

Final Response

February 11, 2020

Dear Applicant:

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act, 2015 - FLR-8-2020

On January 14, 2020, the Department of Fisheries and Land Resources (FLR) received your request for access to the following records:

“DOC/2019/05571 Information Note - CBPPL Shutdown Proposal - November 21, 2019.”

Please be advised that a decision has been made by the Deputy Minister for FLR to provide access to the requested information. Redactions have been made under Section 29 – Policy advice or recommendations, Section 34 - Disclosure Harmful to Intergovernmental relations or Negotiations, and Section 39 – Third Party Harm and of the **Access to Information Protection of Privacy Act, 2015**. You will find a copy of responsive material attached.

Please be advised that you may appeal this decision and ask the Information and Privacy Commissioner to review the decision to provide partial access to the requested information, as set out in section 42 of the Act (a copy of this section of the Act has been enclosed for your reference). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The appeal may be addressed to the Information and Privacy Commissioner as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P.O. Box 13004, Stn. A
St. John's, NL. A1B 3V8

Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the *Act* (a copy of this section of the Act has been enclosed for your reference).

Please be advised that this letter will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. Please note that requests for personal information will not be posted online.

If you have any further questions, please contact me by telephone at 709-637-2354 or by email at Lisaneville@gov.nl.ca .

Sincerely, .



Lisa Neville
ATIPP Coordinator

Right of access

8. (1) A person who makes a request under section 11 has a right of access to a record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under this Act, but if it is reasonable to sever that information from the record, an applicant has a right of access to the remainder of the record.

(3) The right of access to a record may be subject to the payment, under section 25 , of the costs of reproduction, shipping and locating a record.

Access or correction complaint

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52 (1) or 53 (1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

- (8) A complaint shall not be filed under this section with respect to
 - (a) a request that is disregarded under section 21 ;
 - (b) a decision respecting an extension of time under section 23 ;
 - (c) a variation of a procedure under section 24 ; or
 - (d) an estimate of costs or a decision not to waive a cost under section 26 .
- (9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42 , the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45 (2).

Information Note
Department of Fisheries and Land Resources

Title: November 1, 2019 letter from Mr. Francois D'Amours, Senior Vice President Publication Papers, Kruger regarding Corner Brook Pulp and Paper Limited (CBPPL).

Issue: [REDACTED]

39(1)(a)(ii),
39(1)(b),
39(1)(c)(i),
39(1)(c)(ii)

Background:

- Due to oversupply in the newsprint market, CBPPL is [REDACTED]

1. [REDACTED]
2. [REDACTED]

39(1)(a)(ii)
39(1)(b),
39(1)(c)(i),
39(1)(c)(ii)

Analysis:

39(1)(a)(ii), 39(1)(b), 39(1)(c)(ii), 39(1)(a)(i)

CBPPL and Market Overview

- CBPPL newsprint shipments in 2018 totaled [REDACTED]. It is expected that the shipments in 2019 will be lower. As of the end of September, shipments were [REDACTED] than same time last year.
- Analysts are indicating that though the industry-wide average pulp and paper market prices are consistent with last year (approximately \$700USD/tonne), actual transaction prices in some key markets are down as low as \$400 USD/tonne and that in these cases, [REDACTED]

39(1)(a)(ii),
39(1)(b),
39(1)(c)(ii),
39(1)(a)(i)

29(1)(a)

- Industry indicates that the only way for this downturn to correct itself (for newsprint production) is to take more production out of the North American marketplace to bring the supply/demand balance more in line. CBPPL continues to look at India as a growing market [REDACTED]. Recently, the Indian Government has imposed a 10% duty on all paper products entering the country.

39(1)(a)(ii),
39(1)(b),
39(1)(c)(ii),
39(1)(c)(i)

39(1)(a)(ii),
39(1)(b),
39(1)(c)(ii),
39(1)(c)(i)

- CBPPL is maintaining a competitive cost position among other producers in North America. Recent cost benchmarking data received from Resource Information Systems Inc (RISI) by the Dept. of Fisheries and Land Resources has the Corner Brook mill positioned [REDACTED] for cash cost out of 19 mills still in operation. These cash costs represent the cost to produce a tonne of newsprint and do not include administration and marketing costs or transportation costs to get the product to the market.

39(1)(a)(ii),
39(1)(c),
39(1)(c)(iii)

39(1)(a)(ii),
39(1)(b),
39(1)(c)(ii)

- [REDACTED] and in [REDACTED]
- In recent months, there has been downtime and reductions taken across the newsprint industry (there are upwards of 6 paper mills currently engaged in various forms of downtime). Operating rates in the US fell to 72% of capacity in August and Canadian mills ran at 83% of capacity. The downtime (the reduction in supply) has not yet fixed the problem as inventories continue to rise and is now 65% higher than what it was this time last year.

39(1)(a)(i),
39(1)(b),
39(1)(c)(i),
39(1)(c)(ii)

NR Review of CBPPL Proposals

- Newfoundland and Labrador Hydro (NLH) confirms its most recent Holyrood oil purchase was \$95 per barrel which will result in a cost of approximately 16.3 cents per kwh generated. This is consistent with prices stated in the CBPPL proposal. ^{29(1)(a)}
- NLH also confirms the [REDACTED] although it is important to note the market prices for these purchases could be lower or higher over the future time horizon Kruger proposes.
- NLH has informed NR that Kruger has not approached the utility with this proposal and NLH remains available to discuss the proposal with Kruger to better understand the proposed terms and its implication for NLH and its customers' rates. NR has discussed the general proposed terms with NLH although NLH would require additional information to fully assess the proposal.
- NLH and CBPPL are parties to several power purchase arrangements including:
 1. Service Agreement, whereby NLH sells electrical power and energy to CBPPL at rates approved by the Board of Commissioners of Public Utilities (PUB);
 2. Capacity Assistance Agreement (CAA) for up to 105 MW of capacity assistance, expiring in April 2022 or upon commissioning of the Muskrat Falls generation plant; and
 3. Short-term Firm Energy Power Purchase Agreement (PPA) approved by the PUB on November 2, 2019 (November PPA).
- The November PPA terms allowed for delivery of 13.5 - 16.5 gigawatt hours (GWh) of energy over a period of 12 days in November at a capacity of 55 MW +/- 5MW (megawatts). The price of the energy was not publicized. NLH notes that attributes of the November PPA made it more economical than the provisions of the CAA.
- NLH notes that hydrological storage had fallen below minimum levels and historical averages, necessitating increased thermal generation at the Holyrood Thermal generation Station (HTGS) providing rationale for the November PPA.
- Current hydrological storage has improved and NLH staff has confirmed that significant precipitation event in the beginning of November 2019 has improved the utility's energy storage exceeding its minimum storage limits.
- NLH staff advise that market prices vary with the time and prices in March are much lower than prices in November as the winter heating season ends and spring thaws in the region increase hydro generation supplies.
- [REDACTED]
- [REDACTED]
- [REDACTED]
- On November 12, 2019, NLH filed its 2019-2020 Winter Readiness Planning Report with the PUB. The report indicates that NLH is confident in its ability to reliably serve customers in the 2019-2020 winter season.
- Further analysis led by NLH would be required to fully assess the proposal.

^{34(1)(a)(i)} [REDACTED]

Compliance with Loan Agreement

- The CBPPL Loan Agreement requires operation of both machines and that CBPPL advise Government of any planned downtime by December 15 of each year.
- FLR will engage to confirm that proposed shutdowns are in keeping with the conditions of the agreement.

- CBPPL loan agreement is in good standing – interest payments and principal repayments (which commenced in March, 2019) are up to date. In late October 2019, CBPPL requested the final payout of the remaining \$8.165M of the \$110M loan which has been approved and paid out to CBPPL. The outstanding balance as of November 21 is [REDACTED]. The loan is to be repaid by December 31, 2033.

39(1)(a)(ii), 39(1)(c)(i), 39(1)(c)(iii)

Potential Trade Implications of entering into Further PPA with CBPPL

- Trade Policy Division of IGA has not been involved in recent discussions between the Province and CBPPL. However, IGA provides the comments below for general purposes:
 - During the United States Anti-dumping and Countervailing Duty (AD/CVD) Investigation into uncoated groundwood paper, the Department of Commerce generally found electricity programs between CBPPL and NL Hydro to contain subsidies. Saying this, the US International Trade Commission later determined that these programs were not injuring the US industry and ultimately removed all duties on uncoated groundwood paper.

○ [REDACTED]

29(1)(a)

Estimated Salary Costs

- Sufficient information has not been provided by CBPPL to evaluate the cost to maintain employment of staff during downtimes proposed.

Actions Being Taken

- NR will follow up with NL Hydro regarding the new power purchase proposal.
- FLR will work with JPS in determining the proposals compliance with the Loan Agreement.

Prepared/Approved by: G. Forward/G. Murphy/S.Balsom(FLR)
Y. Khan/R. Bates/C. Snook/C. Martin (NR)

Ministerial Approval: Hon. Gerry Byrne

November 21, 2019

Annex A
Kruger's Energy Sale proposal
Schedule & Rates

39(1)(a)(ii), 39(1)(b),
39(1)(c)(i),
39(1)(c)(ii),

Kruger will make power available at the following schedule and rates:

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