Dear [Redacted]

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act (File # NR-150-2018)

On September 20, 2018, the Department of Natural Resources received your request for access to the following records/information:

Please provide a copy of the following briefing note: Exemptions related to the Muskrat Falls project.

I am pleased to inform you that a decision has been made by the Department of Natural Resources, confirmed by the Deputy Minister, to provide access to the requested record. The record is attached.

We are providing access to the most information possible but have made redactions in accordance with Section 29(1)(a) of ATIPPA, 2015 as follows:

29. (1) (a) The head of a public body may refuse to disclose to an applicant information that would reveal advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister.

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 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:

P.O. Box 8700, St. John’s, NL, Canada A1B 4J6 t 709.729-1466
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.

Please be advised that responsive records 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. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

For further details about how an access to information request is processed, please refer to the Access to Information Policy and Procedures Manual at http://www.atipp.gov.nl.ca/info/index.html.

If you have any questions, please feel free to contact me at 709-729-0463 or rhynes@gov.nl.ca.

Sincerely,

[Signature]

Rod Hynes
ATIPP Coordinator
Information Note
Department of Natural Resources

Title: Exemptions related to the Muskrat Falls Project

Issue: To provide an overview of the exemptions related to the Muskrat Falls Project (MFP)

Background and Current Status:
- In an August 11, 2018 Telegram newspaper story, the Opposition leader argued that it was a previous government’s exemption order in 2000 that established a pattern that preceded the exemption of the MFP from regulatory oversight in 2013. He also stated, “…Mr. Ball and his Liberal government should choose to make a reference to the Public Utilities Board on the question of optimum rates.”

- The Electrical Power Control Act (EPCA) and the Public Utilities Act (PUA) provide for regulatory oversight of the Newfoundland and Labrador electricity sector by the Board of Commissioners of Public utilities (PUB). There are, however, two mechanisms by which the Government of Newfoundland and Labrador may exempt a particular electricity matter from PUB oversight – through an Order in Council (OC) pursuant to the EPCA and/or PUA, and through a legislative change to the EPCA and/or PUA.

- Section 5.1 of the EPCA states, “the Lieutenant-Governor in Council may direct the public utilities board with respect to the policies and procedures to be implemented by the board with respect to the determination of rate structures of public utilities.”

- Section 5.2 of the EPCA and section 4.1 of the PUA both state, “the Lieutenant-Governor in Council may exempt a public utility from the application of all or a portion of this Act where the public utility is engaged in activities that in the opinion of the Lieutenant-Governor in Council as a matter of public convenience or general policy are in the best interest of the province, to the extent of its engagement in those activities.”

- In addition, governments may opt to amend the EPCA and/or PUA to change the scope of PUB oversight.

OCs related to hydroelectric development on the lower portion of the Churchill River
- OC2000-206 and OC2000-207 (attached as Annex 1) were issued in December, 2000 under the authority of section 5.2 of the EPCA and section 4.1 of the PUA. Together, these OCs exempted from PUB oversight, “…the planning for, including discussions with potential purchasers or partners, the environmental, economic and engineering study of and, where approved, the design and construction of some or all of” generation and related facilities at Churchill Falls, Gull Island, and Muskrat Falls.

- OC2013-342 (the Muskrat Falls Exemption Order) (attached as Annex 2) was issued in November, 2013 under section 5.2 of the EPCA and section 4.1 of the PUA exempts all costs associated with the MFP from PUB oversight.

- OC2013-343 (attached as Annex 3) was issued in November, 2013 under section 5.1 of the EPCA, and directs the PUB to allow all MFP costs to “be recovered in full by Newfoundland and Labrador Hydro in Island interconnected rates.”
Legislative changes to the EPCA related to Muskrat Falls (MF)

- In December, 2012 amendments to the EPCA related to MF received Royal Assent. Specifically, section 5.1(2) of the EPCA (attached as Annex 4) was amended to explicitly allow direction to be provided to the PUB on various matters related to MF, and section 14.1(1) (attached as Annex 5) was added to provide Newfoundland and Labrador Hydro (NLH) with “the exclusive right to supply, distribute and sell electrical power or energy to a retailer or an industrial customer in respect of the business or operations of that retailer or industrial customer on the island portion of the province.”

Analysis:

- A 2015 report for the Government of Newfoundland and Labrador (GNL) by energy consulting firm Power Advisory stated, “A case can be made that these types of projects require a broader scope for the public interest that recognizes their strategic significance to the Province. Therefore, these are legitimate decisions for governments to make and it is appropriate for Government to exempt such projects from formal regulatory review... ...Since the mid-1990s major supply additions have typically been exempted from PUB oversight under various directives. This practice is common throughout Canada.”

- Analysis provided by Nalcor in April, 2011 (attached as Annex 6) in support of MF sanctioning indicated that the MFP “is unique given the magnitude of the capital addition, as compared to Nalcor’s current balance sheet and the cash flow certainty required by non-recourse lenders for debt service.”

- That same analysis elaborated that “over half of the total financing for MF and the LIL is expected to be provided by project debt for which lender recourse is to only the project revenues, and not the assets or a guarantee by the Province. The remainder of the required financing will be provided by Provincial equity. All (for the LIL) or most (for MF) of the revenues for the Project arise from a regulated Newfoundland and Labrador ratepayer obligation. The amount and cost of the debt financing (which in turn drive ratepayer costs) depend on the risks that lenders perceive; many of these risks can be dealt with through Provincial undertakings.”

- Nalcor’s analysis indicated the exemptions were necessary for the project’s financing structure of non-recourse to GNL, thus precluding their repeal and/or amendment with regard to certain aspects related to project financing.

- Notable, OC2000-206 and OC2000-207, unlike OC2013-342 and OC2013-343, refer to Churchill Falls, Gull Island, and MF and “the transmission facilities necessary to deliver power generated [Churchill Falls, Gull Island, and Muskrat Falls] the island portion of the Province and the border of the Province of Quebec and Labrador.” Also, a press release from November 10, 2000 (attached as Annex 7) references discussion with “Hydro Quebec in their role as a customer of Gull Island power” and discussion with Hydro Quebec on “project configurations.”
Prepared by/Reviewed by: M. Janes / C. Snook/J. Cowan
Approved by: NOT APPROVED
Annex 1 - OC2000-206 and OC2000-207

NEWFOUNDLAND AND LABRADOR
REGULATION 92/00

Labrador Hydro Project Exemption Order
under the
Electrical Power Control Act, 1994
and the
Public Utilities Act
(O.C. 2000-206 &
O.C. 2000-207)

(Filed December 14, 2000)

Under the authority of section 5.2 of the Electrical Power Control Act, 1994 and section 4.1 of the Public Utilities Act, the Lieutenant Governor in Council makes the following Order.

Dated at St. John’s, November 30, 2000.

Gary Norris
Clerk of the Executive Council

ORDER

Analysis

1. Short title
2. Definition
3. Exemption

Short title

1. This Order may be cited as the Labrador Hydro Project Exemption Order.

92/00 s1

Definition
2. In this Order, the "Labrador Hydro Project" means the planning for, including discussions with potential purchasers or partners, the environmental, economic and engineering study of and, where approved, the design and construction of some or all of

(a) generation and related facilities at Churchill Falls, Labrador;

(b) generation and related facilities at Gull Island, Labrador;

(c) generation and related facilities at Muskrat Falls, Labrador;

(d) dams, dykes or other works required for the generation of power at the sites referred to in paragraphs (a), (b) and (c);

(e) the transmission facilities necessary to deliver power generated at the sites referred to in paragraphs (a), (b) and (c) to the island portion of the province and the border of the Province of Quebec and Labrador; and

(f) other facilities related to the activities referred to in paragraphs (a) to (e).

92/00 s2

Exemption

3. Newfoundland and Labrador Hydro is exempt from the Electrical Power Control Act, 1994 and the Public Utilities Act for all aspects of its activities pertaining to the Labrador Hydro Project as defined in section 2.

92/00 s3

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Annex 2 - OC2013-342 (the Muskrat Falls Exemption Order)

NEWFOUNDLAND AND LABRADOR
REGULATION 120/13

Muskat Falls Project Exemption Order
under the
Electrical Power Control Act, 1994
and the
Public Utilities Act
(O.C. 2013-342)

(Filed November 29, 2013)

Under the authority of section 5.2 of the Electrical Power Control Act, 1994 and section 4.1 of the Public Utilities Act, the Lieutenant-Governor in Council makes the following Order.

Dated at St. John’s, November 29, 2013.

Julia Mullaley
Clerk of the Executive Council

REGULATIONS

Analysis

1. Short title
2. Interpretation
3. Public utilities
4. Exemption

Short title

1. This Order may be cited as the Muskat Falls Project Exemption Order.

120/13 s1

Interpretation

2. (1) In this Order
(a) "LiL" means the transmission line and all related components of the Muskrat Falls Project described in section 2.1(1)(a)(ii) of the Energy Corporation Act, and for greater certainty "all related components" in that subparagraph includes converter stations, synchronous condensers, and terminal, telecommunications, and switchyard equipment;

(b) "LiP" means Labrador-Island Link Holding Corporation, the Labrador-Island Link General Partner Corporation, the Labrador-Island Link Limited Partnership, or Labrador-Island Link Operating Corporation, or any combination of them as the context may require;

(c) "LTA" means the transmission facilities of the Muskrat Falls Project described in subparagraph 2.1(1)(a)(iii) of the Energy Corporation Act;

(d) "LTACo" means the Labrador Transmission Corporation;

(e) "MFCo" means the Muskrat Falls Corporation;

(f) "Muskrat Falls" means the hydroelectric facilities of the Muskrat Falls Project as described in subparagraph 2.1(1)(a)(i) of the Energy Corporation Act.

(2) In this Order, references

(a) to a public utility or an activity being "exempt" means the public utility or the activity is exempt from the application of

(i) the Public Utilities Act, and

(ii) Part II of the Electrical Power Control Act, 1994; and

(b) to a corporation or limited partnership, where the corporation or limited partnership does not exist as of the date of this Order coming into force, shall be valid upon the creation of the corporation or limited partnership under the Energy Corporation Act and the Corporations Act or the Limited Partnership Act.

120/13 s2

Public utilities

3. LiP, LTACo and MFCo are acknowledged to be public utilities under the Public Utilities Act for the purpose of this Order.

120/13 s3

Exemption

4. (1) Newfoundland and Labrador Hydro is exempt in respect of

(a) any

(i) expenditures, payments, or compensation paid to MFCo by Newfoundland and Labrador Hydro relating to the purchase and storage of electrical power and energy, the purchase of interconnection facilities, ancillary services, and greenhouse gas credits,
(ii) obligations of Newfoundland and Labrador Hydro in addition to subparagraph (i) to ensure MFCo's and LTACo's ability to meet their respective obligations under financing arrangements related to the construction and operation of Muskrat Falls and the LTA, and

(iii) expenditures, payments, or compensation paid to MFCo and revenues, proceeds or income received by Newfoundland and Labrador Hydro relating to the sale of electrical power and energy acquired from MFCo to persons located outside of the province whether under one or more power purchase agreements or otherwise;

(b) any activity relating to the receipt of delivery, use, storage or enjoyment by Newfoundland and Labrador Hydro of any electrical power and energy, interconnection facilities, ancillary services, and greenhouse gas credits under paragraph (a);

(c) any expenditures, payments, or compensation paid to LiLParty and claimed as costs, expenses or allowances by Newfoundland and Labrador Hydro relating to the design, engineering, construction and commissioning of transmission assets and the purchase of transmission services and ancillary services, electrical power and energy, from LiLParty or otherwise with respect to the LiL, under one or more transmission services agreements, transmission funding agreements, or otherwise; and

(d) any activity relating to the receipt of delivery, use, storage or enjoyment by Newfoundland and Labrador Hydro of any transmission services and ancillary services, electrical power and energy, with respect to the LiL under paragraph (c).

(2) MFCo is exempt in respect of any activity, and any expenditure, payments or compensation, or any revenues, proceeds or income, relating to the following:

(a) the design, engineering, planning, construction, commissioning, ownership, operation, maintenance, management and control of Muskrat Falls;

(b) producing, generating, storing, transmitting, delivering or providing electric power and energy, capacity, ancillary services, and greenhouse gas credits, to or for Newfoundland and Labrador Hydro or any other person or corporation for compensation;

(c) any activity required or related to an agreement under section 5.4 or 5.5 of the Electrical Power Control Act, 1994;

(d) negotiating, concluding, executing and performing any and all agreements for any activity referred to in paragraph (a), (b) or (c);

(e) raising and securing financing necessary to conduct any activity in paragraph (a), (b), (c) or (d), including without limitation the negotiation, conclusion, execution and performance of any and all agreements and security documentation with any lender providing that financing; and

(f) any agreements, contracts or instruments necessary or incidental to any activity described in this exemption, including agreements with LTACo.

(3) LiLParty is exempt in respect of any activity, and any expenditure, payments or compensation, or any revenues, proceeds or income, relating to the following:

(a) the design, engineering, planning, construction, commissioning, ownership, operation, maintenance, management and control of the LiL;

(b) producing, generating, storing, transmitting, delivering or providing electric power and energy to or for Newfoundland and Labrador Hydro or any other person or corporation for compensation;
(c) negotiating, concluding, executing and performing any and all agreements for activities referred to in paragraph (a) or (b);

(d) raising and securing any financing necessary to conduct any activity in paragraph (a), (b) or (c), including without limitation the negotiation, conclusion, execution and performance of any and all agreements and security documentation with any lender providing that financing; and

(e) any agreements, contracts or instruments necessary or incidental to any activity described in this exemption, including agreements between one or more LilParty.

(4) LTACo is exempt in respect of any activity, and any expenditure, payments or compensation, or any revenues, proceeds or income, relating to the following:

(a) the design, engineering, planning, construction, commissioning, ownership, operation, maintenance, management and control of the LTA;

(b) producing, generating, storing, transmitting, delivering or providing electric power and energy to or for Newfoundland and Labrador Hydro or any other person or corporation for compensation;

(c) negotiating, concluding, executing and performing any and all agreements for activities referred to in paragraphs (a) and (b);

(d) raising and securing any financing necessary to construct the LTA, including without limitation the negotiation, conclusion, execution and performance of any and all agreements and security documentation with any lender providing that financing to the projects; and

(e) any agreements, contracts or instruments necessary or incidental to any activity described in this exemption, including agreements with MFCo.

120/13 s4

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Annex 3 – OC2013-343

Order Number: OC2013-343

Order Date: 2013-11-29

Department: Natural Resources

Authority: Electrical Power Control Act, 1994

Order Text:

Under the authority of section 5.1 of the Electrical Power Control Act, 1994, the Lieutenant Governor in Council is pleased to direct the Board of Commissioners of Public Utilities to adopt a policy, subject to section 3, that:

1) Any expenditures, payments or compensation paid directly or indirectly by Newfoundland and Labrador Hydro, under an agreement or arrangement to which the Muskrat Falls Project Exemption Order applies to:
   a) a LiLParty,
   b) a system operator in respect of a tariff for transmission services or ancillary services in respect of the LiL, that otherwise would have been made to a LiLParty, or
   c) Muskrat Falls Corporation, in respect of:
      i) electrical power and energy forecasted by Muskrat Falls Corporation and Newfoundland and Labrador Hydro to be delivered to, consumed by, or stored by or on behalf of Newfoundland and Labrador Hydro for use within the province, whether or not such electrical power and energy is actually delivered, consumed, or stored within the province,
      ii) greenhouse gas credits, transmission services and ancillary services, and
      iii) obligations of Newfoundland and Labrador Hydro in addition to those in paragraphs (i) and (ii) to ensure the ability of Muskrat Falls Corporation and Labrador Transmission Corporation to meet their respective obligations under financing arrangements related to the construction and operation of Muskrat Falls and the LTA shall be included as costs, expenses or allowances, without disallowance, reduction or alteration of those amounts, in Newfoundland and Labrador Hydro’s cost of service calculation in any rate application and rate setting process, so that those costs, expenses or allowances shall be recovered in full by Newfoundland and Labrador Hydro in Island interconnected rates charged to the appropriate classes of ratepayers;

2) The costs, expenses or allowances of Newfoundland and Labrador Hydro described above, and the rates for Newfoundland and Labrador Hydro
established by the Board of Commissioners pursuant to the direction under section 1, shall not be subject to subsequent review, and shall persist without disallowance, reduction or alteration of those costs, expenses or allowances or rates, throughout any processes for any public utility, including Newfoundland Power Inc., or any other process under the Electrical Power Control Act, 1994 or the Public Utilities Act;

3) Notwithstanding sections 1 and 2, no amounts paid by Newfoundland and Labrador Hydro described in those sections shall be included as costs, expenses or allowances in Newfoundland and Labrador Hydro's cost of service calculation or in any rate application or rate setting process, and no such costs, expenses or allowances shall be recovered by Newfoundland and Labrador Hydro in rates:

a) where such amounts are directly attributable to the marketing or sale of electrical power and energy by Newfoundland and Labrador Hydro to persons located outside of the province on behalf of and for the benefit of Muskrat Falls Corporation and not Newfoundland and Labrador Hydro; and

b) in any event, in respect of each of Muskrat Falls, the LTA or the LiL, until such time as the project is commissioned or nearing commissioning and Newfoundland and Labrador Hydro is receiving services from such project.

4) In this Order in Council, terms shall have the same meaning ascribed to them in the Muskrat Falls Project Exemption Order.
Annex 4 – Section 5.1(2) of the EPCA

Direction to board

5.1 (2) Notwithstanding a provision of this Act or the Public Utilities Act, for the purpose of the Muskrat Falls Project the Lieutenant-Governor in Council may direct the public utilities board to implement policies, procedures and directives respecting the exercise of powers and the performance of the duties of the public utilities board under this Act or the Public Utilities Act, including policies, procedures and directives respecting

(a) the costs, expenses and allowances that are to be included in the rates, tolls and charges approved for a public utility, and the terms of that inclusion;

(b) the terms of the interim orders, orders or approvals determining rates, tolls and charges of a public utility;

(c) the criteria to be applied by the public utilities board for the approval or confirmation of an approval by the public utilities board;

(d) the annual rate of return of a public utility;

(e) whether or not a hearing shall be held;

(f) the commencement, suspension, continuation or termination of a hearing or process; and

(g) the parameters, criteria and timing of the exercise or restraint from exercise of a power or performance of a duty of the public utilities board under this Act or the Public Utilities Act.

(3) The public utilities board shall implement the policies, procedures and directives of the Lieutenant-Governor in Council as directed under subsection (2).

2012 c42 s3; 2012 c47 s2
Annex 5 – Section 14.1(1) of the EPCA

Exclusive right to supply, transmit, distribute and sell

14.1 (1) Notwithstanding another provision of this Act or another Act,

(a) Newfoundland and Labrador Hydro shall have the exclusive right to supply, distribute and sell electrical power or energy to a retailer or an industrial customer in respect of the business or operations of that retailer or industrial customer on the island portion of the province; and

(b) a retailer or an industrial customer shall purchase electrical power or energy exclusively from Newfoundland and Labrador Hydro in respect of the business or operations of that retailer or industrial customer on the island portion of the province.

(2) Notwithstanding another provision of this Act or another Act, a retailer or an industrial customer shall not develop, own, operate, manage or control a facility for the generation and supply of electrical power or energy either for its own use or for supply directly or indirectly to or for the public or an entity on the island portion of the province.

(3) Subsection (1) does not apply to an industrial customer if that industrial customer is purchasing electrical power or energy in respect of its business or operations on the island portion of the province exclusively from a retailer to whom subsection (1) applies.

(4) Subsections (1) and (2) do not apply to generation facilities owned, operated, managed or controlled by a retailer or an industrial customer where the electrical power or energy generated is used by the retailer or industrial customer exclusively in emergency circumstances.

(5) Subsection (2) does not apply to generation facilities owned, operated, managed or controlled by a retailer or an industrial customer where those facilities existed on December 31, 2011, including the refurbishment of those facilities.

(6) A contract or arrangement entered into before or after the coming into force of this section which is contrary to this section is unenforceable.

(7) Notwithstanding another provision of this section, the Lieutenant-Governor in Council may, by order, exempt a retailer or an industrial customer from the application of this section or a subsection of it.

2012 c47 s3
Annex 6 – Nalcor DG3 Analysis
Here is the latest.

Derrick Sturge  
Vice-President, Finance & CFO  
Nalcor Energy  
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(e): dsturge@nalcorenergy.com  
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Briefing Note
(Draft – for discussion purposes only)
Confidential and Commercially Sensitive

Title: Muskrat Falls Decision Gate 3 Process and the Necessary Regulatory/Shareholder Undertakings Required to Progress the Lower Churchill Project.

Issue: The purpose of this briefing note is to describe the following:

1. The decision process required by Newfoundland and Labrador Hydro (“NLH”) with respect to the next source of Island supply;
2. The historical regulatory approval process for generation and transmission investments;
3. The Decision Gate 3 process and how independent reviews will comprise a key component of project sanction; and
4. The necessary regulatory/shareholder undertakings and other commitments required immediately for the Lower Churchill Project (the “Project”) by Nalcor to facilitate financing and the completion of discussions regarding a federal loan guarantee.

Overview of Island Supply Decision:

- Development of the Project is consistent with commitments made in the Energy Plan. The first priority is ensuring current and future power needs are met with environmentally friendly, stable, competitively priced power. To deliver on this priority, the Energy Plan states that development of the Project, including a transmission link between Labrador and the Island, must be considered in the context of Nalcor’s broader resource planning initiatives.

- In July, 2010 NLH submitted a Generation Planning Issues Report to the Public Utilities Board (“PUB”). The report signals a generation planning decision must be made by the end of 2010 for the appropriate planning, approvals and construction to take place to address a capacity deficit on the Island, which is projected to materialize in 2015.

- Nalcor evaluated the practical supply options to address this deficit and meet the Island’s long-term electricity needs. Nalcor determined that Muskrat Falls (“MF”) and a transmission link to the Island provide the least-cost solution and most environmentally friendly solution to meet these needs (the “Infeed Option”). Holyrood oil-fired generation will be replaced with electricity from the Project. The replacement of this facility will reduce greenhouse gas emissions by more than one million tonnes annually, eliminating the Province’s dependence on the supply of imported fuel and remove future volatility in electricity prices. The Project will also eliminate the requirement for additional fossil-fuel generation in the future and avoid associated emissions. The development of MF will meet the energy requirements for both Labrador and the Island for the foreseeable future and will also provide sufficient capacity for future industrial developments in Labrador and throughout the Province.
• By the end of June, 2011 a decision to address projected capacity deficits in 2015 is required. Under the infeed Option the least cost method to address this deficit is to construct a 50 MW gas turbine as this provides sufficient capacity in the short term to meet utility standards until the Project is completed. Under the status-quo “Isolated Island” alternative this 50 MW gas turbine is not the least cost option as small wind and hydro on the Island which is more expensive in the short-term would be least cost if the Project was not developed. Lack of certainty in the Island supply selection process created by a PUB review of this decision could result in a sub-optimal choice, and thus potentially higher costs for ratepayers, being made to address the 2015 capacity deficit as each Island supply alternative has a different least cost solution to address this deficit.

• As recently noted in Nalcor’s affidavit related to the injunction sought by Nunatukavut Community Council Inc., there will be substantial harm to Nalcor and the Project if completing the PUB review results in a delay in the Project.
  ❖ Direct financial harm to Nalcor – for each month that the Project is delayed Nalcor will incur direct costs of approximately $4 to $5 million, based on current burn rate, related to corporate support, salaries, professional fees, third party fees, travel, office and overhead, suspension or cancellation of vendor or supplier contracts, and insurance and financing
  ❖ Termination or increased costs of contracts – a delay in the Project in excess of six months will trigger payments pursuant to certain contracts entered into with third parties. In particular, Nalcor’s current agreement with SNC-Lavalin in respect of engineering, procurement, construction and management of the Project (the “SNC-Lavalin Contract”) provides that Nalcor will be directly liable for the costs associated with de-mobilization of SNC-Lavalin’s employees and equipment resulting from a delay. The SNC-Lavalin Contract may be terminated at the option of SNC-Lavalin in the event of a delay of over six months. In the event of termination, Nalcor would be required to retender or renegotiate this contract, which will result in additional time and costs associated with these activities, and the risk that Nalcor may not be able to achieve equally favourable terms.
  ❖ Loss of key project management team members – if the Project is delayed Nalcor will likely lose key project management team members. In the short term, the Project will retain all of its key project management team members. However, any material delay will increase the risk of loss of key project management team members, or in Nalcor being required to de-mobilize project management team members. Key project management team members that are currently available to work on the Project may not be available in the future due to demand from other large projects in the Province. The loss of project management team members with institutional and Project knowledge and intellectual capital would result in additional recruitment costs to Nalcor, in addition to inefficiencies in restarting the Project work. Any delay in the commencement of construction of the Project (if approved) will likely result in increased costs of critical
construction trades due to overlapping construction timelines with other east coast projects. The increased demand for critical construction trades will have cost, scheduling and safety consequences.

- Higher financing and insurance costs - a delay of the Project may have a detrimental effect on the profile of the Project in the financial community. This may result in the Project being associated with a higher risk profile. A heightened risk profile would be reflected in higher financing and insurance costs. Further, a delay of the Project may also result in an increase in the level of equity required in the capital structure, requiring additional equity injections of Newfoundland and Labrador public funding.
- Postponement of key Project timelines - a delay of the Project will result in the postponement of key Project timelines, which are affected by critical timelines for the ordering and delivery of essential components such as turbines and undersea cable, weather and seasonal interruptions, and availability of labour and equipment. A delay in the commencement of the Project will result in rescheduling critical Project timelines.

- As part of the Infeed Option, the Labrador-Island Link ("LIL") requires the awarding of the submarine cable contract for the Strait of Belle Isle ("SOBI") crossing well in advance of the start of manufacturing. Delaying this decision by more than 3 months may result in significant delays to the overall Project. Key points to consideration are as follows:
  - The Request for Proposal ("RFP") for the SOBI crossing is scheduled to be issued in May 2011, with the Cabot Strait RFP either combined with it or following 4-6 weeks afterwards.
  - There are only 3 worldwide manufacturers who can meet the technical requirements of the SOBI submarine cable project - each having capacity to manufacture approximately 200-300 km of submarine cable per year.
  - The SOBI contract is scheduled to be awarded in late 2011 in order to secure the start of submarine cable manufacturing in 2013 (the earliest available slot based on the current worldwide manufacturing log) and a cable laying vessel for June 2015 (the best time of year to commence this work).
  - Based on current market intelligence, there are a number of major projects competing for the limited worldwide submarine cable manufacturing capacity. If two large projects that are expected to be committed in late 2011 (UK Western Link and Italy-Montenegro) are awarded before the SOBI project, availability for the manufacturing of the submarine cable, as well as the cable laying vessel, could be significantly pushed out.
Historical Regulatory Treatment of Generation and Transmission Projects:

Legislation

- The Electrical Power Control Act, 1994 ("EPCA") requires that the PUB ensures that adequate planning occurs for the supply of electricity in the Province.
- The Public Utilities Act ("PUA") empowers the PUB to approve capital and operating expenditures for utilities, including power purchase expenditures.
- Prior to 1994, the PUB did not pre-approve capital expenditures however the PUB maintained purview over the inclusion of the related costs in rates.
- Section 5.1 of the EPCA permits a direction to be made to the PUB as to rates policies by the Lieutenant-Governor in Council.
- Section 5.2 of the EPCA permits the Lieutenant-Governor in Council, for reasons of public policy, to exempt a utility from the EPCA requirements and a similar section of the PUA (section 4.1) permits exemptions to be ordered from requirements under that Act.

Practices related to Generation Additions

- The history of the addition of new generating sources to the Province’s electrical system since the EPCA and the PUA became applicable to NLH, show that the provisions requiring PUB approval of planning decisions and related major capital expenditures for new generating sources have been used rarely.
- Two non-utility generators (Star Lake (15 MW) and Rattle Brook (4 MW)) from which NLH purchased power under a tendered bid issued in 1992, were the subject of specific legislative treatment under the Hydro Corporation Act (this treatment continued under the Hydro Corporation Act, 2007 under paragraph 15(3)(c)) under which NLH is specifically entitled to recover through rates the expenses incurred to purchase energy under these power purchase agreements (PPAs).
- Newfoundland Power added a small generating station (Rose Blanche, 6 MW) in 1998 but due to its small capacity and cost, this small addition of generating capacity did not trigger the PUB’s scrutiny from an overall planning role.
- The first major addition to NLH’s generating assets subsequent to the application of the EPCA occurred in 2000 when NLH’s Granite Canal project (41 MW) was made exempt from the EPCA and the PUA through an exemption order. This was largely because the requirement to add this generating source to the system in time to meet NLH’s needs could not have been made in the context of a full EPCA and PUA planning and capital asset hearing on the matter.
• The next two generating sources to be added to the electrical system were also the subject of exemption orders under the EPCA and PUA: the Exploits River incremental energy project at Grand Falls and Bishop’s Falls carried out by Abitibi and Fortis; and the Corner Brook Pulp and Paper thermal co-generation project. All energy output from these projects was sold to NLH under PPAs. These projects were made exempt from the planning and rate recovery requirements of the EPCA and of the PUA by exemption orders issued under those Acts.

• In 2000, NLH was, through an exemption order, made the Project exempt from the EPCA and PUA as follows:
  - the "Labrador Hydro Project" means the planning for, including discussions with potential purchasers or partners, the environmental, economic and engineering study of and, where approved, the design and construction of some or all of: (a) generation and related facilities at Churchill Falls, Labrador; (b) generation and related facilities at Gull Island, Labrador; (c) generation and related facilities at Muskrat Falls, Labrador; (d) dams, dykes or other works required for the generation of power at the sites referred to in [the above]; (e) the transmission facilities necessary to deliver power generated at the sites referred to in [the above] to the island portion of the province and the border of the Province of Quebec and Labrador; and (f) other facilities related to the activities referred to in paragraphs (a) to (e).

• In 2003, NLH was, through an exemption order, made exempt from the EPCA and PUA for all planning matters relating to a wind demonstration project (this project was, ultimately, not completed).

• Also in 2003, a general rates directive was made to the PUB that costs incurred by NLH with regard to projects for which directives to purchase energy were made, except for the Project, were to be recovered through its rates.

• In 2008 and 2009, respectively, NLH commenced energy purchases from the St. Lawrence and Fermeuse wind farms (each at 27 MW). These power and energy purchases are not the subjects of exemption orders and, therefore, in its next general rates application, NLH will justify these power purchase expenditures on their merits, based primarily upon their attractive energy costs.

Practices in other jurisdictions

• In many jurisdictions, the regulator has purview over the inclusion of generation and transmission costs in rates, whether by approval of the inclusion of the assets in rate base or by approval of supply agreements of the associated assets as a regulated cost for inclusion in rates.

• The Project is unique given the magnitude of the capital addition as compared to Nalcor’s current balance sheet and the cash flow certainty required by non-recourse lenders for debt service. These lenders will require certainty of cash flows as they form the only basis of security/collateral in a non-recourse financing. Subjecting these cash flows to regulatory
uncertainty will negatively impact the amount and cost of debt that will be borne by the ratepayers since the Project is unlikely to receive an investment grade credit rating in this instance.
**Decision Gate 3:**

**Process Overview**

- Nalcor's Decision Gate process is designed to ensure decisions are made at appropriate times, with the appropriate level of information, and at appropriate levels of expenditure.

- Nalcor's Decision Gate process focuses on key milestones to achieve gateway readiness and builds in "cold eyes" reviews at key decision points throughout the process.

- The Project recently passed through Decision Gate 2 ("DG2") which is Concept Selection. At that time, to select a preferred concept, Nalcor completed the appropriate activities and gathered the required information including field work, engineering and design, finalization of Labrador Innu Impacts and Benefits Agreement ("IBA"), environmental assessment progression, execution of water management agreement, completion of the Emera Term Sheet, financing preparation and economic analysis.

- Decision Gate 3 ("DG3") which is Project Sanction requires the advancement of project activities and work streams to a level of progression which provides the certainty needed to sanction the Project (e.g. ratification of the IBA, receipt of environmental permits and approvals, completion of detailed engineering and design, market confirmation of financing strategy, finalization of definitive commercial agreements, etc.). The intent of DG3 is to validate the concept selected before committing the largest dollars.

**Independent Reviews**

- Independent Reviews are carried out in accordance with established Nalcor decision making processes, each Decision Gate having differing requirements, for the successful achievement of DG3 the following independent reviews will be carried out using the latest available project cost and schedule information:
  - Independent Project Analysis Inc. ("IPA") an International organization that specializes in the review of large scale projects;
  - Independent Project Review ("IPR") a group of subject matter exerts who individually are recognized for their knowledge and experience in particular aspects of large scale project delivery and collectively can provide a thorough review and commentary on the readiness of the Project to proceed; and
  - An updated and final report of the preliminary independent review carried out in June 2011 of the reasonableness of the island supply decision as described below (the "Supply Decision Review").

- The Supply Decision Review will be conducted by an external consultant (the "Consultant") with a focus on the reasonableness of the Island supply decision. For purposes of clarification, the scope of the Supply Decision Review does not extend to a review of the financing decision or the monetization of the excess power.
Overview of Required Regulatory/Shareholder Undertakings:

- Over half of the total financing for MF and the LIL is expected to be provided by project debt for which lender recourse is to only the project revenues, and not the assets or a guarantee by the Province. The remainder of the required financing will be provided by Provincial equity. All (for the LIL) or most (for MF) of the revenues for the Project arise from a regulated NL ratepayer obligation. The amount and cost of the debt financing (which in turn drive ratepayer costs) depend on the risks that lenders perceive; many of these risks can be dealt with through Provincial undertakings. Undertakings are being requested, which:

1) Enable creditworthy revenue streams that:
   - Establish the ratepayer payment obligation – Creates certainty that costs and the return on rate base associated with MF and LIL assets will be recovered from a stable, regulated customer base;
   - Provide lenders with a clear line of sight to stable cash flows required for debt service - Inclusion of the costs associated with the MF Power Purchase Agreement ("PPA") and LIL Transmission Services Agreement ("TSA") in NLH's cost of service is critical, as the related payments to the borrowing entities are the only form of security/collateral that will be offered to lenders (as described above);
   - Promote achievement of in-service and commencement of revenues for debt service - A contingent equity commitment provided by the Province assures lenders of project completion, even in the event of overruns or delays.

2) Address risk and uncertainty that will arise if the PUB has influence over Provincial policy and other related matters (some of which are also critical for debt service), including:
   - The decision process for meeting island supply requirements - i.e. selection of the MF + LIL versus Holyrood/Isolated Island option;
   - Recovery of full cost of service for LIL costs, and the NL ratepayer share of MF costs, from NL ratepayers;

3) Address uncertainty surrounding the achievement of a timely MF/LIL financial close, in-service and/or recovery of costs from NL ratepayers which may impact Emera's ability to obtain timely regulatory approvals and financing for the Maritime Link; and
4) Support the achievement of a Federal Loan Guarantee - The Federal government, as potential guarantor of MF/LIL debt, will assess the creditworthiness of these projects in a manner similar to that of potential lenders.

- Absence of appropriate Provincial supports for credit quality (as described in 1 and 2 above) could provide the Federal government with an “out” on loan guarantees, and a loss of an estimated benefit to NL ratepayers of $640M.

- The Federal government would not likely commit to a guarantee until NL regulatory treatment of MF and LIL was clearly addressed. A PUB review of the Project costs could likely result in significant uncertainty for potential lenders/guarantors until the Project was completed. Furthermore, a delay of at least one year to allow for a PUB review of the Island supply decision could also cause a loss in the momentum developed relating to the successful completion with the Federal government.

- The finance-raising process has already commenced; one piece of which, as noted above, is engagement with the Government of Canada concerning a Federal Loan Guarantee. Nalcor plans to engage the financial markets next by seeking a shadow rating from the rating agencies in the May-July 2011 time frame (for the MF and UL borrowing entities); this will be followed by resumed discussions of the Federal Loan Guarantee after the formation of a new federal government.

- These schedule-sensitive finance-raising steps cannot proceed without critical credit-worthiness elements in place. Provincial undertakings are a central component of this credit-worthiness.

The implications of not proceeding with financing at this time are as follows:
- Necessary financing activities will not be completed in order to support the Decision Gate 3 (Sanction) decision for MF in late 2011;
- The Government of Canada will likely require credit ratings for the Project without a federal guarantee as a key measure to assess credit worthiness. Unless the financing process starts now, then these credit ratings will not be available in a timely manner;
- Receipt of debt financing will be pushed out further, thereby increasing the amount of up-front equity contributions required from the Province prior to putting financing in place; and
- Reputational risk – Nalcor has outlined preliminary timelines with rating agencies in advance of the financing activities and delay would decrease confidence in Nalcor’s ability to deliver the Project within the timelines provided.
- The specific requested undertakings and their impact on credit quality are provided below:

<table>
<thead>
<tr>
<th>Requested Undertaking</th>
<th>Impact on Credit Quality</th>
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<tbody>
<tr>
<td>Approval for formation of new Nalcor entities</td>
<td>- The contemplated structured debt will require special borrowing entities so that lender access to project cash flows is clear and unencumbered</td>
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| Inclusion of costs in NL rate base (including Emera’s Interest in LIL) | - Revenues from the NL rate base provide the basis for debt service (all for LIL, most for MF)  
- Lenders will have recourse only to Project revenues, and not Provincial guarantees nor Project assets |
| NLH sole authorized wholesale provider of electricity in NL  | - Absent appropriate undertakings, there is the potential that NLH supply (island fleet plus MF) could be eroded, potentially jeopardizing NLH's ability to meet its PPA and TSA payment obligations that are required by the MF/LIL borrowing entities to service debt. |
| Provincial government indemnification and change in law provisions as part of lending agreements | - Recognizing that future NL Legislatures cannot be bound, and is a customary provision where debt financing is sensitive to the legislative environment.  
- Provides reasonable compensation to lenders if future legislative acts threaten debt service. |
| Borrowing limits for new and existing Nalcor entities        | - Provides new MF and LIL entities the authority to borrow funds required for construction of assets and provides existing entities, such as NLH, additional liquidity to meet obligations under credit-sensitive agreements (if required). |
Annex 7 – November 10, 2000 Press Release
NLIS 1
November 10, 2000
(Mines and Energy)

The following statement was issued today by Mines and Energy Minister Paul Dicks:

It is, and always has been, the main objective of this government to develop the tremendous resource of the Churchill River for the benefit of the people of this province. That development has to be viable and profitable.

For some time, we have been engaged in discussion with Hydro Quebec as well as other potential partners and customers in an effort to reach the right deal. All along, we have said that we will not jeopardize our position by negotiating in public, but that once a deal is reached, government will ensure that the public is well informed.

We would be remiss not to explore all options open to this province. Over the past two years many project configurations have been discussed with Hydro Quebec. This is a normal commercial process which any major project undergoes in an effort to optimize profits and minimize risks.

In May, it became clear to us and to Hydro Quebec that developments in US markets were making it difficult to finalize the partnership arrangements as previously outlined. For this reason, we both agreed to pause negotiations over the summer. Since that time, we talked to other potential partners and started to seriously focus on a 100 per cent Newfoundland and Labrador owned Lower Churchill Project.

At the end of August, it became clear that environmental and aboriginal issues in the province of Quebec would lessen the chances of a diversion of the Romaine River taking place. As a result, this government decided that we would propose to develop this project as a 100 per cent owner and Hydro Quebec would be a major purchaser. There would be no diversion of Quebec water into Labrador. This concept is simple and we feel can be captured in a final binding agreement. In fact, we continue to have a positive working relationship with the province of Quebec on this and other matters of importance to Newfoundland and Labrador.

What we are currently discussing with Hydro Quebec is their role as a customer of Gull Island power. We have also discussed this with other potential buyers. There seems to be some confusion about the status of this project. Let me clarify: a deal is not done, Quebec is not out of the picture, and we have not suddenly limited our options regarding the Lower Churchill project.

We are confident a viable deal remains to be done. While the project would likely be reduced in scope, is there anyone in Newfoundland and Labrador, the country, or indeed North America, who would argue that the generation of a much needed renewable, green power source and the creation of jobs is not something we should aim to achieve?

We cannot and will not negotiate this or any deal in public, but rest assured, once a deal is reached the public will be well informed about it.

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