

November 10, 2009

Board of Commissioners of Public Utilities
120 Torbay Road
P.O. Box 21040
St. John's, NL
A1A 5B2

Attention: Cheryl Blundon, Director – Corporate Services and Board Secretary

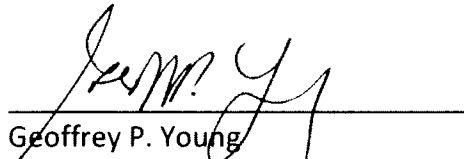
Dear Ms. Blundon:

Re: Application for Establishment of a Water Management Agreement

Nalcor Energy [Nalcor] and Churchill Falls (Labrador) Corporation [CF(L)Co] have both been granted water rights on the Churchill River, and are therefore subject to provisions of the *Electrical Power Control Act, 1994* and the *Water Management Regulations*. Both parties have undertaken to negotiate a water management agreement, but we have been advised by CF(L)Co that a tentative agreement reached between the parties was not approved by CF(L)Co's Board of Directors.

Consequently, in accordance with section 5.5(1) of the *Act*, Nalcor hereby applies to the Board to establish the terms of a Water Management Agreement between Nalcor and CF(L)Co with respect to the Churchill River. Please find enclosed the Application together with proposed water management agreement and supporting documents, in two volumes.

Sincerely,



Geoffrey P. Young
Senior Legal Counsel

cc. Andrew MacNeill, Vice President and General Manager, CF(L)Co.

IN THE MATTER OF the *Electrical Power Control Act, 1994*, SNL 1994, Chapter E-5.1, as amended (the EPCA); and

IN THE MATTER OF an application by Nalcor Energy to establish the terms of a water management agreement between Nalcor Energy and Churchill Falls (Labrador) Corporation Limited for the Churchill River, Labrador.

TO: The Board of Commissioners of Public Utilities (the Board)

THE APPLICATION OF Nalcor Energy **SAYS THAT:**

A. Background:

Introduction

1. Nalcor Energy is a statutory corporation existing pursuant to the Energy Corporation Act, S.N.L 2007, Chapter E-11.01.
2. Churchill Falls (Labrador) Corporation Limited (CF(L)Co) is a corporation incorporated under the laws of Canada.
3. Section 5.4(1) of the EPCA requires that two or more persons who have been granted rights by the Province to the same body of water as a source for the production of power and who utilize, or propose to utilize, or to develop and utilize the body of water as a source for the production of power shall enter into an agreement for the purpose of achieving, with respect to the body of water, the policy objective set out in subparagraph 3(b)(i) of the EPCA.

4. The Water Management Regulations (the Regulations) made pursuant to the EPCA provide further direction with respect to the content of a water management agreement. Each of Nalcor Energy and CF(L)Co is a “supplier” within the meaning of the Regulations, as hereinafter explained.
5. Section 5.7 of the EPCA provides that a water management agreement shall not adversely affect a provision of a contract for the supply of power entered into by a person bound by the water management agreement and a third party that was entered into before the water management agreement, or a renewal of that contract.

Existing and Proposed Facilities on the Churchill River

6. CF(L)Co has water rights with respect to the upper portion of the Churchill River in Labrador in the Province of Newfoundland and Labrador pursuant to the *Churchill Falls (Labrador) Corporation (Lease) Act, 1961*.
7. CF(L)Co owns and operates the existing 5,428 MW Churchill Falls hydroelectric generating facility located at Churchill Falls on the Churchill River, Labrador.

8. CF(L)Co has entered into various contracts relating to the supply of power and energy from the Churchill Falls facility.
9. Nalcor Energy has water rights with respect to the lower portion of the Churchill River pursuant to the Nalcor Water Lease dated March 17, 2009, as amended on October 2, 2009.
10. Nalcor Energy proposes to construct and operate two hydroelectric generating facilities on the lower portion of the Churchill River, consisting of a 2,250 MW generating facility at Gull Island and a 824 MW hydroelectric generating facility at Muskrat Falls.
11. Construction of the lower Churchill generating facilities will take place over the next several years, with first power projected to be after September 1, 2016.

Negotiation Process

12. Between April and September, 2009, Nalcor Energy and CF(L)Co teams negotiated the terms of a proposed water management agreement for the Churchill River.

13. The CF(L)Co Shareholders' Agreement prescribes CF(L)Co's approval process for the proposed water management agreement, as Nalcor Energy is a related party to CF(L)Co. The Shareholders' Agreement requires that the CF(L)Co Board of Directors approve the agreement.
14. On October 23, 2009, the CF(L)Co Board of Directors did not approve the proposed water management agreement and did not provide further direction to its negotiating team.
15. The parties have negotiated but have failed to enter into a water management agreement within a reasonable time as required by the EPCA and Regulations and Nalcor is therefore applying to the Board to establish the terms of a water management agreement.

B. Nalcor Energy Proposals:

16. Nalcor Energy applies to the Board to establish the terms of a water management agreement between Nalcor Energy and CF(L)Co pursuant to the provisions of the EPCA and the Regulations.
17. Nalcor Energy proposes that the terms of the water management agreement shall be substantially as set forth in Schedule "A" to this Application.

C. Order Requested:

18. Nalcor Energy requests that the Board make an Order:

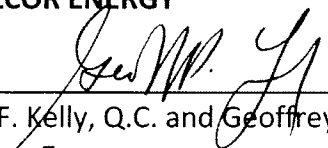
- a) establishing the terms of a water management agreement pursuant to section 5.5 of the EPCA;
- b) such other or alternate orders or directions which may upon the hearing of this Application appear just and reasonable in the circumstances.

D: Communications:

19. Communication with respect to this Application should be forwarded to the attention of Ian F. Kelly, Q.C. and Geoffrey P. Young, counsel to Nalcor Energy.

DATED at St. John's, Newfoundland and Labrador, this ~~10th~~ day of November, 2009.

NALCOR ENERGY


for Ian F. Kelly, Q.C. and Geoffrey Young
Nalcor Energy
P.O. Box 12400
St. John's, NL
A1B 4K7

Telephone: (709) 737-1277
Telecopier: (709) 737-1782
Internet: info@nalcorenergy.com

IN THE MATTER OF the *Electrical Power Control Act, 1994*, SNL 1994, Chapter E-5.1, as amended (the EPCA); and

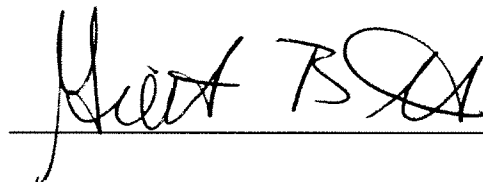
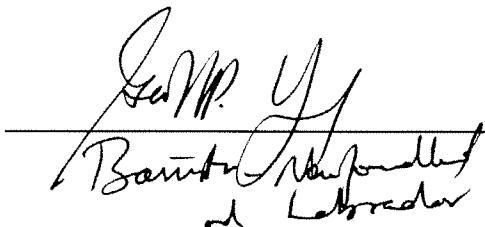
IN THE MATTER OF an application by Nalcor Energy to establish the terms of a water management agreement between Nalcor Energy and Churchill Falls (Labrador) Corporation Limited for the Churchill River, Labrador.

AFFIDAVIT

I, Gilbert Bennett, Professional Engineer, of the City of Mount Pearl, in the Province of Newfoundland and Labrador, make oath and say as follows:

1. That I am Vice-President, Lower Churchill Project of Nalcor Energy and as such I have knowledge of the matters and things to which I have herein deposed, and make this affidavit in support of the Application.
2. That to the best of my knowledge, information and belief, all matters, facts and things set out in this Application are true.

SWORN at St. John's, in the Province of Newfoundland and Labrador, this ~~10th~~ day of November, 2009 before me:



Gilbert Bennett