

1 **IN THE MATTER OF**

2 the *Electrical Power Control Act*, RSNL 1994,  
3 Chapter E-5.1 (the "*EPCA*") and the  
4 *Public Utilities Act*, RSNL 1990,  
5 Chapter P-47 (the "*Act*"), as amended;

6  
7  
8 **AND**  
9

10  
11 **IN THE MATTER OF**

12 an application by Nalcor Energy (the "*Application*") for an Order:  
13 to establish the terms of a Water Management Agreement  
14 between Nalcor Energy ("Nalcor") and  
15 Churchill Falls (Labrador) Corporation Limited ["CF(L)Co"]  
16 for the Churchill River, Labrador.

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**PUBLIC UTILITIES BOARD  
REQUESTS FOR INFORMATION  
TO  
NALCOR ENERGY("NE")  
PUB-NE-1 to PUB-NE-24**

**Issued: January 20, 2010**

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- PUB-NE-1** The objectives of a Water Management Agreement are set out in section 3(b)(i) of the *EPCA* and in section 3(1) of the *Water Management Regulations*. Nalcor has, in Schedule A to its Application, presented a Table of Concordance matching provisions of section 3 of the *Water Management Regulations* to articles in the proposed Water Management Agreement. Please explain how each article referenced in the Table of Concordance implements the objective from the Water Management Regulations to which it is matched and its relation to the policy objective set out in section 3(b)(i) of the *EPCA*. Provide specific references and evidence detailing options considered, analyses undertaken, and reasons for decisions.
- PUB-NE-2** The proposed Water Management Agreement contains articles that are not referred to in the Table of Concordance. Please confirm, for each of those articles, whether it has the potential to promote or detract from the achievement of the objectives set out in section 3(b)(i) of the *EPCA* and in the *Water Management Regulations*, and explain why. Provide specific references and evidence detailing options considered, analyses undertaken, and reasons for decisions.
- PUB-NE-3** The Independent Coordinator to be appointed as set out in article 6.1 of the proposed Water Management Agreement would have responsibility to establish production schedules by which the policy objectives set out in the *EPCA* and the *Water Management Regulations* are met and by which adverse effects on existing power supply contracts are to be avoided. Please provide: i) an explanation of the criteria to be used in the selection of an Independent Coordinator; ii) the means to be employed to ensure that the Independent Coordinator possesses the skills and knowledge necessary to carry out his or her functions; iii) the intended audit procedure of the effectiveness of the performance of the Independent Coordinator; and iv) the methodology by which these concerns are to be addressed in the proposed Water Management Agreement.
- PUB-NE-4** The Water Management Committee to be appointed as set out in article 5.1 of the proposed Water Management Agreement would also play an important role in ensuring that the policy objectives set out in the *EPCA* and the *Water Management Regulations* are met and that adverse effects on existing power supply contracts are avoided. Please provide: i) an explanation of the criteria to be used in the selection of the members of the Water Management Committee; ii) the means to be employed to ensure that the Water Management Committee members possesses the skills and knowledge necessary to carry out the functions of the Committee; iii) the intended audit procedure of the effectiveness of the performance of the Committee; and iv) the methodology by which these concerns are to be addressed in the proposed Water Management Agreement.
- PUB-NE-5** For each of the existing power contracts identified in part 2.2 on page 5 of the Nalcor Pre-filed Evidence and at Tab 6 of the submission of CF(L)Co please identify, with reference to the terms of the contracts, the rights of the parties to those contracts that have the potential to be affected by a Water Management Agreement.


- 1 **PUB-NE-6** Explain in detail how the clauses identified in response to PUB-NE-5 meet the  
 2 requirement, set out in section 5.7 of the *EPCA*, that an agreement to develop a  
 3 source of power, entered into by two or more persons and reviewed by the public  
 4 utilities board, or, in the absence of an agreement by the parties, established by  
 5 the public utilities board, not adversely affect a provision of a contract for the  
 6 supply of power entered into by a person bound by the Water Management  
 7 Agreement and a third party, which was entered into before the Water  
 8 Management Agreement.  
 9
- 10 **PUB-NE-7** In particular, with reference to CF(L)Co's submission at Tab 3, pages 4 and 5,  
 11 regarding the Churchill Falls Guaranteed Winter Availability Contract (GWAC)  
 12 please confirm that the GWAC is a contract within the meaning of section 5.7 of  
 13 the *EPCA*, 3.1 of the *Regulations*, and for all purposes of the *EPCA*.  
 14
- 15 **PUB-NE-8** In Annex "A" of the Water Management Agreement, page 25 of the Application,  
 16 Article 7.1 states that "*Energy Benefits for each Supplier shall be determined by*  
 17 *the Water Management Committee, in accordance with the Agreement, for each*  
 18 *period established by the Water Management Committee, which period shall not*  
 19 *exceed one year.*" In Schedule A of the Water Management Agreement, page 3,  
 20 Article 1.1 defines "*Energy Benefits*" as "*...the Energy accruing to a supplier for*  
 21 *a period as a result of this Agreement in excess of the Energy that would have*  
 22 *accrued to such Supplier for such period in the absence of this Agreement, as*  
 23 *determined in Annex "A"*". Please outline the exact mechanism that will be used  
 24 to determine the Energy Benefits.  
 25
- 26 **PUB-NE-9** In the Pre-filed Evidence of Nalcor, Section 5.4.2, Nalcor sets out how it intends  
 27 to keep track of energy use and the corresponding estimated water volume used at  
 28 each facility. On page 26, it states that: "*These steps have been proposed in order*  
 29 *to avoid any adverse effect on CF(L)Co's prior power contracts.*" Please explain  
 30 this statement with reference to specific sections of any prior power contracts that  
 31 may be affected, highlighting why it is necessary to track water volume in  
 32 addition to energy used.  
 33
- 34 **PUB-NE-10** In considering the response to PUB-NE-9, and Section 5.4.2 of Nalcor's Pre-filed  
 35 Evidence, page 26, lines 10-20 where it is stated that: "*Therefore a party may*  
 36 *have banked energy at a lower conversion rate than when it is ultimately*  
 37 *withdrawn, resulting in the consumption of the same water volume, however*  
 38 *receipt of a lower amount of energy, or alternatively the same amount of energy*  
 39 *for different water volumes.*" In the event that a conflict arises relating to the  
 40 calculation of the amount of energy banked and the consumption of a volume of  
 41 water, which calculation will prevail? Please provide the relevant reference to the  
 42 Water Management Agreement that addresses this issue.  
 43
- 44 **PUB-NE-11** With reference to the response to PUB-NE-9, will the same concerns exist upon  
 45 the renewal of the Hydro Quebec Power Contract?

- 1 **PUB-NE-12** With reference to Schedule III of the Hydro Quebec Power Contract, Volume II  
2 of the Application, Exhibit 3, and the definition of Continuous Energy as found in  
3 Article I (1.1)(II), please explain the difference, if any, in the amount of energy  
4 that CF(L)Co is obligated to make available to Hydro Quebec under the existing  
5 terms and conditions of the Hydro Quebec Power Contract, and under the terms of  
6 the Renewal.  
7
- 8 **PUB-NE-13** Has Nalcor consulted with the Conseil des Innus de Ekuanitshit regarding  
9 Nalcor's proposal to develop two hydroelectric generating facilities on the Lower  
10 Churchill River generally, and regarding the Water Management Agreement in  
11 particular?  
12
- 13 **PUB-NE-14** If consultation with the Conseil des Innus de Ekuanitshit regarding the Water  
14 Management Agreement has occurred, please provide details of the consultation  
15 that has taken place regarding the project generally, and regarding the Water  
16 Management Agreement in particular.  
17
- 18 **PUB-NE-15** Has Nalcor identified any issues arising from the implementation of the proposed  
19 Water Management Agreement that have the potential to affect any rights claimed  
20 by the Council des Innus de Ekuanitshit? If so please identify the issues.  
21
- 22 **PUB-NE-16** If any issues arising from the implementation of the proposed Water Management  
23 Agreement that have the potential to affect any rights claimed by the Conseil des  
24 Innus de Ekuanitshit have been identified, please confirm whether any  
25 consultation has occurred regarding those issues and provide details of the  
26 consultation.  
27
- 28 **PUB-NE-17** Has Nalcor consulted with the Innu of Uashsat mak Mani-Utenam et al regarding  
29 Nalcor's proposal to develop two hydroelectric generating facilities on the Lower  
30 Churchill River generally, and regarding the Water Management Agreement in  
31 particular?  
32
- 33 **PUB-NE-18** If consultation with the Innu of Uashsat mak Mani-Utenam et al regarding the  
34 Water Management Agreement has occurred, please provide details of the  
35 consultation that has taken place regarding the project generally, and regarding  
36 the Water Management Agreement in particular.  
37
- 38 **PUB-NE-19** Has Nalcor identified any issues arising from the implementation of the proposed  
39 Water Management Agreement that have the potential to affect any rights claimed  
40 by the Innu of Uashsat mak Mani-Utenam et al? If so please identify the issues.  
41
- 42 **PUB-NE-20** If any issues arising from the implementation of the proposed Water Management  
43 Agreement that have the potential to affect any rights claimed by the Innu of  
44 Uashsat mak Mani-Utenam et al have been identified, please confirm whether any  
45 consultation has occurred regarding those issues and provide details of the  
46 consultation.

- 1 **PUB-NE-21** Has Nalcor implemented an ongoing consultation process with the Conseil des  
 2 Innus de Ekuanitshit and the Innu of Uashsat mak Mani-Utenam et al with regard  
 3 to the Water Management Agreement?  
 4
- 5 **PUB-NE-22** Does Nalcor have a plan for future consultation with the Conseil des Innus de  
 6 Ekuanitshit and the Innu of Uashsat mak Mani-Utenam et al regarding the Water  
 7 Management Agreement or any other issues that may arise in the development of  
 8 the Churchill River as a source for the production of power?  
 9
- 10 **PUB-NE-23** Please provide details of the consultation that has been undertaken with the  
 11 Conseil des Innus de Ekuanitshit and the Innu of Uashsat mak Mani-Utenam et al  
 12 in relation to the Environmental Impact Statement, and identify any aspects of  
 13 that consultation that may relate to the terms and provisions of the Water  
 14 Management Agreement.  
 15
- 16 **PUB-NE-24** Please provide details of the consultation that has been undertaken with the  
 17 Conseil des Innus de Ekuanitshit and the Innu of Uashsat mak Mani-Utenam et al  
 18 in relation to the Environmental Impact Statement, and identify any aspects of  
 19 that consultation that may relate to the implementation of the Water Management  
 20 Agreement.

**DATED** at St. John's, Newfoundland this 20<sup>th</sup> day of January 2010.

**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

*Per*   
 Cheryl Blundon  
 Board Secretary