

1 **IN THE MATTER OF**

2 the *Electrical Power Control Act*, SNL 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
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11 **IN THE MATTER OF**

12 an application by Nalcor Energy 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. (the “*Application*”)

**PUBLIC UTILITIES BOARD
REQUESTS FOR INFORMATION
TO
NALCOR ENERGY(“NE”)
PUB-NE-25 to PUB-NE-48**

Issued: February 2, 2010

- 1 **PUB-NE-25** Please provide a summary identifying the significant milestones in the proposed
2 development of the Lower Churchill Hydroelectric Generation project and the
3 anticipated or proposed dates for the achievement of those milestones.
4
- 5 **PUB-NE-26** Please identify the anticipated or proposed date for the operational
6 implementation of the proposed Water Management Agreement with a
7 breakdown of any steps and actions that must be taken prior to the operational
8 implementation of the agreement, such as the appointment of the Water
9 Management Committee and the Independent Coordinator, with the anticipated or
10 proposed dates for the achievement of those steps and actions.
11
- 12 **PUB-NE-27** Is there a schedule for the completion of the environmental assessment process for
13 the project by the Joint Review Panel. If not, is there any proposed or anticipated
14 date by which the process is expected to be completed?
15
- 16 **PUB-NE-28** Would the implementation of the proposed Water Management Agreement, and
17 in particular decisions of the Independent Coordinator made pursuant to the
18 proposed Water Management Agreement, cause the water levels in reservoirs
19 above the Upper Churchill hydroelectric site and the characteristics of the water
20 flows in the rivers above the Upper Churchill hydroelectric site to vary at any
21 point in time from the water levels and water flow characteristics that would exist
22 apart from the implementation of the proposed Water Management Agreement? If
23 so, what variances are anticipated?
24
- 25 **PUB-NE-29** Would the implementation of the proposed Water Management Agreement, and
26 in particular decisions of the Independent Coordinator made pursuant to the
27 proposed Water Management Agreement, cause the water levels in reservoirs
28 below the Upper Churchill hydroelectric site and the characteristics of the water
29 flows in the rivers below the Upper Churchill hydroelectric site to vary at any
30 point in time from the water levels and water flow characteristics that would exist
31 apart from the implementation of the proposed Water Management Agreement? If
32 so, what variances are anticipated?
33
- 34 **PUB-NE-30** If the answers to PUB-NE-28 or PUB-NE-29 are yes, then are such variances
35 matters that engage a duty on Nalcor, as an agent of the provincial Crown, to
36 consult with the Intervenor?
37
- 38 **PUB-NE-31** If the answers to PUB-NE-28 or PUB-NE-29 are yes, then will those variances be
39 assessed as part of the environmental assessment process? If they will, to what
40 extent, if at all, does the environmental assessment process provide for
41 consultation with the Intervenor regarding those variances or other aspects of
42 water management under the Water Management Agreement?

PUB-NE-32 Is it anticipated that as a result of the environmental assessment process there may be restrictions, limitations or conditions placed, directly or indirectly, on the power of the Independent Coordinator, or direction or guidance given to the Independent Coordinator, concerning the scheduling of the production of power at the hydroelectric facilities? How will this be reflected in the Water Management Agreement?

PUB-NE-33 Is it anticipated that as a result of the consultation by Nalcor with the Intervenors, apart from the environmental assessment process, there may be restrictions, limitations or conditions placed, directly or indirectly, on the power of the Independent Coordinator, or direction or guidance given to the Independent Coordinator, concerning the scheduling of the production of power at the hydroelectric facilities? How will this be reflected in the Water Management Agreement?

PUB-NE-34 If the answer to the first part of PUB-NE-32 or PUB-NE-33 is yes, then will amendments be required to the Water Management Agreement?

PUB-NE-35 Does the Water Management Agreement take into account any Aboriginal interests, rights and title of the Intervenors in the management of water on the Churchill River?

PUB-NE-36 Does the Independent Coordinator or the Water Management Committee have the authority to consider any Aboriginal interests, rights and title of the Intervenors in the course of fulfilling obligations under the Water Management Agreement?

PUB-NE-37 Does the Independent Coordinator or the Water Management Committee have the obligation to consider any Aboriginal interests, rights and title of the Intervenors and in the course of fulfilling obligations under the Water Management Agreement?

PUB-NE-38 In PUB-NE-13 Nalcor states:

"Nalcor has not consulted in particular regarding the Water Management Agreement. Nalcor does not believe that there is any requirement of consultation with respect to the Water Management Agreement. See responses to PUB-NE-2315 and PUB-NE-24."

Similar statements are made in PUB-NE-14, PUB-NE-17, PUB-NE-18, PUB-NE-21 and PUB-NE-22. Does this statement apply to the operating regime and the management of water to be carried out pursuant to the Water Management Agreement?

PUB-NE-39 What facts and evidence does Nalcor rely on to determine that it has no obligation to consult in relation to the Water Management Agreement?

PUB-NE-40 In relation to Nalcor's answer in PUB-NE-14, and PUB-NE-18, are there aspects of the environmental review process, the ongoing consultation process and/or the draft community consultation agreement which address operations under the Water Management Agreement and/or which might result in a condition, qualification or constraint being placed on operations under the Water Management Agreement or may result in an application to amend the Water Management Agreement?

PUB-NE-41 Nalcor states in PUB-NE-15:

"The precise nature of any rights claimed by the Conseil des Innus de Ekuanitshit is not clear. Nalcor understands that the claim of the Conseil des Innus de Ekuanitshit is generally in relation to land or resource usage in the area of the Lower Churchill Project.

Nalcor has not identified any issues arising specifically from the implementation of the proposed Water Management Agreement that have the potential to affect land or resource usage by the Conseil des Innus de Ekuanitshit. See responses to PUB-NE 23 and PUB-NE-24."

The same statement is made in PUB-NE-19 in relation to the potential effect on the Innu of Uashat mak Mani-Utenam et al.

Has Nalcor made any inquiries or undertaken any investigations or research to satisfy itself as to the precise nature of any rights claimed by the Intervenor or that there are no issues arising specifically from the proposed Water Management Agreement that have the potential to affect land or resource usage by the Intervenor?

PUB-NE-42 How would Nalcor satisfy itself as to the conclusion set out in PUB-NE-41 without consulting with the Intervenor?

PUB-NE-43 Will the consultation that has been undertaken with the Intervenor and as detailed in particular in Nalcor's response to PUB-NE-23 address the ongoing operations under the Water Management Agreement as separate and apart from the project design and construction?

PUB-NE-44 In PUB-NE-23, at page 5 of 6 Nalcor states:

"The Project Description contains information with respect to the various components of the Project, including information with respect to the maximum flows through the Gull Island and Muskrat Falls generating facilities and information with respect to the Lower Churchill reservoirs. Additional information with respect to the Operating Regime for the Gull Island facility and the Muskrat Falls facility is contained in Section 4.5 of the Environmental Impact Statement, attached. Subsection 4.5.1.1 and 4.5.2.1 explain the operating regime for the Gull Island Reservoir and the Muskrat Falls Reservoir respectively, including the fluctuations of reservoir levels."

Will the consultation that has been undertaken with the Intervenor and as detailed in particular in Nalcor's response to PUB-NE-23 address issues in relation to the operating regime and allow for consideration of information and perspectives gained through this consultation?

PUB-NE-45 In PUB-NE-23 Nalcor states at page 6 of 6:

"The Water Management Agreement may affect flows on an hourly basis. It is not possible to determine in advance what the flows will be at any particular hour in the future since they will depend upon the Suppliers' delivery requirements, reservoir conditions, projected inflow conditions and a number of other factors at that specific point in time. These hourly management adjustments are simply the type of adjustments that would occur by either Supplier in relation to its own facilities acting independently or by one Supplier if that Supplier owned and operated both the upper and lower Churchill facilities. It is not necessary to consult with the Aboriginal groups concerning these types of hourly operational adjustments. This level of consultation with respect to hourly operational adjustments is not what is contemplated or required in the duty to consult founded in the Crown's honour and the goal of reconciliation with Aboriginal peoples."

Is it possible that the interests and or rights of the Intervenor may be impacted by:

- i) the operational regime established by the Water Management Agreement;
- ii) the flows on an hourly basis; and/or
- iii) the hourly or other operational adjustments?

PUB-NE-46 How can Nalcor make the determinations referenced in PUB- NE-45 without consulting the Intervenor?

PUB-NE-47 Please provide copies of all correspondence and associated documentation related to consultation with the Intervenor that relates to the operating regime of the project and in particular the management of water pursuant to the Water Management Agreement?

PUB-NE-48 Section 6.3(b) of the Water Management Agreement states:

“Notwithstanding any other provision of this Agreement, the Independent Coordinator shall not schedule production by CF(L)Co for Nalcor that would result in Nalcor Banked Energy being a negative value.”

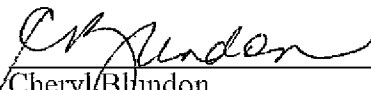
Section 7.1(c)(ii) of the Water Management Agreement states:

“...in the event that the Production Schedule established by the Independent Coordinator results in a production increase at the CF(L)Co Production Facilities and a production decrease at the Nalcor Production Facilities relative to the production required for each Supplier to meet its own Delivery Requirements: If the production increase at the CF(L)Co Production Facilities is greater than the Nalcor Banked Energy, then the CF(L)Co Banked Energy shall be increased by the amount of the production decrease at the Nalcor Production Facilities, in accordance with Annex "A" ”.

Since it appears that section 7.1(c)(ii) anticipates the possibility that CF(L)Co might be required by the Independent Coordinator to produce for Nalcor more energy than has previously been banked by Nalcor and sets out a means of dealing with this possibility, why is it necessary to include section 6.3(b) in the Water Management Agreement?

DATED at St. John's, Newfoundland this 2nd day of February 2010.

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

Per 
Cheryl Blundon
Board Secretary