

February 8, 2010

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

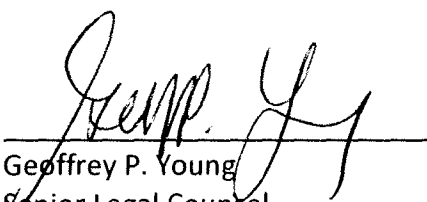
Attention: Cheryl Blundon, Director – Corporate Services and Board Secretary

Dear Ms. Blundon:

Re: Application by Nalcor Energy pursuant to Section 5.5(1) of the Electrical Power Control Act (Water Management Agreement)

Please find enclosed the original and eight copies of Hydro's responses to information requests PUB-NE-25 to PUB-NE-48 with regards to the above-noted application.

Sincerely,



Geoffrey P. Young
Senior Legal Counsel

GPY/jc

cc. Peter Hickman and Jamie Smith, Q.C., Counsel for Churchill Falls (Labrador) Corporation
Dan Simmons, Legal Counsel for Public Utilities Board
Jim Haynes, President, Twin Falls Power Corporation
David Schulze, DIONNE SCHULZE, Counsel for Innu of Ekuanitshit (Mingan)
Gary Carot, O'Reilly & Associates, Counsel for Innu of Uashat Mak Mani-Utenam et al

1 Q. 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
6 A. The following is a summary of the significant milestones with respect to the
7 development of the Lower Churchill Hydroelectric Generation Project:

8
9 Construction of early works infrastructure, including the temporary construction
10 bridge and the accommodations complex, will commence in the first construction
11 season following the achievement of all prerequisite sanctions and environmental
12 approvals (referred to as Year 1 in the attached schedules).

13
14 Construction is anticipated to last 10 years, with first power from the Gull Island
15 Generation Facility scheduled for Year 6. The Gull Island facility will be fully
16 complete by the end of Year 8. Transmission lines connecting the Muskrat Falls
17 facility to the Gull Island facility and in turn to the Churchill Falls facility will be
18 constructed from Year 2 to Year 9. Construction of Muskrat Falls will begin in Year 5
19 and see completion at the end of Year 10, at which time the Project will be fully
20 operational.

21
22 The annual sequence of construction is illustrated in the attached schedules. Key
23 project milestones and their anticipated achievement targets are as follows:

- 24
- 25 • Start Construction Infrastructure at Gull Island Q2, Year 1
 - 26 • River Diversion at Gull Island Q3/Q4, Year 3
 - 27 • Start Construction Infrastructure at Muskrat Falls Q2, Year 5

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1	• First Power – Gull Island Facility	Q4, Year 6
2	• Full Power – Gull Island Facility	Q4, Year 7
3	• First Power – Muskrat Falls Facility	Q3/Q4, Year 9
4	• Full Power – Muskrat Falls Facility	Q1, Year 10
5	• Construction Completion	Q3/Q4, Year 10

Activity	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Project Release										
Gull Island										
Construction Infrastructure										
Site Access										
Construction Bridge										
Fuel Depot										
Borrow Pits & Quarries										
Accomodations Complex										
Diversion Tunnels										
Batch Plants										
Power & Site Communications										
Cofferdams										
Permanent Infrastructure										
Powerhouse										
Dam										
Spillway										
Switchyard										
Reservoir Clearing										
Site Demobilization (Phase I)										
Impounding of Reservoir										
First Power										
Site Rehabilitation										
Full Power										
Site Demobilization (Phase II)										
Transmission Lines										

[illegible]

1 Q. Please identify the anticipated or proposed date for the operational
2 implementation of the proposed Water Management Agreement with a breakdown
3 of any steps and actions that must be taken prior to the operational
4 implementation of the agreement, such as the appointment of the Water
5 Management Committee and the Independent Coordinator, with the anticipated or
6 proposed dates for the achievement of those steps and actions.

7
8
9 A. The Water Management Agreement will become operational on the Operational
10 Date. The Operational Date is the later of the date of renewal of the HQ Power
11 Contract pursuant to Schedule III of the HQ Power Contract (September 1, 2016)
12 and the commercial in-service date of the first Nalcor generating unit on the lower
13 Churchill River. It is currently anticipated that the commercial in-service date of the
14 first Nalcor generating unit will be after September 1, 2016. It is not possible to
15 determine a precise date at this time. In any event, the Water Management
16 Agreement will not become operational until September 1, 2016, at the earliest.

17
18 The Water Management Committee will be appointed after the date of approval of
19 the Water Management Agreement by the Board. See Subsection 5.1(a) of the
20 Water Management Agreement. It is anticipated that the Water Management
21 Committee will be constituted not later than 2012.

22
23 The Water Management Committee is authorized to deal with all substantive
24 matters, other than those expressly assigned to the Independent Coordinator, as
25 necessary to administer the Agreement. This includes the validation of the tools
26 and information sources to be used for the implementation and operation of this
27 Agreement. See Subsection 5.2(a) of the Water Management Agreement.

1 Subsection 5.2(c) provides for other matters which may be addressed by the Water
2 Management Committee.

3

4 The Water Management Committee will also establish an Independent Coordinator
5 Code of Conduct.

6

7 The Water Management Committee will select and appoint the Independent
8 Coordinator. See Subsection 5.2(b).

9

10 No precise dates have yet been established for the performance of the matters
11 required by the Water Management Committee, including the appointment of the
12 Independent Coordinator. However, it is anticipated that the Water Management
13 Committee will perform these tasks during the period from its appointment
14 through to 2016, such that all necessary steps will have been taken so that the
15 Water Management Agreement will become operational on the Operational Date.

1 Q. Is there a schedule for the completion of the environmental assessment process for
 2 the project by the Joint Review Panel. If not, is there any proposed or anticipated
 3 date by which the process is expected to be completed?

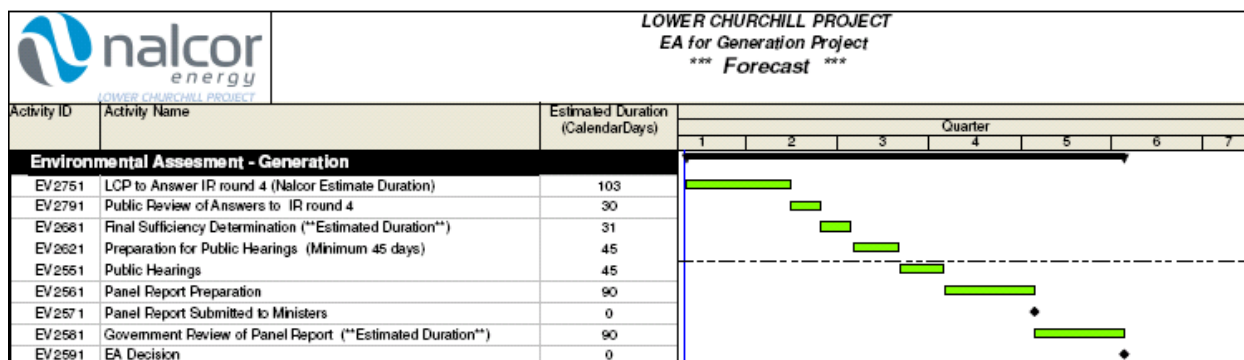
4

5

6 A. While the environmental assessment (EA) by the Joint Review panel does not have
 7 a firm schedule for their activities, the panel is guided by a schedule that is based
 8 on activities which are outlined in their Terms of Reference.

9

10 The sequence of the activities for the EA process is illustrated below.



11

12

13 Completion of the environmental assessment process by the Joint Review Panel is
 14 anticipated in 2010.

1 Q. Would the implementation of the proposed Water Management Agreement, and in
2 particular decisions of the Independent Coordinator made pursuant to the
3 proposed Water Management Agreement, cause the water levels in reservoirs
4 above the Upper Churchill hydroelectric site and the characteristics of the water
5 flows in the rivers above the Upper Churchill hydroelectric site to vary at any point
6 in time from the water levels and water flow characteristics that would exist apart
7 from the implementation of the proposed Water Management Agreement? If so,
8 what variances are anticipated?

9

10

11 A. The upper Churchill facilities will continue to operate within the same parameters
12 as previously. The minimum and maximum elevations for the upper Churchill
13 reservoirs will not be affected by the implementation of the Water Management
14 Agreement. The minimum and maximum production levels for the Churchill Falls
15 generating station are also not affected by the implementation of the Water
16 Management Agreement. The implementation of the Water Management
17 Agreement does not change these operating parameters.

18

19 Provisions of prior power contracts for Churchill Falls permit reservoir levels to
20 range between low supply level and full supply level at any point in time. The flows
21 among the upper Churchill reservoirs are similarly unrestricted, since the Churchill
22 Falls generating station may be required to produce at its maximum capacity of
23 5,428 MW at any time. The provisions of existing contracts for the supply of power
24 must not be adversely affected.

25

26 While the production level of the generating station and the amount of water in
27 storage at any time may be different with a Water Management Agreement in place

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1 than they would have been without a Water Management Agreement, they will
2 always be within the production and storage ranges that currently exist for Churchill
3 Falls.

4

5 The proposed Water Management Agreement may cause water levels and flows at
6 any point in time to vary from what would have occurred without the Water
7 Management Agreement. Predicting the variances that would exist at any future
8 point in time is not possible given that future inflows and future production
9 decisions, with and without the Water Management Agreement, cannot be
10 predicted.

11

12 The tributaries to the reservoirs making up the upper Churchill reservoir system are
13 not affected by the agreement.

1 Q. Would the implementation of the proposed Water Management Agreement, and in
2 particular decisions of the Independent Coordinator made pursuant to the
3 proposed Water Management Agreement, cause the water levels in reservoirs
4 below the Upper Churchill hydroelectric site and the characteristics of the water
5 flows in the rivers below the Upper Churchill hydroelectric site to vary at any point
6 in time from the water levels and water flow characteristics that would exist apart
7 from the implementation of the proposed Water Management Agreement? If so,
8 what variances are anticipated?

9

10

11 A. Nalcor Energy has set forth the operating parameters, in particular the reservoir
12 levels and water flows, in the Environmental Impact Statement (see PUB-NE-23).
13 The environmental assessment process will consider the operating parameters for
14 the lower Churchill project.

15

16 The lower Churchill facilities will operate within those parameters. The minimum
17 and maximum elevations for the lower Churchill reservoirs will not be affected by
18 the implementation of the Water Management Agreement. Water management
19 will be accomplished within the limits of the reservoirs. The implementation of the
20 Water Management Agreement will not change the operating parameters.

21

22 The proposed Water Management Agreement may cause water levels and flows at
23 any point in time to vary from what would have occurred without the Water
24 Management Agreement. Predicting the variances that would exist at any future
25 point in time is not possible given that future inflows and future production
26 decisions, with and without the Water Management Agreement, cannot be
27 predicted.

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1 The flow and reservoir drawdown predictions in the lower Churchill Environmental
2 Impact Statement are predicated on a Water Management Agreement in place. The
3 energy production forecast for the lower Churchill facilities is also based on the
4 existence of a Water Management Agreement, with its ability to reduce spill by
5 reducing Churchill Falls production during periods of high local inflow. If a water
6 management agreement were not in place, greater reservoir drawdown would
7 likely be required for the lower Churchill reservoirs than is the current case. For
8 example, greater reservoir drawdown may be required to reduce spillage during
9 periods of significant inflows without water management.

10

11 The tributaries to the reservoirs making up the lower Churchill reservoir system are
12 not affected by the agreement.

1 Q. If the answers to PUB-NE-28 or PUB-NE-29 are yes, then are such variances matters
2 that engage a duty on Nalcor, as an agent of the provincial Crown, to consult with
3 the Intervenor?

4

5

6 A. Without engaging in a discussion of all aspects of the duty of consultation, the basic
7 principle is stated in *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC
8 73 as follows:

9

10 35 But, when precisely does a duty to consult arise? The foundation
11 of the duty in the Crown's honour and the goal of reconciliation,
12 suggest that the duty arises when the Crown has knowledge, real or
13 constructive, of the potential existence of the Aboriginal right or title
14 and contemplates conduct that might adversely affect it.

15

16 Matters such as reservoir levels and water flows will be subject to consultation
17 through the environmental assessment process. The environmental assessment
18 process will establish operating parameters for the lower Churchill facilities. Those
19 operating parameters will in turn become incorporated into regulatory and permit
20 requirements.

21

22 Consultation is occurring with nine Aboriginal groups. Three of them are in
23 Labrador: the Innu Nation, the Labrador Metis Nation and the Nunatsiavut
24 Government. The remaining six are Quebec Innu groups: Uashat mak Mani-
25 Utenam (Sept-Isle), Ekuanitshit (Mingan), Nutaskuan (Natashquan), Unamen Shipu
26 (La Romaine), Pakua Shipi (Ste. Augustine) and Matimekush-Lake John
27 (Schefferville).

1 Any claim to adverse impact and accommodation will be considered as part of the
2 consultation process with respect to establishing the operating parameters.

3

4 The Water Management Agreement itself does not contain any prescribed
5 operating parameters, such as reservoir levels or water flows. The Water
6 Management Agreement is structured to operate in relation to whatever operating
7 parameters are established through the environmental assessment and
8 consultation processes.

9

10 Variances in reservoir levels and water flows as a result of the hour by hour
11 operation of the facilities, within the operating parameters established through the
12 environmental assessment and consultation processes, do not engage a further
13 duty on Nalcor, as agent of the provincial Crown, to consult with the Intervenor.
14 Consultation and, if appropriate, accommodation, will already have occurred and
15 the results will have been incorporated into the operating parameters for the
16 facilities. Water management will then operate within the limits of such
17 parameters.

1 Q. If the answers to PUB-NE-28 or PUB-NE-29 are yes, then will those variances be
2 assessed as part of the environmental assessment process? If they will, to what
3 extent, if at all, does the environmental assessment process provide for
4 consultation with the Intervenor regarding those variances or other aspects of
5 water management under the Water Management Agreement?

6

7

8 A. See the answer to PUB-NE-30.

1 Q. Is it anticipated that as a result of the environmental assessment process there may
2 be restrictions, limitations or conditions placed, directly or indirectly, on the power
3 of the Independent Coordinator, or direction or guidance given to the Independent
4 Coordinator, concerning the scheduling of the production of power at the
5 hydroelectric facilities? How will this be reflected in the Water Management
6 Agreement?

7
8
9 A. Yes, the environmental assessment process will establish the operating parameters
10 for the lower Churchill facilities which may result in restrictions, limitations or
11 conditions placed, directly or indirectly, on the power of the Independent
12 Coordinator, or direction or guidance given to the Independent Coordinator,
13 concerning the scheduling of the production of power at the hydroelectric facilities.

14
15 The Water Management Agreement itself does not contain any prescribed
16 operating parameters, such as reservoir levels or water flows. The Water
17 Management Agreement is structured to operate in relation to whatever operating
18 parameters are established through the environmental assessment and
19 consultation processes.

20
21 The Independent Coordinator must adhere to the operating parameters established
22 through the environmental assessment and consultation processes and all
23 regulatory and permit requirements in scheduling the production of power at the
24 hydroelectric facilities. For example, in scheduling the production of power, the
25 Independent Coordinator must have regard to, *inter alia*, reservoir levels, minimum
26 flow requirements and any other regulatory or permit requirements.

1 This is reflected in the *Water Management Regulations* and the Water
2 Management Agreement in several places. Subsection 3(2)(c) of the *Water*
3 *Management Regulations*, reflected in Subsection 6.2(a) of the Water Management
4 Agreement, requires the Independent Coordinator to establish production
5 schedules in the exercise of reasonable judgment. It would not be an exercise of
6 reasonable judgment to establish production schedules which are not in accordance
7 with regulatory and permit requirements for the generating facilities.

8
9 Pursuant to Subsection 6.2(d) of the Water Management Agreement, the
10 Independent Coordinator shall not act in a manner inconsistent with any provision
11 of the Agreement, the Act, the Regulations, or any procedures, directions or
12 guidelines established by the Water Management Committee.

13
14 Subsection 3(4) of the Water Management Regulations requires each Supplier to
15 operate its facilities in a manner not inconsistent with principles of good utility
16 practice. Section 4.2 of the Water Management Agreement expressly provides that
17 “CF(L)Co and Nalcor shall adhere to the production schedules set by the
18 Independent Coordinator, provided that in no event shall the Suppliers be required
19 to operate in a manner which is inconsistent with good utility practice including...”.
20 It would not be in accordance with good utility practice to operate in contravention
21 of regulatory and permit requirements.

22
23 Consequently, the Water Management Agreement contemplates that the
24 Independent Coordinator will schedule production of power bearing in mind the
25 facilities’ operating parameters and regulatory and permit requirements.

- 1 Q. Is it anticipated that as a result of the consultation by Nalcor with the Intervenors,
2 apart from the environmental assessment process, there may be restrictions,
3 limitations or conditions placed, directly or indirectly, on the power of the
4 Independent Coordinator, or direction or guidance given to the Independent
5 Coordinator, concerning the scheduling of the production of power at the
6 hydroelectric facilities? How will this be reflected in the Water Management
7 Agreement?
8
9
- 10 A. See the answer to PUB-NE-32.

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

3

4

5 A. For the reasons explained in the answer to PUB-NE-32, no amendments are
6 required to the Water Management Agreement. The Water Management
7 Agreement itself does not contain any prescribed operating parameters, such as
8 reservoir levels or water flows. The Water Management Agreement is structured to
9 operate in relation to whatever operating parameters are established through the
10 environmental assessment and consultation processes.

1 Q. Does the Water Management Agreement take into account any Aboriginal
2 interests, rights and title of the Intervenor in the management of water on the
3 Churchill River?
4
5

6 A. See the answers to PUB-NE-30 and PUB-NE-32. The establishment of the operating
7 parameters for the lower Churchill facilities will be determined following a
8 consultation process as part of the environmental assessment process. In that
9 sense, the operating parameters will be established after consultation with
10 aboriginal groups with respect to their interests. The Water Management
11 Agreement will operate within those established parameters.

1 Q. Does the Independent Coordinator or the Water Management Committee have the
2 authority to consider any Aboriginal interests, rights and title of the Intervenor in
3 the course of fulfilling obligations under the Water Management Agreement?
4

5
6 A. See the answer to PUB-NE-32.
7

8 As a result, the Independent Coordinator and the Water Management Committee
9 will function within the operating parameters for the lower Churchill project which
10 will have been established after consultation and, if appropriate, accommodation
11 with respect to aboriginal interests.
12

13 The Independent Coordinator and the Water Management Committee do not
14 further consider aboriginal interests in the course of fulfilling their obligations
15 under the Water Management Agreement. In particular, the Independent
16 Coordinator does not further consider aboriginal interests in determining the hour
17 by hour production schedules for the lower Churchill facilities.

1 Q. Does the Independent Coordinator or the Water Management Committee have the
2 obligation to consider any Aboriginal interests, rights and title of the Intervenor
3 and in the course of fulfilling obligations under the Water Management
4 Agreement?

5

6

7 A. See the answer to PUB-NE-36.

1 Q. In PUB-NE-13 Nalcor states:

2

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

7

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

12

13

14 A. See the answers to PUB-NE-29, PUB-NE-30, PUB-NE-32, PUB-NE-35, PUB-NE-36 and
15 PUB-NE-37.

16

17 The statement does not apply to the establishment of the operating parameters for
18 the lower Churchill facilities. The statement applies to the management of water to
19 be carried out pursuant to the Water Management Agreement.

20

21 The environmental review and consultation processes will address the operating
22 parameters for the lower Churchill facilities and will establish those operating
23 parameters. The Water Management Agreement will operate within those
24 established parameters.

25

26 The Water Management Agreement itself does not contain any prescribed
27 operating parameters, such as reservoir levels or water flows. The Water

1 Management Agreement is structured to operate in relation to whatever operating
2 parameters are established through the environmental assessment and
3 consultation processes.
4

5 Since there are no prescribed operating parameters in the Water Management
6 Agreement itself, the Water Management Agreement cannot adversely affect any
7 Aboriginal interests. Consultation and, if appropriate, accommodation, will occur
8 through the environmental assessment and consultation processes and the results
9 will be incorporated into the operating parameters for the lower Churchill facilities.
10 Water management will then operate within the limits of such parameters. Nalcor
11 does not believe that there is any requirement of consultation with respect to the
12 hour by hour management of water to be carried out pursuant to the Water
13 Management Agreement.

1 Q. What facts and evidence does Nalcor rely on to determine that it has no obligation
2 to consult in relation to the Water Management Agreement?

3

4

5 A. See the answers to PUB-NE-29, PUB-NE-30, PUB-NE-32, PUB-NE-35, PUB-NE-36 and
6 PUB-NE-37.

7

8 The environmental review and consultation processes will address the operating
9 parameters for the lower Churchill facilities and will establish those operating
10 parameters. The Water Management Agreement will operate within those
11 established parameters.

12

13 The Water Management Agreement itself does not contain any prescribed
14 operating parameters, such as reservoir levels or water flows. The Water
15 Management Agreement is structured to operate in relation to whatever operating
16 parameters are established through the environmental assessment and
17 consultation processes.

18

19 Since there are no prescribed operating parameters in the Water Management
20 Agreement itself, the Water Management Agreement cannot adversely affect any
21 Aboriginal interests. Consultation and, if appropriate, accommodation, will occur
22 through the environmental assessment and consultation processes and the results
23 will be incorporated into the operating parameters for the lower Churchill facilities.
24 Water management will then operate within the limits of such parameters.

25

26 Consequently, there is no obligation to consult in relation to the Water
27 Management Agreement.

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

8
9
10 A. See the answers to PUB-NE-29, PUB-NE-30, PUB-NE-32, PUB-NE-35, PUB-NE-36 and
11 PUB-NE-37.

12
13 The environmental review process and consultation process will address the
14 operating parameters for the lower Churchill facilities and will establish those
15 operating parameters. The Water Management Agreement will operate within
16 those established parameters. For the reasons explained in the answer to PUB-NE-
17 32, no amendment to the Water Management Agreement will be required.

1 Q. Nalcor states in PUB-NE-15:

2

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

7

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

12

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

15

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

21

22

23 A. See the answers to PUB-NE-29, PUB-NE-30, PUB-NE-32, PUB-NE-35, PUB-NE-36 and
24 PUB-NE-37.

25

26 Nalcor has commenced the consultative process with Aboriginal groups with
27 respect to potential impacts of the Lower Churchill Project upon land and resource

usage. That process is continuing. Any issues and concerns expressed by the
Intervenors will be addressed as part of that consultative process.

The environmental review and consultation processes will address the operating
parameters for the lower Churchill facilities and will establish those operating
parameters. The Water Management Agreement will operate within those
established parameters.

Any claim to adverse impact and accommodation will be considered as part of the
consultation process with respect to establishing the operating parameters.

The operating parameters for the lower Churchill facilities will be established after
the consultation process that considers any land or resource usage by the
Intervenors. Having consulted and, if appropriate, accommodated any potential
land or resource usage by the Intervenors in establishing such parameters, nothing
in the Water Management Agreement has any further or separate potential to
affect such land or resource usage.

The Water Management Agreement itself does not contain any prescribed
operating parameters, such as reservoir levels or water flows. The Water
Management Agreement is structured to operate in relation to whatever operating
parameters are established through the environmental assessment and
consultation processes.

Since there are no prescribed operating parameters in the Water Management
Agreement itself, the Water Management Agreement does not have the potential
to affect land or resource usage by the Intervenors.

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

3

4

5 A. See the answer to PUB-NE-41.

6

7 Since there are no prescribed operating parameters in the Water Management

8 Agreement itself, the Water Management Agreement does not have the potential

9 to affect land or resource usage by the Intervenor.

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

5

6

7 A. See the answers to PUB-NE-29, PUB-NE-30, PUB-NE-32, PUB-NE-35, PUB-NE-36 and
8 PUB-NE-37.

1 Q. In PUB-NE-23, at page 5 of 6 Nalcor states:

2

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

12

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

17

18

19 A. Yes. The operating parameters are subject to consultation through the
20 environmental assessment process and the consultation process will allow for
21 consideration of information and perspectives gained through this consultation.
22 The environmental assessment process will establish the operating parameters for
23 the lower Churchill. See the answers to PUB-NE-30 and PUB-NE-41.

1 Q. In PUB-NE-23 Nalcor states at page 6 of 6:

2

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

15

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

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

20

21

22 A. No. The operating parameters for the lower Churchill facilities will be established
23 after the consultation process referred to in PUB-NE-41. Having consulted and, if
24 appropriate, accommodated any interests of the Intervenor in establishing such
25 parameters, nothing in the Water Management Agreement has any further or
26 separate potential to affect such interests.

1 The Water Management Agreement itself does not contain any prescribed
2 operating parameters, such as reservoir levels or water flows. The Water
3 Management Agreement is structured to operate in relation to whatever operating
4 parameters are established through the environmental assessment and
5 consultation processes.

6

7 Since there are no prescribed operating parameters in the Water Management
8 Agreement itself, the Water Management Agreement does not have the potential
9 to affect any interests of the Intervenors.

1 Q. How can Nalcor make the determinations referenced in PUB- NE-45 without
2 consulting the Intervenor?

3

4

5 A. See the answer to PUB-NE-41.

6

7 Since there are no prescribed operating parameters in the Water Management
8 Agreement itself, the Water Management Agreement does not have the potential
9 to affect any interests of the Intervenor.

1 Q. Please provide copies of all correspondence and associated documentation related
2 to consultation with the Intervenor that relates to the operating regime of the
3 project and in particular the management of water pursuant to the Water
4 Management Agreement?

5

6

7 A. Attached are correspondence and associated documentation related to
8 consultation with the Intervenor.

9

10 Attachment 1 – Correspondence with both groups

11 Attachment 2 – Correspondence with Mingan Bank Council - Ekuanitshit

12 Attachment 3 – Correspondence with Inu D'Equan Uashat mak mani-Utenam

13

14 Correspondence and documentation filed as part of the environmental assessment
15 process are not included but are available on the CEAA webpage

16 <http://www.ceaa.gc.ca> (Lower Churchill Hydroelectric Generation Project, File No.
17 07-05-26178).

18

19 Also not included is email correspondence between counsel.

1 Q. Section 6.3(b) of the Water Management Agreement states:

2

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

6

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

8

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

17

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

23

24

25 A. Subsection 6.3(a)(ii) and 6.3(b) together are complementary to Subsection 7.1(c)(ii).
26 Subsection 6.3(a)(ii) provides, in effect, that CF(L)Co will not produce for Nalcor in

1 excess of then current Nalcor Banked Energy except in circumstances and to the
2 extent necessary to avoid or limit water spillage from CF(L)Co reservoirs. In that
3 eventuality, the energy produced by CF(L)Co for Nalcor shall be calculated and
4 accounted for in accordance with Subsection 7.1(c)(ii). Subsection 6.3(b) expressly
5 provides that the Independent Coordinator shall not schedule production by
6 CF(L)Co for Nalcor that would result in Nalcor Banked Energy being a negative
7 value.

8
9 Section 7.1(c)(ii) provides the precise regulatory mechanism to fulfill the
10 requirements contained in Section 6.3. The introductory words of Section 7.1(c)(ii)
11 are "Subject to Section 6.3...".

12
13 It is correct to suggest that the same result would have been achieved in the
14 absence of Subsection 6.3(b). However, for reasons explained in the answers to
15 PUB-NE-9 and PUB-NE-11, it is important that CF(L)Co remain entitled to obtain the
16 same amount of energy from the water available to it in its reservoirs that it
17 otherwise would have obtained in the absence of water management. As a result,
18 the parties agreed, that as an overriding principle, Nalcor Banked Energy could not
19 be a negative value. That overriding principle is expressed in Subsection 6.3(b). As
20 a result of the combined effect of Subsection 6.3(a)(ii) and 6.3(b), CF(L)Co cannot be
21 required to use its water to produce for Nalcor, except to the extent of existing
22 Nalcor Banked Energy and except to avoid water spillage.