

1 Q. The objectives of a Water Management Agreement are set out in section 3(b)(i) of the
2 *EPCA* and in section 3(1) of the *Water Management Regulations*. Nalcor has, in
3 Schedule A to its Application, presented a Table of Concordance matching provisions of
4 section 3 of the *Water Management Regulations* to articles in the proposed Water
5 Management Agreement. Please explain how each article referenced in the Table of
6 Concordance implements the objective from the *Water Management Regulations* to
7 which it is matched and its relation to the policy objective set out in section 3(b)(i) of
8 the *EPCA*. Provide specific references and evidence detailing options considered,
9 analyses undertaken, and reasons for decisions.

10 A. In our analysis of the EPCA and the *Water Management Regulations* ("**Regulations**") we
11 have assumed that the provisions of the *Water Management Agreement* ("**WMA**")
12 would *de facto* meet the objectives of the EPCA and the Regulations, if such provisions
13 clearly encompassed the requirements set out in 3(2)(a) to 3(2)(n) of the Regulations.
14 This is particularly so given that the introductory paragraph of section 3(2) of the
15 Regulations provides that to "obtain" the objectives in section 3(1) of the Regulations,
16 the WMA shall contain those measures listed in 3(2)(a) to 3(2)(n).

17 It is noted that in CF(L)Co's response to Nalcor's application, a revised table of
18 concordance was provided, containing additional provisions. These additional
19 provisions serve to promote the objectives detailed in section 3(2) of the Regulations
20 and 3(b)(i) of the EPCA. As such, the following discussion includes comment on these
21 additional provisions.

22 It is noted, as well, that this analysis is provided for the purpose of assisting the Board
23 in assessing the extent to which the draft WMA promotes the objectives of the EPCA
24 and the Regulations. It should not be taken as determinative of any issue that may arise
25 between the parties on implementation, application or interpretation of a WMA.

PUB-CF(L)Co-1

Application for Establishment of a Water Management Agreement

Page 2 of 12

WMA ARTICLE IN NALCOR'S TABLE OF CONCORDANCE	ADDITIONAL RELEVANT ARTICLES IDENTIFIED BY CF(L)Co	SECTION IN REGULATIONS TO WHICH IT IS MATCHED	DISCUSSION ON HOW THIS WMA ARTICLE IMPLEMENTS THE OBJECTIVE (SECTION) FROM THE REGULATIONS TO WHICH IT IS MATCHED AND ITS RELATION TO THE POLICY OBJECTIVE SET OUT IN SECTION 3(b)(i) OF THE EPCA
2: Objective of the Agreement		3.(1)	Article 2 of the WMA states the objective of the WMA and repeats verbatim the language that appears in subsection 3.(1) of the Regulations. This language is substantially the same as the policy objective set out in section 3(b)(i) of the EPCA.
3: Prior Power Contracts ("PPCs")		3.(1)	The objective of the WMA as stated in subsection 3.(1) of the Regulations includes "ensuring that the provisions of a contract for the supply of power governed by section 5.7 of the EPCA are not adversely affected". Article 3 of the WMA contains 1) an acknowledgement by the parties as to the protection provided at section 5.7 of the EPCA and 2) a statement as to which contracts constitute PPCs, being contracts which benefit from such protection.
	4.7(d): Changes to fulfill PPCs obligations	3.(1)	To ensure that PPCs are not adversely affected, modifications to Delivery Requirements under the WMA are permitted at article 4.7(d) as necessary to fulfill obligations under a PPC.
4.3(a): Joint funding of the Independent Coordinator ("IC")		3.(2)(a)	Subsection 3.(2) of the Regulations states that to "obtain" the objectives set out in subsection 3.(1), the WMA shall contain the provisions and requirements described in subsection 3.(2)(a) to (n). Subsection 3.(2)(a) of the Regulations provides that the WMA shall require that suppliers jointly and sufficiently fund the administration of the IC in proportion to the energy benefits obtained by each

WMA ARTICLE IN NALCOR'S TABLE OF CONCORDANCE	ADDITIONAL RELEVANT ARTICLES IDENTIFIED BY CF(L)Co	SECTION IN REGULATIONS TO WHICH IT IS MATCHED	DISCUSSION ON HOW THIS WMA ARTICLE IMPLEMENTS THE OBJECTIVE (SECTION) FROM THE REGULATIONS TO WHICH IT IS MATCHED AND ITS RELATION TO THE POLICY OBJECTIVE SET OUT IN SECTION 3(b)(i) OF THE EPCA
			supplier from the administration of the WMA. Article 4.3(a) of the WMA incorporates verbatim such language.
	1.1: Energy Benefits definition	3.(2)(a)	To clarify the meaning of the phrase "energy benefits obtained ... from the administration of the WMA", the parties have agreed on a definition of Energy Benefits at article 1.1 of the WMA.
	11: costs and expenses	3.(2)(a)	In addition, the parties have agreed that in the spirit of subsection 3.(2)(a) of the Regulations, other costs resulting from the WMA should also be shared in proportion to energy benefits obtained from the WMA (and not only those relating to the administration of the IC). However, considering that most, if not all, of the benefits derived from the WMA will accrue to Nalcor, and that, absent a WMA CF(L)Co would not have required the installation of additional equipment, facilities, upgrades or interconnection/ transmission facilities, it was agreed that CF(L)Co would not be responsible for such expenses. For similar reasons and to avoid any energy losses which may result in an adverse effect on a PPC, no transmission losses due to the operation of the WMA are borne by CF(L)Co. It should be noted, however, that while Nalcor bears all transmission losses, it benefits from any reduction in transmission losses resulting from the operation of the WMA.
	Annex A: Calculations	3.(2)(a)	In addition, Annex "A" of the WMA provides the methods and formulas to

PUB-CF(L)Co-1
Application for Establishment of a Water Management Agreement
Page 4 of 12

WMA ARTICLE IN NALCOR'S TABLE OF CONCORDANCE	ADDITIONAL RELEVANT ARTICLES IDENTIFIED BY CF(L)Co	SECTION IN REGULATIONS TO WHICH IT IS MATCHED	DISCUSSION ON HOW THIS WMA ARTICLE IMPLEMENTS THE OBJECTIVE (SECTION) FROM THE REGULATIONS TO WHICH IT IS MATCHED AND ITS RELATION TO THE POLICY OBJECTIVE SET OUT IN SECTION 3(b)(i) OF THE EPCA
	mechanisms		calculate Energy Benefits and to account for transmission losses.
4.3(c)(i)–(ix): Information to be provided to the IC		3.(2)(b)	Subsection 3.(2)(b) of the Regulations provides that the WMA shall require that suppliers provide the IC with the information listed in subparagraphs 3.(2)(b)(i) to (viii) of the Regulations. Article 4.3(c) of the WMA provides for such requirement, and lists such items verbatim at subparagraphs (i) to (viii). In addition to those matters required by subsection 3.2(b) of the Regulations, subparagraph 4.3(c)(ix) of the WMA was added in light of subsection 3.(2)(f) of the Regulations.
	4.3(c)(x): additional information required	3.(2)(b)	Subparagraph 4.3(c)(x) was added to allow the parties to agree on additional information required for the IC to perform its duties under the WMA.
6.2(a): IC duty to establish Production		3.(2)(c)	Subsection 3.(2)(c) of the Regulations provides that the WMA shall require the IC, based on the information received in paragraph (b) and in the exercise of reasonable judgment, to establish short and long-term production schedules for all production facilities on a body of water, through the coordination of production scheduling of the suppliers on the body of water based upon the use of aggregate generating capacity, storage and transmission facilities of any supplier on the respective body of water, in accordance with the objectives of the Regulations and with the WMA. Article

WMA ARTICLE IN NALCOR'S TABLE OF CONCORDANCE	ADDITIONAL RELEVANT ARTICLES IDENTIFIED BY CF(L)Co	SECTION IN REGULATIONS TO WHICH IT IS MATCHED	DISCUSSION ON HOW THIS WMA ARTICLE IMPLEMENTS THE OBJECTIVE (SECTION) FROM THE REGULATIONS TO WHICH IT IS MATCHED AND ITS RELATION TO THE POLICY OBJECTIVE SET OUT IN SECTION 3(b)(i) OF THE EPCA
			6.2(a) of the WMA provides for such requirement. Subparagraphs 6.2(a)(i), (ii), (iii) and (vi) were added to detail particulars that may be included in such functions. As for subparagraphs (iv), (v) and (vi), they contain the requirements provided at subsections 3.(2)(g) and (h) of the Regulations.
	6.2(b),(c),(d): IC duties	3.(2)(c)	Articles 6.2(b), (c) and (d) also clarify aspects contained in subsection 3.(2)(c) of the Regulations. 6.2(b) is the IC's duty to prepare the production schedules based on information received from the suppliers, being their delivery requirements, 6.2(c) the IC's duty to provide the amount of Power to be produced at each facility, and 6.2(d) the IC's duty to do so in accordance with the EPCA, the Regulations and the WMA adopted pursuant thereto.
	6.3: Limitations on IC powers	3.(2)(c)	Article 6.3 protects PPCs in accordance with section 5.7 of the EPCA. Therefore, the IC cannot issue production schedules which conflict with obligations under PPCs, or schedule production by CF(L)Co for Nalcor, unless Nalcor has banked energy. As such, if there is no banked energy to deduct against, Nalcor would then be using water that belongs to a third party under a PPC. In furtherance of the objective of the WMA as stated in the Regulations, provision is made that such "borrowing" of energy will be permitted to avoid or limit water spillage.

WMA ARTICLE IN NALCOR'S TABLE OF CONCORDANCE	ADDITIONAL RELEVANT ARTICLES IDENTIFIED BY CF(L)Co	SECTION IN REGULATIONS TO WHICH IT IS MATCHED	DISCUSSION ON HOW THIS WMA ARTICLE IMPLEMENTS THE OBJECTIVE (SECTION) FROM THE REGULATIONS TO WHICH IT IS MATCHED AND ITS RELATION TO THE POLICY OBJECTIVE SET OUT IN SECTION 3(b)(i) OF THE EPCA
4.2: Compliance with Production Schedules		3.(2)(d)	Subsection 3.(2)(d) of the Regulations provides that the WMA shall require that suppliers adhere to the production schedules set by the IC. Article 4.2 of the WMA provides for such requirement, subject to restrictions for the protection of human life and safety and the integrity of equipment, facilities and reservoir structures.
4.7(a): Scheduling not to exceed generating Capability 7.1(b): No less of capacity or Capability		3.(2)(e) (i) (ii)	Subsection 3.(2)(e) of the Regulations provides that the WMA shall provide that in no event shall: (i) the power requests made to the IC by a supplier exceed the maximum power generating capability of the production facilities of that supplier for the period requested, and (ii) the generating capacity, storage capacity, or transmission capability available to a supplier from all facilities on the body of water be less than the amounts of then available generating capacity, storage capacity, or transmission capability of the production facilities owned by that supplier on the body of water. Articles 4.7(a) and 7.1(b) of the WMA capture verbatim the requirements contemplated at paragraphs (i) and (ii) respectively.
	7.1(a): Water storage rights	3.(2)(e)	Article 7.1(a) is consistent with subsection 3.(2)(e)(ii), which recognizes and protects the rights of the suppliers to

WMA ARTICLE IN NALCOR'S TABLE OF CONCORDANCE	ADDITIONAL RELEVANT ARTICLES IDENTIFIED BY CF(L)Co	SECTION IN REGULATIONS TO WHICH IT IS MATCHED	DISCUSSION ON HOW THIS WMA ARTICLE IMPLEMENTS THE OBJECTIVE (SECTION) FROM THE REGULATIONS TO WHICH IT IS MATCHED AND ITS RELATION TO THE POLICY OBJECTIVE SET OUT IN SECTION 3(b)(i) OF THE EPCA
			their own water storage capacity, as well as those of third parties under PPCs, while at the same time recognizing the right to bank energy as necessary to fulfill the objective of the WMA set out in the Regulations.
4.4: Suppliers Information Sharing		3.(2)(f)	Subsection 3.(2)(f) of the Regulations provides that the WMA shall require that information and data be shared between suppliers and by suppliers with the IC as is necessary for the IC to perform its functions under the WMA, including records, data, models, as well as physical and computer access to those facilities as are required to obtain and verify that information. Article 4.4 of the WMA provides for such requirement.
	4.5: Water Management Committee ("WMC") access to records	3.(2)(f)	Since the suppliers will be acting through the WMC to address all substantive matters other than those assigned to the IC, article 4.5 of the WMA gives the WMC access to the same information provided by the suppliers to the IC pursuant to subsection 3.(2)(f) of the Regulations.
4.6: Suppliers record keeping 6.2(a)(iv): IC record keeping		3.(2)(g)	Subsection 3.(2)(g) of the Regulations provides that the WMA shall require suppliers and the IC to maintain, for a period of not less than 7 years, records required of them to undertake their responsibilities under the WMA and the Regulations which shall be available, upon request, to the board or minister. Articles 4.6 and 6.2(a)(iv) of the WMA repeat verbatim this requirement for the

WMA ARTICLE IN NALCOR'S TABLE OF CONCORDANCE	ADDITIONAL RELEVANT ARTICLES IDENTIFIED BY CF(L)Co	SECTION IN REGULATIONS TO WHICH IT IS MATCHED	DISCUSSION ON HOW THIS WMA ARTICLE IMPLEMENTS THE OBJECTIVE (SECTION) FROM THE REGULATIONS TO WHICH IT IS MATCHED AND ITS RELATION TO THE POLICY OBJECTIVE SET OUT IN SECTION 3(b)(i) OF THE EPCA
			suppliers and the IC respectively.
6.2(a)(v): IC reports to Suppliers and WMC 6.2(a)(vi): IC annual report to Minister		3.(2)(h) (i) (ii)	Subsection 3.(2)(h) of the Regulations provides that the WMA shall require the IC to: (i) provide suppliers with reports on its activities at regular intervals to be established in consultation with the suppliers, and (ii) provide to the minister, and, on request, the board, with an annual report summarizing its activities in a form acceptable to the minister. Articles 6.2(a)(v) and 6.2(a)(vi) of the WMA repeat verbatim the requirements contemplated at paragraphs (i) and (ii) respectively.
10.1(a): Adjustments to remedy Deficiencies 10.1(b): Damages for Deficiencies		3(2)(i) (i) (ii)	Subsection 3.(2)(i) of the Regulations provides that the WMA shall require that when a deficiency occurs, or is projected to occur. (i) appropriate adjustments shall be made to the power and energy production levels and schedules of all production facilities on that body of water to the extent practicable to remedy the deficiency or anticipated deficiency, and (ii) where a deficiency occurs despite subparagraph (i), and as a result of that deficiency, a supplier incurs damages under a provision of a contract for the supply of power entered into by a person bound by the WMA and a third party

WMA ARTICLE IN NALCOR'S TABLE OF CONCORDANCE	ADDITIONAL RELEVANT ARTICLES IDENTIFIED BY CF(L)Co	SECTION IN REGULATIONS TO WHICH IT IS MATCHED	DISCUSSION ON HOW THIS WMA ARTICLE IMPLEMENTS THE OBJECTIVE (SECTION) FROM THE REGULATIONS TO WHICH IT IS MATCHED AND ITS RELATION TO THE POLICY OBJECTIVE SET OUT IN SECTION 3(b)(i) OF THE EPCA
			<p>where that contract was entered into before the WMA, those costs shall be paid by the supplier who caused the deficiency.</p> <p>Articles 10.1(a) and (b) of the WMA repeat verbatim the requirements contemplated at paragraphs 3(2)(i) and (ii) respectively.</p>
	1.1: Deficiency and Damages definitions	3.(2)(i)	<p>Definitions of Deficiency and Damages are also provided at article 1.1 of the WMA. The definition of "Deficiency" is consistent with that provided in the Regulations, and the definition of "Damages" was agreed to by the parties to limit the risk of any dispute on its scope.</p>
7.1(f) Assignment of Energy Losses		3.(2)(j)	<p>Subsection 3.(2)(j) of the Regulations provides that the WMA shall include mechanisms to appropriately assign energy storage amounts to each supplier for water stored in the body of water's reservoirs and, if water spillage occurs, to assign the lost energy fairly to each supplier.</p> <p>Article 7.1(f) of the WMA provides for the assignment of energy losses due to water spillage. The parties have determined that it would be "fair", as contemplated in the Regulations, to first deduct energy losses due to spills from the energy banked by the other party in the reservoir where the spill occurred.</p>

WMA ARTICLE IN NALCOR'S TABLE OF CONCORDANCE	ADDITIONAL RELEVANT ARTICLES IDENTIFIED BY CF(L)Co	SECTION IN REGULATIONS TO WHICH IT IS MATCHED	DISCUSSION ON HOW THIS WMA ARTICLE IMPLEMENTS THE OBJECTIVE (SECTION) FROM THE REGULATIONS TO WHICH IT IS MATCHED AND ITS RELATION TO THE POLICY OBJECTIVE SET OUT IN SECTION 3(b)(i) OF THE EPCA
Annex "A": Calculations mechanisms		3.(2)(j)	In addition, Annex "A" of the WMA provides the methods and formulas to calculate energy storage and energy losses.
	7.1(c) and (d)	3.(2)(j)	While article 7.1(f) of the WMA provides for the assignment of energy losses, 7.1(c) provides for the assignment of banked energy, as well as the accounting for "withdrawals" of banked energy, in accordance with the methods and formulas detailed in Annex "A". 7.1(d) clarifies how the rules in 7.1(c) are to be applied in accounting for banked energy and "withdrawals".
7.1(e): Conversion rates for Banked Energy		3.(2)(k)	Subsection 3.(2)(k) of the Regulations provides that the WMA shall require that the amount of energy in storage shall be determined based upon average water to energy conversion rates for the respective production facilities calculated based upon the best data source available as tested in accordance with good utility practice. Article 7.1(e) of the WMA provides for such requirement.
Annex "A": Calculations mechanisms		3.(2)(k)	In addition, Annex "A" of the WMA provides the methods and formulas to calculate energy storage taking into account the applicable conversion rate, as well as details on the determination of such conversion rate.
7.1(g): Annual adjustments for Energy losses		3.(2)(l)	Subsection 3.(2)(l) of the Regulations provides that the WMA shall include an appropriate method that ensures that, at

WMA ARTICLE IN NALCOR'S TABLE OF CONCORDANCE	ADDITIONAL RELEVANT ARTICLES IDENTIFIED BY CF(L)Co	SECTION IN REGULATIONS TO WHICH IT IS MATCHED	DISCUSSION ON HOW THIS WMA ARTICLE IMPLEMENTS THE OBJECTIVE (SECTION) FROM THE REGULATIONS TO WHICH IT IS MATCHED AND ITS RELATION TO THE POLICY OBJECTIVE SET OUT IN SECTION 3(b)(i) OF THE EPCA
			regular intervals not less frequently than annually, adjustments are made to a supplier's available energy for subsequent intervals for energy losses incurred in the previous period by each supplier as a result of changes to its energy capability caused by the application of the WMA. Article 7.1(g) of the WMA provides for such requirement.
Annex "A": Calculations mechanisms		3.(2)(l)	In addition, Annex "A" of the WMA provides the methods and formulas to calculate such adjustments for energy losses.
1.5: Applicable law		3.(2)(m)	Article 1.5 of the WMA provides that the WMA shall be governed by the laws of the Province of Newfoundland and Labrador, as required under subsection 3.(2)(m) of the Regulations.
	5: Water Management Committee ("WMC")	3.(2)(n)	Subsection 3.(2)(n) of the Regulations provides that the WMA shall include those other provisions that the Board determines are necessary or useful in achieving the objectives of the EPCA. Article 5 of the WMA establishes the WMC. The role of the WMC is to deal with all substantive matters other than those assigned to the IC. The WMC therefore plays an important role in ensuring that the policy objectives set out in the EPCA and the Regulations are met and that adverse effects on existing power supply contracts are avoided (as noted in the Board's question PUB-

WMA ARTICLE IN NALCOR'S TABLE OF CONCORDANCE	ADDITIONAL RELEVANT ARTICLES IDENTIFIED BY CF(L)Co	SECTION IN REGULATIONS TO WHICH IT IS MATCHED	DISCUSSION ON HOW THIS WMA ARTICLE IMPLEMENTS THE OBJECTIVE (SECTION) FROM THE REGULATIONS TO WHICH IT IS MATCHED AND ITS RELATION TO THE POLICY OBJECTIVE SET OUT IN SECTION 3(b)(i) OF THE EPCA
			CF(L)Co-4).
	8: Metering and Measurement		The metering and measuring provisions introduced by article 8 of the WMA provide a means by which the parties may account for banked energy and energy losses, and are therefore necessary for the administration of the WMA.
	9: Maintenance		Article 9 of the WMA requires cooperation between the parties and the IC to schedule maintenance outages. This provision will allow such outages to be scheduled at the most opportune times, maximizing the use of water.
	12: Effective date and term		The effective date of the WMA was established at article 12 in order to avoid an adverse effect on a PPC. The termination date provides that the WMA will remain in effect as long as facilities are in operation (no termination until a new WMA has been signed, unless the facilities are closed).
	13: Dispute resolution		A dispute resolution mechanism was added at article 13 to facilitate the continued efficient operation of the WMA in case of dispute.
	14: Miscellane- ous provisions		The miscellaneous provisions at article 14 are standard provisions which facilitate the administration of the WMA in furtherance of the EPCA objectives.