Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act (File # NR-66-2016)

On November 16, 2016 the Department of Natural Resources received your request for access to the following records/information:

On November 30th, in Question Period, Minister Coady referenced a review of Mr. Stan Marshall's investment portfolio as it relates to any potential conflict of interest with Nalcor. I am requesting information about who did this review, any and all documents reviewed, and a copy of the findings of this review. Please also include how the results were communicated to the Minister of Natural Resources and/or Cabinet.

I am pleased to inform you that a decision has been made by the department to provide access to some of the requested information. Access to the remaining information contained within the records has been refused in accordance with the following exceptions to disclosure, as specified in the Access to Information and Protection of Privacy Act (the Act):

29 Policy advice or recommendations
   (1)(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister.

30 Legal Advice
   (1)(a) that is subject to solicitor and client privilege or litigation privilege of a public body;
As required by 8(2) of the Act, we have severed information that is unable to be disclosed and have provided you with as much information as possible. In accordance with your request for a copy of the records, the records have been included with this correspondence.

As set out in section 42 of the Act you may ask the Information and Privacy Commissioner to review the department’s decision to provide partial access to the requested information. 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 request should identify your concerns with the department’s response and why you are requesting a review.

The request for review 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

Pursuant to section 52 of the Act, you may also appeal directly to the Supreme Court Trial Division within 15 business days after receiving the department’s decision.

**Response to be Made Public**

After this response is sent to you, the responsive records will be made public by the department. The records will be posted online within 72 hours of the response being forwarded to you electronically or within five business days of the records being put in the mail to you. The goal is to have the records posted on the Office of Public Engagement’s website within one business day following the applicable period of time.

If you have any further questions, please feel free to contact me by telephone at 729-3214 or by e-mail at andreamarshall@gov.nl.ca. Alternatively, please contact Tanya Noseworthy, the department’s primary access to information coordinator at 729-1466 or tanyanoseworthy@gov.nl.ca.

Sincerely,

Andrea Marshall
Departmental ATIPP Coordinator
22 July 2016

Department of Natural Resources
7th Floor, Natural Resources Building
50 Elizabeth Avenue
P.O. Box 8700
St. John’s, NL
A1B 4J6

Attention: Honorable Slobhan Coady
Minister of Natural Resources

RE: Section 15 of the Conflict of Interest Act, 1995, SNL1995 c. C-301 (the Act)

Dear Minister Coady:

For several years, prior to joining Nalcor, I have been an independent Director on the Board of Enerflex, which is a publicly traded company with the head office being in Calgary.

Enerflex, as its principal business, designs, fabricates and services units for the industrial processing of gases in many parts of the world, but does not have any operations in this province.

I am requesting your confirmation that being a Director of Enerflex does not represent a conflict of interest for me within the meaning of the Act.

Sincerely,

Stan Marshall
Mr. Bruce Hollett
Chair and Chief Executive Officer
Public Service Commission
50 Mundy Pond Road
P.O. Box 8700
St. John's, NL
A1B 4J6

Dear Mr. Hollett:

I have received a letter from Mr. Stan Marshall (attached) seeking confirmation that his being a Director of Enerflex does not represent a conflict of interest under Section 15 of the Conflict of Interest Act.

I would request that the Public Service Commission facilitate the referral of this request to the Conflict of Interest Advisory Committee for the appropriate review, and advise accordingly on its findings.

If additional information is required, please contact Charles Bown, Deputy Minister, at 729-2766.

Sincerely,

SIOBHAN COADY, MHA
St. John's West
Minister

Attachments (1)
11 August 2016

Department of Natural Resources
7th Floor, Natural Resources Building
50 Elizabeth Avenue
P.O. Box 8700
St. John’s, NL
A1B 4J6

Attention: Honorable Siobhan Coady
Minister of Natural Resources

RE: Personal Share Holdings Information
PERSONAL & CONFIDENTIAL

Dear Minister Coady:

Further to my letter of 22 July 2016, I would like to add that I have long term common share holdings in the following three publicly traded companies in what I have, at one time or another, been an officer or a director:

- Fortis (former officer and director)
- Toromont (former director)
- Enerflex (current director)

In addition, I currently own common shares in the following publicly traded companies in which I have never had any special business relation:

- Agrium Inc.
- AGT Food & Ingredients Inc. Corp
- Badger Daylighting Ltd.
- Bank of Nova Scotia
- BCE Inc. Corp
- CAE Inc.
- Canadian National Railway Co.
- DH Corporation Corp
- Empire Company Ltd. (CL-A Non-Voting Shares)
- Imperial Oil Ltd. New
- Industrial Alliance Insurance and Financial Services Inc.
I actively manage my own investments and will, from time to time, purchase and/or sell shares in the publicly traded companies including these listed above. In all instances my holdings are substantially less than the 5% limit referenced in my contract.

This information is provided in the interest of full disclosure and is not a request for review under the Conflict of Interest Act.

Sincerely,

Stan Marshall

sm/cg
September 1, 2016

Honorahle Siobhan Coady
Minister of Natural Resources
7th Floor, Natural Resources Building
50 Elizabeth Avenue, P. O. Box 8700
St. John’s, NL A1B 4J6

Dear Minister Coady:

This letter is in reply to your July 27, 2016 letter requesting advice from the Conflict of Interest Advisory Committee regarding Mr. Stan Marshall’s request seeking confirmation that his being a Director of Enerflex does not represent a conflict of interest under the Conflict of Interest Act.

The Committee understands Enerflex is a publicly traded global corporation with the principle business of design and fabrication of plants for processing natural gas. The company also engages in service and rental of the equipment associated with processing natural gas. Enerflex also provides some power generation solutions in the range of 20kW to 50MW.

The Act includes directorship of a corporation in the definition of private interest. The Act also restricts a public office holder, such as Mr. Marshall, from influencing decisions, or using or sharing information that would further a private interest.

The Advisory Committee understands that Enerflex does not currently do business with Nalcor or in the Province. On that basis, the Advisory Committee does not view Mr. Marshall’s directorship as presenting a conflict under the Act. The Committee further advises that should Enerflex seek to do business in the Province, or with Nalcor in the future, that appropriate measures be considered at that time to avoid any conflict.

The final determination regarding whether a conflict exists rests with you, as Minister. The Advisory Committee believes that it would be appropriate for you to determine that Mr. Marshall’s directorship at Enerflex does not present a conflict, and to advise Mr. Marshall accordingly.

I trust this advice will assist you.

Yours truly,

BRUCE HOLLETT
Chair and Chief Executive Officer
This is a more accurate statement than the previous draft.
RE: Section 15 of the Conflict of Interest Act, 1995, SNL 1995 c. C-301 (the Act)

Thank you for your letter of July 22, 2016, and your subsequent correspondence on August 11, 2016, requesting confirmation that you are not in a conflict of interest within the meaning of the Conflict of Interest Act, 1995 (the Act) with respect to serving as a director of various corporations and owning long-term common shares of publicly-traded corporations.

As you are aware, the Act imposes obligations on a public office holder (POH), or a family member or other person who resides in the household of the POH. Generally, while the office is held:

1. The POH shall not participate in a decision that may benefit the POH, family member, household member either improperly, directly or indirectly;

2. The POH shall not attempt to influence a decision made by another person that may benefit the POH, family member, or household member; and,

3. The POH generally cannot be a party to a contract with the entity with which they work (please refer to s.8.4 (a-h) of the Act for exceptions).

In considering your request, I have consulted the Conflict of Interest Advisory Committee and the Department of Justice and Public Safety. Because Enerflex does not do business with Nalcor or its subsidiaries at this time, the Committee does not view your directorship as presenting a conflict within the meaning of the Act. Furthermore, the Department of Justice and Public Safety advises that neither your previous position with Fortis, nor your current ownership of shares in private corporations, constitutes any automatic form of conflict of interest under the Act. Instead, as contemplated by the Act, potential conflicts have to be identified as they arise on an operational basis. As a result, given the importance of the obligations imposed by the Act, I respectfully ask that in addition to your disclosure requirements under the Act in the event of a potential conflict, you notify me if the companies of which you or members of

S. 29(1)(a), S. 30(1)(a)
your household are either a shareholder or a board member begin to do business with Nalcor or its subsidiaries, or if at any time you own more than ten percent of the shares of any corporation.

With respect to your correspondence of 11 August 2016, I appreciate your disclosure of your personal shareholdings and former directorships. Obviously, the provisions of the Act will continue to apply in respect to all of your personal shareholdings, in that if you find yourself in a position in the course of your duties as CEO that there may be a conflict of interest as a result of these share interests, the Act imposes standards on such situations and requires your disclosure of same to me as Minister at the earliest opportunity. 

S. 29(1)(a), S. 30(1)(a)

Once again, thank you for writing to seek clarification on this important matter. Our government is committed to ensuring that we use the highest standards of conduct in serving the interests of the people of Newfoundland and Labrador. 

Sincerely,

SIOBHAN COADY, MHA
St. John’s West
Minister
Dear Mr. Marshall:

RE: Section 15 of the Conflict of Interest Act, 1995, SNL1995 c. C-301 (the Act)

Thank you for your letter of July 22, 2016, and your subsequent correspondence on August 11, 2016, requesting confirmation that you are not in a conflict of interest within the meaning of the Conflict of Interest Act, 1995 (the Act) with respect to serving as a director of various corporations and owning long-term common shares of publicly-traded corporations.

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1. The POH shall not participate in a decision that may benefit the POH, family member, household member, either improperly, directly or indirectly;

2. The POH shall not attempt to influence a decision made by another person that may benefit the POH, family member, or household member; and,

3. The POH generally cannot be a party to a contract with the entity with which they work (please refer to s.8.4 (a-h) of the Act for exceptions).

In considering your request, I have consulted the Conflict of Interest Advisory Committee and the Department of Justice and Public Safety. Enerflex does not do business with Nalcor or its subsidiaries at this time and the Committee does not view your directorship with that company as presenting a conflict within the meaning of the Act. Furthermore, the Department of Justice and Public Safety advises that neither your previous position with Fortis, nor your current ownership of shares in private corporations, constitutes any automatic form of conflict of interest under the Act. Instead, as contemplated by the Act, potential conflicts have to be identified as they arise on an operational basis. As a result, given the importance of the obligations imposed by the Act, I respectfully ask that in addition to your disclosure requirements under the Act in the event of a potential conflict, you notify me if you become aware that the companies of which you or members of your household are either a shareholder or a board member begin to do business.
with Nalcor or its subsidiaries, or if at any time you own more than ten percent of the shares of any corporation.

With respect to your correspondence of 11 August 2016, I appreciate your disclosure of your personal share holdings and former directorships. Obviously, the provisions of the Act will continue to apply in respect to all of your personal shareholdings, in that if you find yourself in a position in the course of your duties as CEO that there may be a conflict of interest as a result of these share interests, the Act imposes standards on such situations and requires your disclosure of same to me as Minister at the earliest opportunity.

As you can appreciate, good governance would require you to recuse yourself from any strategic, policy or commercial decisions or transactions which directly involve any company for which you may have a direct conflict. As there may be a perceived conflict of interest with Fortis Inc and its subsidiaries, please ensure you are removed from the decision making process with prospect for material effect or benefit to Fortis Inc or Newfoundland Power generally.

Once again, thank you for writing to seek clarification on this important matter. Our government is committed, as I know you are, to ensuring that we use the highest standards of conduct in serving the interests of the people of Newfoundland and Labrador.

Sincerely,

SIOBHAN COADY, MHA
St. John’s West
Minister