

1 Q. **Re: NLH Evidence, Section 1.2.2, page 1.6 to 1.8**

2 Please indicate whether, to the best of NLH's knowledge, will approval of the PPA
3 with Nalcor with respect to power from Muskrat Falls require approval of:

- 4 • The Lieutenant Governor in Council,
5 • The Public Utilities Board,
6 • Any other body.
- 7
8

9 A. Please see IN-NLH-154 Attachment 1, *An Act to Amend the Electrical Power Control*
10 *Act, 1994, the Energy Corporation Act and the Hydro Corporation Act, 2007,*
11 SNL2012, Chapter 47. Section 2 of that Act, which as of the date of this response
12 has not been proclaimed in force, amends Section 5.1 of the *Electrical Power*
13 *Control Act, 1994* with regard to the directives that may be given to the Public
14 Utilities Board by the Lieutenant-Governor in Council with regard to the Muskrat
15 Falls Project.

16
17 Pending the proclaiming into force of these provisions, and the issuance of Orders
18 in Council with respect to a Muskrat Falls PPA, it would be premature and
19 speculative to indicate whether the PPA will require approvals or as to the nature of
20 any such approvals.

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Important Information

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Statutes of Newfoundland and Labrador 2012

CHAPTER 47

AN ACT TO AMEND THE ELECTRICAL POWER CONTROL ACT, 1994, THE ENERGY CORPORATION ACT AND THE HYDRO CORPORATION ACT, 2007

(Assented to December 22, 2012)

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Performance under guarantee
17. Commencement

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

ELECTRICAL POWER CONTROL ACT, 1994

SNL1994 cE-5.1
as amended

1. (1) Section 2 of the *Electrical Power Control Act, 1994* is amended by adding immediately after paragraph (j) the following:

(j.1) "Muskrat Falls Project" means the Muskrat Falls Project as defined in the *Energy Corporation Act*;

(2) Section 2 of the Act is amended by adding immediately after paragraph (o) the following:

(o.1) "public utility" means a public utility as defined in the *Public Utilities Act*;

2. Section 5.1 of the Act is amended by renumbering it as subsection 5.1(1) and by adding immediately after that subsection the following:

(2) Notwithstanding a provision of this Act or the *Public Utilities Act*, for the purpose of the Muskrat Falls Project the Lieutenant-Governor in Council may direct the public utilities board to implement policies, procedures and directives respecting the exercise of powers and the performance of the duties of the public utilities board under this Act or the *Public Utilities Act*, including policies, procedures and directives respecting

- (a) the costs, expenses and allowances that are to be included in the rates, tolls and charges approved for a public utility, and the terms of that inclusion;
- (b) the terms of the interim orders, orders or approvals determining rates, tolls and charges of a public utility;
- (c) the criteria to be applied by the public utilities board for the approval or confirmation of an approval by the public utilities board;
- (d) the annual rate of return of a public utility;
- (e) whether or not a hearing shall be held;
- (f) the commencement, suspension, continuation or termination of a hearing or process; and
- (g) the parameters, criteria and timing of the exercise or restraint from exercise of a power or performance of a duty of the public utilities board under this Act or the *Public Utilities Act*.

(3) The public utilities board shall implement the policies, procedures and directives of the Lieutenant-Governor in Council as directed under subsection (2).

3. The Act is amended by adding immediately after section 14 the following:

**PART II.1
EXCLUSIVE RIGHT**

Exclusive right to supply, transmit, distribute and sell

14.1 (1) Notwithstanding another provision of this Act or another Act,

(a) Newfoundland and Labrador Hydro shall have the exclusive right to supply, distribute and sell electrical power or energy to a retailer or an industrial customer in respect of the business or operations of that retailer or industrial customer on the island portion of the province; and

(b) a retailer or an industrial customer shall purchase electrical power or energy exclusively from Newfoundland and Labrador Hydro in respect of the business or operations of that retailer or industrial customer on the island portion of the province.

(2) Notwithstanding another provision of this Act or another Act, a retailer or an industrial customer shall not develop, own, operate, manage or control a facility for the generation and supply of electrical power or energy either for its own use or for supply directly or indirectly to or for the public or an entity on the island portion of the province.

(3) Subsection (1) does not apply to an industrial customer if that industrial customer is purchasing electrical power or energy in respect of its business or operations on the island portion of the province exclusively from a retailer to whom subsection (1) applies.

(4) Subsections (1) and (2) do not apply to generation facilities owned, operated, managed or controlled by a retailer or an industrial customer where the electrical power or energy generated is used by the retailer or industrial customer exclusively in emergency circumstances.

(5) Subsection (2) does not apply to generation facilities owned, operated, managed or controlled by a retailer or an industrial customer where those facilities existed on December 31, 2011, including the refurbishment of those facilities.

(6) A contract or arrangement entered into before or after the coming into force of this section which is contrary to this section is unenforceable.

(7) Notwithstanding another provision of this section, the Lieutenant-Governor in Council may, by order, exempt a retailer or an industrial customer from the application of this section or a subsection of it.

No liability

14.2 (1) A person is not entitled to compensation or damages from the Crown or a minister, employee or agent of the Crown arising from, resulting from or incidental to the operation of this Part.

(2) An action or proceeding does not lie or shall not be instituted or continued against the Crown or a minister, employee or agent of the Crown based on a cause of action arising from, resulting from or incidental to the operation of this Part.

(3) For the purpose of this section, the corporation established by the *Energy Corporation Act* and Newfoundland and Labrador Hydro are agents of the Crown.

ENERGY CORPORATION ACT

SNL2007 cE-11.01 as amended

4. The *Energy Corporation Act* is amended by adding immediately after paragraph 2(f) the following:

(f.1) "Muskrat Falls Project" means the Muskrat Falls Project as described in section 2.1;

5. The Act is amended by adding immediately after section 2 the following:

Muskrat Falls Project

2.1 (1) For the purpose of this Act, "Muskrat Falls Project" means a project by the corporation, a subsidiary of the corporation, Newfoundland and Labrador Hydro and Emera Inc., whether individually or by any combination of them, for

- (a) the design, engineering, planning, construction, commissioning, ownership, operation, maintenance, management and control of equipment and facilities, to be comprised of
 - (i) the new hydroelectric plant to be constructed at Muskrat Falls on the Churchill River, and all associated facilities, including the intake structures, penstock, powerhouse, dams and spillways,
 - (ii) a new HVdc transmission line and all related components to be constructed between the Muskrat Falls hydroelectric plant on the Churchill River and Soldier's Pond, including
 - (A) foundations, underground services, subsea services, roads, buildings, erections and structures, whether temporary or permanent,
 - (B) all other facilities, fixtures, appurtenances and tangible personal property, including inventories, of any nature whatsoever contained on or attaching to the transmission line, and
 - (C) all mechanical, electrical and other systems and other technology installed under or upon anything referred to in clause (A) or (B),
 - (iii) new transmission facilities to be constructed between the Muskrat Falls hydroelectric plant on the Churchill River and the generating plant located at Churchill Falls,
 - (iv) new transmission facilities to be constructed by Emera Inc. between the island portion of Newfoundland and Labrador and Cape Breton, Nova Scotia including
 - (A) foundations, underground services, subsea services, roads, buildings, erections and structures, whether temporary or permanent,
 - (B) all other facilities, fixtures, appurtenances and tangible personal property, including inventories, of any nature whatsoever contained on or attaching to them, and
 - (C) all mechanical, electrical and other systems and other technology installed under or upon anything referred to in clause (A) or (B), and
 - (v) any associated upgrades to the bulk electrical system or related control facilities on the island portion of the province required as a result of subparagraphs (i) to (iv);
- (b) the production, generation, storage, transmission, delivery or provision of electrical power and energy from the facilities in paragraph (a);
- (c) the negotiation, conclusion, execution and performance of agreements for activities referred to in paragraphs (a) and (b), and in particular agreements respecting the
 - (i) construction, operations, maintenance and administration,

(ii) acquisition of easements, rights-of-way, permits, licences, certificates, consents and other authorizations,

(iii) engineering and procurement,

(iv) arrangements with aboriginal peoples,

(v) demobilization and decommissioning, and

(vi) any agreements, contracts or instruments necessary or incidental to any activity described in this paragraph; and

(d) raising and securing equity or debt financing and any related derivative contracts necessary to construct the facilities and otherwise engage in the activities referred to in paragraphs (a) to (c), including without limitation the negotiation, conclusion and execution of agreements and security documentation with a lender providing that financing or refinancing to the projects.

(2) The Lieutenant-Governor in Council may designate any activities, agreements and amendments in connection with or in respect of subsection (1) entered into by the corporation, a subsidiary of the corporation, Newfoundland and Labrador Hydro, and Emera Inc., whether individually or by any combination of them

(a) to be included as part of the Muskrat Falls Project where that activity, agreement or amendment may not otherwise qualify under this section; and

(b) to be excluded from the Muskrat Falls Project, notwithstanding another provision of this section.

(3) For the purpose of this section, "Emera Inc." includes all affiliates, subsidiaries, successors and assigns of that corporation.

6. The Act is amended by adding immediately after section 3 the following:

Crown agency status

3.1 (1) Notwithstanding subsections 3(5), (6) and (7), where the corporation enters into contracts and ancillary arrangements relating to the Muskrat Falls Project, the corporation shall be considered to have entered into those contracts and ancillary arrangements in its own capacity and not as an agent of the Crown, and the Crown shall not be liable as principal in contract, tort or otherwise at law or equity for the liabilities of the corporation created directly or indirectly by those contracts or arrangements.

(2) Notwithstanding subsection (1), the corporation may execute contracts relating to the Muskrat Falls Project as an agent of the Crown where

(a) the Lieutenant-Governor in Council has approved the contract; and

(b) the contract explicitly states that the corporation signs the contract as an agent of the Crown.

7. Paragraph 14(1)(a) of the Act is repealed and the following substituted:

(a) where it is an agent of the Crown, on behalf of the Crown, or where it is not an agent of the Crown, in its own capacity, enter into contracts or other agreements and acquire and

dispose of and otherwise deal with real and personal property and all rights of all kinds in the name of the corporation;

8. Section 16 of the Act is repealed and the following substituted:

Application of Acts

16. Whether or not the corporation is an agent of the Crown

- (a) the *Mechanics' Lien Act* applies in respect of the corporation and all property to which title is vested in the name of the corporation; and
- (b) the *Workplace Health, Safety and Compensation Act* applies in respect of the corporation and its employees.

9. Section 27 of the Act is amended by renumbering it as subsection 27(1) and by adding immediately after that subsection the following:

(2) Notwithstanding subsection (1), in respect of the Muskrat Falls Project, a payment or advance that the Crown may approve in the exercise of a power conferred by this Act or be required to make under this Act shall be paid by the Minister of Finance out of the Consolidated Revenue Fund.

10. Section 28 of the Act is repealed and the following substituted:

Total amount of loan

28. (1) The total amount of money to be raised by the corporation and its subsidiaries in the aggregate by loans shall not exceed \$600 million in Canadian currency or its equivalent in the currency of another country.

(2) The total of all loans to the corporation and its subsidiaries in the aggregate to be guaranteed by or on behalf of the Crown shall not exceed \$600 million in Canadian currency or its equivalent in the currency of another country.

(3) In calculating the maximum amount of money raised by way of loans by the corporation and its subsidiaries and of guarantees given under this Act, no account shall be taken of amounts raised by way of loan

- (a) that have been repaid or a part of the proceeds of a loan to be raised for, or that has been spent on, the repayment, refinancing, refunding, redemption, retirement or purchase of the whole or a part of loans or securities of the corporation; or
- (b) by the corporation or its subsidiaries in respect of the Muskrat Falls Project.

HYDRO CORPORATION ACT, 2007

SNL2007 cH-17

11. Section 2 of the *Hydro Corporation Act, 2007* is amended by adding immediately after paragraph (f) the following:

- (f.1) "Muskrat Falls Project" means the Muskrat Falls Project as defined in the *Energy*

Corporation Act;

12. The Act is amended by adding immediately after section 3 the following:

Crown agency status

3.1 Notwithstanding subsections 3(4), (5) and (6), where the corporation enters into contracts and ancillary arrangements relating to the purchase of electrical energy, capacity and transmission services including contracts providing for direct cost reimbursement to the Muskrat Falls Project, the corporation shall be considered to have entered into those contracts and ancillary arrangements in its own capacity and not as an agent of the Crown, and the Crown shall not be liable as principal in contract, tort or otherwise at law or equity for the liabilities of the corporation created directly or indirectly by those contracts or arrangements.

13. Subsection 5(2) of the Act is repealed and the following substituted:

(2) Notwithstanding subsection (1), the corporation may engage in those activities that the Lieutenant-Governor in Council may approve.

14. Paragraph 14(1)(a) of the Act is repealed and the following substituted:

- (a) where it is an agent of the Crown, on behalf of the Crown, or where not an agent of the Crown, in its own capacity enter into contracts or other agreements and acquire and dispose of and otherwise deal with real and personal property and all rights of all kinds in the name of the corporation;

15. Section 18 of the Act is repealed and the following substituted:

Application of Acts

18. Whether or not the corporation is an agent of the Crown

- (a) the *Mechanics' Lien Act* applies in respect of the corporation and all property to which title is vested in the name of the corporation; and
- (b) the *Workplace Health, Safety and Compensation Act* applies in respect of the corporation and its employees.

16. Section 29 of the Act is amended by renumbering it as subsection 29(1) and by adding immediately after that subsection the following:

(2) Notwithstanding subsection (1), in respect of the Muskrat Falls Project, a payment or advance that the Crown may approve in the exercise of a power conferred by this Act or be required to make under this Act shall be paid by the Minister of Finance out of the Consolidated Revenue Fund.

Commencement

17. This Act, or a section, subsection, paragraph or subparagraph of this Act, comes into force on a day or days to be proclaimed by the Lieutenant-Governor in Council.