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**NEWFOUNDLAND AND LABRADOR  
REGULATION 4/09**

*Water Management Regulations*  
under the  
*Electrical Power Control Act, 1994*  
(O.C. 2009-016)

*(Filed January 16, 2009 )*

Under the authority of section 32 of the *Electrical Power Control Act, 1994*, the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's , January 16, 2009 .

Gary Norris  
Clerk of the Executive Council

**REGULATIONS**

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**Short title**

1. These regulations may be cited as the *Water Management Regulations*.

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**Definitions****2. In these regulations**

- (a) "Act" means the *Electrical Power Control Act, 1994* ;
- (b) "board" means the Board of Commissioners of Public Utilities for Newfoundland and Labrador ;
- (c) "deficiency" means a failure to satisfy the power generation and energy production requirements prescribed by an independent coordinator;
- (d) "good utility practice" means those practices, methods or acts, including but not limited to the practices, methods or acts engaged in or approved by a significant portion of the electric utility industry in Canada, that at a particular time, in the exercise of reasonable judgment, and in light of the facts known at the time a decision is made, would be expected to accomplish the desired result in a manner which is consistent with laws and regulations and with due consideration for reliability, safety, environmental protection, and economic and efficient operations.
- (e) "minister" means the minister appointed under the *Executive Council Act* to administer the Act;
- (f) "independent coordinator" means a person appointed under a water management agreement to impartially determine suppliers' power and energy production levels;
- (g) "production facilities" means all components of a hydro-electric generating facility including any transmission facilities associated with them;
- (h) "supplier" means a person owning rights to produce power from hydro-electric facilities on a body of water;
- (i) "transmission provider" means any entity that owns, operates or controls facilities used for the transmission of electric energy between or amongst production facilities on the same body of water; and
- (j) "water management agreement" means an agreement made under section 5.4 of the Act or imposed by the board under section 5.5 of the Act, in accordance with these regulations.

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**Objective of water management agreement**

**3. (1)** The objective of a water management agreement shall be the coordination of the power generation and energy production in the aggregate for all production facilities on a body of water to satisfy the delivery schedules for all suppliers on the body of water, in a manner that provides for the maximization of the long term energy-generating potential of a body of water, while ensuring that the provisions of a contract for the supply of power governed by section 5.7 of the Act are not adversely affected.

(2) To obtain the objectives in subsection (1) a water management agreement shall:

- (a) require that suppliers jointly and sufficiently fund the administration of the independent coordinator in proportion to the energy benefits obtained by each supplier from the administration of the water management agreement or according to that other methodology as may be agreed upon by suppliers and approved by the board, or in the absence of supplier agreement, imposed by the board, as the case may be;
- (b) require that suppliers provide the independent coordinator with:

- (i) demand requirements of contracts for the supply of power,
  - (ii) the power and energy generation capacity of each of the supplier's production facilities,
  - (iii) equipment maintenance requirements,
  - (iv) short and long term supplier forecast requirements,
  - (v) copies of a licence, lease or other instrument granting water rights,
  - (vi) plans and requirements respecting suppliers' construction or commissioning activities,
  - (vii) transmission availabilities, and
  - (viii) the forecast of inflows,
- and regularly update any changes to them, all prepared in a manner consistent with good utility practices;
- (c) require the independent coordinator, based on the information received in paragraph (b) and in the exercise of reasonable judgment, to establish short and long term production schedules for all production facilities on a body of water, through the coordination of production scheduling of the suppliers on the body of water based upon the use of the aggregate generating capacity, storage and transmission facilities of any supplier on the respective body of water, in accordance with the objectives of these regulations and with the water management agreement;
  - (d) require that suppliers adhere to the production schedules set by the independent coordinator in paragraph (c);
  - (e) provide that in no event shall:
    - (i) the power requests made to the independent coordinator by a supplier exceed the maximum power generating capability of the production facilities of that supplier for the period requested, and
    - (ii) the generating capacity, storage capacity, or transmission capability available to a supplier from all facilities on the body of water be less than the amounts of then available generating capacity, storage capacity, or transmission capability of the production facilities owned by that supplier on the body of water;
  - (f) require that information and data be shared between suppliers and by suppliers with the independent coordinator as is necessary for the independent coordinator to perform its functions under the agreement, including records, data, models, as well as physical and computer access to those facilities as are required to obtain and verify that information;
  - (g) require suppliers and the independent coordinator to maintain, for a period of not less than 7 years, records required of them to undertake their responsibilities under the agreement and these regulations which shall be available, upon request, to the board or minister;
  - (h) require an independent coordinator to
    - (i) provide suppliers with reports on its activities at regular intervals to be established in consultation with the suppliers,
    - (ii) provide to the minister, and, on request, the board, with an annual report summarizing its activities in a form acceptable to the minister;

(i) require that when a deficiency occurs, or is projected to occur:

- (i) appropriate adjustments shall be made to the power and energy production levels and schedules of all production facilities on that body of water to the extent practicable to remedy the deficiency or anticipated deficiency, and
- (ii) where a deficiency occurs despite subparagraph (i), and as a result of that deficiency, a supplier incurs damages under a provision of a contract for the supply of power entered into by a person bound by the water management agreement and a third party where that contract was entered into before the water management agreement, those costs shall be paid by the supplier who caused the deficiency;

(j) include mechanisms to appropriately assign energy storage amounts to each supplier for water stored in the body of water's reservoirs and, if water spillage occurs, to assign the lost energy fairly to each supplier;

(k) require that the amount of energy in storage shall be determined based upon average water to energy conversion rates for the respective production facilities calculated based upon the best data source available as tested in accordance with good utility practice;

(l) include an appropriate method that ensures that, at regular intervals not less frequently than annually, adjustments are made to a supplier's available energy for subsequent intervals for energy losses incurred in the previous period by each supplier as a result of changes to its energy capability caused by the application of the water management agreement;

(m) be governed by the laws of the province; and

(n) include those other provisions that the board determines are necessary or useful in achieving the objectives of the Act.

(3) Where suppliers agree and the board determines that the degree or amount of efficiencies to be gained through a water management agreement that complies with subsection 3(2) do not justify the costs of its implementation and administration, the board may approve or establish a water management agreement that does not comply with all of the elements of subsection 3(2), provided that the board is satisfied that the water management agreement it approves or establishes shall achieve the objectives of the Act.

(4) Each supplier, in complying with the requirements of subsection 3(2), shall:

(a) maintain its production facilities in serviceable and good repair; and

(b) operate its facilities in a manner not inconsistent with principles of good utility practice,

but notwithstanding any other provision of these regulations, nothing in these regulations shall require a supplier to operate or maintain facilities or portions of facilities which, but for the water management agreement, that supplier, acting reasonably, would no longer operate or maintain.

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### **Reasonable time**

4. For the purpose of subsection 5.5(1) of the Act, "a reasonable time" means 60 days.

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### **Application of regulations**

5. The *Board of Commissioners of Public Utilities Regulations, 1996* shall apply to the referral to the board of a proposed water management agreement under section 5.4 of the Act, or the filing of an application under subsection 5.5(1) of the Act, except to the extent these regulations deviate from it, or the board believes the process under those regulations are not necessary or useful, or would unnecessarily delay, the establishment of a water management agreement.

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### **Written submission**

6. Within 30 days of the referral to the board of a proposed water management agreement under section 5.4 of the Act, or the filing of an application under subsection 5.5(1) of the Act, the applicant and each affected supplier shall file a written submission with the board setting out:

- (a) the names of all suppliers on the body of water and all affected transmission providers;
- (b) a summary of the facts and the issues in dispute;
- (c) a proposed water management agreement;
- (d) copies of existing power contracts to which affected suppliers are a party; and
- (e) any other matter considered relevant.

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### **Time period**

7. Notwithstanding section 5, the board shall approve or establish a water management agreement within 120 days of the referral to the board of a proposed water management agreement under section 5.4 of the Act, or the filing of an application under subsection 5.5(1) of the Act.

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### **Determination of disputes**

8. Disputes between suppliers arising from the operation of a water management agreement or involving the interpretation or application of a water management agreement may be determined by the board upon application of one of the suppliers.

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### **Orders by board**

9. Upon an application under section 8, where the board determines that a supplier has failed to comply with a water management agreement, the board may issue those orders as are necessary to ensure compliance with it.

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