

**NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

AN ORDER OF THE BOARD

NO. P.U. 34(2022)

1 **IN THE MATTER OF** the **Electrical Power Control**
2 **Act, 1994**, SNL 1994, Chapter E-5.1
3 (the "**EPCA**") and the **Public Utilities Act**, RSNL
4 1990, Chapter P-47 (the "**Act**"), as amended, and
5 regulations thereunder; and
6

7 **IN THE MATTER OF** an application by
8 Newfoundland and Labrador Hydro for approval
9 of certain rules and regulations pertaining to the
10 supply of electrical power and energy to one of
11 its Island Industrial customers, Marathon Gold
12 Corporation, pursuant to section 71 of the **Act**.
13
14

15 **WHEREAS** Newfoundland and Labrador Hydro ("**Hydro**") is a corporation continued and existing
16 under the **Hydro Corporation Act, 2007**, is a public utility within the meaning of the **Act**, and is
17 also subject to the provisions of the **EPCA**; and
18

19 **WHEREAS** in Order No. P.U. 7(2002-2003) the Board approved, inter alia, the Service Agreements
20 for each of Hydro's Island Industrial customers, constituting the rules and regulations under
21 which Hydro provides service to those customers; and
22

23 **WHEREAS** those Service Agreements have since been amended by various Board Orders and
24 rates for Hydro's Island Industrial customers arising from a general rate application were last
25 approved by the Board in Order No. P.U. 30(2019); and
26

27 **WHEREAS** in Order No. P.U. 27(2021) the Board approved capital expenditures proposed by
28 Hydro for the engineering and construction of an interconnection between the Star Lake
29 Terminal Station and the Valentine Terminal Station to provide service to a new intended Island
30 Industrial customer, Marathon Gold Corporation ("**Marathon**"), with the capital expenditures to
31 be recovered from Marathon; and
32

33 **WHEREAS** on November 4, 2022 Hydro filed an application (the "**Application**") for approval of a
34 negotiated Service Agreement between Hydro and Marathon; and

1 **WHEREAS** the Application states that the Service Agreement is, in most respects, consistent with
2 Service Agreements approved by the Board for the other Island Industrial customers except for
3 a period, referred to as the “Ramp-Up Period”, where Billing Demand for firm power is to be
4 calculated based upon the highest demand in that month instead of the highest firm demand in
5 that year; and

6
7 **WHEREAS** the Application states the Ramp-Up Period is intended to provide a different demand
8 billing methodology for the period during which Marathon is adding, commissioning and testing
9 processes or processing equipment, all activities that are expected to cause variability in
10 Marathon’s electrical loads; and

11
12 **WHEREAS** the Application states applying the standard terms and conditions for Billing Demand
13 without allowing for the Ramp-Up Period could cause Marathon to unduly restrict its
14 commissioning or early processing activities or incur large demand-related expenses due to a
15 requirement to operate new equipment or carry out new processes with unpredictable electrical
16 load outcomes during the first few years; and

17
18 **WHEREAS** the Application also states the operational restrictions and extra costs that Marathon
19 could incur during the Ramp-Up Period should be avoided where possible and the proposed Firm
20 Power Billing Demands based upon the maximum monthly demand instead of the maximum
21 annual demand during this period is fair, appropriate and consistent with past practice for new
22 Island Industrial customers; and

23
24 **WHEREAS** the Application was copied to: Newfoundland Power Inc. (“Newfoundland Power”);
25 the Consumer Advocate, Dennis Browne, K.C. (the “Consumer Advocate”); Hydro’s Island
26 Industrial customers: Corner Brook Pulp and Paper Limited, Braya Renewable Fuels
27 (Newfoundland) GP Inc., Vale Newfoundland and Labrador Limited; Teck Resources Limited;
28 Praxair Canada Inc.; and

29
30 **WHEREAS** on November 16, 2022 Newfoundland Power advised it had no comments; and

31
32 **WHEREAS** on November 17, 2022 Hydro requested that the Board approve the Application as
33 submitted; and

34
35 **WHEREAS** no other parties commented on the Application; and

36
37 **WHEREAS** the Board notes that similar Service Agreements were approved for Aur Resources Inc.
38 (now known as Teck Resources Limited), Vale Newfoundland and Labrador Limited and Praxair
39 Canada Inc. in Order Nos. P.U. 1(2006), P.U. 6(2012) and P.U. 9(2013) under substantially similar
40 circumstances as for Marathon; and

41
42 **WHEREAS** the Board is satisfied that the proposed Service Agreement should be approved.

1 **IT IS THEREFORE ORDERED THAT:**

2

3 1. The Service Agreement for Marathon Gold Corporation, as set out in Schedule A, is approved.

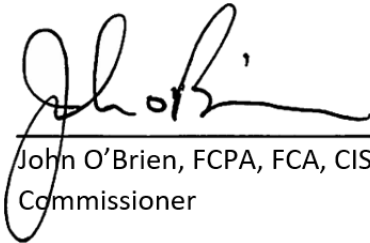
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5 2. Hydro shall pay all expenses of the Board arising from this Application.

DATED at St. John's, Newfoundland and Labrador, this 25th day of November 2022.



Darlene Whalen, P. Eng., FEC
Chair and Chief Executive Officer



John O'Brien, FCPA, FCA, CISA
Commissioner



Christopher Pike, LL.B., FCIP
Commissioner



Cheryl Blundon
Board Secretary

THIS SERVICE AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador on the _____ day of _____ 20____ (the "Agreement").

BETWEEN: **NEWFOUNDLAND AND LABRADOR HYDRO**, a corporation and an agent of the Crown constituted by statute, renamed and continued by the *Hydro Corporation Act, 2007*, Revised Statutes of Newfoundland and Labrador, Chapter H-16, (hereinafter called "Hydro") of the first part;

AND **MARATHON GOLD CORPORATION**, a company organized under the laws of Canada and extra-provincially registered under the laws of Newfoundland and Labrador (hereinafter called the "Customer") of the second part.

WHEREAS Hydro has agreed to sell electrical Demand and Energy to the Customer and the Customer has agreed to purchase the same from Hydro according to the Rates, Rules and Regulations set by the Board of Commissioners of Public Utilities for the Province of Newfoundland and Labrador and by the terms of this Agreement;

AND WHEREAS Hydro and the Customer acknowledge that this Agreement shall not be binding unless and until it is approved by the Board of Commissioners of Public Utilities;

THEREFORE THIS AGREEMENT WITNESSETH that the parties agree as follows:

ARTICLE 1
INTERPRETATION

- 1.01 In this Agreement, including the recitals, unless the context otherwise requires,
- (a) **"Amount of Power on Order"** means the Power contracted for in accordance with Article 2. **"Power on Order"** and **"Firm Power"** as referenced in the Rate Schedules have corresponding meanings;
 - (b) **"Billing Demand"** means the components of the Customer's monthly Power consumption for which Demand charges apply as determined in accordance with Articles 2, 5 and 10;
 - (c) **"Board"** means the Board of Commissioners of Public Utilities for Newfoundland and Labrador;

- (d) **“Business Day”** means any day that is not a Saturday, Sunday or holiday upon which the main offices of Hydro or the Customer in Newfoundland and Labrador are closed;
- (e) **“Calendar Year”** means a period that commences on January 1 and ends on December 31 of that year;
- (f) **“Customer’s Demand”** means the Demand at any particular time determined by adding the amount supplied to the Customer at the Delivery Point;
- (g) **“Delivery Point”** means the termination point of TL271 onto the takeoff structure at the Customer’s Valentine Terminal Station;
- (h) **“Demand”** means the amount of Power averaged over each consecutive period of fifteen minutes duration, commencing on the hour and ending each fifteen minute period thereafter and measured by a demand meter of a type approved for revenue metering by the appropriate department of the Government of Canada;
- (i) **“Electricity”** includes Demand and Energy;
- (j) **“Energy”** means the amount of electricity delivered in a given period of time and measured in kilowatt hours (kWh);
- (k) **“Firm Energy”** means the Energy associated with Firm Power;
- (l) **“Firm Power”** means, except as varied by paragraph 5.01 (a) and subject to Clause 2.06, the Demand normally associated with the Amount of Power on Order;
- (m) **“Force Majeure”** means:
 - (i) Acts of God, fire, flood, tidal wave, lightning, earthquake, cyclone, epidemic, pandemic, acts of a competent authority, acts of public enemies, terrorism, civil commotion, war, invasion, embargo, insurrection, rebellion, sabotage, protest, riot, violence, malicious mischief, extortion;
 - (ii) strike, labour dispute or lockout; and
 - (iii) includes any other cause which could not have been avoided by the exercise of reasonable human foresight and skill;
- (n) **“Interruptible Demand”** means that part of a Customer's Demand which exceeds its Power on Order, which may be interrupted, in whole or in part, at the discretion of Hydro, and which is supplied to the Customer in accordance with Clause 4.01;

- (o) **“Interruptible Energy”** means the Energy associated with Interruptible Demand, determined as that Energy taken in each fifteen-minute interval in which Interruptible Demand is taken and it shall be deemed that in such cases Firm Energy is taken at 100 percent load factor;
- (p) **“Interruptible Power”** means the Demand associated with Interruptible Demand and the Energy associated with Interruptible Energy;
- (q) **“Maximum Demand”** means the greatest amount of Demand taken during the appropriate Month or part of a Month, as the case may be, averaged over each consecutive period of fifteen minutes duration commencing on the hour and ending each fifteen minute period thereafter, and measured by a demand meter of a type approved for revenue metering by the appropriate department of the Government of Canada;
- (r) **“Month”** means a calendar month;
- (s) **“Power”** means the amount of electrical power delivered at any time and measured in kilowatts (kW);
- (t) **“Province”** means the Province of Newfoundland and Labrador;
- (u) **“Ramp-Up Period”** means the period of time it takes for the Customer to initially reach full operation of its facilities, as further specified in Clause 2.06;
- (v) **“Rate Schedules”** means the schedules of rates that are approved by the Board for the sale and purchase of Demand and Energy;
- (w) **“Specifically Assigned Charge”** means the payment made by the Customer in each Month, calculated according to a method approved by the Board, for the use of Specifically Assigned Plant;
- (x) **“Specifically Assigned Plant”** means that equipment and those facilities which are owned by Hydro and used to serve the Customer only, as described in Schedule A;
- (y) **“Standby or Emergency Energy Source”** means the energy source associated with Industrial Non-Firm Energy as published in Newfoundland and Labrador Hydro’s Schedule of Rates, Rules and Regulations;
- (z) **“Tax” or “Taxes”** means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff wherever imposed, assessed or collected, and whether based

on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts.

- 1.02 Hydro and the Customer agree that they are bound by this Agreement, which supersedes and replaces any previous Power Service Agreement between the parties, and by the agreements and covenants contained in the Rates Schedules. In the event of a conflict between this Agreement and the Rates Schedules, the Rates Schedules shall have priority.
- 1.03 In this Agreement all references to dollar amounts and all references to any other money amounts are, unless specifically otherwise provided, expressed in terms of coin or currency of Canada which at the time of payment or determination shall be legal tender herein for the payment of public and private debts.
- 1.04 Words in this Agreement importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders.
- 1.05 Where a word is defined anywhere in this Agreement, other parts of speech and tenses of the same word have corresponding meanings.
- 1.06 Wherever this Agreement prescribes a number of days for any purpose, the days shall be reckoned exclusively of the first and inclusively of the last.
- 1.07 The headings of all the articles are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.08 Any reference in this Agreement to an Article, a Clause, a subclause or a paragraph shall, unless the context otherwise specifically requires, be taken as a reference to an article, a clause, a subclause or a paragraph of this Agreement.
- 1.09 This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all of such counterparts together shall constitute one and the same instrument. The counterparts of this Agreement may be executed and delivered by electronic mail, facsimile or other electronic signature (including PDF) by either of the parties.
- 1.10 Notwithstanding any other provision of this Agreement, the respective rights, obligations and liabilities of the parties hereunder shall not take effect and shall be of no effect unless and until the Customer has made a written declaration to Hydro, which declaration must

be made on or before July 31, 2024.

- 1.11 The parties agree that any waiver of or non-action with respect to any breach or default of any of the terms or conditions of this Agreement shall not be construed as a waiver of any subsequent or other breach or default but all of the terms and conditions of this Agreement shall survive and continue to remain in force and effect.
- 1.12 Should any provision of this Agreement be deemed in contradiction of applicable laws or unenforceable for any reason, such provision shall be deemed null and void, and this Agreement shall remain in force in all other respects (provided that if deeming such provision null and void would materially affect the intent of this Agreement, such provision shall be adjusted rather than deemed null and void, if possible, in order to achieve the intent of the parties to the extent possible). If such circumstances arise, the parties shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by law.

ARTICLE 2
AMOUNT OF POWER ON ORDER

- 2.01 Subject to this Agreement, Hydro agrees to deliver to the Customer and the Customer agrees to purchase from Hydro the Amount of Power on Order.
- 2.02 Subject to Clause 2.06 and Clause 15.03, the Customer shall declare to Hydro in writing, not later than October 1 of each Calendar Year, its Amount of Power on Order for the following Calendar Year. Such declarations may provide for an Amount of Power on Order to apply throughout the Calendar Year, or may provide for one or more successive increases at specified times during the Calendar Year, but subject to Clause 2.05, may not provide for a decrease other than a decrease to take effect on January 1st of that following Calendar Year. The Amount of Power on Order shall in no event be greater than 25,000 kilowatts.
- 2.03 Hydro will supply all future Power requirements requested by the Customer additional to the amounts specified in Clause 2.02 provided that the Customer's request for such additional Power shall be made upon adequate notice, (provided that, if Hydro asserts that the amount of advance time provided by the Customer is inadequate for the supply of additional Power, it shall provide reasons for asserting such inadequacy) so that Hydro may make suitable extensions or additions to its system, if necessary.
- 2.04 If Hydro cannot fully comply with a declaration of Amount of Power on Order made in accordance with Clause 2.02 it will, as soon as practicable and in any event not later than November 1 of the year in which the declaration was made, advise the Customer of the extent to which it can comply. If more than one industrial customer requests an increase

in their Amount of Power on Order and Hydro cannot in its judgment provide enough Power to satisfy all of the timely requests it has received, Hydro will offer additional Amounts of Power on Order to the industrial customers who made those requests in such amounts as are prorated in accordance to the quantity of additional Amounts of Power on Order in the timely requests it has received from those customers.

- 2.05 The Customer hereby acknowledges that Hydro cannot deliver Power to the Customer unless it is consumed by the Customer. If at any time the Customer does not consume the Power that it has obligated itself to pay for in this Agreement, then, subject to Article 9, the readiness of Hydro to deliver such Power, as evidenced by the maintenance of normal voltage and frequency at the Delivery Point, shall constitute a valid tender by Hydro to the Customer of such Power.
- 2.06 The Ramp-Up Period:
- (a) shall be deemed to commence at the Customer's written declaration to Hydro that Ramp-Up Period has commenced.
 - (b) During the Ramp-Up Period the Customer shall declare the Amount of Power on Order for the following Month by giving written notice to that effect to Hydro's Energy Control Center not later than noon of the first Business Day of each Month. Such declarations shall provide for an Amount of Power on Order that shall apply throughout the following Month. As of the commencement of the Ramp-Up Period, the Amount of Power on Order shall in no event be less than 500 kilowatts.
 - (c) During the Ramp-Up Period, the Customer's Billing Demand for Firm Power shall be the greater of the Customer's Maximum Demand in that Month less its maximum Interruptible Demand in that Month, and the Amount of Power on Order declared under paragraph (b) of this Clause. In the event that the Customer does not declare an Amount of Power on Order for any Month pursuant to this clause, then, subject to paragraph (b) of this clause, the Billing Demand for Firm Power for that Month shall be the Customer's Maximum Demand in that Month less its maximum Interruptible Demand in that Month except that as of the commencement of the Ramp-Up Period, in no event shall the Billing Demand for Firm Power be less than 500 kilowatts.
 - (d) The Ramp-Up Period shall be deemed to end at the earlier of:
 - (i) The Customer's written declaration to Hydro that the Ramp-Up Period has ended, or
 - (ii) The Customer's Billing Demand, subject to Clause 10.02, exceeds 19,000 kilowatts for a period of three (3) consecutive Months, or

- (iii) 30 Months following the date of commencement of the Ramp-Up Period as outlined in paragraph (a).
 - (e) During the Ramp-Up Period, not later than noon of the first Business Day of the last month of every quarter, the Customer shall provide forecasts of monthly peak demand for the following quarter by giving written notice to that affect to Hydro's Energy Control Centre.
- 2.07 In no event shall Hydro be obliged to deliver Power in excess of that which it has agreed to deliver pursuant to this Article 2 and the Customer shall manage its Demand such that its Maximum Demand does not exceed its Amount of Power on Order, subject to Article 4.

ARTICLE 3
PURCHASE AND SALE OF DEMAND AND ENERGY

- 3.01 The sale and purchase of Demand and Energy shall be at such prices and upon such terms and conditions as are set out in the Rate Schedules and this Agreement.
- 3.02 Notwithstanding anything to the contrary herein, the Customer shall pay in each Month its applicable Demand charges, its applicable Energy charges, and its Specifically Assigned Charge as set out in the metering and billing statement delivered by Hydro to the Customer pursuant to Clause 13.01. For greater clarity, the Specifically Assigned Charge is limited to the sustaining capital and operations and maintenance expenditures as approved by the Board and made by Hydro for the Customer's Specifically Assigned Plant, it being acknowledged that the Customer will fully contribute to the costs of construction of the Specifically Assigned Plant in accordance with the contribution agreement dated September 1, 2021 between Newfoundland and Labrador Hydro and Marathon Gold Corporation, as amended from time to time.

ARTICLE 4
INTERRUPTIBLE POWER

- 4.01 The Customer may in any Month take an amount of Interruptible Power in addition to the Amount of Power of Order which shall be billed at Interruptible Demand and Energy rates approved by the Board. The amount of Interruptible Power available shall be 5,000 kW per Month. If Hydro is willing and able to serve the Customer's Interruptible Power, then the following shall apply:
- (a) The Customer shall, if practicable, make a prior request for, or otherwise as soon

as practicable notify Hydro of its requirement for Interruptible Power, specifying the amount and duration of its Interruptible Power requirements. Such request or notification may be made by telephone to the contact listed in Article 18.04 with confirmation of the request provided by the Customer in email to the contact listed in Clause 18.04 within 3 business days of the telephone request; Hydro officials shall reply by email to the Customer to confirm the request, and if such Interruptible Power was made available.

- (b) If serving the Customer's Interruptible Power would result in Hydro generating, or increasing or prolonging generation, from a Standby or Emergency Energy Source, then Hydro will so advise the Customer. If the Customer wishes to purchase Interruptible Demand and Energy at such a time or times, that Demand and Energy shall be charged for as calculated by the method or formula approved by the Board in Newfoundland and Labrador Hydro's Schedule of Rates, Rules and Regulations in the "Industrial – Non-Firm" rate sheet.

ARTICLE 5
DETERMINATION OF BILLING DEMAND

5.01 Subject to Clause 2, Clause 10 and Clause 15.03, the Customer's Billing Demands, which shall each be charged at the applicable rates as approved by the Board, shall comprise the following:

- (a) the Billing Demand for Firm Power, which in each Month shall be the greater of:
 - (i) the Amount of Power on Order,
 - (ii) the lesser of 75% of the Amount of Power on Order for the prior Calendar Year and, the Amount of Power on Order for the prior Calendar Year less 20,000 kW,or
 - (iii) the Maximum Demand taken up to that time in the Calendar Year less any Interruptible Demand; and
- (b) the maximum Interruptible Demand for that Month.

ARTICLE 6
CHARACTERISTICS OF POWER SERVICE AND POINTS OF DELIVERY

- 6.01 The Demand and Energy to be supplied under this Agreement will be delivered to the Customer at three (3) phase alternating current having a normal frequency of sixty (60) cycles and at a voltage to be determined by Hydro and the Customer, and delivery will be made at the Delivery Point.
- 6.02 Hydro will exercise its best efforts to limit variation from the normal frequency and voltage to tolerable values.

ARTICLE 7
POWER FACTOR

- 7.01 The Customer agrees to consume the Power contracted for in this Agreement at a power factor of not less than ninety percent (90%) lagging at the Delivery Point.
- 7.02 Should the power factor be consistently less than ninety percent (90%) lagging, the Customer, upon written notification from Hydro, agrees to install suitable corrective equipment to bring the power factor to a minimum of ninety percent (90%) lagging.
- 7.03 If the Customer should install static condensers to correct the lagging power factor, the equipment shall be installed such that it can be completely disconnected at the request of Hydro.

ARTICLE 8
METERING

- 8.01 The metering equipment and meters to register the amount of Demand and Energy to be delivered to the Customer under this Agreement shall be furnished and owned by Hydro and if required to be located on the Customer's premises will be installed by Hydro at the Customer's cost and expense, in a suitable place satisfactory to Hydro and provided by the Customer, and in such manner as to register accurately the total amount of Demand and Energy taken by the Customer under this Agreement. All metering equipment shall be inspected and tested by Hydro upon installation, and thereafter all testing, calibration, and if necessary replacement of the metering equipment shall be carried out and arranged for by Hydro in accordance with all applicable laws and regulatory approvals.
- 8.02 If the metering is installed on the Customer end of transmission lines or low side of transformers that are Specifically Assigned Plant or owned by the Customer, an appropriate adjustment will be made to account for losses in the transmission lines and transformers.

- 8.03 The Customer shall have the right, at its own expense, to install, equip, and maintain check meters adjacent to Hydro's meters. Schedule A depicts the approximate location of Hydro's metering equipment.
- 8.04 Marathon may, at any time, request the data related to the reading, inspecting, testing, repairing or replacement of Hydro's meters and Hydro shall provide the data as soon as reasonably possible. Marathon may also, upon reasonable notice, request to be present at a subsequent inspection, which request will not be unreasonably denied.
- 8.05 Should any Hydro meter fail to register the amount of Demand and Energy accurately, or be found to be not true and accurate within the acceptable margins of error set forth in the Electricity and Gas Inspection Regulations, and to the extent that this clause does not conflict with the *Electricity and Gas Inspection Act*, RSC 1985, c. E-4, the check meters provided by the Customer shall be used for measuring the amount of Demand and Energy delivered while the Hydro meters are out of service. If Hydro's meters fail to register the amount of Demand and Energy accurately, or the amount of Demand and Energy is not found to be true and accurate as noted above, and should the Customer's check meters also fail to register the amount of Demand and Energy accurately, Hydro may charge for the Demand and Energy delivered during the period when the registration was inaccurate, either:
- (a) On the basis of the amount of Demand and Energy charged for:
 - i. During the corresponding term immediately succeeding or preceding the period of alleged inaccurate registration; or
 - ii. During the corresponding term in the previous calendar year; or
 - (b) On the basis of the amount of Demand and Energy supplied as established by available evidence,
- whichever basis appears most fair and accurate to both the Customer and Hydro.

ARTICLE 9
LIABILITY FOR SERVICE

- 9.01 Subject to the provisions of the Rate Schedules and this Agreement, the Power and Energy herein contracted for will be made available for use by the Customer during twenty-four (24) hours on each and every day of the term of this Agreement.

- 9.02 The obligation of Hydro to furnish Power and Energy under this Agreement is expressly subject to all accidents or causes that may occur at any time and affect the generation or transmission of such Power and Energy, and in any such event, but subject to Clause 9.04, Hydro shall have the right in its discretion to reduce or, if necessary, to interrupt the delivery of Power and Energy under this Agreement.
- 9.03 Hydro shall cause all reasonable precautions to be taken in order to guard against reductions, fluctuations and interruptions in the delivery of Electricity and shall cause all such reductions, fluctuations or interruptions that occur to be terminated with all possible dispatch. If reductions, fluctuations or interruptions are necessary or unavoidable for repair, overhauling or inspection of equipment or for improving or adding to its equipment, where practical Hydro shall coordinate with the Customer in advance and give the Customer reasonable notice of any anticipated reduction, fluctuation or interruption of any amount of Electricity so that inconvenience and loss to the Customer may be minimized. The parties agree to use reasonable commercial efforts to coordinate, where possible, necessary reductions, fluctuations and interruptions in Hydro's delivery of Electricity in order to minimize the impact on the Customer's operations.
- 9.04 Unless the Customer suffers damages due to the willful acts or negligence of Hydro, and subject always to Clauses 9.08 and 9.09 and Article 10, the Customer's sole remedy for an interruption or reduction in the delivery of Electricity by Hydro to the Customer shall be the right to reduce its Billing Demand in accordance with Article 10.
- 9.05 If the operations of Hydro or the operations of its suppliers are suspended or curtailed by reason of Force Majeure, Hydro shall use reasonable commercial efforts to remove the cause of such suspension or curtailment and to resume normal operations at the earliest possible date and, in the event such suspension or curtailment of operations of Hydro or its suppliers results in the suspension or curtailment of the operations of the Customer for a period of more than seven (7) days thereafter occurring during the continuance of such period of curtailment or suspension of the operations of Hydro or its suppliers, the Customer's sole remedy shall be the right to reduce its Billing Demand in respect of the period of such suspension or curtailment by an amount of Power proportionate to the reduction of the amount of Power actually made available by Hydro and resulting from such suspension or curtailment of the operations of Hydro or its suppliers, including such seven (7) day period.
- 9.06 If the operations of the Customer are suspended or curtailed owing to Force Majeure, the Customer shall use reasonable commercial efforts to remove the cause of such suspension or curtailment and to resume normal operations at the earliest possible date, but if as a result of such suspension or curtailment, the Power taken by the Customer is reduced below fifty percent (50%) of the Amount of Power on Order, for any period exceeding seven (7) days, then, the Customer's sole remedy shall be the right to reduce its Billing Demand in respect of the period of such suspension or curtailment by an amount

of Power proportionate to the reduction of the amount of Power actually taken by Customer and resulting from such suspension or curtailment of the operations of the Customer, including such seven (7) day period.

9.07 Nothing in Clause 9.06 shall obligate the Customer to settle or resolve (or attempt to settle or resolve) a strike or other labour issue or interruption (or threatened strike or other labour issue or interruption).

9.08 Notwithstanding any other provision contained herein, neither Hydro nor the Customer shall:

- (a) be responsible to other for injury, damages or losses arising from loss of business, loss of profits, or any other losses as a result of interruption of the other's operations, or any other consequential losses, directly or indirectly arising out of the activities, occupancy, use or operation of the other's premises; or
- (b) look to or pursue the directors, officers or employees of the other for satisfaction of any claim or cause of action arising under this agreement, including any liability, damages, expenses or losses of any nature.

9.09 In no event shall the liability of either party exceed the sum of \$1,000,000.00 for any single occurrence.

ARTICLE 10
REDUCED BILLING DEMAND

10.01 If, in accordance with Clauses 9.04 or 9.05, or subject to the Customer's request pursuant to Clause 9.06, the Customer is entitled to a reduction in its Billing Demand, such reduction will be made according to the following:

- (a) If there is a total interruption of the delivery of Power and Energy by Hydro for a whole Month, the Customer Billing Demand for such Month shall be zero.
- (b) If there is a total interruption of Power for part of a Month, the Billing Demand for that Month shall be reduced by an amount of Power bearing the same ratio to that Billing Demand as the number of hours during which the interruption occurs bears to the total number of hours in that Month.
- (c) If the reduction of Power is made for a whole Month, then, subject to subclause 10.01(e), the reduced Billing Demand for that Month shall be substituted for the Billing Demand for the same Month, when determining the price of Power and

Energy for that Month.

- (d) If the reduction of Power is made for part of a Month, then, subject to subclause 10.01(e), the Billing Demand for such Month shall be determined by adding:

the reduced Billing Demand for the part of the Month during which the reduction was made, averaged over the whole of that Month;

to

the Billing Demand for the part of the Month during which no reduction was made, averaged over the whole of that Month.

- (e) In no event shall the reduced Billing Demand in any period be lower than the Maximum Demand in that same part of the Month.
- (f) Where a Billing Demand, a reduced Billing Demand or a Maximum Demand for a part of a Month is to be averaged for the whole of that Month in accordance with subclause 10.01(d), the averaging shall be done by dividing the Billing Demand, the reduced Billing Demand or the Maximum Demand, as the case may be, by the total number of hours in the whole of that Month and multiplying the result by the number of hours to which the Billing Demand, the reduced Billing Demand or the Maximum Demand relates.

10.02 In addition to the reductions in Billing Demand that may be made in accordance with Clause 10.01, Hydro may, in its sole judgment and discretion, make other Billing Demand adjustments from time to time to decrease the Customer's bill to reflect unusual or unanticipated conditions or to facilitate the testing of equipment or processes by the Customer.

ARTICLE 11

CONSTRUCTION OR INSTALLATION OF TRANSMISSION LINES OR APPARATUS

11.01 For the consideration aforesaid, the Customer hereby grants to Hydro the right to construct transmission lines and accessory apparatus on locations approved by the Customer on, under or over the property of the Customer for the purpose of serving the Customer and the other customers of Hydro, together with the right of access to the property of the Customer at all times for the construction of such lines and apparatus and for the repair, maintenance and removal thereof, provided that nothing in this clause shall entitle Hydro to construct transmission lines and accessory apparatus on or over the Customer's property if such transmission lines are not directly connected with the

Customer's premises or some part thereof. Hydro agrees to observe and fully comply with (a) any and all applicable laws and municipal statutes, codes, regulations, order, by-laws and guidelines applicable to the Customer's premises, and (b) all of the Customer's health, safety, and environmental rules, provided they are in compliance with the laws of the Province of Newfoundland and Labrador, and of Canada, as the case may be. Without derogating from the previous sentence, Hydro shall also undertake any construction, repair, maintenance and removal of transmission lines and accessory apparatus in accordance with its construction rules and standards as they exist from time to time and in accordance with good industry practice. Hydro agrees to consider the Customer's input with respect to the design, location, clearance and material composition of any equipment or installation built or placed on the Customer's premises, provided that in no event shall Hydro be required to incorporate the Customer's input to the extent that such input would result in a breach of Hydro's construction rules and standards or any applicable laws. Hydro will assume all risk of, and indemnify and hold harmless, and at its expense defend the Customer from and against all claims, loss, cost, legal actions, liabilities or expense on account of personal injury to or death of any persons whomsoever in exercising its right of access (either directly or through a contractor) pursuant to this Article 11. Hydro shall protect, defend, indemnify and hold harmless the Customer from and against all costs, which at any time may be imposed on the Customer arising out of any environmental claim resulting from Hydro's exercise of its rights under this Article 11, save for environmental costs or claims arising out of or in connection with any negligence or willful misconduct of the Customer to the extent of such negligence or willful misconduct.

- 11.02 The Customer shall not erect any building, structure or object on or over any right-of-way referred to in Clause 11.01 without the written approval of Hydro, which may not be unreasonably withheld, conditioned, or delayed, but subject to that limitation the Customer shall be entitled to make fair and reasonable use of all lands subjected to the said right-of-way.
- 11.03 Any changes that the Customer may request Hydro to make in the location of any lines or apparatus constructed pursuant to Clause 11.01 shall be made by Hydro, but the Customer shall bear the expense of any such changes to the extent that such lines or apparatus deliver Power to the Customer.
- 11.04 All transmission lines and apparatus of Hydro furnished and installed by it on the Customer's premises shall remain the property of Hydro, and Hydro shall be entitled to remove or retain such transmission lines and apparatus on the expiry or termination of this Agreement.
- 11.05 For the purpose of using the power service of Hydro, the Customer shall install properly designed and suitable apparatus in accordance with good engineering practice, and shall at all times operate and maintain such apparatus so as to avoid causing any undue

disturbance on the system of Hydro, and so that the current shall be approximately equal on all three of its phases.

- 11.06 If, at any time, the unbalance in current between any two of its phases is, in the judgment of Hydro, excessive to a degree that the power delivery system of Hydro and/or the electrical equipment of any other customer of Hydro is adversely affected, then it shall be the responsibility of the Customer to take such reasonable remedial measures as may be necessary and within their control, to reduce the unbalance to an acceptable value, at the Customer's cost and expense.
- 11.07 If, at any time during the term of this Agreement, Hydro desires to improve the continuity of power service to any of its customers, Hydro and the Customer will co-operate and use their reasonable commercial efforts to carry out the improvements either by changes to existing equipment or additions to the original installations of either Hydro or the Customer. If the proposed improvements will materially improve the continuity of power service to the Customer and will provide a benefit solely to the Customer, the costs and expenses shall be borne by the Customer. If the improvements provide a benefit to Hydro customers other than, or in addition to, the Customer, the costs and expenses shall be either (i) shared amongst the Hydro customers receiving the benefit provided that if the Customer is within the group of Hydro customers receiving the benefit then its contribution to the costs and expenses shall be proportionate to its benefit relative to the benefit to the other Hydro Customers, or (ii) borne by Hydro, as applicable.
- 11.08 The Customer shall not proceed with the construction of or major alterations of its equipment or structures associated with any terminal station at which Power and Energy is being delivered until Hydro has provided its written consent, not to be unreasonably withheld, conditioned, or delayed, that the proposals for such construction or alteration are in accordance with good engineering practice and the laws and regulations of the Province, provided that any examination of the Customer's proposals by Hydro shall not render Hydro responsible in any way for the construction or alteration proposed, even if electrical connection is made by Hydro, whether or not any changes suggested by Hydro shall have been made by the Customer.

ARTICLE 12
RESPONSIBILITY FOR DAMAGES

- 12.01 Subject to Clause 11.01, beyond the Delivery Point, the Customer shall indemnify and hold Hydro harmless with respect to any and all claims, losses, costs, damages, expenses, fines, penalties and other liabilities (including legal fees on a solicitor and client basis) that may be made for injuries or damages to persons or property caused in any manner by electric current or by the presence or use on the Customer's premises of electric circuits or apparatus, whether owned by Hydro or by the Customer, unless and to the extent that

such injuries or damages are caused by the willful misconduct or negligence on the part of the employees of Hydro or other persons for whom Hydro would in law be liable.

- 12.02 Up to the Delivery Point, Hydro shall indemnify and hold the Customer harmless with respect to any and all claims, losses, costs, damages, expenses, fines, penalties and other liabilities (including legal fees on a solicitor and client basis) that may be made for injuries or damages to persons or property caused in any manner by electric current or by the presence or use on the Customer's premises of electric circuits or apparatus owned by Hydro, unless and to the extent that such injuries or damages are caused by willful misconduct or negligence on the part of the employees of the Customer or other persons for whom the Customer would in law be liable.
- 12.03 If any of the transmission lines or apparatus installed by Hydro on the Customer's premises should be destroyed or damaged by the negligence of the Customer, its employees or agents, the Customer shall reimburse Hydro for the cost of their replacement or repair.

ARTICLE 13
PAYMENT OF ACCOUNTS AND NOTICE OF CLAIMS OF CUSTOMER

- 13.01 Hydro will render a monthly metering and billing statement to the Customer and the Customer shall, within twenty (20) days after the date of rendering any such account, make payment in lawful money of Canada by wire transfer or electronic funds transfer in accordance with the written instructions of Hydro without deduction for any claim or counterclaim which the Customer may have to claim to have against Hydro arising under this Agreement or otherwise. In the event that an error is found in any metering and billing statement rendered, the necessary adjustment shall be made in the next metering and billing statement. In the event a party disputes, in good faith, any part of a metering or billing statement, such dispute shall be resolved in accordance with the dispute resolution provisions of this Agreement.
- 13.02 Hydro and the Customer acknowledge that, notwithstanding any other provision of this Agreement, any amounts payable by the Customer to Hydro pursuant to this Agreement exclude HST and include all other Taxes. If Hydro is required to collect from the Customer an amount of HST with respect to the provision of any goods or services supplied pursuant to this Agreement, such amounts shall be identified separately on the invoice and the Customer shall pay the amount of such HST to Hydro.
- 13.03 All amounts in arrears after the expiration of the period of twenty (20) days referred to in Clause 13.01 shall bear interest at the rate of five percent (5%) per annum above the Bank of Canada prime business rate (publication V122495) or its successor rate, calculated daily

not in advance, to and including the date of payment, and interest accrued will be payable on demand.

- 13.04 If the Customer is in default for more than thirty (30) days in paying any amount due Hydro under this Agreement, then, without prejudice to its other recourses and without liability therefor, Hydro shall, upon ten (10) days written notice to the Customer of its intention so to do, be entitled to suspend the delivery of Power and Energy to the Customer until the said amount is paid, and if the delivery is so suspended, the Customer shall not be relieved of its obligations under this Agreement.
- 13.05 The Customer and Hydro will submit to the other in writing every claim or counterclaim which each may have or claim to have against the other arising under this Agreement within sixty (60) days of the day upon which the Customer or Hydro has knowledge of the event giving rise to such a claim.
- 13.06 The Customer and Hydro shall be deemed to have waived all rights for the recovery of any claim or counterclaim which has not been submitted to the other party pursuant to and in accordance with Clause 13.05.
- 13.07 Except as otherwise provided, each party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the collection, payment, withholding, reporting and remittance of all Taxes in accordance with the applicable law. Hydro shall pay or cause to be paid all Taxes on or with respect to the Electricity up to the Delivery Point. Customer shall pay or cause to be paid all Taxes on or with respect to the Electricity beyond the Delivery Point. For the computation of amounts of Electricity delivered at the Delivery Point and the Taxes so calculated, amounts determined through metering will be subject to any appropriate losses calculated in accordance with Clause 8.02. For greater certainty:
- (a) Hydro is solely responsible for the payment of Taxes payable by Hydro; and
 - (b) Customer is solely responsible for the payment of Taxes payable by Customer.

ARTICLE 14
ARBITRATION

- 14.01 In substitution for the dispute resolution provisions set out in the *Electricity and Gas Inspection Act*, RSC 1985, c. E-4, and the *Electricity and Gas Inspection Regulations*, any dispute or differences between Hydro and the Customer concerning this Agreement which cannot be resolved or settled by Hydro and the Customer shall be settled by final and binding arbitration in the City of St. John's, Newfoundland and Labrador, or such

other place as the parties mutually agree, at the request of either party pursuant to the provisions of the Arbitration Act (Newfoundland and Labrador), subject to the specific terms hereof. The party desiring arbitration shall notify the other party of its intention to submit any dispute(s) or difference(s) to arbitration as well as a brief description of the matter(s) to be submitted for arbitration. Should Hydro and the Customer fail to agree on a single arbitrator to settle the relevant dispute(s) or difference(s) within fifteen (15) days of delivery of the aforesaid notice, then each such party shall within thirty (30) days thereafter nominate an arbitrator having expertise with respect to the subject matter(s) under dispute (failing which nomination by a party, the arbitrator nominated by the other party may proceed to determine the dispute alone as he or she shall deem fit) and the two (2) arbitrators so selected shall select a third arbitrator to serve as a chairperson of the arbitral tribunal of similar expertise to act jointly with them. If said arbitrators shall be unable to agree in the selection of such chairperson within thirty (30) days of the expiry of the aforesaid thirty (30) day arbitrator nomination period, the chairperson shall be selected as contemplated in the aforesaid Arbitration Act. The costs of the arbitration shall be borne by the parties hereto as may be specified in the determination of the arbitrator(s). The arbitrator(s) shall further be authorized to retain such legal counsel and other professional advisors to provide any advice to the arbitrator(s) as the arbitrator(s) deem appropriate. The decision of the single arbitrator or any two (2) of the three (3) arbitrators, as the case may be, shall be non-appealable, final and binding with respect to the issue(s) in dispute.

ARTICLE 15
MODIFICATION OR TERMINATION OF AGREEMENT

- 15.01 Except where otherwise specifically provided in this Agreement and only to the extent so provided, all previous communications between Hydro and the Customer, either oral or written, with reference to the subject matter of this Agreement, are hereby abrogated and this Agreement shall constitute the sole and complete agreement between Hydro and the Customer in respect of the matters herein set forth.
- 15.02 At any time while this Agreement is in effect, the Customer may terminate it by giving to Hydro two (2) years notice in writing of its intention so to do. It is acknowledged by Hydro that Clause 19.01 shall have no application in the case of a termination of this Agreement in accordance with such notice.
- 15.03 It is possible that during the term of this Agreement, there may be material change to Hydro's system for the provision of electrical Demand and Energy to customers such as the creation of non-firm rate or other flexible product that could provide for additional options related to a gradual reduction of Power on Order (i.e. Ramp-Down) leading up to termination of the Agreement. If such circumstances were to occur, or in any event at

least 5 years prior to the anticipated termination of this Agreement, the parties shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes.

- 15.04 Any amendment, change or modification of this Agreement shall be binding upon Hydro and the Customer, or either of them only if such amendment, change or modification is in writing and is executed by Hydro and the Customer by its duly authorized officers or agents and in accordance with their respective regulations or by-laws.
- 15.05 In the event that the Board sets terms and conditions of rates to be charged by Hydro to the Customer for the Electricity delivered hereunder and those rates are inconsistent with the terms and conditions set out in this Agreement, the rates set by the Board shall prevail.

ARTICLE 16
SUCCESSORS AND ASSIGNS

- 16.01 This Agreement shall be binding upon and enure to the benefit of Hydro and the Customer and their respective successors and assigns, but it shall not be assignable by the Customer, except to any affiliate, parent or subsidiary corporation of the Customer, without the written consent of Hydro with such consent not to be unreasonably withheld. Where the Agreement is assigned to an affiliate, parent or subsidiary corporation of the Customer, the Customer must provide written notice to Hydro of the assignment.

ARTICLE 17
GOVERNING LAW AND FORUM

- 17.01 This Agreement shall be governed by and interpreted in accordance with the laws of the Province and the federal laws of Canada applicable therein, and every action or other proceeding arising hereunder shall be determined exclusively by a court of competent jurisdiction in the Province, subject to the right of appeal to the Supreme Court of Canada where such appeal lies.

ARTICLE 18
COMMUNICATION BETWEEN HYDRO AND THE CUSTOMER

- 18.01 Subject to Clauses 18.02 and 18.03, any notice, request or other instrument which is required or permitted to be given, made or served under this Agreement by either Hydro or the Customer, except for notices or requests pertaining to Interruptible Power or

Power on Order, shall be given, made or served in writing and shall be deemed to be properly given, made or served if personally delivered, or sent by email, or mailed by prepaid registered post, addressed, if service is to be made

(a) on Hydro, to

The Corporate Secretary
Newfoundland and Labrador Hydro
Hydro Place
P.O. Box 12400
St. John's, Newfoundland
CANADA. A1B 4K7
Email: hydrocorporatesecretary@nlh.nl.ca

or

(b) on the Customer, to

Marathon Gold Corporation
Suite 600, 36 Lombard Street
Toronto, Ontario
M5C 2X3
Email: twilliams@marathon-gold.com
Attention: Tim Williams, COO

18.02 Any notice mailed by prepaid registered mail will be conclusively deemed to have been given on the fourth day after mailing thereof and, if given by email, will be conclusively deemed to have been given on the day of transmittal thereof if given during the normal business hours of the recipient and on the next Business Day during which such normal business hours next occur if not given during such hours on any day; provided that, in each case, confirmation of receipt is received by the party giving the Notice. If the party giving any Notice knows or ought reasonably to know any difficulties with the postal system that might affect the delivery of mail, any such Notice must not be mailed but must be given by email.

Except for notices for Interruptible Power, whenever this Agreement requires a notice to be given or a request to be made on a day that is not a Business Day, such notice or request may be given or made on the first Business Day occurring thereafter. Notices or requests pertaining to Interruptible Power may be given and received by and to the appropriate nominees of Hydro and the Customer by telephone or electronic communication provided that it is confirmed in writing and transmitted or delivered by email, courier or mail as soon as practicable.

- 18.03 Either Hydro or the Customer may change the address to which a notice, request or other instrument may be sent to it by giving the other party notice of such change, and thereafter, every notice, request or other instrument shall be delivered or mailed in the manner prescribed in Clause 18.01 to such party at the new address.
- 18.04 Any notices or requests pertaining to Interruptible Power or Power on Order, shall be made by the Customer via telephone call to Hydro's Energy Control Center, at (709) 737-1957/1958. The notice or request shall be confirmed by the Customer via email sent to KeyAccounts@nlh.nl.ca within 3 business days of the initial telephone call to the Energy Control Center. Hydro shall confirm the request by return email.

ARTICLE 19
LIQUIDATED DAMAGES

- 19.01 Subject to applicable law and Article 10 and Article 15.02, if the Customer voluntarily or forcibly abandons its operations, commits an act of bankruptcy or liquidates its assets, then there shall, forthwith, become due and payable to Hydro by the Customer, as stipulated and liquidated damages without burden of proof thereof, a lump sum equal to:
- (a) 0.85 of its then current Billing Demand for Firm Power, at the Firm Power Demand rate, multiplied by 24;
- plus
- (b) Specifically Assigned Plant: the remaining net book value, plus any decommissioning costs, less the salvageable value, and less the net book value of any contributions made by the Customer.

ARTICLE 20
ANTI-CORRUPTION

- 20.01 Hydro represents and warrants that, in all of its activities in connection with this Agreement and on behalf of the Customer, Hydro and its employees, directors, agents and representatives will at all times comply with all applicable anticorruption and conflict of interest laws, policies and codes of conduct, including, but not limited to, the Criminal Code (Canada), Hydro's Code of Business Conduct and Ethics, Hydro's Statement of Core Values, Newfoundland and Labrador Conflict of Interest Act, and that at no time will its employees, directors, agents and representatives derive any benefit from this Agreement unless the provision or receipt of such benefit is in full compliance with such laws, policies and codes of conduct.

[Signature Page Follows]

IN WITNESS WHEREOF Hydro and the Customer have each executed this Agreement by causing it to be executed in accordance with its by-laws or regulations and by its duly authorized officers or agents, the day and year first above written.

DULY EXECUTED by **Newfoundland and Labrador Hydro** in accordance with its Regulations or By-Laws in the presence of:

Witness

DULY EXECUTED by **Marathon Gold Corporation** in accordance with its By-Laws in the presence of:

Witness

Schedule A
Specifically Assigned Plant

Specifically Assigned Plant

The Customers Specifically Assigned Plant is as described below:

All assets associated with the safe and reliable delivery of power to the Customer that are located in the extension section (extension for breaker B1L71 and associated equipment) of the Star Lake Terminal Station (“SLK TS”) and the transmission line, TL271, up to the interconnection point between Hydro and the Customer. The interconnection point is the termination of transmission line TL271 onto the takeoff structure inside the Valentine Terminal Station (“VLN TS”). The figures in this Schedule indicate the approximate location of the SLK TS extension and the interconnection point at VLN TS. Minor communications equipment that Hydro has installed at the VLN TS for Hydro’s SCADA purposes is also included in the Customer’s Specifically Assigned Plant.

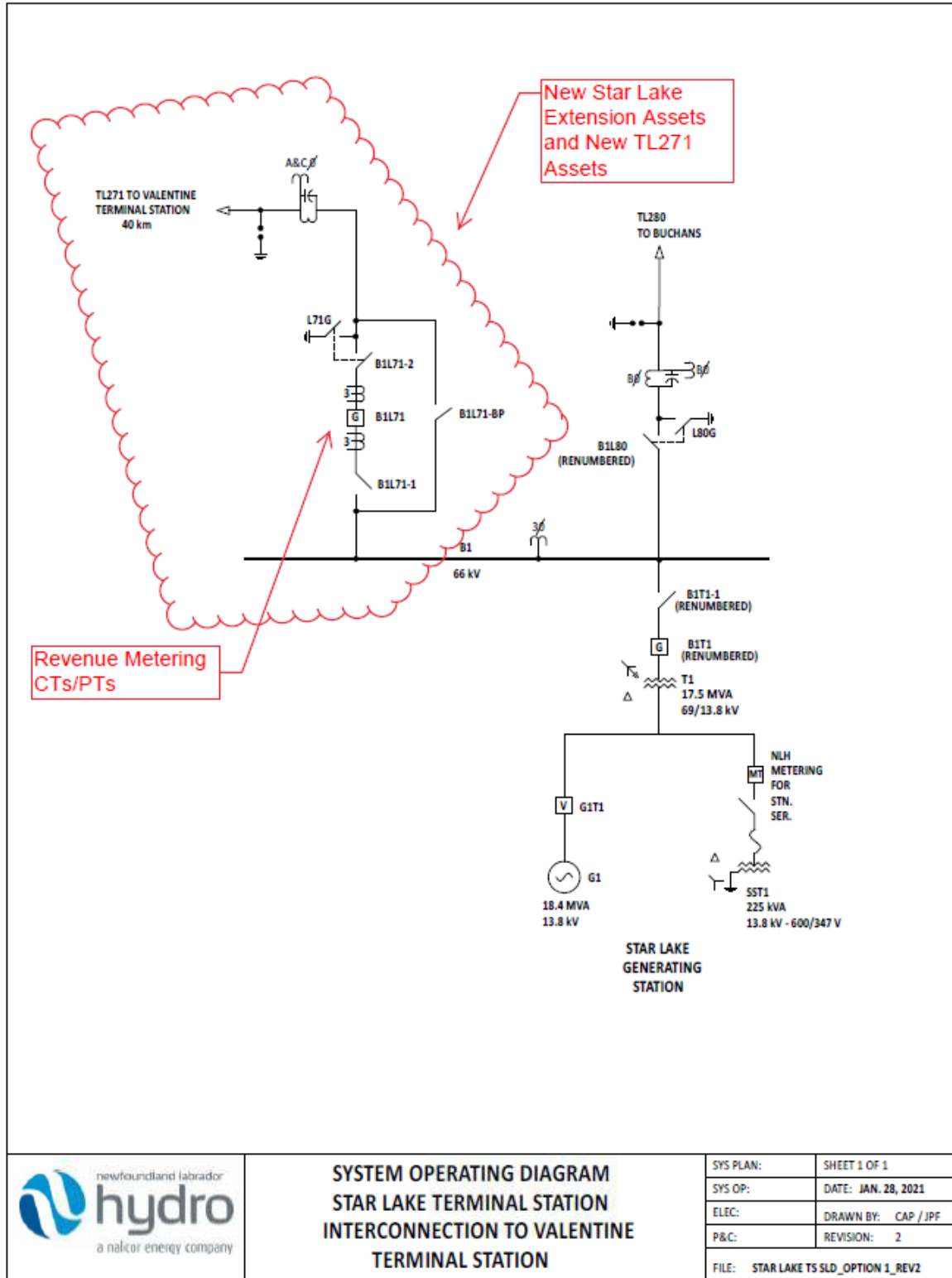


Figure 1: Star Lake Terminal Station (SLK TS) Single Line Diagram

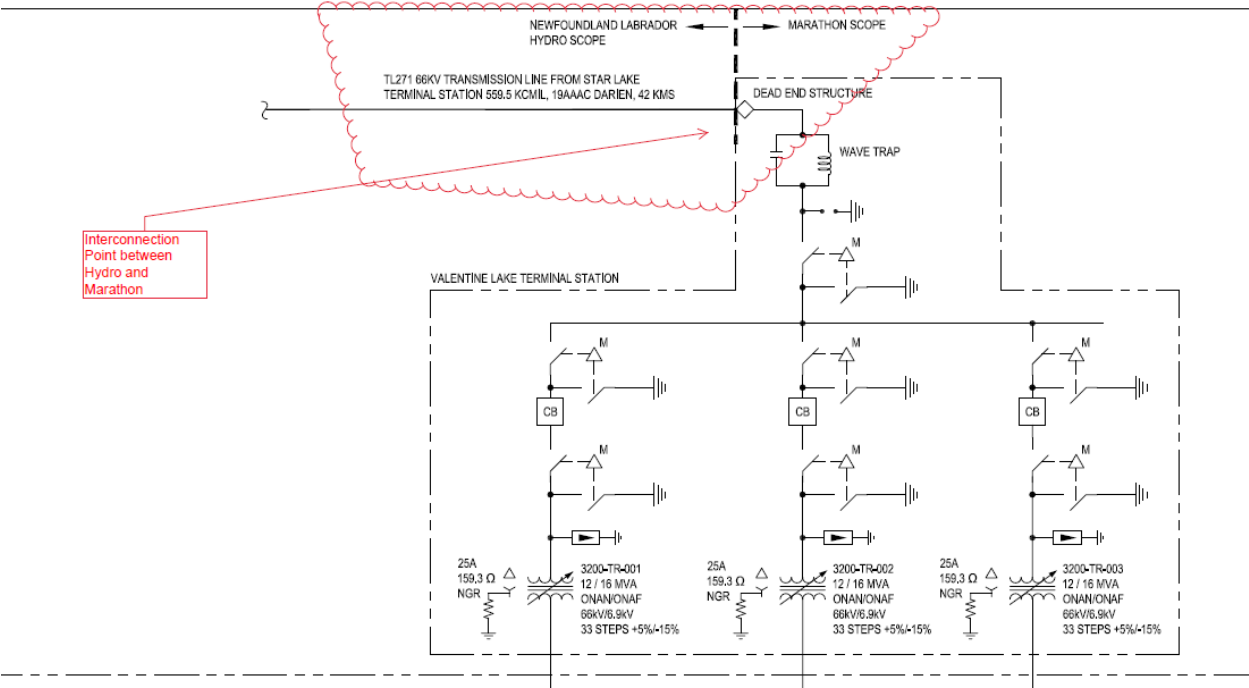


Figure 2: Valentine Terminal Station (VLTN TS) Single Line Diagram