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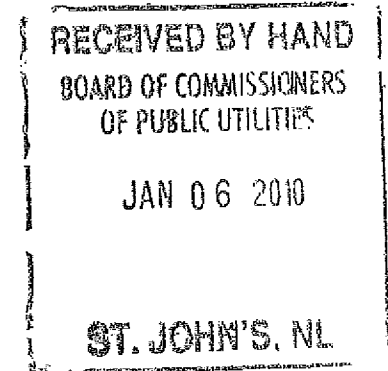
JAMIE M. SMITH, Q.C.

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January 6, 2010

Via Courier

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



Attn: Ms. Cheryl Blundon – Board Secretary

Re: Application of Nalcor Energy to Establish Water Management Agreement

Dear Ms. Blundon:


Further to the above-captioned matter, please find enclosed the following:

1. Reply of CF(L)Co to Request for Intervenor Status from the Innu of Uashat Mak Mani-Utenam, the Innu Takuaikan Uashat Mak Mani-Utenam Band Council and Certain Traditional Families of the Uashat Mak Mani-Utenam Innu Nation;
2. Reply of CF(L)Co to Request for Intervenor Status from the Conseil des Innus de Ekuanitshit; and
3. Reply of CF(L)Co to Request for Intervenor Status from Twin Falls Power Corporation Limited;

We trust this is satisfactory.

Yours truly,

JAMIE M. SMITH PLC INC.



Jamie M. Smith, Q.C.

JMS/cm
Enclosures

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.

REPLY OF CF(L)Co TO REQUEST FOR INTERVENOR STATUS

BY

TWIN FALLS POWER CORPORATION LIMITED ("TWINCO")

SMITH LAW OFFICES
Solicitors for CF(L)Co
The Law Chambers, 2nd Floor
263 Duckworth Street
St. John's, NL A1C 1G9
Per: Jamie M. Smith, Q.C.

TO: **The Board of Commissioners of Public Utilities**
120 Torbay Road
P.O. Box 21040
St. John's, NL A1A 5B2
Attn: Cheryl Blundon – Board Secretary

AND TO: **Twin Falls Power Corporation Limited**
P.O. Box 12500
St. John's, NL A1B 3T5
Attn: James R. Haynes

AND TO: **Nalcor Energy**
Hydro Place, 500 Columbus Drive
P.O. Box 12800
St. John's, NL A1B 0C9
Attn: Ian F. Kelly, Q.C. and
Geoffrey P. Young

1. The Board's discretion to grant intervenor status is addressed in Section 27 of the *EPCA*:

Powers of board

27. (1) The public utilities board may

(a) give directions as to the nature and extent of interventions by persons interested in a matter that is to be the subject of a reference or inquiry held under this Act;

2. The *Board of Commissioners of Public Utilities Regulations, 1996*, defines intervenor as:

- (c) "intervenor"

(i) when used in connection with proceedings commenced by an application to the board, means a person, other than the applicant, who files a submission, and

(ii) when used in connection with proceedings commenced by the board on its own motion, means a person who files a submission;

The *Regulations* otherwise provide little assistance in determining any issue of intervenor status.

3. It is submitted that the Board's discretion to grant intervenor status is guided, in part, by Section 5 of the *Water Management Regulations*:

Application of regulations

5. The *Board of Commissioners of Public Utilities Regulations, 1996* shall apply to the referral to the board of a proposed water management agreement under section 5.4 of the Act, or the filing of an application under subsection 5.5(1) of the Act, except to the extent these regulations deviate from it, or the board believes the process under those regulations are not necessary or useful, or would unnecessarily delay, the establishment of a water management agreement.
4. It is generally accepted that intervenor status should be granted only where it is useful, if not necessary, to a determination of an issue before the Board or to assist the Board in the discharge of its statutory obligation.
5. The onus is on the party seeking intervenor status to establish 1) a proper or sufficient interest in the proceeding before the Board and 2) a useful contribution to any determination to be made by the Board.

6. Pursuant to Section 5.5(2) of the *EPCA*, the Board is under a statutory obligation to establish the terms of a water management agreement for the purpose of achieving the policy objective set out in subparagraph 3(b)(i) of the *Act*.

7. Section 3(b)(i) of the *EPCA* provides:

Power policy

3. It is declared to be the policy of the province that

(b) all sources and facilities for the production, transmission and distribution of power in the province should be managed and operated in a manner

(i) that would result in the most efficient production, transmission and distribution of power,

8. Additionally, Section 3.1 of the *Water Management Regulations* provides:

Objective of water management agreement

3. (1) The objective of a water management agreement shall be the coordination of the power generation and energy production in the aggregate for all production facilities on a body of water to satisfy the delivery schedules for all suppliers on the body of water, in a manner that provides for the maximization of the long term energy-generating potential of a body of water, while ensuring that the provisions of a contract for the supply of power governed by section 5.7 of the *Act* are not adversely affected.

9. Thus, the Board is required by statute to establish the terms of a water management agreement between Nalcor and CF(L)Co that achieves the policy objective set out in subparagraph 3(b)(i) of the *EPCA* while ensuring that such agreement contains/addresses the requirements set out in section 3(2)(a) – (n) of the *Water Management Regulations*.

10. Here, the Applicant's sole interest in the proceeding before the Board is set out at paragraph 5 of its submission:

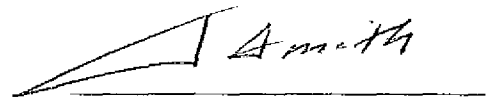
5. Twinco is requesting Intervenor status for the purpose of obtaining all documents and information filed in the proceeding and to receive transcripts and orders of the Board pertaining to this matter ...

11. It is submitted that the Applicant's desire to obtain "all documents and information filed in the proceeding and to receive transcripts and orders of the Board pertaining to this matter" is not a proper or sufficient interest in the proceeding such as to warrant intervenor status.

Such interest of the Applicant can be readily accommodated without the need for intervenor status.

12. It is further submitted that the Applicant, by its own admission, can make no useful contribution to any determination to be made by the Board or otherwise assist the Board in the discharge of its statutory duty.
13. It is respectfully submitted that the within application for intervenor status be dismissed.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 6th day of January, 2010.



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Per: Jamie M. Smith, Q.C.