avis

**Industrial Customer Group**  
Dean A. Porter, Poole Althouse

**Iron Ore Company of Canada**  
Gregory A.C. Moores, Stewart McKelvey

**Labrador Interconnected Group**  
Senwung Luk, Olthuis Kleer Townshend LLP  
Chief Eugene Hart, Sheshatshiu Innu First Nation  
Cathy Etsell, Town of Labrador City  
Charlie Perry, Town of Wabush  
Randy Dillon, Town of Happy Valley-Goose Bay

**Teck Resources Limited**  
Shawn Kinsella



# Application to Delay the Filing of Newfoundland and Labrador Hydro's Next General Rate Application

**April 15, 2020**

An Application to the Board of Commissioners of Public Utilities





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

**IN THE MATTER OF** an Application by Newfoundland and Labrador Hydro (“Hydro”) for an Order to delay the filing of its next General Rate Application (“GRA”) pursuant to Sections 70, 71, and 76 of the *Act*.

**To: The Board of Commissioners of Public Utilities (“Board”)**

**THE APPLICATION OF NEWFOUNDLAND AND LABRADOR HYDRO STATES THAT:**

**A. Background**

1. Hydro is a corporation continued and existing under the *Hydro Corporation Act, 2007*, is a public utility within the meaning of the *Act*, and is subject to the provisions of the *EPCA*.
2. Section 3(a)(ii) of the *EPCA* requires that rates should be established, wherever practicable, based on forecast costs for the supply of power within the province for one or more years.
3. On May 7, 2019, the Board issued Order No. P.U. 16(2019) setting out its determination and decisions with respect to Hydro’s 2017 GRA (“2017 GRA Order”).
4. The 2017 GRA Order, amongst other things, directed Hydro to file its next GRA no later than September 30, 2020 for rates based on a 2021 Test Year.
5. At the time of the release of the 2017 GRA Order, the Muskrat Falls Project was scheduled for commissioning on September 1, 2020.

6. In the 2017 GRA Order, the Board acknowledged that “. . . there is a great deal of uncertainty as to a number of important factors that will have to be considered in the preparation . . .”<sup>1</sup> of the next GRA. In particular, the Board noted the material change to the forecast supply costs due to the commissioning of the Muskrat Falls Project. In light of that, the Board indicated that to the extent that circumstances change Hydro may apply to the Board to alter the stipulated filing date.

**B. Reasons for Filing Delay**

7. On February 7, 2020, the Board issued its report to the Government of Newfoundland and Labrador (“Government”) in relation to the Rate Mitigation Options and Impacts Reference proceeding (“Rate Mitigation Options Report”).<sup>2</sup> In that report, the Board indicated that the Government’s rate mitigation plan, once developed, and the various policy issues should be reflected in Hydro’s next GRA.
8. Hydro does not yet know which of the Board’s recommendations in the Rate Mitigation Options Report that the Government may implement or the details of the nature and timing of such implementation. The decisions of the Government regarding the Rate Mitigation Options Report recommendations can have a material impact on the Hydro’s 2021 Test Year revenue requirement.
9. On February 10, 2020, the Government of Newfoundland and Labrador and the Government of Canada announced a plan to negotiate a financial restructuring of the Muskrat Falls Purchase Power Agreement (“PPA”).
10. Without knowledge of the revised financial structure that will replace the internal rate of return model reflected in the current Muskrat Falls PPA, Hydro is unable to determine the power purchase costs associated with the Muskrat Falls PPA, which is anticipated to be the largest component of its revenue requirement for the 2021 Test Year.

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<sup>1</sup> *Newfoundland and Labrador Hydro – 2017 General Rate Application Order*, P.U. 16(2019), (*Public Utilities Act*) at p. 61/13–14.

<sup>2</sup> *Reference to the Board – Rate Mitigation Options and Impacts – Muskrat Falls Project: Final Report*, (Board of Commissioners of Public Utilities, February 7, 2020).

11. The completion of the financial restructuring of the Muskrat Falls PPA is required prior to completion of the Government's rate mitigation plan; both are required by Hydro to determine proposed customer rates to be included in Hydro's next GRA filing.
12. Additionally, on April 7, 2020, Hydro received a Notice of Force Majeure, pursuant to section 15.1 of the Muskrat Falls PPA, arising from the COVID-19 pandemic impact on Muskrat Falls Project construction. Under that notice, the Muskrat Falls Hydroelectric Generating Facility was placed into care and maintenance mode until such time that it is safe for the workers to return to the site to carry out their work. As a result, the Muskrat Falls Project will be unable to perform Development Activities under the Muskrat Falls PPA for an unidentified period of time. The impact of this action on commissioning is yet to be ascertained.
13. As noted herein, Hydro requires information regarding the Government's rate mitigation plan and the restructuring of the Muskrat Falls PPA to prepare a GRA filing that would reasonably reflect the costs that Hydro will incur in providing electrical service to its customers for use in determining proposed customer rates. Once the information required is made available, Hydro will need to determine its financial requirements for use in developing its test year revenue requirements, cost of service studies, and proposed customer rates to reflect in evidence supporting its GRA filing.
14. Hydro estimates that, subsequent to receiving all of the information described in this application, it will require a period of nine months to prepare its GRA filing.

**C. Test Year for GRA Filing**

15. As noted earlier, Paragraph 3(a)(iii) of the *EPCA* indicates that test years "wherever practicable" should be one or more forecast test years. The two circumstances where this requirement would not apply are:
  - (i) Where the Board is specifically directed otherwise under Section 5.1 of the *EPCA*; and
  - (ii) Where the Board in applying proper ratemaking principles deems that, for some reason, the use of a forecast test year is not practicable.

16. It remains probable that Hydro will incur costs in 2021 as a result of the commissioning of the Muskrat Falls Project. Therefore, although Hydro proposes to delay its GRA filing, Hydro is proposing to continue to require 2021 as a test year for use in determining the 2021 costs to be ultimately recovered from customers.
17. Given that Hydro's next GRA may not be filed until mid-2021, the completion of regulatory process may not conclude and permit final rate implementation until late 2022 or early 2023. Hydro does not yet have adequate information to determine if the use of a 2021 test year for rate-setting would provide Hydro a reasonable opportunity to recover its forecast costs for 2022 and 2023. Therefore, Hydro believes it would be appropriate for the Board to provide Hydro the opportunity to include an additional test year(s) in its next GRA filing.
18. The use of multiple test years would permit the use of: (i) a 2021 test year to determine any under-recovery of costs through customer rates in effect during 2021, and (ii) a separate test year as the basis for establishing future customer rates, including the incorporation of the rate mitigation plan to be released by the Government.

**D. Application Proposals**

19. Hydro is therefore proposing that the Board approve:
  - (i) Hydro's filing of its next GRA no later than nine months from the date upon which both the revised financial structure for the Muskrat Falls PPA and Government's rate mitigation plan have been finalized and publicly communicated; and
  - (ii) That the GRA filing should be based on a 2021 Test Year and additional test years, if required.
20. If Hydro were to file its next GRA as required by Order No P.U. 16(2019) by September 30, 2020:
  - (i) Hydro would not have the details of the Rate Mitigation options the Government may be implementing and, therefore, not have the relevant information to accurately project its test year revenue requirement;

- (ii) Hydro would not know the details of the revised structure of the Muskrat Falls PPA and, therefore, could not accurately project its test year revenue requirement;
- (iii) Hydro would not have the details on the rate mitigation funding available to use in developing proposed customer rates;
- (iv) Hydro would be required to refile its GRA at a later date to reflect up-to-date information as it is released;
- (v) Any necessary GRA refiling will result in regulatory inefficiencies and extend the duration of the GRA regulatory process; and
- (vi) Costs associated with the conduct of the application would be increased from what they would be otherwise.

21. Permitting Hydro to delay the filing of its next GRA and to reflect multiple test years in the delayed filing will permit the orderly establishment of rates to be charged to Hydro's customers, is consistent with regulatory efficiency, and is consistent with regulatory practice before the Board and the *EPCA*.

**E. Communications**

22. 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 15th day of April 2020

**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, Newfoundland, A1B 4K7  
Telephone: (709) 685-4973





## Affidavit



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

**IN THE MATTER OF** an Application by Newfoundland and Labrador Hydro (“Hydro”) for an Order to delay the filing of its next General Rate Application (“GRA”) pursuant to Sections 70, 71, and 76 of the *Act*.

**AFFIDAVIT**

I, Kevin Fagan, of St. John’s in the Province of Newfoundland and Labrador, make oath and say as follows:

1. I am Vice President, Regulatory and Customer Service for Newfoundland and Labrador Hydro, the Applicant named in the attached Application.
2. I have read and understand the foregoing Application.
3. I have personal knowledge of the facts contained therein, except where otherwise indicated, and they are true to the best of my knowledge, information and belief.

**SWORN** at St. John’s in the )  
Province of Newfoundland and )  
Labrador )  
this 15th day of April 2020, )  
before me: )



Barrister – Newfoundland and Labrador



Kevin Fagan