

1    Q.    **Re: IN-NLH-092**

2            “There are no formal agreements with either Mushuau Innu First Nation (MIFN) or  
3            the Federal Government with respect to this matter. While negotiations were held  
4            with MIFN and Indian and Northern Affairs Canada (INAC – now Aboriginal Affairs  
5            and Northern Development Canada) regarding a formal operating agreement for  
6            the operation at Natuashish, no formal agreement has been reached. Over a span  
7            of several years, meetings were held and draft agreements circulated without  
8            conclusion of a final agreement.”

9            Please provide copies of documents related to the negotiation of an operating  
10          agreement for the operations at Natuashish, and explain why a formal operating  
11          agreement is required in NLH’s view

12  
13  
14    A.    Hydro prefers to enter into a formal agreement to clarify its contractual rights and  
15          obligations with MIFN as to operating the Natuashish electrical system. Hydro has,  
16          however, operated the system on a cost recovery basis in the absence of a formal  
17          agreement. Please see IN-NLH-205 Attachments 1-14.



"Baird, Maeve"  
<maeve.baird@justice.gc.ca>  
03/16/2005 11:16 AM

To <WChamberlain@nlh.nf.ca>, <NKleer@OKTLaw.com>  
cc "Butler, Michael" <Michael.Butler@JUSTICE.GC.CA>  
bcc

Subject Hydro Operating Agreement Natuashish

## WITHOUT PREJUDICE

Wayne/Nancy;

Following up from our meeting in St. John's on March 8-9th, I am confirming that our clients have requested that we prepare a draft operating agreement for the generating facility at Natuashish by April 15th. It is my understanding that the intention of the parties is to have a meeting on April 26th to review the agreement and resolve any outstanding issues.

As Nancy was not present for the meeting and may not have had an opportunity to obtain instructions from her client yet, this is my understanding of the general principles of the operating agreement;

- MIFN will continue to own the facility, including fuel tanks and lines and distribution system, as part of the band's infrastructure;
- MIFN will be responsible for general operations and maintenance and insurance for the facility (although they may purchase the operations and maintenance services from Hydro);
- Hydro will operate the facility pursuant to the operating agreement and will provide all the services they provide as a public utility for remote locations;
- Canada/MIFN will be responsible for one-half the net operating costs for the facility (including fuel costs) after billing (not collection) of consumers of electricity;
- Hydro will be responsible for one-half the net operating costs, and for rendering and collecting invoices to consumers of electricity;
- Hydro will apply the rural rates as set by the PUB from time to time when invoicing consumers;
- Hydro will not accept any liability for environmental contamination for fuel delivery, or for operation of the facility unless caused by its negligence;
- Hydro will provide to MIFN an annual capital plan and estimates for the facility, any issues arising from that will be addressed by the Operations Committee
- The Operations committee will continue to exist, and will meet quarterly at a minimum or as required;
- A management committee will be established which will meet twice a year to resolve any issues;
- Hydro wants confirmation from the band council that they support Hydro using normal collection procedures for unpaid invoices;
- The Operating agreement should include a clause to allow a review of the current arrangement, and particularly in the event there is an arrangement reached with respect to development of the Lower Churchill which affects the operating agreement.

There are some other issues to consider. DIAND has agreed to try to assist with payment of invoices for electrical consumption through a provision in the funding agreement for facility management.

DIAND is also determining the duration for which it can commit funding and whether it can exceed the usual five year funding arrangement. This will affect the term of the operating agreement.

We also need to determine in what circumstances the operating agreement can be terminated and what the consequences are for provision of electrical service if the agreement were terminated.

Hydro has agreed to make application to the PUB for abandonment of Davis Inlet once the operating agreement is finalized, and if necessary request the PUB's approval for the operating agreement-Wayne



is checking with his regulatory group on that issue.

I don't know if I have omitted something important but Wayne will tell me if I have. I don't know what Wayne's time line is for the initial draft that he agreed to prepare, but once we have that, we can have a meeting of counsel (either in person or on the phone) to review/discuss and then with luck we can make any changes before April 15th.

We will then need to prepare a 28(2) permit for Hydro. The MIFN have agreed to provide a BCR before the end of March to request DIAND to renew the existing letter permit.

Maeve

*Maeve A. Baird  
Counsel  
Civil Litigation and Advisory Group  
Justice Canada  
Suite 1400, Duke Tower  
5151 Duke Street  
Halifax, Nova Scotia B3J 1P3  
Telephone (902) 426-8791  
Facsimile (902) 426-8796*

*The information transmitted is intended only for the person or entity to whom it is addressed and contains confidential and solicitor-client privileged material. If you receive this in error, please contact the sender and delete the material from any computer. Any review, retransmission, dissemination or other use, or taking of any action in reliance of this information by those other than the intended recipient, is prohibited.*



"Nancy Kleer"  
<Nkleer@oktlaw.com>  
10/03/2005 12:36 PM

To <WChamberlain@nlh.nf.ca>, "Baird, Maeve"  
<maeve.baird@justice.gc.ca>  
cc "O Pelley" <opelley@nf.aibn.com>  
bcc

Subject Fuel Delivery Charge - MIFN response to NLH comments

Wayne, Maeve:

In response to Hydro's request for support for MIFN's response to Hydro's comments on the fuel delivery charge (issue 1 as set out in my email of Sept. 15, 2005), MIFN has the following comments. Note that MIFN's response also requests INAC to respond to NLH's comments on the fuel delivery charge:

#### Tank Wagon Delivery

1. INAC contributing to all capital costs at Natuashish is not true. MIFN suggests that INAC should respond officially to this Hydro statement.
2. It appears to have been agreed by all parties that Hydro will be given a 75% administration cost on everything except fuel and delivery charge. MIFN understands that this administration cost granted to Hydro is to cover office and other overhead costs. MIFN also has overhead cost related to the fuel supply and delivery that it must recover.

#### Pipeline Delivery

All assumptions with respect to pipeline delivery are assumptions only. MIFN cannot bear the additional costs associated with fuel truck delivery until the pipeline is repaired and put into service, if that should ever happen.

What Hydro pays Woodward for delivery in Nain is irrelevant. Woodward has a markup on their fuel price to Hydro.

What Hydro feels is a reasonable charge does not compensate MIFN for costs. The 10.6 cent per litre delivery cost is the minimum acceptable charge.

Further to Maeve's summary of the status of outstanding issues as set out in her September 30 email, I am of the view that the fuel delivery charge matter is an all-parties matter that will need to be resolved amongst the parties, rather than through further technical discussion. Please confirm.

Nancy J. Kleer  
Olthuis, Kleer, Townshend  
Barristers & Solicitors  
229 College Street, Suite 312  
Toronto, ON M5T 1R4

PH: 416.981.9336  
F: 416.981.9350

\*\*\*\*\*

This e-mail message and any attachments may be privileged, confidential and subject to copyright. Any unauthorized review, copying, transmittal, use or disclosure is prohibited. If you are not the intended recipient you have received this message in error. Please immediately notify us by reply or collect telephone call to (416) 981-9330 and destroy this message and any attachments.

\*\*\*\*\*



"Baird, Maeve"  
<maeve.baird@justice.gc.ca>  
05/05/2005 02:06 PM

To <WChamberlain@nlh.nf.ca>, <NKleer@OKTLaw.com>  
cc "Butler, Michael" <Michael.Butler@JUSTICE.GC.CA>  
bcc  
Subject Meeting for Long Term Operating Agreement

Nancy;

Wayne has indicated that he anticipates providing a draft of the Long Term Operating Agreement by May 13th. I assume that you are participating in the meeting in St. John's scheduled for May 17th. It is likely that the May 17th meeting will give the parties a chance to discuss the principles of the agreement and hopefully resolve any issues. There won't be time to deal with drafting any revisions. I think it would be useful to have a meeting of the lawyers on May 18th to deal with legal and drafting issues, and Wayne has agreed - are you available and/or interested in staying over for May 18th for such a meeting?

Maeve

*Maeve A. Baird  
Counsel  
Civil Litigation and Advisory Group  
Justice Canada  
Suite 1400, Duke Tower  
5151 Duke Street  
Halifax, Nova Scotia B3J 1P3  
Telephone (902) 426-8791  
Facsimile (902) 426-8796*

*The information transmitted is intended only for the person or entity to whom it is addressed and contains confidential and solicitor-client privileged material. If you receive this in error, please contact the sender and delete the material from any computer. Any review, retransmission, dissemination or other use, or taking of any action in reliance of this information by those other than the intended recipient, is prohibited.*





Wayne  
Chamberlain/NLHydro  
05/16/2005 12:31 PM

To AttwoodW@inac-ainc.gc.ca, TrainorD@inac.gc.ca,  
opelley@nf.aibn.com, mckinnonj@inac.gc.ca,  
maeve.baird@justice.gc.ca, NKleer@OKTLaw.com,  
cc Bill Wells/NLHydro@NLHydro, Fred  
Martin/NLHydro@NLHydro, Keith  
Boone/NLHydro@NLHydro, Bill

bcc

Subject Meeting - Draft Natuashish Long Term Operating Agreement



Good afternoon

Please find attached hereto a draft Long Term Operating Agreement concerning the Power System in Natuashish.

Please be advised that this draft Agreement has not been reviewed by Hydro internally and there may be errors or omissions that Hydro would like to respond to as well.

It is also quite possible that Fred Martin may not be able to make the meeting tomorrow as he has a bad flu and accordingly we may not be in a position to respond to any counterproposals that MIFN or DIAND may propose. The purpose of tomorrow's meeting will be to review the draft Agreement and hopefully have a good discussion on the issues identified therein.

In attendance for Hydro will be Bill Wells, Keith Boone, Bill Nippard, Geoff Young (rates legal counsel) myself and possibly Fred Martin.

The venue for the meeting has changed due to the number of people that will be attending. The meeting will commence at 11:30 a.m. at the Battery Hotel and Suites in the Riverhead Room. We will only have Tuesday to meet and discuss the Agreement due to prior commitments by several of the Hydro representatives.



Natuashish Long Term Operating Agreement (May 16, 2005).doc

Wayne D. Chamberlain  
Senior Legal Counsel  
Legal Department  
Newfoundland and Labrador Hydro  
Telephone: (709)737-1443  
Facsimile: (709)737-1782  
mailto:wchamberlain@nlh.nf.ca

Notice: This email communication is confidential and legally privileged. Any unauthorized reproduction, distribution or disclosure of this email or any attachments is strictly prohibited. Please destroy/delete this email communication and attachments and notify me if this email was misdirected to you.

**NLH Draft May 16, 2005**

This Operating Agreement made in triplicate as of the       day of       A.D., 2005.

**BETWEEN:**                      **MUSHUAU INNU FIRST NATION**, a band pursuant to Section 2(1) of the Indian Act, Revised Statutes of Canada 1985, c. I-5 as amended (hereinafter referred to as "MIFN")

OF THE FIRST PART

**AND:**                              **HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by the Minister of Indian Affairs and Northern Development (hereinafter referred to as "DIAND");

OF THE SECOND PART

**AND:**                              **NEWFOUNDLAND AND LABRADOR HYDRO**, a body corporate existing pursuant to the Hydro Corporation Act, Chapter H-16 of the Revised Statutes of Newfoundland and Labrador, 1990 and having its head office at St. John's, in the Province of Newfoundland and Labrador (hereinafter referred to as "NLH");

OF THE THIRD PART

**AND WHEREAS** MIFN is the owner of the Power System that is located in the community of Natuashish which is also fully within the boundaries of the Reserve;

**AND WHEREAS** MIFN and DIAND wish to enter into an operating and maintenance agreement with NLH to manage the operation of and perform routine maintenance on the Power System as an independent contractor and as outlined in this long term operating agreement (hereinafter referred to as the "Operating Agreement");

**AND WHEREAS** DIAND and MIFN agree to provide NLH with all necessary approvals and authority to permit NLH to manage the operation and routine maintenance of the Power System in accordance with this Operating Agreement;

**AND WHEREAS** DIAND is prepared to share the costs of operating and maintaining the Power System and to pay the full cost of all required capital work associated with the Power System as provided herein so that NLH may manage the operation and routine maintenance of the Power System in accordance with Good Utility Practice and in accordance with similar standards and operating procedures as other NLH remote diesel plant facilities in Labrador;

**AND WHEREAS** MIFN, as owner of the Power System, will pay any and all accounts of MIFN or associated bodies of MIFN, in a timely manner and will cooperate with NLH in the management of the operation and maintenance of the Power System in a safe, reliable and efficient manner such that NLH is not unreasonably hindered or delayed by MIFN in the performance its duties and responsibilities under this Operating Agreement including the collection of customer accounts;

**AND WHEREAS** the parties wish to enter into this Operating Agreement setting forth their respective rights and obligations with respect to the operation and maintenance of the Power System.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that for and in consideration of the premises and mutual covenants herein contained and upon the terms and conditions hereinafter set forth, MIFN, DIAND and NLH do hereby covenant, undertake and agree as follows:

## **ARTICLE 1 INTERPRETATION**

1.01 The terms used in this Agreement, including the recitals, shall, unless the context otherwise requires, have the following meanings:

- (a) “day” means calendar day unless otherwise specified herein;
- (b) “Force Majeure” means any fortuitous event, act of governmental authority, act of public enemies, war, invasion or insurrection, riot, civil disturbance, labour trouble, strike; flood, fire, shortage of labour, or of materials or of transport or other cause of inability to perform or delay in performing obligations hereunder which, in each such event, is beyond the reasonable control of the party or parties affected;
- (c) “Good Utility Practice” means those practices, methods or acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in Canada) that at a particular time, in the exercise of reasonable judgment, would be expected to accomplish the desired result in a manner which is consistent with laws and regulations and due concerns for reliability, safety, environmental protection, economy and expedition;
- (d) “month” means a calendar month unless otherwise specified herein;
- (e) “NLH” means Newfoundland and Labrador Hydro, its employees, contractors and agents;
- (f) “Plant” means Natuashish diesel generating plant facility located on the Reserve;



- (g) “Power System” means the diesel generating plant, electrical distribution system and associated facilities situate on the Reserve but excludes the fuel storage tanks and fuel delivery systems that transport fuel from the fuel supplier’s vessel to the fuel storage tanks and from the fuel storage tanks to the diesel generating plant;
  - (h) “Province” means the province of Newfoundland and Labrador;
  - (i) “PUB” means the Board of Commissioners of Public Utilities for the Province of Newfoundland and Labrador;
  - (j) “Reserve” means ????
- 1.02 In this Operating Agreement all references to dollar amounts and all references to any other money amounts are expressed in terms of the coin or currency of Canada which at the time of payment or determination shall be legal tender for the payment of public and private debts.
- 1.03 Words in this Operating Agreement importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders.
- 1.04 Where a word is defined anywhere in this Operating Agreement other parts of speech and tenses of the same word have corresponding meanings.
- 1.05 Whenever in the Operating Agreement a number of days are prescribed for any purpose, the days shall be reckoned exclusively of the first and inclusively of the last.
- 1.06 Whenever this Operating Agreement requires a notice to be given or a request to be made on a Saturday, Sunday or legal holiday in the Province or the Reserve, such notice or request may be given or made on the first business day occurring thereafter, and, whenever in this Operating Agreement the time within which any right will lapse or expire shall terminate on a Saturday, Sunday or legal holiday in the Province or Reserve, such time will continue to run until the next succeeding business day.
- 1.07 In this Operating Agreement the headings of Articles are inserted for convenience of reference only and shall not affect the construction or interpretation thereof.
- 1.08 Any reference in this Operating Agreement to an article, a clause, a subclause, a paragraph or a schedule shall be taken as a reference to an article, a clause, a subclause, a paragraph or a schedule to this Operating Agreement.
- 1.09 This Operating Agreement may be executed in three or more counterparts, each of which when so executed shall be deemed to be an original, but all of such counterparts together shall constitute one and the same instrument.



## ARTICLE 2 RESPONSIBILITIES OF ALL PARTIES

2.01 In accordance with and subject to the provisions of this Operating Agreement, the parties shall:

- (a) fully co-operate in a timely manner in the planning, operation and maintenance of the Power System; and
- (b) fully co-operate in providing NLH and its personnel with all necessary rights of access to and passage over all lands on the Reserve to permit NLH to carry out its responsibilities under this Operating Agreement.

2.02 Operations Committee

- (a) The parties agree to continue with the Operations Committee that was established by the parties prior to this Operations Agreement whose main responsibility shall be to address issues identified by any of the parties concerning the operation and maintenance of the Power System and review any annual operating budgets or updated forecasts of said budgets provided by NLH to MIFN and DIAND for the operation, maintenance, capital costs and expenses.
- (b) The Operations Committee shall be composed of two (2) representatives from each of the parties. The Operations Committee representatives nominated by the parties are as follows:

**MIFN:**

Cajetan Rich  
c/o Mushuau Innu First Nation  
Nation Band Office  
P.O. Box 190  
Natuashish, NL  
A0P 1A0

Telephone: (709) 478-8827

Fax No. (709) ???- ????

Gerry Gregoire  
c/o Mushuau Innu First  
Nation Band Office  
P.O. Box 190  
Natuashish, NL  
A0P 1A0

Telephone: (709) 478-8827

Fax No. (709) ???- ????

**DIAND:**

Mr. David Trainor  
Department of Indian and  
Northern Affairs  
Atlantic Regional Office  
P.O. Box 160  
40 Havelock Street  
Amherst, Nova Scotia  
B4H 3Z3

Telephone: ?????????

Facsimile No. ????????

Mr. Jean Richard  
Department of Indian and  
Northern Affairs  
Atlantic Regional Office  
P.O. Box 160  
40 Havelock Street  
Amherst, Nova Scotia  
B4H 3Z3

Telephone: ?????????

Fax No. ???????

**NLH:**

Mr. Keith Boone  
P.O. Box 12400  
500 Columbus Drive  
St. John's, NL  
A1B 4K7

Telephone: (709) 737-1236

Facsimile No. (709) 737-1902

Mr. Bill Nippard  
P.O. Box 1780, Station "B"  
Happy Valley–Goose Bay,  
NL  
AOP 1E0

Telephone: (709) 896-2993

Fax No. (709) 896-8948

The parties shall inform the other parties to this Operating Agreement in writing before changing their representatives on the Operations Committee.

- (c) The Operations Committee members shall address all issues forwarded to it in a timely and expeditious manner and endeavour to reach a consensus. Subject to Clause 3.05 and Clause 3.06 herein, if the members of the Operations Committee are unable to reach a consensus then the matter shall be referred to the Management Committee.
- (d) The Operating Committee shall meet quarterly or as required and members may attend in person or by conference call.

2.03

**Management Committee**

- (a) The Management Committee's main responsibility shall be to address any significant issues concerning this Operating Agreement and any issues referred to it by the Operations Committee that are in dispute concerning the operation and maintenance of the Power System.

- (b) The Management Committee shall be composed of one (1) representative from each of the parties. The Management Committee representatives nominated by the parties are as follows:

**MIFN:**

??????????  
c/o Mushuau Innu First Nation Band Office  
P.O. Box 190  
Natuashish, NL  
A0P 1A0

Telephone: (709) ????????

Fax No. (709) ???-????

**DIAND:**

??????????  
Department of Indian and Northern Affairs  
Atlantic Regional Office  
P.O. Box 160  
40 Havelock Street  
Amherst, Nova Scotia  
BH4 3Z3

Telephone: ?????????

Fax No. ???????

**NLH:**

??????  
Newfoundland and Labrador Hydro  
P.O. Box 12400  
500 Columbus Drive  
St. John's, NL  
A1B 4K7

Telephone: (709) 737 - ????

Facsimile No. (709) 737-????

The parties shall inform the other parties to this Operations Agreement in writing before changing their representative on the Management Committee.

- (c) The Management Committee members shall address all issues forwarded to it in a timely and expeditious manner and endeavour to reach a consensus. Subject to Clause 3.05 and Clause 3.06 herein, if the members of the Management Committee are unable to reach a consensus then the matter shall be addressed pursuant to Article 8 - Dispute Resolution herein.
- (d) The Management Committee shall meet twice a year or as required and members may attend in person or by conference call.

### **ARTICLE 3 POWER SYSTEM OPERATION**

- 3.01 NLH shall manage, operate and maintain the Power System in accordance with Good Utility Practice to meet the customer load requirements on the Reserve. NLH is responsible for the safe and reliable operation of the Power System.
- 3.02 NLH shall carry out inspection programs, servicing, maintenance and repairs on all aspects of the Power System similar to the work carried out by NLH at other NLH remote diesel plant locations and this work shall be carried out by qualified personnel.
- 3.03 NLH shall have, as a minimum, two qualified operators to operate the Plant unless otherwise agreed to by MIFN and DIAND.
- 3.04 The scope of work and services to be performed by NLH pursuant to this Operating Agreement shall include, but not be necessarily limited to:
  - (a) daily operation and maintenance of the Power System;
  - (b) reading and maintenance of meters;
  - (c) providing new service connections when requested by persons on the Reserve;
  - (d) identifying and maintaining an adequate inventory of spare parts and materials pertaining to the operation and maintenance of the Power System;
  - (e) consulting with DIAND and MIFN concerning any warranty issues that may arise with respect to the Power System;
  - (f) performing repairs or maintenance when required and consult with DIAND and MIFN before performing any significant work on the Power System;
  - (g) inform MIFN of all significant work performed in a timely manner;



- (h) act as a prudent independent contractor in the management of the operation and maintenance of the Power System;
  - (i) shall, within the scope of its responsibilities under the Operating Agreement and with the cooperation of the other parties herein, manage the operation and maintenance of the Power System to the same standards as the other diesel generating systems in remote communities in Labrador; and
  - (j) shall, where in NLH's sole opinion it is feasible and economical to do so, continue to provide liability and property insurance coverage as provided in Article 7 herein.
- 3.05 NLH shall, where possible and prudent, identify and consult with MIFN and DIAND on any significant operational or non-routine maintenance issues. Upon consulting with MIFN and DIAND, NLH shall have sole and final approval on the course of action to be taken for all operation and maintenance issues concerning safety and health, Power System reliability or environmental protection.
- 3.06 NLH shall identify and consult with MIFN and DIAND concerning any Power System capital work that it recommends be undertaken. Upon consulting with MIFN and DIAND, MIFN and DIAND shall have sole and final approval on the course of action to be taken for all capital work on the Power System unless the capital work recommended pertains to significant safety and health, Power System reliability or environmental protection concerns whereby Article 8 – Dispute Resolution may be invoked by either party to resolve the matter.
- 3.07 NLH shall not have any duties, responsibility or liability pursuant to this Operating Agreement concerning the fuel storage tanks and fuel delivery systems, truck deliveries or pipelines external to the boundaries of the Plant. Further, with respect to delivery of diesel fuel to the Plant, NLH shall not have any responsibility or liability for fuel delivery systems or processes beyond the delivery point specified herein. The fuel delivery point where NLH will take responsibility for the fuel for the Plant as part of the operation of the Power System shall be \_\_\_\_\_.
- 3.08 NLH shall maintain records with respect to residential and general service metered usage of electrical service on the Reserve based upon the rates for users as determined by PUB for isolated system communities in Labrador. NLH will provide such records to DIAND and MIFN as they may reasonably require and upon receiving a written request.
- 3.09 When NLH is required to undertake emergency work or services it shall endeavor, where time permits, to contact the Operations Committee. Where NLH does not, in its sole discretion and acting reasonably, believe there is sufficient time to notify the Operations Committee, NLH shall not be liable for

not contacting or consulting with the Operations Committee, DIAND or MIFN prior to commencing the emergency work or services.

- 3.10 NLH shall prepare and submit to the Operations Committee an annual forecast of the operating and maintenance costs for the Power System for the next calendar year. The Operations Committee shall review and approve the annual forecast budget for the operation and management of the Power System and NLH shall provide in a timely manner any reforecast of the budget, if necessary. This annual budget shall be submitted on or before \_\_\_\_\_. The amounts payable by DIAND pursuant to Article 4 – Cost Sharing Arrangement shall be payable on the basis of the actual Operating Deficit and Capital Expenditures as defined and not on the basis of the annual forecast budget.
- 3.11 NLH shall, with full cooperation of MIFN, bill customers in a similar manner as customers were previously billed in Davis Inlet, and shall commence to collect on such accounts once the billing system is established. For the purposes of this Operating Agreement, NLH shall be fully responsible for the collection and recovery of customer accounts associated with the Power System but MIFN and DIAND agree that all MIFN and other federally funded facilities on the Reserve electrical service accounts shall be fully paid in a timely manner and that if there is a failure by MIFN or DIAND to pay such accounts then such amounts shall be not be included as part of the Billings as defined by Clause 4.01(a) but rather shall be included as part of the Operating Expenses as defined by Clause 4.01(d) or DIAND shall, with the consent of MIFN herein given, to provide for the payment of such outstanding electrical accounts through a provision in the funding agreement for facility management.
- 3.12 MIFN shall be fully responsible for the purchase, supply and delivery of diesel fuel to the Plant delivery point as identified in Clause 3.07. MIFN shall sell the diesel fuel to NLH at the delivery point at the same price paid by MIFN to the fuel supplier without any markup. MIFN shall, if requested by NLH, provide NLH with supporting documentation to verify that the price of diesel fuel being charged to NLH is the same as the price of the diesel fuel paid by MIFN to the supplier. NLH shall pay the invoice for fuel supplied and delivered to the Plant by MIFN within thirty (30) days of the date of the invoice.
- 3.13 NLH shall be fully responsible for the collection and recovery of all customer accounts associated with the Power System but MIFN and DIAND agree that all MIFN and other federally funded facilities on the Reserve electrical service accounts shall be fully paid in a timely manner and that if there is a failure by MIFN to pay such accounts and these amount remain outstanding for more than sixty (60) days then NLH may set off any outstanding amounts against any amount owing by NLH to MIFN for diesel fuel supplied pursuant to Clause 3.12. (Note: There was some discussion that this could be addressed by a provision in the funding agreement for facility management.)



## **ARTICLE 4**

### **COST SHARING ARRANGEMENT**

4.01 The terms used in this Article, shall, unless the context otherwise requires, have the following meanings:

- (a) "Billings" means the amounts charged by NLH to the customers for electrical power and energy provided by NLH from the Power System in accordance with rates approved by the PUB or otherwise charged in accordance with applicable laws;
- (b) "Capital Expenditures" means those expenditures determined in accordance with the CICA Handbook to acquire, construct, develop, or enhance the service potential of property, plant or equipment, which expenditures shall include but shall not be limited to, labour (at bill rates), materials, engineering, project management, transportation, travel, overhead allocations, and allowance for funds used during construction (AFUDC), all of which expenditures shall be consistent with those practices used by NLH in its reports and filings before the PUB.
- (c) "Operating Deficit" means the Operating Expenses less the Billings.
- (d) "Operating Expenses" means those actual costs, other than MIFN Fees, incurred by NLH with respect to the operation and maintenance of the Power System, which costs shall include but shall not be limited to:
  - labour, at the bill rate which includes fringe benefits and other salary/employee related costs for operators, meter readers, maintenance personnel and other personnel carrying out non-capital work;
  - overtime;
  - fuel, lubricants and additives consumed at the Plant;
  - materials;
  - direct engineering;
  - station services and utility costs;
  - traveling and transportation expenses associated with operating activities; and
  - an allocation of administrative overheads applied at the rate of 75% of all operating expenses with the exception of fuel which will not have any overhead applied.
- (e) "MIFN Fees" means any and all fees, taxes, royalties, assessments, levies or other charges of whatsoever nature or kind charged or chargeable to NLH by MIFN.

4.02 DIAND shall pay to NLH fifty percent (50%) of the Operating Deficit incurred by NLH.

- 4.03 DIAND shall pay to NLH one hundred percent (100%) of all Capital Expenditures and of all MIFN Fees.
- 4.04 The Operating Deficit shall be billed by NLH to DIAND monthly.
- 4.05 Capital Expenditures that comprise items of amounts less than \$250,000 shall be billed to DIAND by NLH on a quarterly basis.
- 4.06 Payments for individual capital items in amounts of \$250,000 or greater shall be paid by DIAND to NLH before they are procured by NLH, based upon NLH's written estimates for the same being provided to DIAND by NLH. Where the actual cost of a capital item estimated to cost in excess of \$250,000 is more or less than the estimated amount, then NLH shall forthwith reimburse the overpayment to DIAND, or DIAND shall forthwith pay to NLH the additional amount, as the case may be.
- 4.07 MIFN Fees shall be billed to DIAND as they are incurred by NLH.
- 4.08 DIAND shall make payments to NLH in accordance with Article 5 herein and such payments shall be made to NLH at its head office in St. John's in the Province, or in such other place in the Province as NLH may designate, without deduction for any claim or counterclaim which MIFN or DIAND may have or claim to have against NLH arising under this Operating Agreement or otherwise.
- 4.09 Where funding is provided by DIAND to MIFN for MIFN electrical service accounts or for other infrastructure on the Reserve whereby there would be associated electrical accounts, MIFN hereby authorizes DIAND and DIAND hereby agrees to directly pay NLH for all such electrical accounts pursuant to the provisions of the funding agreement between DIAND and MIFN for facility or infrastructure management which would include a component for operating costs such as electrical services or may be set off against fuel invoice amounts owing by NLH to MIFN pursuant to Clause 3.13. Such accounts include but are not limited to \_\_\_\_\_.

## **ARTICLE 5 PAYMENT**

- 5.01 NLH shall invoice DIAND for all amounts owing pursuant to Clause 4.02 or Clause 4.03 pursuant to the scope of work and services under this Operating Agreement on a monthly basis, and the invoice shall be paid by DIAND within thirty (30) days of the date of the invoice. NLH shall itemize and identify, where reasonably possible to do so, all costs and expenses in its invoice. DIAND shall review the invoice and shall identify in writing any concerns or problems with the invoice to NLH within fifteen (15) days of the date of the invoice.



- 5.02 If an invoice is disputed, DIAND shall not withhold payment of the invoice and shall pay the full amount of the invoice and forward a written notice of the details of their dispute with the invoice payment. If the dispute is mutually resolved in favor of DIAND by the parties, the Operations or Management Committees or a determination is made pursuant to Article 8 - Dispute Resolution that all or part of the amount disputed was payable then NLH shall credit or refund DIAND for the amount that was determined not to be payable along with provision for the payment of interest in accordance with Clause 5.03.
- 5.03 Payment of invoices shall be deemed overdue if not paid within thirty (30) days from the date of the invoice. Interest shall accrue and be due and payable by DIAND on all outstanding amounts due and owing beyond the date upon which payment is due and payable at the rate of one and one-half percent (1-1/2%) percent per month. Interest will be compounded monthly as long as the payment of the invoice and applicable interest remains overdue.

## **ARTICLE 6**

### **TERMINATION FOR CAUSE**

- 6.01 Subject to Clause 6.03, NLH may terminate this Operating Agreement for the following material or fundamental breaches, including but not limited to: the failure by MIFN or DIAND to provide NLH with the necessary property rights or authorizations or the failure of MIFN, DIAND or the Operations/Management Committee to address significant concerns identified by NLH with respect to Power System reliability, health and safety or environmental protection.
- 6.02 Subject to Clause 6.03, the failure by DIAND to fully pay any two (2) invoices from NLH, shall be considered a material or fundamental breach or a fundamental breach of this Operating Agreement by any party shall be cause to terminate this Operating Agreement for cause.
- 6.03 A party shall give the other parties to this Operating Agreement written notice of any of the matters considered to be a material as identified in this Article and shall comply with Article 8 – Dispute Resolution in an effort to resolve the material breach dispute. If the matter cannot be satisfactorily resolved by the Management Committee to the satisfaction of the party alleging the fundamental breach then that party may either suspend and withdraw all work, services, personnel, equipment and materials provided or cease payment for all such work and services until the matter is resolved to its satisfaction or may terminate the Operating Agreement. The aggrieved party is not obligated to commence legal proceeding to resolve the matter but may do so if it so decides.

## **ARTICLE 7 DISPUTE RESOLUTION**

- 7.01 Subject to Clauses 6.03 herein, if a party is of the opinion that the other party is in material breach of this Operating Agreement, it shall forthwith give written notice to the other party of the facts believed to comprise the material breach and the required or desired remedy including the deadline for a response. The other party shall either remedy the stated material breach within the stated deadline and where there is no deadline provided, within thirty (30) days, or shall fully respond in writing within ten (20) days of receipt of the notice of the material breach with its position and reason for same.
- 7.02 In addition to remedies provided for in Article 5 - Payment and Article 6 – Termination for Cause, if there is a dispute about a breach of this Operating Agreement and/or remedy or other related matters, the Management Committee shall forthwith meet (either in person or by telephone) to discuss possible solutions and attempt to reach a consensus on the resolution of the dispute. If the dispute cannot be addressed in a timely manner or resolved by the Management Committee to the satisfaction of a party, a party may avail of the remedies in this Operating Agreement or may at any time commence legal proceedings to resolve the issue in dispute pursuant to and in accordance with Article 11 - Governing Law and Forum.

## **ARTICLE 8 LIABILITY AND PROPERTY INSURANCE COVERAGE**

8.01 **Liability**

- (a) NLH shall not have any liability or responsibility for work or services performed pursuant to this Operating Agreement unless it is negligent in the performance of its duties and responsibilities. NLH shall not have any liability or responsibility for design errors or omissions in providing work or services under this Operating Agreement, including any capital work performed (“Professional Errors and Omissions”). MIFN and DIAND confirm and agree that they hereby waive any legal remedies or rights it may have against NLH for Professional Errors and Omissions pertaining to work or services performed pursuant to this Operating Agreement.
- (b) Subject to the foregoing and the exclusions in NLH’s General Liability policy of insurance, NLH confirms and agrees to provide general liability insurance coverage with a limit of four million (\$4,000,000) dollars per occurrence to cover NLH’s liability for bodily injury or property damage resulting directly from NLH’s negligence in the performance of its duties and responsibilities under this Operations Agreement. Accordingly, the cumulative liability of NLH with respect to any or all claims arising out of the performance or non-performance

of their obligations in connection with this Operating Agreement whether based on contract, indemnity, warranty, tort or otherwise shall not exceed the aforesaid limit of the general liability insurance coverage herein whether or not such damages are foreseeable or whether or not NLH has been advised of such damages.

8.02 **Property Insurance Coverage**

Subject to Clause 3.04 and the exclusions in NLH's Property Insurance policy, NLH will provide All Risk property coverage that is limited to the total replacement value of the Plant subject to a \$50,000 per occurrence deductible ("Deductible"). If the damage or loss to the Plant is directly caused by the negligence of NLH in the performance of its duties and responsibilities under this Operating Agreement then NLH shall be responsible for the payment of the Deductible. MIFN shall be responsible for the payment of the Deductible in all other claims payable under this property insurance policy.

8.03 NLH shall not have any liability or responsibility whatsoever for damage or loss to property or for personal injury or loss of life caused by NLH's negligent acts or omissions in the performance of its duties and responsibilities under this Operating Agreement beyond the risks identified or limits specified in Clauses 8.01 and 8.02 herein. DIAND and MIFN shall indemnify NLH for any and all liability that exceeds the risks and limits specified herein.

**ARTICLE 9**  
**NOTICE**

9.01 All notices under this Operations Agreement shall be in writing. Any notice to MIFN, DIAND or NLH shall be sufficiently served if given by registered mail, facsimile transmission, or by delivering the same:

(i) in the case of MIFN, to:

Mushuau Innu First Nation  
P.O. Box 190  
Natuashish, NL  
A0P 1A0

Attention: ??????

Fax: (709)



- (ii) in the case of DIAND, to:

Department of Indian and Northern Affairs  
Atlantic Regional Office  
P.O. Box 160  
40 Havelock Street  
Amherst, Nova Scotia  
BH4 3Z3

Attention: ??????

Fax: (902) ????

- (iii) in the case of NLH, to:

Newfoundland and Labrador Hydro  
P.O. Box 12400  
500 Columbus Drive  
St. John's, NL  
A1B 4K7

Attention: ?????????

Fax: (709) 737-????

9.02 Any notice or invoice shall be deemed to be received:

- (i) five (5) business days after mailing if sent by registered mail,
- (ii) on the next business day if sent by facsimile transmission, or
- (iii) on the date of delivery if sent by personal delivery.

9.03 A party may, at any time and from time to time, change its address for notice, or the person designated to receive such notice, under this Article by giving notice in writing, in accordance with this Article, to the other party of this change.

## **ARTICLE 10 GOVERNING LAW AND FORUM**

10.01 This Operating Agreement shall be governed by and construed in accordance with the laws of the Province and every action or other proceeding arising hereunder shall be determined exclusively by a court of competent jurisdiction in the Province, subject to applicable rights of appeal.



## **ARTICLE 11 TERM**

- 11.01 This Operating Agreement shall be for a term of twenty (20) years, commencing on the 1<sup>st</sup> day of June 2005 and terminating on the 31<sup>st</sup> day of May 2025. The parties agree that two (2) years prior to the termination date of this Operating Agreement, they will initiate negotiations for the renewal of this Operating Agreement and will make every effort to reach agreement on such renewal before December 31, 2024.

## **ARTICLE 12 ACCOMMODATIONS**

- 12.01 NLH entered into an Accommodations Agreement with the Natuashish Housing Authority Inc. in 2003, a copy of which is attached hereto as Schedule "A". This Accommodations Agreement addresses NLH's accommodations requirements for the purpose of providing the scope of work and services under this Operating Agreement and requires that the Demised Premises as defined under that Agreement be provided and that the Accommodations Agreement be renewed and continue in full force and effect for the term of this Operations Agreement. If the Accommodations Agreement is not renewed or is terminated during the term of this Operating Agreement and accommodations acceptable to NLH, acting reasonably, are not provided to NLH's employees then NLH may either suspend all work and services where such accommodations are required until suitable accommodations are acceptable to NLH, in its sole discretion, or may find suitable accommodations in another neighboring community whereby DIAND and MIFN shall be jointly and severally liable and responsible for 100% of all additional costs and expenses incurred by NLH in providing such accommodations and such costs shall be treated in the same manner as Capital Expenditures in Article 4 – Cost Sharing Arrangement. In such case, NLH shall not be liable or responsible for any delays in the performance of the work and services and for any and all resulting property damages or losses attributable to the work and services not being performed in a timely manner.

## **ARTICLE 13 DAVIS INLET**

- 13.01 Upon execution of this Operating Agreement by all parties and subject to Clause 13.03 herein, NLH shall, within sixty (60) days, prepare and file an application to abandon the provision of electrical service to the community of Davis Inlet in the Province. NLH will pursue this application expeditiously and MIFN and DIAND shall fully cooperate with and assist NLH in the support of this application, if requested by NLH.

- 13.02 DIAND shall fully compensate NLH for all decommissioning costs associated with the destruction, dismantling and removal of the NLH diesel generating plant and associated facilities in Davis Inlet provided that the costs directly associated with the cleanup of hydrocarbon or PCB contamination of soil and water shall be fully borne by NLH.
- 13.03 MIFN shall, at its cost and in a timely manner, fully cooperate and assist NLH with the preparation of the application and hearing, if necessary, concerning the abandonment of the community of Davis Inlet and shall cooperate and assist NLH, where required, with respect to the decommissioning of the facilities in Davis Inlet.

**ARTICLE 14  
ENTIRE AGREEMENT**

- 14.01 This Operating Agreement and any schedules attached hereto constitute the entire agreement between the parties and no other writing or conversations will be deemed a part of this Operating Agreement.

**ARTICLE 15  
UNENFORCEABLE PROVISION**

- 15.01 If any provision of this Operating Agreement is determined by a Court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions of this Operating Agreement, and each provision is declared to be separate, severable and distinct.

**ARTICLE 16  
PREVIOUS AGREEMENTS**

- 16.01 This Operating Agreement supersedes and revokes all previous agreements, understandings, and proposals made between the parties with respect to the provision of electrical services in the community of Natuashish and on the Reserve.

**ARTICLE 17  
SUCCESSORS AND ASSIGNS**

- 17.01 This Operating Agreement and everything contained herein shall enure to the benefit of and be binding upon each of the parties hereto, and their respective permitted successors and assigns.

**ARTICLE 19**  
**MEMBERS OF HOUSE OF COMMONS OR HOUSE OF ASSEMBLY**

**HER MAJESTY THE QUEEN IN  
RIGHT OF CANADA**, as represented  
by the Minister of Indian Affairs and  
Northern Development

THE COMMON SEAL of Newfoundland )  
and Labrador Hydro was hereunder )  
affixed at St. John's, Newfoundland and )  
Labrador, this       day of       , 2005, )  
in the presence of: )  
\_\_\_\_\_)  
\_\_\_\_\_)

NEWFOUNDLAND AND LABRADOR  
HYDRO

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**SCHEDULE "A"**



Wayne  
Chamberlain/NLHydro  
05/19/2005 04:57 PM

To "Baird, Maeve" <maeve.baird@justice.gc.ca>  
cc  
bcc  
Subject RE: Next Meeting - Natuashish Long Term Operating Agreement

That is my understanding as well. I will follow-up on our end to ensure we are making progress where our representatives are involved.

Wayne D. Chamberlain  
Senior Legal Counsel  
Legal Department  
Newfoundland and Labrador Hydro  
Telephone: (709)737-1443  
Facsimile:(709)737-1782  
mailto:wchamberlain@nlh.nf.ca

Notice: This email communication is confidential and legally privileged. Any unauthorized reproduction, distribution or disclosure of this email or any attachments is strictly prohibited. Please destroy/delete this email communication and attachments and notify me if this email was misdirected to you.

"Baird, Maeve" <maeve.baird@justice.gc.ca>



"Baird, Maeve"  
<maeve.baird@justice.gc.ca>  
>  
05/19/2005 03:16 PM

To <WChamberlain@nlh.nf.ca>, <AttwoodW@inac-ainc.gc.ca>, <crich@nf.sympatico.ca>, <TrainorD@inac.gc.ca>, <opelley@nf.aibn.com>, <mckinnonj@inac.gc.ca>, <NKleer@OKTLaw.com>, "Butler, Michael" <Michael.Butler@JUSTICE.GC.CA>  
cc <BWells@nlh.nf.ca>, <FMartin@nlh.nf.ca>, <KBoone@nlh.nf.ca>, <BNippard@nlh.nf.ca>, <GYoung@nlh.nf.ca>  
Subject RE: Next Meeting - Natuashish Long Term Operating Agreement

Thanks Wayne. I recall that the following issues arising from the meeting also require some follow-up between the various parties prior to our next meeting;

- Hydro was to approach Woodward's with respect to the fuel purchase price for the Natuashish facility;
- There were to be further discussions regarding the administrative overhead that Hydro proposes to add to the monthly invoices;
- The parties were to consider the options for accommodation of Hydro employees at Natuashish, and in particular whether the purchase of a trailer for those employees could resolve that issue;
- MIFN and Hydro were to have further discussions regarding documentation required to support an application to the PUB for abandonment of Davis Inlet.

The parties can advise if there were any other issues that required discussion prior to the next draft of the agreement.

Maeve A. Baird  
Counsel  
Civil Litigation and Advisory Group  
Justice Canada  
Suite 1400, Duke Tower  
5151 Duke Street  
Halifax, Nova Scotia B3J 1P3  
Telephone (902) 426-8791  
Facsimile (902) 426-8796

*The information transmitted is intended only for the person or entity to whom it is addressed and contains confidential and solicitor-client privileged material. If you receive this in error, please contact the sender and delete the material from any computer. Any review, retransmission, dissemination or other use, or taking of any action in reliance of this information by those other than the intended recipient, is prohibited.*

-----Original Message-----

**From:** WChamberlain@nlh.nf.ca [mailto:WChamberlain@nlh.nf.ca]

**Sent:** May 19, 2005 2:52 PM

**To:** AttwoodW@inac-ainc.gc.ca; crich@nf.sympatico.ca; TrainorD@inac.gc.ca;  
opelley@nf.aibn.com; mckinnonj@inac.gc.ca; Baird, Maeve; NKleer@OKTLaw.com; Butler,  
Michael

**Cc:** BWells@nlh.nf.ca; FMartin@nlh.nf.ca; KBoone@nlh.nf.ca; BNippard@nlh.nf.ca;  
GYoung@nlh.nf.ca

**Subject:** Next Meeting - Natuashish Long Term Operating Agreement

**Importance:** High

Good afternoon;

I have consulted with Hydro's representatives as to their schedules for the next meeting and I am happy to advise that the first option of June 6th from 1:00 - 4:30 is acceptable. I am presuming that we will have similar numbers of people attending as the last meeting and have reserved a room at our building for the afternoon.

I have requested a copy of the insurance policy from our Risk and Insurance Manager and will provide a scanned copy of same to Maeve Baird and Orville Pelley by email when I receive it. Our Risk and Insurance Manager is currently away from the office and is scheduled to return until May 24, 2005.

Two original duplicate Natuashish Capital Works Agreements were hand delivered to Orville Pelley yesterday afternoon.

I will provide to Maeve and Nancy a description of the delivery point for the fuel. I will also endeavour to redraft Clauses 3.11 and 3.13 which we indicated would be combined and did not really reflect what Hydro representatives had changed earlier that morning when we internally reviewed the Agreement. I will also provide Maeve and Nancy with the reference to the Taxation of Utilities legislation that we discussed at the meeting.

We understand that the redraft of the Natuashish Operating Agreement will be provided on or before May 31, 2005.



If there is anything further that you require please advise.

Wayne D. Chamberlain  
Senior Legal Counsel  
Legal Department  
Newfoundland and Labrador Hydro  
Telephone: (709)737-1443  
Facsimile:(709)737-1782  
mailto:wchamberlain@nlh.nf.ca

Notice: This email communication is confidential and legally privileged. Any unauthorized reproduction, distribution or disclosure of this email or any attachments is strictly prohibited. Please destroy/delete this email communication and attachments and notify me if this email was misdirected to you.



"O Pelley"  
<opelley@nf.aibn.com>  
05/20/2005 09:35 AM

To "Baird, Maeve" <maeve.baird@justice.gc.ca>,  
<WChamberlain@nlh.nf.ca>, <AttwoodW@inac-ainc.gc.ca>,  
<crich@nf.sympatico.ca>, <TrainorD@inac.gc.ca>,  
cc <BWells@nlh.nf.ca>, <FMartin@nlh.nf.ca>,  
<KBoone@nlh.nf.ca>, <BNippard@nlh.nf.ca>,  
<GYoung@nlh.nf.ca>  
bcc  
Subject RE: Next Meeting - Natuashish Long Term Operating Agreement

Hi folks

Another issue is the cost for the term "delivery charge" for fuel by MIFN. This charge includes more than just delivery from the storage yard to the plant, it would also take into consideration things like, but not necessarily limited to, maintenance of fuel lines, tanks, containment dykes, pumphouse and pumps, maintenance of delivery truck, snow clearing, environmental risks, finance charges, etc.

Orville

**From:** Baird, Maeve [mailto:maeve.baird@justice.gc.ca]  
**Sent:** Thursday, May 19, 2005 3:17 PM  
**To:** WChamberlain@nlh.nf.ca; AttwoodW@inac-ainc.gc.ca; crich@nf.sympatico.ca; TrainorD@inac.gc.ca; opelley@nf.aibn.com; mckinnonj@inac.gc.ca; NKleer@OKTLaw.com; Butler, Michael  
**Cc:** BWells@nlh.nf.ca; FMartin@nlh.nf.ca; KBoone@nlh.nf.ca; BNippard@nlh.nf.ca; GYoung@nlh.nf.ca  
**Subject:** RE: Next Meeting - Natuashish Long Term Operating Agreement

Thanks Wayne. I recall that the following issues arising from the meeting also require some follow-up between the various parties prior to our next meeting;

- Hydro was to approach Woodward's with respect to the fuel purchase price for the Natuashish facility;
- There were to be further discussions regarding the administrative overhead that Hydro proposes to add to the monthly invoices;
- The parties were to consider the options for accommodation of Hydro employees at Natuashish, and in particular whether the purchase of a trailer for those employees could resolve that issue;
- MIFN and Hydro were to have further discussions regarding documentation required to support an application to the PUB for abandonment of Davis Inlet.

The parties can advise if there were any other issues that required discussion prior to the next draft of the agreement.

Maeve A. Baird  
Counsel  
Civil Litigation and Advisory Group  
Justice Canada  
Suite 1400, Duke Tower  
5151 Duke Street  
Halifax, Nova Scotia B3J 1P3  
Telephone (902) 426-8791  
Facsimile (902) 426-8796

*The information transmitted is intended only for the person or entity to whom it is addressed and contains confidential and solicitor-client privileged material. If you receive this in error, please contact the sender and delete the material from any computer. Any review, retransmission, dissemination or other use, or taking of any action in reliance of this information by those other than the*

*intended recipient, is prohibited.*

-----Original Message-----

**From:** WChamberlain@nlh.nf.ca [mailto:WChamberlain@nlh.nf.ca]

**Sent:** May 19, 2005 2:52 PM

**To:** AttwoodW@inac-ainc.gc.ca; crich@nf.sympatico.ca; TrainorD@inac.gc.ca;  
opelley@nf.aibn.com; mckinnonj@inac.gc.ca; Baird, Maeve; NKleer@OKTLaw.com; Butler,  
Michael

**Cc:** BWells@nlh.nf.ca; FMartin@nlh.nf.ca; KBoone@nlh.nf.ca; BNippard@nlh.nf.ca;  
GYoung@nlh.nf.ca

**Subject:** Next Meeting - Natuashish Long Term Operating Agreement

**Importance:** High

Good afternoon;

I have consulted with Hydro's representatives as to their schedules for the next meeting and I am happy to advise that the first option of June 6th from 1:00 - 4:30 is acceptable. I am presuming that we will have similar numbers of people attending as the last meeting and have reserved a room at our building for the afternoon.

I have requested a copy of the insurance policy from our Risk and Insurance Manager and will provide a scanned copy of same to Maeve Baird and Orville Pelley by email when I receive it. Our Risk and Insurance Manager is currently away from the office and is scheduled to return until May 24, 2005.

Two original duplicate Natuashish Capital Works Agreements were hand delivered to Orville Pelley yesterday afternoon.

I will provide to Maeve and Nancy a description of the delivery point for the fuel. I will also endeavour to redraft Clauses 3.11 and 3.13 which we indicated would be combined and did not really reflect what Hydro representatives had changed earlier that morning when we internally reviewed the Agreement. I will also provide Maeve and Nancy with the reference to the Taxation of Utilities legislation that we discussed at the meeting.

We understand that the redraft of the Natuashish Operating Agreement will be provided on or before May 31, 2005.

If there is anything further that you require please advise.

Wayne D. Chamberlain  
Senior Legal Counsel  
Legal Department  
Newfoundland and Labrador Hydro  
Telephone: (709)737-1443  
Facsimile:(709)737-1782  
mailto:wchamberlain@nlh.nf.ca

Notice: This email communication is confidential and legally privileged. Any unauthorized reproduction, distribution or disclosure of this email or any attachments is strictly prohibited. Please destroy/delete this email communication and attachments and notify me if this email was misdirected to you.





"Baird, Maeve"  
<maeve.baird@justice.gc.ca>  
>  
05/31/2005 05:52 PM

To <WChamberlain@nlh.nf.ca>, <NKleer@OKTLaw.com>  
cc <AttwoodW@inac-ainc.gc.ca>, "David Trainor"  
<TrainorD@inac-ainc.gc.ca>, "Joe McKinnon"  
<IMCEAX400-c=CA+3Ba=GOVMT+2ECANADA+3Bp=GC+2  
bcc  
Subject Proposed Revisions to Natuashish LTOA

<<Hydro LTOA May 30th.doc>>  
WITHOUT PREJUDICE

Wayne and Nancy;

Enclosed find proposed revisions to the draft Hydro Long Term Operating Agreement for Natuashish. Canada's proposed revisions are in the second column of the document, and any comments we had are in the third column.

Our office previously sent a draft of our proposed revisions to Nancy Kleer so that she could start reviewing the document with her client within the short time frame that we had. However we had not reviewed the enclosed with our client before sending the document to Nancy Kleer on a without prejudice basis. We subsequently made revisions to the document that we provided to Nancy, as reflected in the attached document. The attached contains only Canada's proposed amendments to the draft LTOA.

We understand that the next meeting will take place in St. John's on the afternoon of Monday, June 6th. We will advise who will be attending on behalf of Canada by tomorrow.

*Maeve A. Baird  
Counsel  
Civil Litigation and Advisory Group  
Justice Canada  
Suite 1400 Duke Tower  
5251 Duke Street  
Halifax, Nova Scotia  
B3K 5H1  
Phone (902) 426-8791  
Facsimile (902) 426-8796*



Hydro LTOA May 30th.doc



"Nancy Kleer"  
<NKleer@oktlaw.com>  
06/03/2005 06:09 AM

To <maeve.baird@justice.gc.ca>, <WChamberlain@nlh.nf.ca>,  
<mbutler@justice.gc.ca>  
cc <crich@nf.sympatico.ca>, <opelley@nf.aibn.com>  
bcc  
Subject further MIFN revisions to LTO

I have now had the opportunity to review the text Canada sent to NLH on May 31, and have integrated MIFN's changes/ comments sent on June 2 into this text. **There is thus no need to review the June 2 text I sent, but you can all work with this version which has everything in one place.**

I also have made some further refinements to the changes sent by me on MIFN's behalf on June 2, in relation to matters related to dispute resolution and Article 5, and changes to maintain the distinction between payments by MIFN for Operating Deficit and payments by MIFN for its customer accounts.

Re DR, I find it is confusing to try to draft at this point, because it's not clear to me from NLH's draft how NLH intended the DR provisions to work. We'll need to review that Monday, so my revisions re DR issues are mostly intended to get us all thinking more about the model for DR that we're creating here, rather than expressing MIFN's positions about how DR should work here.

Nancy

Nancy J. Kleer  
Olthuis, Kleer, Townshend  
Barristers & Solicitors  
229 College Street, Suite 312  
Toronto, ON M5T 1R4

PH: 416.981.9336  
F: 416.981.9350

\*\*\*\*\*

This e-mail message and any attachments may be privileged, confidential and subject to copyright. Any unauthorized review, copying, transmittal, use or disclosure is prohibited. If you are not the intended recipient you have received this message in error. Please immediately notify us by reply or collect telephone call to (416) 981-9330 and destroy this message and any attachments.



DRAFT-WITHOUT PREJUDICE

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
This Operating Agreement made in triplicate as of the day of        A.D., 2005.		
<b><u>BETWEEN: MUSHUAU INNU FIRST NATION</u></b> , a band pursuant to Section 2(1) of the Indian Act, Revised Statutes of Canada 1985, c. I-5 as amended (hereinafter referred to as "MIFN")		
OF THE FIRST PART		
<b><u>AND: HER MAJESTY THE QUEEN IN RIGHT OF CANADA</u></b> , as represented by the Minister of Indian Affairs and Northern Development (hereinafter referred to as "DIAND");		
OF THE SECOND PART		
<b><u>AND: NEWFOUNDLAND AND LABRADOR HYDRO</u></b> , a body corporate existing pursuant to the Hydro Corporation Act, Chapter H-16 of the Revised Statutes of Newfoundland and Labrador, 1990 and having its head office at St. John's, in the Province of Newfoundland and Labrador (hereinafter referred to as "NLH");		



DRAFT-WITHOUT PREJUDICE

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
OF THE THIRD PART		
	<u>WHEREAS the Natuashish Indian Reserve No. 2 was set aside for the use and benefit of the Mushuau Innu First Nation by order in council dated December 11, 2003;</u>	
<u>AND WHEREAS</u> MIFN is the owner of the Power System that is located in the community of Natuashish which is also fully within the boundaries of the Reserve;	<u>AND WHEREAS</u> prior to the lands being set aside as a reserve a diesel generating plant and associated facilities were constructed within the current reserve boundaries for the purpose of providing electrical service to persons residing at Natuashish;	
<u>AND WHEREAS</u> MIFN and DIAND wish to enter into an operating and maintenance agreement with NLH to manage the operation of and perform routine maintenance on the Power System as an independent contractor and as outlined in this long term operating agreement (hereinafter referred to as the “Operating Agreement”);	<u>AND WHEREAS</u> MIFN and DIAND wish to enter into an operating and maintenance agreement with NLH to manage the operation of and perform routine maintenance on the Power System as outlined in this long term operating agreement (hereinafter referred to as the “Operating Agreement”);	
<u>AND WHEREAS</u> DIAND and MIFN agree to provide NLH with all necessary approvals and authority to permit NLH to manage the operation and routine maintenance of the Power System in accordance with this Operating Agreement;	Delete	Amend text and move to body of agreement
<u>AND WHEREAS</u> DIAND is prepared to share the costs of operating and maintaining the Power System and to pay the full	Delete	Amend text and move to body of agreement

DRAFT-WITHOUT PREJUDICE

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
cost of all required capital work associated with the Power System as provided herein so that NLH may manage the operation and routine maintenance of the Power System in accordance with Good Utility Practice and in accordance with similar standards and operating procedures as other NLH remote diesel plant facilities in Labrador;		
<u>AND WHEREAS</u> MIFN, as owner of the Power System, will pay any and all accounts of MIFN or associated bodies of MIFN, in a timely manner and will cooperate with NLH in the management of the operation and maintenance of the Power System in a safe, reliable and efficient manner such that NLH is not unreasonably hindered or delayed by MIFN in the performance its duties and responsibilities under this Operating Agreement including the collection of customer accounts;	Delete	See Clause 3.13-I have not drafted wording for MIFN's commitment to "cooperate" in collection of residential acc
<u>AND WHEREAS</u> the parties wish to enter into this Operating Agreement setting forth their respective rights and obligations with respect to the operation and maintenance of the Power System.		
<u>NOW THEREFORE THIS AGREEMENT WITNESSETH</u> that for and in consideration of the premises and mutual covenants herein contained and upon the terms and conditions hereinafter set forth, MIFN, DIAND and NLH do hereby covenant, undertake and agree as follows:		
ARTICLE 1		
INTERPRETATION		



DRAFT-WITHOUT PREJUDICE

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
1.01 The terms used in this Agreement, including the recitals, shall, unless the context otherwise requires, have the following meanings:		
(a) “day” means calendar day unless otherwise specified herein;		
	<u>(aa) “Delivery Charge” means the amount charged by MIFN, per litre of fuel delivered to the Plant, to cover the costs of delivery from the fuel storage tanks to the Plant, maintenance by MIFN and environmental risk assumption by MIFN in respect of those facilities that are part of the electricity supply system for Natuashish but which do not form part of the Power System, snow clearing and other maintenance services associated with maintaining access to the Plant, and administrative overhead, provided that the Delivery Charge shall not include provision for profit by MIFN</u>	<u>Orville Pelley may have some refinements to this draft tex</u>
(b) “Force Majeure” means any fortuitous event, act of governmental authority, act of public enemies, war, invasion or insurrection, riot, civil disturbance, labour trouble, strike; flood, fire, shortage of labour, or of materials or of transport or other cause of inability to perform or delay in performing obligations hereunder which, in each such event, is beyond the reasonable control of the party or parties affected;	(b) “Force Majeure” means any fortuitous event, act of competent governmental authority, act of public enemies, war, invasion or insurrection, riot, or civil disturbance, or other cause of inability to perform or delay in performing obligations hereunder which, in each such event, is beyond the reasonable control or foresight of the party or parties affected;	
	c) Fiscal year means the year commencing on April 1st and ending on March 31 <sup>st</sup> in each year;	



DRAFT-WITHOUT PREJUDICE

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
(c) “Good Utility Practice” means those practices, methods or acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in Canada) that at a particular time, in the exercise of reasonable judgment, would be expected to accomplish the desired result in a manner which is consistent with laws and regulations and due concerns for reliability, safety, environmental protection, economy and expedition;	<u>“Good Utility Practice” means those practices, methods and acts, engaged in or approved by a significant portion of the electrical utility industry in Canada during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment, could have been expected to accomplish the desired result in a manner consistent with laws and regulations and at a reasonable cost consistent with good business practices, reliability, safety, environmental protection and expedition.</u>	
	<u>“MIFN Facilities” means DIAND-funded eligible capital assets on Reserve and other assets to which electricity is provided and for which MIFN is responsible for paying, as listed in Schedule “A” hereto as may be amended from time to time.</u>	
(d) “month” means a calendar month unless otherwise specified herein;		
(e) “NLH” means Newfoundland and Labrador Hydro, its employees, contractors and agents;		
(f) “Plant” means Natuashish diesel generating plant facility located on the Reserve;	(f) “Plant” means Natuashish diesel generating plant facility located on Lot on the Reserve, as shown on the attached plan annexed hereto as Schedule “A”;  <u>MIFN alternative – see comment “Plant” means Natuashish diesel generating plant facility located on the Reserve, including</u>	<u>MIFN note: If the survey plan includes the storage tank i the gate, then this definition as proposed by Canada is fin Otherwise, I note Wayne C was to provide proposed text describe the delivery point for the fuel. Maeve has sugge MIFN or DIAND can supply the delivery point – Particul we need to be sure to capture the INTERNAL storage tan</u>



DRAFT-WITHOUT PREJUDICE

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
	<u>but not limited to .... AND the storage</u>	<u>doesn't get confused with the fuel storage tanks that are excluded from the Power System definition; this more exp version is thus suggested as a starting point for the definiti</u>
(g) "Power System" means the diesel generating plant, electrical distribution system and associated facilities situate on the Reserve but excludes the fuel storage tanks and fuel delivery systems that transport fuel from the fuel supplier's vessel to the fuel storage tanks and from the fuel storage tanks to the diesel generating plant;	<u>MIFN alternative (see comment):</u> <u>"Power System" means the Plant, electrical distribution system and associated facilities situate on the Reserve but excludes the fuel storage tanks external to the boundaries of the Plant and fuel delivery systems that transport fuel from the fuel supplier's vessel to the fuel storage tanks and from the fuel storage tanks to the Plant;</u>	<u>MIFN note: If the survey plan includes the storage tank in the gate, then NLH's definition is fine.</u>
(h) "Province" means the province of Newfoundland and Labrador;		
(i) "PUB" means the Board of Commissioners of Public Utilities for the Province of Newfoundland and Labrador;		
(j) "Reserve" means ????	(j) "Reserve" means the Natuashish Indian Reserve No. 2 which has been set apart for the use and benefit of the MIFN;	
1.02 In this Operating Agreement all references to dollar amounts and all references to any other money amounts are expressed in terms of the coin or currency of Canada which at the time of payment or determination shall be legal tender for the payment of public and private debts.		

DRAFT-WITHOUT PREJUDICE

<b>Draft LTO Prepared by NLH Dated May 16, 2005</b>	<b>Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)</b>	<b>COMMENTS</b>
1.03 Words in this Operating Agreement importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders.		
1.04 Where a word is defined anywhere in this Operating Agreement other parts of speech and tenses of the same word have corresponding meanings.		
1.05 Whenever in the Operating Agreement a number of days are prescribed for any purpose, the days shall be reckoned exclusively of the first and inclusively of the last.		
1.06 Whenever this Operating Agreement requires a notice to be given or a request to be made on a Saturday, Sunday or legal holiday in the Province or the Reserve, such notice or request may be given or made on the first business day occurring thereafter, and, whenever in this Operating Agreement the time within which any right will lapse or expire shall terminate on a Saturday, Sunday or legal holiday in the Province or Reserve, such time will continue to run until the next succeeding business day.		
1.07 In this Operating Agreement the headings of Articles are inserted for convenience of reference only and shall not affect		



DRAFT-WITHOUT PREJUDICE

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
the construction or interpretation thereof.		
1.08 Any reference in this Operating Agreement to an article, a clause, a subclause, a paragraph or a schedule shall be taken as a reference to an article, a clause, a subclause, a paragraph of or schedule to this Operating Agreement.		
1.09 This Operating Agreement may be executed in three or more counterparts, each of which when so executed shall be deemed to be an original, but all of such counterparts together shall constitute one and the same instrument.		
<b>ARTICLE 2</b>		
<b>RESPONSIBILITIES OF ALL PARTIES</b>		
2.01 In accordance with and subject to the provisions of this Operating Agreement, the parties shall:		
(a) fully co-operate in a timely manner in the planning, operation and maintenance of the Power System; and		
(b) fully co-operate in providing NLH and its personnel with all necessary rights of access to and passage over all lands on the Reserve to permit NLH to carry out its responsibilities under this Operating Agreement.	<u>Canada <del>proposal</del></u> (b) NLH shall request, in a timely manner, and MIFN and DIAND shall respond to requests in a timely manner, for all necessary rights of access and passage over the Reserve for NLH and its personnel to carry out its responsibilities under this Operating Agreement.	<u>NK comment – NLH and Canada’s texts suggest that this agreement requires something super-added beyond what w be set out re access and passage in a s. 28(2) permit. I sug that the permit itself deal with access issues to avoid dupli requirements – see proposed text:</u>



Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <b><u>With revisions for MIFN prepared June 3</u></b> (Only clauses which have been changed are in this column)	COMMENTS
	<u>MIFN proposal: (b) DIAND shall, after receipt of an appropriate band council resolution from MIFN, issue a permit under s. 28(2) of the <i>Indian Act</i> acceptable to NLH and MIFN, to provide NLH with the necessary rights of access and passage over the Reserve for NLH and its personnel to carry out its responsibilities under this Operating Agreement in accordance with the terms of that permit;</u>	
2.02 <u>Operations Committee</u>		
(a)      The parties agree to continue with the Operations Committee that was established by the parties prior to this Operations Agreement whose main responsibility shall be to address issues identified by any of the parties concerning the operation and maintenance of the Power System and review any annual operating budgets or updated forecasts of said budgets provided by NLH to MIFN and DIAND for the operation, maintenance, capital costs and expenses.		
(b)      The Operations Committee shall be composed of two (2) representatives from each of the parties. The Operations Committee representatives nominated by the parties are as follows:	(b)      The Operations Committee shall be composed of two (2) representatives from each of the parties. The Operations Committee representatives nominated by the parties are as follows:	
<b><u>MIFN:</u></b>	<b><u>MIFN:</u></b>	

DRAFT-WITHOUT PREJUDICE

Draft LTO Prepared by NLH Dated May 16, 2005		Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
Cajetan Rich	Gerry Gregoire	<del>Position</del> <u>Position MIFN councillor</u> <u>MIFN councillor or</u> <u>his or her designate</u> <u>his or her designate</u>	
c/o Mushuau Innu First Nation First Nation Band Office	c/o Mushuau Innu Nation Band Office		
P.O. Box 190	P.O. Box 190		
Natuashish, NL	Natuashish, NL		
Telephone: (709) 478-8827 478-8827	Telephone: (709)		
Fax No. (709) ???- ????	Fax No. (709) ???-		
????			
<u>DIAND:</u>		<u>DIAND:</u>	
<u>Mr.</u> David Trainor _	Mr. Jean Richard	Special Projects Officer Davis Inlet Relocation Project	
		Position	
Department of Indian and Indian and Northern Affairs	Department of Northern Affairs		
Atlantic Regional Office Office	Atlantic Regional		
P.O. Box 160	P.O. Box 160		
40 Havelock Street Amherst, Nova Scotia Scotia	40 Havelock Street Amherst, Nova		



Draft LTO Prepared by NLH Dated May 16, 2005		Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
B4H 3Z3	BH4 3Z3		
Telephone: ?????????? ???????????	Telephone:		
Facsimile No. ????????	Fax No. ????????		
<u>NLH:</u>	<u>NLH:</u>		
Mr. Keith Boone	Mr. Bill Nippard	Position	Position
P.O. Box 12400	P.O. Box 178 Station “B”		
500 Columbus Drive	Happy Valley–Goose Bay,		
St. John’s, NL	NL		
A1B 4K7	AOP 1E0		
Telephone: (709) 737-1236 896-2993	Telephone: (709)		
Facsimile No. (709) 737-1902 8948	Fax No. (709) 896-		
The parties shall inform the other parties to this Operating Agreement in writing before changing their representatives on the Operations Committee.			
(c) The Operations Committee members shall address all issues forwarded to it in a timely and expeditious manner and endeavour to reach a consensus. Subject to Clause 3.05 and	(c) The Operations Committee members shall address all issues forwarded to it <b><u>including but not limited to its specific responsibilities set out in this Operating Agreement, in a</u></b>	<u>MIFN comment – not also deletion of 3.06</u>	

DRAFT-WITHOUT PREJUDICE

<p><b>Draft LTO Prepared by NLH Dated May 16, 2005</b></p>	<p><b>Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)</b></p>	<p><b>COMMENTS</b></p>
<p>Clause 3.06 herein, if the members of the Operations Committee are unable to reach a consensus then the matter shall be referred to the Management Committee.</p>	<p><u>timely and expeditious manner and endeavour to reach a consensus. Subject to Clause 3.05 herein, if <b>after a reasonable period of time</b> the members of the Operations Committee are unable to reach a consensus, then <b>any two representatives</b> on the Operations Committee may refer the issue to the Management Committee.</u></p>	
<p>(d) The Operating Committee shall meet quarterly or as required and members may attend in person or by conference call.</p>		
<p>2.03 <u>Management Committee</u></p>		
<p>(a) The Management Committee's main responsibility shall be to address any significant issues concerning this Operating Agreement and any issues referred to it by the Operations Committee that are in dispute concerning the operation and maintenance of the Power System.</p>		
<p>(b) The Management Committee shall be composed of one (1) representative from each of the parties. The Management Committee representatives nominated by the parties are as follows:</p>		
<p><b><u>MIFN:</u></b></p>		



DRAFT-WITHOUT PREJUDICE

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
???????????	<u>MIFN Councillor</u> <del>Position</del>	
`c/o Mushuau Innu First Nation Band Office		
P.O. Box 190		
Natuashish, NL		
AOP 1A0		
Telephone: (709) ????????		
Fax No. (709) ???-????		
<u>DIAND:</u>		
???????????	Position	
Department of Indian and Northern Affairs		
Atlantic Regional Office		
P.O. Box 160		
40 Havelock Street		
Amherst, Nova Scotia		
BH4 3Z3		
Telephone: ????????		
Fax No. ???????		
<u>NLH:</u>		

DRAFT-WITHOUT PREJUDICE

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
???????	Position	
Newfoundland and Labrador Hydro		
P.O. Box 12400		
500 Columbus Drive		
St. John's, NL		
A1B 4K7		
Telephone: (709) 737 - ????		
Facsimile No. (709) 737-????		
The parties shall inform the other parties to this Operations Agreement in writing before changing their representative on the Management Committee.		
(c) The Management Committee members shall address all issues forwarded to it in a timely and expeditious manner and endeavour to reach a consensus. Subject to Clause 3.05 and Clause 3.06 herein, if the members of the Management Committee are unable to reach a consensus then the matter shall be addressed pursuant to Article 8 - Dispute Resolution herein.	<u>(c) The Management Committee members shall address any significant issues concerning this Operating Agreement and any issues referred to it by the Operations Committee that are in dispute in a timely and expeditious manner and endeavour to reach a consensus. Subject to Clause 3.05 herein, if the members of the Management Committee are unable to reach a consensus on any issues before them then such issues shall be addressed pursuant to Article7 - Dispute Resolution herein.</u>	<u>Further changes proposed from the June 2 text by MIFN, to clarify scope of issues the MC deals with. Also, delete "at 3.06", change Article reference.</u>
(d) The Management Committee shall meet twice a year or as required and members may attend in person or by conference		



<b>Draft LTO Prepared by NLH</b> <b>Dated May 16, 2005</b>	<b>Revised LTO Prepared by Canada</b> <b>May 30th , 2005</b> <u><b>With revisions for MIFN prepared June 3</b></u> <b>(Only clauses which have been changed are in this column)</b>	<b>COMMENTS</b>
call.		
	<b>New Clause</b> The payment of any money by DIAND pursuant to this Operating Agreement is subject to there being an appropriation by Parliament for the particular service for the Fiscal year in which any commitment hereunder could come in course of payment.	
<b>ARTICLE 3</b>		
<b>POWER SYSTEM OPERATION</b>		
3.01 NLH shall manage, operate and maintain the Power System in accordance with Good Utility Practice to meet the customer load requirements on the Reserve. NLH is responsible for the safe and reliable operation of the Power System.		
3.02 NLH shall carry out inspection programs, servicing, maintenance and repairs on all aspects of the Power System similar to the work carried out by NLH at other NLH remote diesel plant locations and this work shall be carried out by qualified personnel.		
3.03 NLH shall have, as a minimum, two qualified operators to operate the Plant unless otherwise agreed to by MIFN and DIAND.	3.03 NLH shall have, as a minimum, two qualified operators on the Reserve to operate the Plant, unless otherwise agreed to by MIFN and DIAND.	<u>MIFN still to review whether this number of operators acceptable?</u>
3.04 The scope of work and services to be performed by NLH		<u>MIFN will review to see if there are any additions or revisions</u>

DRAFT-WITHOUT PREJUDICE

<b>Draft LTO Prepared by NLH Dated May 16, 2005</b>	<b>Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)</b>	<b>COMMENTS</b>
pursuant to this Operating Agreement shall include, but not be necessarily limited to:		<u>to list of services?</u>
(a) daily operation and maintenance of the Power System;		
(b) reading and maintenance of meters;		
(c) providing new service connections when requested by persons on the Reserve;		
(d) identifying and maintaining an adequate inventory of spare parts and materials pertaining to the operation and maintenance of the Power System;		
(e) consulting with DIAND and MIFN concerning any warranty issues that may arise with respect to the Power System;	(e) consulting with the Operations Committee concerning any warranty issues that may arise with respect to the Power System;	
(f) performing repairs or maintenance when required and consult with DIAND and MIFN before performing any significant work on the Power System;	(f) performing repairs or maintenance as required, and consulting with the Operations Committee before performing any significant work on the Power System outside the scope of work contemplated by the annual forecast referred to in Clause 3.10 herein;	



<b>Draft LTO Prepared by NLH</b> <b>Dated May 16, 2005</b>	<b>Revised LTO Prepared by Canada</b> <b>May 30th , 2005</b> <u><b>With revisions for MIFN prepared June 3</b></u> <b>(Only clauses which have been changed are in this column)</b>	<b>COMMENTS</b>
(g) inform MIFN of all significant work performed in a timely manner;		
(h) act as a prudent independent contractor in the management of the operation and maintenance of the Power System;	(h) act in accordance with Good Utility Practice in the management of the operation and maintenance of the Power System;	
(i) shall, within the scope of its responsibilities under the Operating Agreement and with the cooperation of the other parties herein, manage the operation and maintenance of the Power System to the same standards as the other diesel generating systems in remote communities in Labrador; and		
(j) shall, where in NLH's sole opinion it is feasible and economical to do so, continue to provide liability and property insurance coverage as provided in Article 7 herein.	Delete	See Clause 8
3.05 NLH shall, where possible and prudent, identify and consult with MIFN and DIAND on any significant operational or non-routine maintenance issues. Upon consulting with MIFN and DIAND, NLH shall have sole and final approval on the course of action to be taken for all operation and maintenance issues concerning safety and health, Power System reliability or environmental protection.	3.05 Subject to Clause 3.09, NLH shall identify and consult with the other parties through the Operations Committee on any significant operational or non-routine maintenance issues, and shall identify any costs proposed to be incurred with respect to those issues pursuant to Clause 3.10. Upon consulting with the Operations Committee and subject to Clause (new clause dealing with Capital Work) NLH shall have final approval on	

DRAFT-WITHOUT PREJUDICE

<p><b>Draft LTO Prepared by NLH Dated May 16, 2005</b></p>	<p><b>Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)</b></p>	<p><b>COMMENTS</b></p>
	<p>the course of action to be taken for all operation and maintenance issues concerning <u>Power System reliability</u>, safety and health or environmental protection.</p>	
<p>3.06 NLH shall identify and consult with MIFN and DIAND concerning any Power System capital work that it recommends be undertaken. Upon consulting with MIFN and DIAND, MIFN and DIAND shall have sole and final approval on the course of action to be taken for all capital work on the Power System unless the capital work recommended pertains to significant safety and health, Power System reliability or environmental protection concerns whereby Article 8 – Dispute Resolution may be invoked by either party to resolve the matter.</p>	<p>Delete</p>	<p>See new clause on Capital Work.</p>
<p>3.07 NLH shall not have any duties, responsibility or liability pursuant to this Operating Agreement concerning the fuel storage tanks and fuel delivery systems, truck deliveries or pipelines external to the boundaries of the Plant. Further, with respect to delivery of diesel fuel to the Plant, NLH shall not have any responsibility or liability for fuel delivery systems or processes beyond the delivery point specified herein. The fuel delivery point where NLH will take responsibility for the fuel for the Plant as part of the operation of the Power System shall be _____.</p>	<p>3.07 NLH shall not have any duties, responsibility or liability pursuant to this Operating Agreement concerning the fuel storage tanks and fuel delivery systems, truck deliveries or pipelines external to Lot # _____. Further, with respect to delivery of diesel fuel to the Plant, NLH shall not have any responsibility or liability for fuel delivery systems or processes beyond the delivery point specified herein. The fuel delivery point where NLH will take responsibility for the fuel for the Plant as part of the operation of the Power System shall be _____.</p>	<p>MIFN or DIAND can supply the specific delivery point.</p>



Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
3.08 NLH shall maintain records with respect to residential and general service metered usage of electrical service on the Reserve based upon the rates for users as determined by PUB for isolated system communities in Labrador. NLH will provide such records to DIAND and MIFN as they may reasonably require and upon receiving a written request.	3.08 NLH shall maintain records with respect to residential and general service metered usage of electrical service on the Reserve based upon the rates for users as determined by PUB for isolated system communities in Labrador. NLH will also maintain records with respect to the maintenance and repair of the Power System. NLH will provide such records to DIAND and MIFN upon receiving a written request.	
3.09 When NLH is required to undertake emergency work or services it shall endeavor, where time permits, to contact the Operations Committee. Where NLH does not, in its sole discretion and acting reasonably, believe there is sufficient time to notify the Operations Committee, NLH shall not be liable for not contacting or consulting with the Operations Committee, DIAND or MIFN prior to commencing the emergency work or services.	<u>3.09 When NLH is required to undertake emergency work or services it shall, where time permits, contact the Operations Committee. Where NLH does not, acting reasonably, believe there is sufficient time to notify the Operations Committee, NLH shall not be liable for not contacting or consulting with the Operations Committee, DIAND or MIFN prior to commencing the emergency work or services.</u>	<u>Delete “in its sole discretion”.</u>
3.10 NLH shall prepare and submit to the Operations Committee an annual forecast of the operating and maintenance costs for the Power System for the next calendar year. The Operations Committee shall review and approve the annual forecast budget for the operation and management of the Power System and NLH shall provide in a timely manner any reforecast of the budget, if necessary. This annual budget shall be submitted on or before _____. The amounts payable by DIAND pursuant to Article 4 – Cost	3.10 (a) NLH shall prepare and submit to the Operations Committee an annual forecast of the operating and maintenance costs for the Power System for the next Fiscal Year. The Operations Committee shall review and approve the annual forecast budget for the operation and management of the Power System. (b) This annual budget for the Fiscal Year shall be submitted on or before February 15 <sup>th</sup> in each preceding Fiscal Year. (c) NLH shall provide to the Operations Committee, in a timely	<u>Provided that we revise 2.02)c) to clarify that all responsibilities of the Operations Committee can be kicked to the Management Committee if unresolved, then Canada in 3.10 is OK.</u>



DRAFT-WITHOUT PREJUDICE

<p><b>Draft LTO Prepared by NLH Dated May 16, 2005</b></p>	<p><b>Revised LTO Prepared by Canada May 30th , 2005</b> <b><u>With revisions for MIFN prepared June 3</u></b> <b>(Only clauses which have been changed are in this column)</b></p>	<p><b>COMMENTS</b></p>
<p>Sharing Arrangement shall be payable on the basis of the actual Operating Deficit and Capital Expenditures as defined and not on the basis of the annual forecast budget.</p>	<p>manner, any reforecast of the annual budget, which shall be reviewed and approved by the Operations Committee.</p>	
<p>3.11 NLH shall, with full cooperation of MIFN, bill customers in a similar manner as customers were previously billed in Davis Inlet, and shall commence to collect on such accounts once the billing system is established. For the purposes of this Operating Agreement, NLH shall be fully responsible for the collection and recovery of customer accounts associated with the Power System <u>but</u> MIFN and DIAND agree that all MIFN and other federally funded facilities on the Reserve electrical service accounts shall be fully paid in a timely manner and that if there is a failure by MIFN or DIAND to pay such accounts then such amounts shall be not be included as part of the Billings as defined by Clause 4.01(a) but rather shall be included as part of the Operating Expenses as defined by Clause 4.01(d) or DIAND shall, with the consent of MIFN herein given, to provide for the payment of such outstanding electrical accounts through a provision in the funding agreement for facility management.</p>	<p>3.11 <u>Subject to Clause 11.03,</u> (a) NLH shall, <del>with full cooperation of MIFN,</del> bill customers <u>on the Reserve</u> in a similar manner as other customers in Newfoundland and Labrador are billed, <del>and</del> shall commence to bill and collect on such accounts as of the effective date of the Operating Agreement, <u>and</u> <del>For the purposes of this Operating Agreement, NLH</del> shall be fully responsible for the collection and recovery of all <u>such</u> customer accounts; <del>associated with the Power System.</del> <u>(b) MIFN as represented by its elected council shall not oppose NLH's billing of customers on the Reserve or the commencement by NLH of collection procedures, provided that the elected council of MIFN is not hereby precluded from assisting any of its members or businesses established by MIFN or its members subject to collection procedures commenced by or on behalf of NLH;</u> <u>(c ) MIFN agrees that the portion of operations and maintenance funding for eligible capital assets on Reserve provided by DIAND to MIFN for electricity will be utilized by MIFN to pay for electrical accounts for those facilities;</u> <u>(d) MIFN agrees that electrical service accounts for all MIFN Facilities shall be fully paid within XX days of receipt of the invoice for the account, provided that</u></p>	<p><u>I have moved some of the language in Article 4 into Article 3. It is clearer if customer account payment is dealt with in 3, the payment for Operating Deficit (which is a cost-sharing issue) is dealt with in 4.</u></p>



<p><b>Draft LTO Prepared by NLH</b> <b>Dated May 16, 2005</b></p>	<p><b>Revised LTO Prepared by Canada</b> <b>May 30th , 2005</b> <b><u>With revisions for MIFN prepared June 3</u></b> <b>(Only clauses which have been changed are in this column)</b></p>	<p><b>COMMENTS</b></p>
	<p><u>(i) if there is a failure by MIFN to pay any account and that account remains outstanding for more than XX (XX) days from the date of receipt of the invoice by MIFN, then NLH may set off any outstanding amounts against any amount owing by NLH to MIFN for diesel fuel supplied pursuant to Clause 3.12;</u>  <u>(ii) but if MIFN notifies NLH that it reasonably believes it has been over-charged on an account, the right of set off in respect of that account shall cease to exist in respect of the amount that MIFN claims it has been over-charged.</u></p>	
<p>3.12 MIFN shall be fully responsible for the purchase, supply and delivery of diesel fuel to the Plant delivery point as identified in Clause 3.07. MIFN shall sell the diesel fuel to NLH at the delivery point at the same price paid by MIFN to the fuel supplier without any markup. MIFN shall, if requested by NLH, provide NLH with supporting documentation to verify that the price of diesel fuel being charged to NLH is the same as the price of the diesel fuel paid by MIFN to the supplier. NLH shall pay the invoice for fuel supplied and delivered to the Plant by MIFN within thirty (30) days of the date of the invoice.</p>	<p><u>3.12 (a) MIFN shall be fully responsible for the purchase, supply and delivery of diesel fuel to the Plant delivery point as identified in Clause 3.07.</u>  <u>(b) MIFN shall sell the diesel fuel to NLH at the delivery point at the price paid by MIFN to the fuel supplier plus a Delivery Charge.</u>  <u>(c) MIFN shall, if requested by NLH, provide NLH with supporting documentation to verify that the price of diesel fuel being charged to NLH, less the Delivery Charge, is the same as the price of the diesel fuel paid by MIFN to the supplier, and to verify that the Delivery Charge is not resulting in MIFN making a profit.</u>  <u>(d) NLH agrees that diesel fuel invoices from MIFN shall be</u></p>	



DRAFT-WITHOUT PREJUDICE

<p><b>Draft LTO Prepared by NLH Dated May 16, 2005</b></p>	<p><b>Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> <b>(Only clauses which have been changed are in this column)</b></b></p>	<p><b>COMMENTS</b></p>
	<p><u>fully paid within thirty (30) days of receipt of the invoice by NLH, provided that</u></p> <p><u>(i) if there is a failure by NLH to pay such accounts and these amounts remain outstanding for more than sixty (60) days from the date of receipt of the invoice by NLH, then MIFN may set off any outstanding amounts for fuel supply and delivery against any amount owing by MIFN to NLH for customer accounts for MIFN facilities pursuant to Clause 3.11;</u></p> <p><u>(ii) but if NLH notifies MIFN that it reasonably believes it has been over-charged on an invoice, the right of set off in respect of the invoice that has been challenged shall cease to exist in respect of the amount that NLH claims it has been over-charged.</u></p>	
<p>3.13 NLH shall be fully responsible for the collection and recovery of all customer accounts associated with the Power System <u>but</u> MIFN and DIAND agree that all MIFN and other federally funded facilities on the Reserve electrical service accounts shall be fully paid in a timely manner and that if there is a failure by MIFN to pay such accounts and these amount remain outstanding for more than sixty (60) days then NLH may set off any outstanding amounts against any amount owing by NLH to MIFN for diesel fuel supplied pursuant to Clause 3.12. (Note: There was some discussion that this could be addressed by a provision in the funding agreement for facility</p>	<p><del>Delete 3.13—NLH shall be fully responsible for the collection and recovery of all customer accounts associated with the Power System. MIFN agrees that electrical service accounts for all MIFN facilities on the Reserve shall be fully paid in a timely manner and that if there is a failure by MIFN to pay such accounts and these amount remain outstanding for more than sixty (60) days then NLH may set off any outstanding amounts against any amount owing by NLH to MIFN for diesel fuel supplied pursuant to Clause 3.12.</del></p>	<p><u>NK suggests dealing with 3.13 as in 3.11(c) There is a lot overlap with Clause 3.11 we could probably delete one of clauses.</u></p>



<b>Draft LTO Prepared by NLH</b> <b>Dated May 16, 2005</b>	<b>Revised LTO Prepared by Canada</b> <b>May 30th , 2005</b> <u><b>With revisions for MIFN prepared June 3</b></u> <b>(Only clauses which have been changed are in this column)</b>	<b>COMMENTS</b>
management.)		
<b>ARTICLE 4</b>		
<b>COST SHARING ARRANGEMENT</b>		
4.01 The terms used in this Article, shall, unless the context otherwise requires, have the following meanings:		
(a) "Billings" means the amounts charged by NLH to the customers for electrical power and energy provided by NLH from the Power System in accordance with rates approved by the PUB or otherwise charged in accordance with applicable laws;	(a) "Billings" means the amounts charged by NLH to the customers for electrical power and energy provided by NLH from the Power System pursuant to Clause 3.11, whether or not those Billings are collected. These amounts charged by NLH shall be in accordance with rates approved by the PUB <del>or otherwise charged in accordance with applicable laws.</del>	<u>Deal is PUB-approved rates.</u>
(b) "Capital Expenditures" means those expenditures determined in accordance with the CICA Handbook to acquire, construct, develop, or enhance the service potential of property, plant or equipment, which expenditures shall include but shall not be limited to, labour (at bill rates), materials, engineering, project management, transportation, travel, overhead allocations, and allowance for funds used during construction (AFUDC), all of which expenditures shall be consistent with those practices used by NLH in its reports and		

DRAFT-WITHOUT PREJUDICE

<b>Draft LTO Prepared by NLH Dated May 16, 2005</b>	<b>Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)</b>	<b>COMMENTS</b>
filings before the PUB.		
(c) "Operating Deficit" means the Operating Expenses less the Billings.		
(d) "Operating Expenses" means those actual costs, other than MIFN Fees, incurred by NLH with respect to the operation and maintenance of the Power System, which costs shall include but shall not be limited to:	(d) "Operating Expenses" means those actual costs, other than MIFN Fees, incurred by NLH with respect to the operation and maintenance of the Power System, as set out in the annual forecast or in reforecasts supplied by NLH and reviewed and approved by the Operations Committee, pursuant to clause 3.10 Those costs shall include but shall not be limited to:	
- labour, at the bill rate which includes fringe benefits and other salary/employee related costs for operators, meter readers, maintenance personnel and other personnel carrying out non-capital work;		DIAND is reviewing these expenses to be included in the Operating Expenses.
- overtime;		
- fuel, lubricants and additives consumed at the Plant;		
- materials;		
- direct engineering;		
- station services and utility costs;		
	<del>-fuel</del> delivery charges	
	-accommodation charges for NLH personnel while on the Reserve;	
- traveling and transportation expenses associated with operating activities; and		
- an allocation of administrative overheads applied at the	- an allocation of administrative overheads applied at the	For discussion



Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
rate of 75% of all operating expenses with the exception of fuel which will not have any overhead applied.	rate of    of all operating expenses with the exception of fuel which will not have any overhead applied.	
(e)    “MIFN Fees” means any and all fees, taxes, royalties, assessments, levies or other charges of whatsoever nature or kind charged or chargeable to NLH by MIFN.		This requires discussion. This would include permit fees, would in turn be billed back to MIFN.
4.02    DIAND shall pay to NLH fifty percent (50%) of the Operating Deficit incurred by NLH.	4.02    MIFN shall pay to NLH fifty percent (50%) of the Operating Deficit incurred by NLH, <u>provided DIAND has paid MIFN the money to pay same, and NLH will be responsible for the other fifty percent (50%) of the Operating Deficit..</u>	
4.03    DIAND shall pay to NLH one hundred percent (100%) of all Capital Expenditures and of all MIFN Fees.	Delete	This section to be amended and moved to a new section on capital work.
4.04    The Operating Deficit shall be billed by NLH to DIAND monthly.	4.04 <u>Fifty per cent (50%) of t</u> The Operating Deficit shall be billed by NLH to MIFN on a monthly basis, in accordance with Clause 5.01.	
4.05    Capital Expenditures that comprise items of amounts less than \$250,000 shall be billed to DIAND by NLH on a quarterly basis.	Delete	
4.06    Payments for individual capital items in amounts of \$250,000 or greater shall be paid by DIAND to NLH before they are procured by NLH, based upon NLH’s written estimates	Delete	



DRAFT-WITHOUT PREJUDICE

<b>Draft LTO Prepared by NLH Dated May 16, 2005</b>	<b>Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)</b>	<b>COMMENTS</b>
<p>for the same being provided to DIAND by NLH. Where the actual cost of a capital item estimated to cost in excess of \$250,000 is more or less than the estimated amount, then NLH shall forthwith reimburse the overpayment to DIAND, or DIAND shall forthwith pay to NLH the additional amount, as the case may be.</p>		
<p>4.07 MIFN Fees shall be billed to DIAND as they are incurred by NLH.</p>	<p>4.07 MIFN Fees shall be included in the Operating Deficit.</p>	<p>Hydro will not want these expenses to be shared 50/50- but may be able to resolve this through discussion of what MIFN fees will be and whether they will be charged. <u>MIFN not that this section needs to be considered – NLH, like any of service provider not making money, could be subject to MIFN Fees and there seems to be no clear rationale as to why DI or MIFN should pay them.</u></p>
<p>4.08 DIAND shall make payments to NLH in accordance with Article 5 herein and such payments shall be made to NLH at its head office in St. John's in the Province, or in such other place in the Province as NLH may designate, without deduction for any claim or counterclaim which MIFN or DIAND may have or claim to have against NLH arising under this Operating Agreement or otherwise.</p>	<p>4.08 MIFN shall make payments to NLH <u>for fifty per cent (50%) of the Operating Deficit</u> in accordance with Article 5 herein and such payments shall be made to NLH at its head office in St. John's in the Province, or in such other place in the Province as NLH may designate, without deduction for any claim or counterclaim which MIFN may have or claim to have against NLH arising under this Operating Agreement or otherwise.</p>	<p><u>Articles 3 and 4 are best kept distinct..</u></p>
<p>4.09 Where funding is provided by DIAND to MIFN for MIFN electrical service accounts or for other infrastructure on the Reserve whereby there would be associated electrical</p>	<p><del>4.09—NLH shall bill MIFN for electrical accounts for DIAND funded eligible capital assets on Reserve. Those facilities include but are not limited to the assets listed in Schedule “B”</del></p>	<p>This needs to be reviewed by MIFN and DIAND. We can attach a list of those facilities for which MIFN pays the electrical accounts.</p>



Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
accounts, MIFN hereby authorizes DIAND and DIAND hereby agrees to directly pay NLH for all such electrical accounts pursuant to the provisions of the funding agreement between DIAND and MIFN for facility or infrastructure management which would include a component for operating costs such as electrical services or may be set of against fuel invoice amounts owing by NLH to MIFN pursuant to Clause 3.13. Such accounts include but are not limited to	<del>(the “MIFN Facilities”). MIFN and NLH agree that any amounts owing by MIFN for electrical accounts for MIFN Facilities may be set off against fuel invoice amounts owing by NLH to MIFN in accordance with Clause 3.13. Delete</del>	<u>This duplicates 3.11 dealing with billing by NLH of MIFN customer accounts. I suggest Part 4 deal only with the Operating Deficit, not customer accounts, and let Part 3 d with customer accounts</u>
—		
<b>ARTICLE 5</b>		
<b>PAYMENT</b>	<b><u>PAYMENT of OPERATING DEFICIT SHARE</u></b>	
5.01 NLH shall invoice DIAND for all amounts owing pursuant to Clause 4.02 or Clause 4.03 pursuant to the scope of work and services under this Operating Agreement on a monthly basis, and the invoice shall be paid by DIAND within thirty (30) days of the date of the invoice. NLH shall itemize and identify, where reasonably possible to do so, all costs and expenses in its invoice. DIAND shall review the invoice and shall identify in writing any concerns or problems with the invoice to NLH within fifteen (15) days of the date of the invoice.	5.01 NLH shall invoice MIFN on a monthly basis for all amounts owing pursuant to Clause 4.02. These invoices shall be paid by MIFN within thirty (30) days of receipt of the invoice <u>provided DIAND has paid MIFN the money to pay same</u> . NLH shall itemize and identify, where reasonably possible to do so, all costs and expenses in its invoices. MIFN <u>after consulting with DIAND</u> shall review the invoice and shall identify in writing any concerns or problems with the invoice to NLH within thirty (30) days of the date of receipt of the invoice.	<u>I note that DIAND has agreed in principle to pay ½ of the operating costs after billing, but this is in effect a “bonus NLH that it is not really entitled to, as we are not aware of basis upon which NLH can claim to treat a reserve different than any other remote community. Hence, we need to make clear that DIAND has to provide MIFN with the money (of course to appropriations from parliament, which MIFN NLH cannot control)</u>
5.02 If an invoice is disputed, DIAND shall not withhold payment of the invoice and shall pay the full amount of the invoice and forward a written notice of the details of their dispute with the invoice payment. If the dispute is mutually	5.02 If an invoice <u>for amounts owing pursuant to Clause 4.02</u> is disputed, MIFN shall not withhold payment of the invoice and shall pay the full amount of the invoice, <u>provided DIAND has paid MIFN the money to pay same</u> , -and forward a written	<u>clarify this applies only to Operating Deficit</u>



DRAFT-WITHOUT PREJUDICE

<p><b>Draft LTO Prepared by NLH Dated May 16, 2005</b></p>	<p><b>Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)</b></p>	<p><b>COMMENTS</b></p>
<p>resolved in favor of DIAND by the parties, the Operations or Management Committees or a determination is made pursuant to Article 8 - Dispute Resolution that all or part of the amount disputed was payable then NLH shall credit or refund DIAND for the amount that was determined not to be payable along with provision for the payment of interest in accordance with Clause 5.03.</p>	<p>notice of the details of their dispute with the invoice payment. If the dispute is mutually resolved in favor of MIFN by the parties, the Operations or Management Committees or a determination is made pursuant to Article 7 - Dispute Resolution that all or part of the amount disputed was not payable then NLH shall credit or refund MIFN for the amount that was determined not to be payable along with provision for the payment of interest in accordance with Clause 5.03, which interest shall commence to accrue from the date of payment of the disputed invoice by MIFN.</p>	
<p>5.03 Payment of invoices shall be deemed overdue if not paid within thirty (30) days from the date of the invoice. Interest shall accrue and be due and payable by DIAND on all outstanding amounts due and owing beyond the date upon which payment is due and payable at the rate of one and one-half percent (1-1/2%) percent per month. Interest will be compounded monthly as long as the payment of the invoice and applicable interest remains overdue.</p>	<p>5.03 Payment of invoices <u>for amounts owing pursuant to Clause 4.02</u> shall be deemed overdue if not paid within thirty (30) days from the date of <u>receipt of</u> the invoice. Interest shall accrue and be due and payable by MIFN on all outstanding amounts due and owing beyond the date upon which payment is due and payable at the rate of one and one-half percent (1-1/2%) per cent per month. Interest will be compounded monthly as long as the payment of the invoice and applicable interest remains overdue.</p>	



Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
	New Article	
	CAPITAL WORK	
	The parties agree that from time to time the Power System will require capital work outside the scope of routine maintenance contemplated by this Operating Agreement. NLH shall identify and consult with the Operations Committee concerning any Power System capital work that NLH recommends be undertaken. Recommendations by NLH for capital work will be discussed and <del>agreed upon by</del> the Operations Committee and/or the Management Committee <u>shall endeavour to reach consensus on the recommendations, failing which Article 7- Dispute Resolution shall be invoked.</u> The scope of the capital work to be performed will be set out in an agreement between the parties for completion of such capital work. The parties agree that <del>DIAND NLH</del> shall <del>not</del> be responsible for the cost of capital work outside the scope of routine maintenance contemplated by this Operating Agreement.	<u>MIFN agrees with NLH on the need for dispute resolution capital work (NLH limited it to “significant” matters in its proposed text), and NK further notes that some form of D would be needed if DIAND and MIFN cannot agree among themselves.</u>  <u>MIFN cannot pay for these capital costs itself; DIAND m responsible for paying for these costs.</u>
<b>ARTICLE 6 TERMINATION FOR CAUSE</b>		
6.01 Subject to Clause 6.03, NLH may terminate this Operating Agreement for the following material or fundamental breaches, including but not limited to: the failure by MIFN or DIAND to provide NLH with the necessary property rights or authorizations or the failure of MIFN, DIAND or the Operations/Management Committee to address significant concerns identified by NLH with respect to Power System reliability, health and safety or environmental protection.	6.01 Subject to Clause 6.03 and Clause 6.04., NLH may terminate this Operating Agreement <u>only</u> for the following material or fundamental breaches, <del>including but not limited to:</del>  (a) the failure by MIFN or DIAND to provide NLH with the <del>necessary</del> access rights to the Power System <u>in accordance with the terms of a permit issued under s. 28(2) of the Indian Act; or</u>	<u>This agreement cannot be terminated for cause for reason beyond MIFN’s control. MIFN cannot be left without po either because DIAND fails to come up with the money to for the Operating Deficit or fails to identify money for ca work that must be done in order for the power system to b properly operated in accordance with Good Utility Practic</u>



DRAFT-WITHOUT PREJUDICE

<p><b>Draft LTO Prepared by NLH Dated May 16, 2005</b></p>	<p><b>Revised LTO Prepared by Canada May 30th , 2005</b> <b><u>With revisions for MIFN prepared June 3</u></b> <b>(Only clauses which have been changed are in this column)</b></p>	<p><b>COMMENTS</b></p>
	<p><u>(b) MIFN having (either directly or by exercise by NLH of its rights of set off), four or more monthly invoices for the Operating Deficit all outstanding at one point in time, provided that DIAND has paid MIFN the money to pay same;</u></p> <p><u>or the failure of MIFN, DIAND, the Operations or Management Committees to address significant concerns identified by NLH with respect to health and safety or environmental protection.</u></p>	
<p>6.02 Subject to Clause 6.03, the failure by DIAND to fully pay any two (2) invoices from NLH, shall be considered a material or fundamental breach or a fundamental breach of this Operating Agreement by any party shall be cause to terminate this Operating Agreement for cause.</p>	<p><u>6.02 For any alleged material or fundamental breach by MIFN, DIAND or NLH other than those set out in clauses 6.01(a) and (b), or any other dispute or issue that the Operations Committee and/or Management Committee has not been able to resolve, the alleged material or fundamental breach or issue may be referred to dispute resolution under Article 7. 6.02 ——— Subject to Clause 6.03 and Clause 6.04, , the failure by MIFN to fully pay any two (2) consecutive invoices issued by NLH pursuant to Clause 5.01, shall be considered a material or fundamental breach of this Operating Agreement and shall be cause to terminate this Operating Agreement by NLH.</u></p>	<p><u>NLH can sue for nonpayment, but MIFN's position is that cannot be left without power because DIAND fails to com with the money to pay.</u></p>
		<p>I have not inserted a clause dealing with NLH's fundamen breach, nor with the terms and conditions upon which NLI could withdraw its services. This could be part of the arbi process.</p>
<p>6.03 A party shall give the other parties to this Operating Agreement written notice of any of the matters considered to be a material as identified in this Article and shall comply with</p>	<p>6.03 A party shall give the <u>Management Committee</u><del>other parties to this Operating Agreement</del> written notice of any of the matters considered to be a material or fundamental breach as</p>	



Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
Article 8 – Dispute Resolution in an effort to resolve the material breach dispute. If the matter cannot be satisfactorily resolved by the Management Committee to the satisfaction of the party alleging the fundamental breach then that party may either suspend and withdraw all work, services, personnel, equipment and materials provided or cease payment for all such work and services until the matter is resolved to its satisfaction <u>or</u> may terminate the Operating Agreement. The aggrieved party is not obligated to commence legal proceeding to resolve the matter but may do so if it so decides.	identified in this Article <u>which shall first attempt to resolve the dispute, failing which</u> and shall comply with Article 7 – Dispute Resolution in <u>an effort</u> to resolve the material breach dispute.	
	6.044 The parties shall not terminate this Operating Agreement <u>for the alleged failures in clauses 6.01(a) or (b), but,</u> and shall continue to operate in accordance with the terms and conditions of this Operating Agreement, pending the outcome of the dispute resolution process outlined in Article 7.	
ARTICLE 7	<u>6.05 In respect of any other alleged breaches of this Operating Agreement or issues or disputes arising hereunder, the parties shall not terminate this Operating Agreement unless on mutual agreement of all the parties.</u>	
DISPUTE RESOLUTION		
7.01 Subject to Clauses 6.03 herein, if a party is of the opinion that the other party is in material breach of this Operating Agreement, it shall forthwith give written notice to the other party of the facts believed to comprise the material breach and the required or desired remedy including the deadline for a response. The other party shall either remedy the	7.01 Pursuant to Clause <u>2.03(c), 6.03 herein, [Capital Work article] or Clause 8.03(c), where a party has raised an issue or dispute that has not been resolved by the Operations Committee as applicable, the party who has raised the issue or dispute, if a party is of the opinion that the other party is in material breach of this Operating Agreement,</u> it shall	



<b>Draft LTO Prepared by NLH Dated May 16, 2005</b>	<b>Revised LTO Prepared by Canada May 30th , 2005</b> <b><u>With revisions for MIFN prepared June 3</u></b> <b>(Only clauses which have been changed are in this column)</b>	<b>COMMENTS</b>
stated material breach within the stated deadline and where there is no deadline provided, within thirty (30) days, or shall fully respond in writing within ten (20) days of receipt of the notice of the material breach with its position and reason for same.	forthwith give written notice to the other party of the facts <u>that relate to the alleged material breach, issue or dispute believed to comprise the material breach</u> and the required or desired remedy including the deadline for a response (the “Notice of Dispute”). The other party shall either remedy the stated material breach <u>or issue or dispute</u> within the stated deadline and where there is no deadline provided, within thirty (30) days, or shall fully respond in writing within twenty (20) days of receipt of the notice of the <u>alleged material breach, material breach issue or dispute</u> with its position and reason for same (the “Reply”). Each Reply shall contain a statement of those assertions of fact in the Notice of Dispute <del>which</del> with <u>which</u> the party agrees, a summary of the different or additional facts relevant to the issue or issues as asserted by the party, and the suggested resolution or remedy to address the dispute.	
7.02 In addition to remedies provided for in Article 5 - Payment and Article 6 – Termination for Cause, if there is a dispute about a breach of this Operating Agreement and/or remedy or other related matters, the Management Committee shall forthwith meet (either in person or by telephone) to discuss possible solutions and attempt to reach a consensus on the resolution of the dispute. If the dispute cannot be addressed in a timely manner or resolved by the Management Committee to the satisfaction of a party, a party may avail of the remedies in this	7.02 Upon receipt of the Notice of Dispute and the Replies, <u>if the matter has not already been considered by the Management Committee, t</u> he Management Committee shall forthwith meet (either in person or by telephone) to discuss possible solutions and attempt to reach a consensus on the resolution of the dispute. If the dispute cannot be addressed in a timely manner or resolved by the Management Committee, <u>or the dispute has not already been considered by the Management Committee</u> a party may avail of the dispute resolution process set out in Clause	<u>NK note: We need to deal with the fact that in some cases dispute will already have gone to the management Committee less formally then under 7.01. I have not had to carefully analyze whether my proposed revisions will ac that, but provide this to get the ball rolling.</u>



Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
Operating Agreement or may at any time commence legal proceedings to resolve the issue in dispute pursuant to and in accordance with Article 11 - Governing Law and Forum.	7.03.	
	<p>7.03</p> <p>(a) If the Management Committee has not reached agreement in writing on a resolution or remedy for the dispute within thirty (30) days of receipt of the Reply or Replies by the party which delivered the Notice of Dispute, the issue or issues identified in the Notice of Dispute may be referred to arbitration pursuant to the <i>Commercial Arbitration Act</i>, R.S.C. 1985, c.C-17, as amended, except as modified by this Operating Agreement.</p> <p>(b) A single arbitrator, as selected by the Management Committee, shall determine the resolution to the issue or issues identified in the Notice of Dispute, and the decision of the arbitrator shall be final and binding upon the parties, <u>provided that the arbitrator may not order termination of this Agreement as a remedy except for failures in clauses 6.01(a) or (b).</u> If the parties are unable to agree on the arbitrator, he or she shall be appointed, upon request of a party, by a court pursuant to the provisions of the <i>Commercial Arbitration Act</i>.</p>	This issue of binding arbitration requires discussion with DIAND, and MIFN will want to consider their position on
ARTICLE 8		
LIABILITY AND PROPERTY INSURANCE COVERAGE		
8.01 <u>Liability</u>		

DRAFT-WITHOUT PREJUDICE

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
(a) NLH shall not have any liability or responsibility for work or services performed pursuant to this Operating Agreement unless it is negligent in the performance of its duties and responsibilities. NLH shall not have any liability or responsibility for design errors or omissions in providing work or services under this Operating Agreement, including any capital work performed (“Professional Errors and Omissions”). MIFN and DIAND confirm and agree that they hereby waive any legal remedies or rights it may have against NLH for Professional Errors and Omissions pertaining to work or services performed pursuant to this Operating Agreement.	(a) NLH shall not have any liability or responsibility for work or services performed pursuant to this Operating Agreement unless it is negligent in the performance of its duties and responsibilities.	The agreement of the parties with respect to specific capital works projects will be outlined in capital works agreement no clause dealing with design errors is required here.
(b) Subject to the foregoing and the exclusions in NLH’s General Liability policy of insurance, NLH confirms and agrees to provide general liability insurance coverage with a limit of four million (\$4,000,000) dollars per occurrence to cover NLH’s liability for bodily injury or property damage resulting directly from NLH’s negligence in the performance of its duties and responsibilities under this Operations Agreement. Accordingly, the cumulative liability of NLH with respect to any or all claims arising out of the performance or non-performance of their obligations in connection with this Operating Agreement whether based on contract, indemnity, warranty, tort or otherwise shall not exceed the aforesaid limit of the general liability insurance coverage herein whether or not such damages are foreseeable or whether or not NLH has been advised of such	(b) Subject to the foregoing and the exclusions in NLH’s General Liability policy of insurance, NLH confirms and agrees to provide general liability insurance coverage with a limit of four million (\$4,000,000) dollars per occurrence to cover NLH’s liability for bodily injury or property damage resulting directly from NLH’s negligence in the performance of its duties and responsibilities under this Operations Agreement.	We need to see the policy provisions before commenting further.



Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <b><u>With revisions for MIFN prepared June 3</u></b> (Only clauses which have been changed are in this column)	COMMENTS
damages.		
8.02 <b><u>Property Insurance Coverage</u></b>		
Subject to Clause 3.04 and the exclusions in NLH's Property Insurance policy, NLH will provide All Risk property coverage that is limited to the total replacement value of the Plant <u>subject</u> to a \$50,000 per occurrence deductible ("Deductible"). If the damage or loss to the Plant is directly caused by the negligence of NLH in the performance of its duties and responsibilities under this Operating Agreement then NLH shall be responsible for the payment of the Deductible. MIFN shall be responsible for the payment of the Deductible in all other claims payable under this property insurance policy.		We need to see the provisions of the insurance policy before commenting on this section.
	8.03 (a) NLH shall continue to provide General Liability and Property insurance coverage as set out in Clauses 8.01 and 8.02 during the term of this Operating Agreement, unless notice has been provided to the parties of intention by NLH to discontinue this insurance coverage. (b) NLH shall provide in writing six months notice of intention to discontinue the insurance coverage set out in Clauses 8.01 and 8.02, together with reasons for NLH's intention to discontinue such coverage. (c) disputes between the parties with respect to the continuation of insurance coverage by NLH shall be referred to the Operations Committee and/or the Management Committee for	

DRAFT-WITHOUT PREJUDICE

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
	resolution, <u>but if the dispute cannot be resolved by the Management Committee, the provisions of Article 7 shall apply.</u>	
8.03 NLH shall not have any liability or responsibility whatsoever for damage or loss to property or for personal injury or loss of life caused by NLH's negligent acts or omissions in the performance of its duties and responsibilities under this Operating Agreement beyond the risks identified or limits specified in Clauses 8.01 and 8.02 herein. DIAND and MIFN shall indemnify NLH for any and all liability that exceeds the risks and limits specified herein.	Delete.	This clause is not acceptable.
ARTICLE 9		
NOTICE		
9.01 All notices under this Operations Agreement shall be in writing. Any notice to MIFN, DIAND or NLH shall be sufficiently served if given by registered mail, facsimile transmission, or by delivering the same:		
(i) in the case of MIFN, to:		
Mushuau Innu First Nation		
P.O. Box 190		
Natuashish, NL		



<b>Draft LTO Prepared by NLH</b> <b>Dated May 16, 2005</b>	<b>Revised LTO Prepared by Canada</b> <b>May 30th , 2005</b> <b><u>With revisions for MIFN prepared June 3</u></b> <b>(Only clauses which have been changed are in this column)</b>	<b>COMMENTS</b>
AOP 1A0		
<u>Attention:</u> ??????	Position	
<u>Fax:</u> (709)		
(ii)    in the case of DIAND, to:		
Department of Indian and Northern Affairs		
Atlantic Regional Office		
P.O. Box 160		
40 Havelock Street		
Amherst, Nova Scotia		
BH4 3Z3		
<u>Attention:</u> ??????	Executive Advisor-Newfoundland and Labrador Secretariat	
<u>Fax:</u> (902) ????	<u>Fax:</u> (902) 661-6237	
(iii)    in the case of NLH, to:		

DRAFT-WITHOUT PREJUDICE

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
Newfoundland and Labrador Hydro		
P.O. Box 12400		
500 Columbus Drive		
St. John's, NL		
A1B 4K7		
Attention: ?????????	Position	
Fax: (709) 737-????		
9.02 Any notice or invoice shall be deemed to be received:		
(i) five (5) business days after mailing if sent by registered mail,		
(ii) on the next business day if sent by facsimile transmission, or		
(iii) on the date of delivery if sent by personal delivery.		
9.03 A party may, at any time and from time to time, change its address for notice, or the person designated to receive such notice, under this Article by giving notice in writing, in accordance with this Article, to the other party of this change.		
ARTICLE 10		
GOVERNING LAW AND FORUM		



Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
10.01 This Operating Agreement shall be governed by and construed in accordance with the laws of the Province and every action or other proceeding arising hereunder shall be determined exclusively by a court of competent jurisdiction in the Province, subject to applicable rights of appeal.	10.01 This Operating Agreement shall be governed by and construed in accordance with the laws of the Province and the laws of Canada as applicable. Actions arising hereunder shall be determined by a court of competent jurisdiction in the Province, subject to applicable rights of appeal, with the exception of proceedings for judicial review, which fall within the exclusive jurisdiction of the Federal Court.	We cannot contract out of the exclusive jurisdiction of the Federal Court, for example with respect to review of the Minister's decision to issue a permit or other decisions which are subject to judicial review.
ARTICLE 11		
TERM	TERM AND AMENDMENTS	
11.01 This Operating Agreement shall be for a term of twenty (20) years, commencing on the 1 <sup>st</sup> day of June 2005 and terminating on the 31 <sup>st</sup> day of May 2025. The parties agree that two (2) years prior to the termination date of this Operating Agreement, they will initiate negotiations for the renewal of this Operating Agreement and will make every effort to reach agreement on such renewal before December 31, 2024.	11.01 This Operating Agreement shall be for a term of five (5) years, commencing on the 1 <sup>st</sup> day of 2005 and terminating on the 31 <sup>st</sup> day of 2010. The parties agree that this Operating Agreement may be renewed, by consent of the parties and upon the same terms and conditions, for three (3) additional five (5) year periods for a total of twenty (20) years, terminating on the day of , 2025.  The parties agree that two (2) years prior to the termination date of this Operating Agreement or subsequent renewals thereof, they will initiate negotiations for the renewal of this Operating Agreement and will make every effort to reach agreement on such renewal before December 31 in the year in which the Operating Agreement is due to expire.	
	11.02 The provisions of this Operating Agreement may be	Clause 11.03 requires further review by NLH and MIFN.

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
	amended in writing with the written consent of all parties.  11.03 Notwithstanding Clause 11.01, the parties agree that the terms and conditions of this Operating Agreement will be reviewed by the parties in the event of development of an energy project by the Province and NLH of the Lower Churchill during the term of this Operating Agreement. <u>Any of the parties may during their participation, or the participation of any entity representing them, in negotiations relating to this energy project present positions and negotiate for terms relating to the payment of customer accounts and other matters without regard for and without being in breach of the provisions of this Operating Agreement.</u>	
ARTICLE 12		
ACCOMMODATIONS		
12.01 NLH entered into an Accommodations Agreement with the Natuashish Housing Authority Inc. in 2003, a copy of which is attached hereto as Schedule “A”. This Accommodations Agreement addresses NLH’s accommodations requirements for the purpose of providing the scope of work and services under this Operating Agreement and requires that the Demised Premises as defined under that Agreement be provided and that the Accommodations Agreement be renewed and continue in full force and effect for the term of this Operations Agreement. If the Accommodations Agreement is not renewed or is terminated during the term of this Operating Agreement and		I have not redrafted this pending discussion by the parties regarding suitable accommodations for NLH employees.



Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
accommodations acceptable to NLH, acting reasonably, are not provided to NLH's employees then NLH may either suspend all work and services where such accommodations are required until suitable accommodations are acceptable to NLH, in its sole discretion, or may find suitable accommodations in another neighboring community whereby DIAND and MIFN shall be jointly and severally liable and responsible for 100% of all additional costs and expenses incurred by NLH in providing such accommodations and such costs shall be treated in the same manner as Capital Expenditures in Article 4 – Cost Sharing Arrangement. In such case, NLH shall not be liable or responsible for any delays in the performance of the work and services and for any and all resulting property damages or losses attributable to the work and services not being performed in a timely manner.		
<b>This</b>		
<b>ARTICLE 13</b>		
<b>DAVIS INLET</b>		
13.01 Upon execution of this Operating Agreement by all parties and subject to Clause 13.03 herein, NLH shall, within sixty (60) days, prepare and file an application to abandon the provision of electrical service to the community of Davis Inlet in the Province. NLH will pursue this application expeditiously and MIFN and DIAND shall fully cooperate with and assist NLH in the support of this application, if requested by NLH.		

DRAFT-WITHOUT PREJUDICE

<b>Draft LTO Prepared by NLH Dated May 16, 2005</b>	<b>Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)</b>	<b>COMMENTS</b>
<p>13.02 DIAND shall fully compensate NLH for all decommissioning costs associated with the destruction, dismantling and removal of the NLH diesel generating plant and associated facilities in Davis Inlet provided that the costs directly associated with the cleanup of hydrocarbon or PCB contamination of soil and water shall be fully borne by NLH.</p>	<p>13.02 DIAND shall pay the decommissioning costs for the NLH diesel generating plant at Davis Inlet in accordance with the provisions of the Mushuau Innu Relocation Agreement between the Mushuau Innu, DIAND and the Province dated November 1996, as amended from time to time.</p>	
<p>13.03 MIFN shall, at its cost and in a timely manner, fully cooperate and assist NLH with the preparation of the application and hearing, if necessary, concerning the abandonment of the community of Davis Inlet and shall cooperate and assist NLH, where required, with respect to the decommissioning of the facilities in Davis Inlet.</p>	<p><u>13.03 MIFN shall, at its cost as funded by DIAND .....</u></p>	
<p><b>ARTICLE 14</b></p>		
<p><b>ENTIRE AGREEMENT</b></p>		
<p>14.01 This Operating Agreement and any schedules attached hereto constitute the entire agreement between the parties and no other writing or conversations will be deemed a part of this Operating Agreement.</p>		
<p><b>ARTICLE 15</b></p>		
<p><b>UNENFORCEABLE PROVISION</b></p>		
<p>15.01 If any provision of this Operating Agreement is</p>		



DRAFT-WITHOUT PREJUDICE

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
determined by a Court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions of this Operating Agreement, and each provision is declared to be separate, severable and distinct.		
ARTICLE 16		
PREVIOUS AGREEMENTS		
16.01 This Operating Agreement supersedes and revokes all previous agreements, understandings, and proposals made between the parties with respect to the provision of electrical services in the community of Natuashish and on the Reserve.		
ARTICLE 17		
SUCCESSORS AND ASSIGNS		
17.01 This Operating Agreement and everything contained herein shall enure to the benefit of and be binding upon each of the parties hereto, and their respective permitted successors and assigns.		
ARTICLE 18		
DOCTRINE OF CONTRA PROFERENTEM		

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
18.01 It is fully understood and agreed that the doctrine of <i>contra proferentem</i> shall not apply in the interpretation of this Operating Agreement.		
ARTICLE 19		
MEMBERS OF HOUSE OF COMMONS OR HOUSE OF ASSEMBLY		
19.01 No member of the House of Commons or House of Assembly shall be admitted to any share or part of this Operating Agreement or to any benefit to arise there from.		
IN WITNESS WHEREOF the parties hereto have caused this Operating Agreement to be executed in accordance with their respective rules and regulations in that behalf at the places and on the dates hereinafter set forth.		
SIGNED, SEALED AND DELIVERED ) MUSHUAU INNU FIRST NATION		
by person(s) having full authority to commit)		
and bind MIFN at _____, )		
Newfoundland and Labrador, this day of )		
_____, 2005, in the ) _____		



DRAFT-WITHOUT PREJUDICE

Draft LTO Prepared by NLH Dated May 16, 2005	Revised LTO Prepared by Canada May 30th , 2005 <u>With revisions for MIFN prepared June 3</u> (Only clauses which have been changed are in this column)	COMMENTS
presence of: )		
)		
)		
_____ )		
)		
)		
_____ )		
)		
)		
_____ )		
_____ )		
<b>SIGNED, SEALED AND DELIVERED</b> by <u>HER</u>		
<b>MAJESTY THE QUEEN IN</b>		
Her Majesty the Queen In Right of Canada, as <u>RIGHT</u>		
<b>OF CANADA</b> , as represented		
represented by the Minister of Indian Affairs by the		
Minister of Indian Affairs and		
and Northern Development Northern Development		

C:\lto mifn revisions june 3.doc





"Wilf Attwood"  
<attwoodw@inac-ainc.gc.ca>  
06/08/2005 11:36 AM

To "Joe McKinnon" <McKinnonJ@inac-ainc.gc.ca>, "David  
Trainor" <TrainorD@inac-ainc.gc.ca>,  
<maeve.baird@JUSTICE.GC.CA>,  
cc <BNippard@nlh.nf.ca>, <BWells@nlh.nf.ca>,  
<FMartin@nlh.nf.ca>, <GYoung@nlh.nf.ca>,  
<KBoone@nlh.nf.ca>

bcc

Subject Re: Next Meeting - Natuashish LTO Agreement

I'll be there.

Wilf

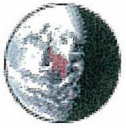
>>> <WChamberlain@nlh.nf.ca> 06/07/05 1:41 PM >>>  
Good afternoon

I have checked Hydro personnel schedules and advise that we have scheduled the next meeting for Monday, June 27, 2005 from 10:00 a.m. to 4:30 p.m. as was agreed at the meeting yesterday. Please advise at your earliest convenience if this is not acceptable.

We understand that Maeve Baird will be producing the next redraft of the LTO Agreement with input from both Nancy Kleer, Geoff Young, Orville Pelley and myself.

Wayne D. Chamberlain  
Senior Legal Counsel  
Legal Department  
Newfoundland and Labrador Hydro  
Telephone: (709) 737-1443  
Facsimile: (709) 737-1782  
mailto:wchamberlain@nlh.nf.ca

Notice: This email communication is confidential and legally privileged. Any unauthorized reproduction, distribution or disclosure of this email or any attachments is strictly prohibited. Please destroy/delete this email communication and attachments and notify me if this email was misdirected to you.



<NKleer@oktlaw.com>  
09/15/2005 06:14 AM

To "Baird, Maeve" <maeve.baird@justice.gc.ca>,  
<WChamberlain@nlh.nf.ca>  
cc "Butler, Michael" <Michael.Butler@JUSTICE.GC.CA>,  
<opelley@nf.aibn.com>, <crich@nf.sympatico.ca>  
Subject RE: LTOA September 2005

Maeve, Wayne:

Here's my mark-up of Maeve's version of the revised LTOA, made by track changes. If I didn't have any problems with your track-changes, Maeve, I'm fine with those changes but I didn't go through and "accept" the changes you'd made. They'll still appear as track changes.

Re the main issues I'm asking MIFN is to follow up on, the list I've asked Cajetan and Orville to consider and respond to me on is as follows:

1. Delivery Charge - we await NLH's comments on the schedule Orville provided some time ago.
2. re 3.07(b) and the definition of Delivery Charge- Can the delivery charge (and fuel price as well) include a profit mark-up for MIFN, given DIAND doesn't pay for 100% of MIFN facilities electrification costs?
3. List of MIFN Facilities - MIFN is waiting from DIAND for definitive info re how much DIAND covers for electricity costs per facility
4. 2.03- MIFN rep on Operations and maintenance committees
5. 3.06(b)- Orville to comment on concept Wayne raised, that Operating Procedure would be revised to include a mechanism to resolve the disputes about fuel quantity delivered. The mechanism NLH is proposing would be along the following lines: every year, MIFN either must have the truck gauges or fuel pipeline gauges calibrated at their own cost, or if they don't do that, the way to resolve disputes would be that NLH and MIFN would physically witness the dipping of the tanks done by hand, and if there's a dispute > 100 litres bn the dip records and the gauge records, the dip record would prevail over the gauge record.
6. 3.06(d) - Orville will review last sentence in draft, which was at NLH's suggestion.
7. 3.11, 3.12, 3.13 - re disputed O&M and Capital Work
8. 6.01(b) - event of termination
9. 8.05 - Property insurance
10. Accommodations agreement - I'll have a redraft out by the end of this week.

Maeve, I would add to DIAND's list:

1. DIAND also has to consider 3.11 (not just 3.12) as it relates to Wayne's proposed 3.13 -- NLH is asking MIFN to take on liability not just if NLH chooses not to Disputed Capital Expenditures Work, but also if NLH chooses not to do disputed O&M Work.
2. Monthly billing vs. quarterly billing for Capital Expenditures.

Re Sept . 28, that date would also work for me.

Nancy

Nancy J. Kleer  
Olthuis, Kleer, Townshend  
Barristers & Solicitors  
229 College Street, Suite 312



Toronto, ON M5T 1R4

PH: 416.981.9336

F: 416.981.9350

\*\*\*\*\*

This e-mail message and any attachments may be privileged, confidential and subject to copyright. Any unauthorized review, copying, transmittal, use or disclosure is prohibited. If you are not the intended recipient you have received this message in error. Please immediately notify us by reply or collect telephone call to (416) 981-9330 and destroy this message and any attachments.

**From:** Baird, Maeve [mailto:maeve.baird@justice.gc.ca]

**Sent:** September 14, 2005 12:42 PM

**To:** WChamberlain@nlh.nf.ca; Nancy Kleer

**Cc:** Butler, Michael

**Subject:** LTOA September 2005

<<335025.doc>>

Wayne/Nancy;

Attached find the revised LTOA, incorporating the changes discussed during yesterday's teleconference. Most changes have been tracked, except those resulting from accepting NLH changes and a couple where I forgot to turn on the track changes. Let me know if I missed anything. Provisions which are still under review by the parties are highlighted in yellow.

I will try to follow up by Friday, September 16th on the following issues;

- Administrative overhead;
- Sections 3.12 and 3.13 with respect to capital expenditures;
- Sections 8.02(a), liability insurance, and 8.05, property insurance;
- Section 7.03, use of provincial or federal arbitration legislation;
- Advise NLH to whom they should direct the proposed decommissioning plan and budget for Davis Inlet.

We were to have a follow up teleconference on September 27th at 10:30 am Atlantic time- it appears that the meeting I am attending in Moncton on the 26th may last through the 27th. I will confirm by the end of this week. If that happens, are you available to discuss this on the 28th?

*Maeve A. Baird*

*Counsel*

*Civil Litigation and Advisory Group*

*Justice Canada*

*Suite 1400 Duke Tower*

*5251 Duke Street*

*Halifax, Nova Scotia*

*B3K 5H1*

*Phone (902) 426-8791*

*Facsimile (902) 426-8796*

**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**  
DRAFT-WITHOUT PREJUDICE

The Effective Date of this Operating Agreement, made in triplicate, is the      day of  
A.D., 2005.

Deleted: is

Deleted: as

Deleted: of

**BETWEEN:**      **MUSHUAU INNU FIRST NATION**, a band pursuant to Section 2(1) of the Indian Act, Revised Statutes of Canada 1985, c. I-5 as amended (hereinafter referred to as "**MIFN**")

OF THE FIRST PART

**AND:**      **HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by the Minister of Indian Affairs and Northern Development (hereinafter referred to as "**DIAND**");

OF THE SECOND PART

**AND:**      **NEWFOUNDLAND AND LABRADOR HYDRO**, a body corporate existing pursuant to the Hydro Corporation Act, Chapter H-16 of the Revised Statutes of Newfoundland and Labrador, 1990 and having its head office at St. John's, in the Province of Newfoundland and Labrador (hereinafter referred to as "**NLH**");

OF THE THIRD PART

**WHEREAS** the Natuashish Indian Reserve No. 2 was set aside for the use and benefit of the Mushuau Innu First Nation by Order in Council dated December 11, 2003;

Deleted: o

Deleted: c

**AND WHEREAS** prior to the lands being set aside as a reserve a diesel generating plant and associated facilities were constructed within the current reserve boundaries for the purpose of providing electrical service to persons residing at Natuashish

**AND WHEREAS** MIFN and DIAND wish to contract with NLH for the management and performance of the operation and routine maintenance on the Power System, as outlined in this long term operating agreement (hereinafter referred to as the "Operating Agreement");

**AND WHEREAS** the parties wish to enter into this Operating Agreement setting forth their respective rights and obligations with respect to the operation and maintenance of the Power System.



**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**  
DRAFT-WITHOUT PREJUDICE

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that for and in consideration of the premises and mutual covenants herein contained and upon the terms and conditions hereinafter set forth, MIFN, DIAND and NLH do hereby covenant, undertake and agree as follows:

**ARTICLE 1**  
**INTERPRETATION**

**Article 1.**

**Section 1.01** The terms used in this Operating Agreement, including the recitals, shall, unless the context otherwise requires, have the following meanings:

- (a) **"Billings"** means the amounts charged by NLH to the customers for electrical power and energy provided by NLH from the Power System in accordance with rates approved by the PUB for users for isolated system communities in Labrador, whether or not those Billings are collected;
- (b) **"Capital Expenditures"** means those expenditures determined in accordance with the CICA Handbook to acquire, construct, develop, or enhance the service potential of property, plant or equipment, which expenditures shall include but shall not be limited to;
  - (i) labour (at bill rates);
  - (ii) materials;
  - (iii) engineering;
  - (iv) project management;
  - (v) transportation;
  - (vi) travel;
  - (vii) overhead allocations; and
  - (viii) allowance for funds used during construction (AFUDC),
all of which expenditures shall be consistent with those practices used by NLH in its reports and filings before the PUB;
- (c) **"day"** means calendar day unless otherwise specified herein;
- (d) **"Delivery Charge"** means the amount charged by MIFN, per litre of fuel delivered to the Plant, to cover the costs of;
  - (i) delivery from the fuel storage tanks to the Plant;
  - (ii) maintenance by MIFN and environmental risk assumption by MIFN in respect of those facilities that are part of the electricity supply system for Natuashish but which do not form part of the Power System;
  - (iii) snow clearing and other maintenance services associated with maintaining access to the Plant; and
  - (iv) administrative overhead,
provided that the Delivery Charge shall **not include provision for profit by MIFN** waiting for the amount of delivery charge and formula used to calculate;

**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

- (e) **"Fuel"** means Type A fuel in accordance with CAN/CGSB-36-2000 as amended, being regular sulphur fuel having the exceptional properties specified in Schedule "A" hereto as amended from time to time;
- (f) **"Force Majeure"** means any fortuitous event, act of competent governmental authority, act of public enemies, war, invasion or insurrection, riot, civil disturbance, vandalism, flood, fire, or other cause of inability to perform or delay in performing obligations hereunder which, in each such event, is beyond the reasonable control or foresight of the party or parties affected;
- (g) **"Fiscal Year"** means the year commencing on April 1st and ending on March 31<sup>st</sup> in each year;
- (h) **"Good Utility Practice"** means those practices, methods and acts, engaged in or approved by a significant portion of the electrical utility industry in Canada during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment, could have been expected to accomplish the desired result in a manner consistent with laws and regulations and at a reasonable cost consistent with good business practices, reliability, safety, environmental protection and expedition;
- (i) **"month"** means a calendar month unless otherwise specified herein;
- (j) **"MIFN"** means Mushuau Innu First Nation, its employees, contractors and agents;
- (k) **"MIFN Facilities"** means DIAND-funded eligible capital assets on Reserve and other assets to which electricity is provided and for which MIFN is responsible for paying the electrical accounts, as listed in Schedule "B" hereto as may be amended from time to time; [Note: Please provide Schedule B or list of these facilities]
- (l) **"MIFN Fees"** means amounts that MIFN may charge to NLH based upon Billings by NLH for electrical power and energy consumed within the Reserve, which amounts shall not exceed 2.5% of the amount of these Billings for the Billing period. [moved to article 4];
- (m) **"NLH"** means Newfoundland and Labrador Hydro, its employees, contractors and agents;
- (n) **"Operating Deficit"** means the Operating Expenses less the Billings;
- (o) **"Operating Expenses"** means those actual costs, incurred by NLH with respect to the operation and maintenance of the Power System, as approved by the Operations Committee. Those costs shall include but shall not be limited to:

**Deleted:** NLH shall not be charged for or liable to pay to MIFN any other fees, taxes, royalties, assessments or levies other than those which are specifically set out in this Operating Agreement or which are expressly agreed to in writing by the parties



REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005

DRAFT-WITHOUT PREJUDICE

- (i) labour, at the bill rate which includes fringe benefits and other salary/employee related costs for operators, meter readers, maintenance personnel and other personnel carrying out non-capital work; overtime;
  - (ii) fuel, lubricants and additives consumed at the Plant;
  - (iii) materials;
  - (iv) direct engineering;
  - (v) station services and utility costs;
  - (vi) Delivery Charges;
  - (vii) accommodation charges for NLH personnel while on the Reserve, including the rental charges set out in the Accommodations Agreement referred to in Article 12; (NK note: add last few words, since we haven't defined Accommodations Agreement as a capitalized term)
  - (viii) insurance premiums for liability and property insurance coverage pursuant to clauses 8.01 and 8.02 herein;
  - (ix) traveling and transportation expenses associated with operating activities;
  - (x) MIFN Fees; and
  - (xi) an allocation of administrative overheads applied at the rate of 75% of all operating expenses with the exception of Fuel, Fuel Delivery Charges, and MIFN Fees which will not have any overhead applied.
- (p) **"Plant"** means the Natuashish diesel generating plant facility located on Lot 13 as shown on a Plan and Field Notes of Survey which is recorded in the Canada Lands Surveys Records Office at Ottawa, Ontario under ● and which is also recorded in the Crown Lands Registry Office at St. John's, Newfoundland and Labrador under SP ● {NK will supply the bulleted info which is in the OIC legal description} on the Reserve," but does not include the fuel delivery pipeline from Valve #37 to the fence line along the boundary of the Plant. {NK note: we don't need to attach the survey plan if we reference the CLSR/CLRO survey records, and I've added that legal description into this draft. We're checking with Orville and G. Isaacs to see if we can verify that the fence line is within Lot 13.}
- (q) **"Power System"** means the Plant, electrical distribution system and associated facilities situate on the Reserve but excludes the fuel storage tanks external to the boundaries of the Plant and fuel delivery systems that transport fuel from the fuel supplier's vessel to the fuel storage tanks and from the fuel storage tanks to the Plant;
- (r) **"Province"** means the province of Newfoundland and Labrador;
- (s) **"PUB"** means the Board of Commissioners of Public Utilities for the Province of Newfoundland and Labrador;
- (t) **"Reserve"** means the Natuashish Indian Reserve No. 2 which has been set apart for the use and benefit of the MIFN;

Deleted: Accomodations

Deleted: ;

Deleted: , as described on the attached plan annexed hereto as Schedule "C"

Deleted: ;

**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

- (u) "Valve #37 means the valve as shown on the photograph annexed hereto as Schedule " ".

Deleted: is

Inserted: is the valve as shown on the photograph annexed hereto as Schedule " ".

**Section 1.02** In this Operating Agreement all references to dollar amounts and all references to any other money amounts are expressed in terms of the coin or currency of Canada which at the time of payment or determination shall be legal tender for the payment of public and private debts.

**Section 1.03** Words in this Operating Agreement importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders.

**Section 1.04** Where a word is defined anywhere in this Operating Agreement other parts of speech and tenses of the same word have corresponding meanings.

**Section 1.05** Whenever in this Operating Agreement a number of days are prescribed for any purpose, the days shall be reckoned exclusively of the first and inclusively of the last day.

**Section 1.06** Whenever this Operating Agreement requires a notice to be given or a request to be made on a Saturday, Sunday or legal holiday in the Province or the Reserve, such notice or request may be given or made on the first business day occurring thereafter, and, whenever in this Operating Agreement the time within which any right will lapse or expire shall terminate on a Saturday, Sunday or legal holiday in the Province or Reserve, such time will continue to run until the next succeeding business day.

**Section 1.07** In this Operating Agreement the headings of Articles are inserted for convenience of reference only and shall not affect the construction or interpretation thereof.

**Section 1.08** Any reference in this Operating Agreement to an article, a section, a subsection, a paragraph or a schedule shall be taken as a reference to an article, a section, a subsection, a paragraph or a schedule to this Operating Agreement.

**Section 1.09** This Operating Agreement may be executed in three or more counterparts, each of which when so executed shall be deemed to be an original, but all of such counterparts together shall constitute one and the same instrument.

## **ARTICLE 2 RESPONSIBILITIES OF ALL PARTIES**

### **Article 2.**

**Section 2.01** In accordance with and subject to the provisions of this Operating Agreement, the parties shall:



**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

- (a) fully co-operate in a timely manner in the planning, operation and maintenance of the Power System; and
- (b) fully co-operate to provide NLH in a timely manner, through the provisions of a permit issued pursuant to section 28(2) of the Indian Act, with rights of access to and passage over all lands on the Reserve as required to permit NLH to carry out its responsibilities under this Operating Agreement;
- (c) not be considered in default in performance of their obligations hereunder to the extent that performance of such obligations is delayed, hindered or prevented by Force Majeure.

**OPERATIONS COMMITTEE****Section 2.02 Operations Committee**

The parties agree to continue with the Operations Committee that was established by the parties prior to this Operating Agreement. The Operations Committee's main responsibility shall be to address issues identified by any of the parties concerning the operation and maintenance of the Power System, and to review any annual operating and capital budgets, or updated forecasts of said budgets, provided by NLH to the Operations Committee for the operation, maintenance, capital costs and expenses of the Power System.

**Section 2.03** The Operations Committee shall be composed of at least two (2) representatives from each of the parties. The parties shall inform the other parties to this Operating Agreement in writing before changing their representatives on the Operations Committee. The current Operations Committee representatives nominated by the parties are as follows:

MIFN:

**Cajetan Rich**  
MIFN councillor

Orville Pelley  
Band Technical  
Advisor

Gerry Gregoire  
MIFN councillor

c/o Mushuau Innu First Nation  
P.O. Box 190  
Natuashish, NL  
Telephone: (709) 478-8827  
Facsimile No. (709) ???- ????

DIAND:

David Trainor  
Special Projects Officer  
Davis Inlet Relocation Project

Jean Richard  
Project Engineer  
Davis Inlet Relocation Project

**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

Department of Indian and  
Northern Affairs

Atlantic Regional Office

P.O. Box 160

40 Havelock Street

Amherst, Nova Scotia

B4H 3Z3

Telephone: (902) 661-6243

Facsimile No. (902) 661-6237

Department of Indian and  
Northern Affairs

Atlantic Regional Office

P.O. Box 160

40 Havelock Street Amherst,

Nova Scotia

BH4 3Z3

Telephone: (902) 661-6257

Facsimile No. (902) 661-6237

**NLH:**

Mr. Keith Boone  
System Planning Supervising Engineer  
P.O. Box 12400  
500 Columbus Drive  
St. John's, NL  
A1B 4K7  
Telephone: (709) 737-1236  
Facsimile No. (709) 737-1902

Mr. Bill Nippard  
Labrador Regional Manager  
P.O. Box 178 Station "B"  
Happy Valley-Goose Bay, NL  
AOP 1E0  
Telephone: (709) 896-2993  
Facsimile No. (709) 896-8948

**Section 2.04** The Operations Committee shall address all issues forwarded to it by any of the parties in a timely and expeditious manner and endeavour to reach a consensus. If the Operations Committee is unable to reach consensus on an issue within thirty (30) days of the matter being raised at the Operations Committee, any two representatives on the Operations Committee may refer the issue to the Management Committee in accordance with Section 7.01 herein.

**Section 2.05** The Operations Committee shall review, on a quarterly basis, invoices submitted by NLH pursuant to Article 5-Payment and Set-Off herein.

**Section 2.06** The Operations Committee shall meet quarterly or as required, and members may attend in person or by conference call or by other electronic means acceptable to the parties.

**MANAGEMENT COMMITTEE****Section 2.07 Management Committee**

The Management Committee's main responsibility shall be to address any issues referred to it by the Operations Committee that are in dispute.

**Section 2.08** The Management Committee shall be composed of one (1) senior management representative from each of the parties. The parties shall inform the other parties to this Operating Agreement in writing before changing their



**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

representative on the Management Committee. The Management Committee representatives nominated by the parties are currently as follows:

MIFN:

Cajetan Rich  
Mushuau Innu First Nation Band Office  
P.O. Box 190  
Natuashish, NL  
A0P 1A0  
Telephone: (709)  
Fax No. (709)

DIAND:

Wilf Attwood, Executive Advisor, NL Secretariat  
Department of Indian and Northern Affairs  
Atlantic Regional Office  
P.O. Box 160  
40 Havelock Street  
Amherst, Nova Scotia  
BH4 3Z3  
Telephone: (902) 661-6255  
Fax No. (902) 661-6237

NLH:

Jim Haynes, VP • {Wayne to supply}  
Newfoundland and Labrador Hydro  
P.O. Box 12400  
500 Columbus Drive  
St. John's, NL  
A1B 4K7  
Telephone: (709) 737-1325  
Facsimile No. (709) 737-1993

Formatted: Font: (Default) Times  
New Roman, Font color: Auto

**Section 2.09** The Management Committee members shall address all issues forwarded to them in a timely and expeditious manner, and endeavour to reach a consensus. Unless otherwise specified herein, if the members of the Management Committee are unable to reach a consensus then the matter shall be addressed pursuant to Article 7 - Dispute Resolution herein.

**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

**Section 2.10** The Management Committee shall meet twice a year, or as required, and members may attend in person or by conference call or by other electronic means acceptable to the parties.

**ARTICLE 3  
POWER SYSTEM OPERATION AND COSTS**

**Article 3.**

**Section 3.01** NLH shall within the scope of its responsibilities under this Operating Agreement manage, operate and maintain the Power System in accordance with Good Utility Practice to meet the customer load requirements on the Reserve. NLH is responsible for the safe and reliable operation of the Power System.

**Section 3.02** NLH shall within the scope of its responsibilities under this Operating Agreement carry out inspection programs, servicing, maintenance and repairs on all aspects of the Power System similar to the work carried out by NLH at other NLH remote diesel plant locations and this work shall be carried out by qualified personnel.

Deleted: e

**Section 3.03** NLH shall have, as a minimum, two (2) qualified operators to operate the semi-attended Plant, one of whom will always be on the Reserve.

**Section 3.04** The scope of work and services to be performed by NLH pursuant to this Operating Agreement shall include, but shall not necessarily be limited to:

- (a) daily operation and maintenance of the Power System;
- (b) reading and maintenance of meters;
- (c) providing new service connections;
- (d) identifying and maintaining an adequate inventory of spare parts and materials pertaining to the operation and maintenance of the Power System;
- (e) consulting with the Operations Committee concerning any warranty issues that may arise with respect to the Power System;
- (f) performing repairs or maintenance as required, and consulting with the Operations Committee before performing any significant work on the Power System outside the scope of work contemplated by the annual forecast budget or reforecast budget referred to in Section 3.10 herein;
- (g) informing MIFN of all significant work performed in a timely manner; and
- (h) within the scope of its responsibilities under this Operating Agreement and with the cooperation of the other parties herein, acting prudently in managing the operation and maintenance of the Power System to the same standards as the other diesel generating systems in remote communities in Labrador.

**Section 3.05** When NLH is required to undertake emergency work or services it shall, as soon as practicable, contact the Operations Committee. Where NLH does not, acting reasonably, believe there is sufficient time to notify the Operations Committee,



REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005

DRAFT-WITHOUT PREJUDICE

NLH shall not be in breach of this Operating Agreement for not contacting or consulting with the Operations Committee prior to commencing the emergency work or services.

Section 3.06 Fuel Delivery

- (a) MIFN shall supply and deliver Fuel, in accordance with the specifications in Schedule "A" as amended, to NLH in a timely manner, for the operation of the Power System. If the Fuel does not meet the said specifications, then MIFN shall ensure that NLH is provided with Fuel that meets these specifications and shall be responsible for all costs and expenses in correcting or replacing any fuel that does not meet these specifications.
- (b) NLH shall not have any duties, responsibility or liability pursuant to this Operating Agreement concerning the Fuel storage tanks and Fuel delivery systems, tanker truck deliveries or pipelines external to the Plant. Further, with respect to tanker truck delivery of the Fuel to the Plant, NLH and MIFN shall have their responsibilities as set out in the Local Operating Procedure attached as Schedule "D", which may be amended from time to time upon agreement of MIFN and NLH, for so long as the Fuel is delivered by truck.
- (c) During the period that the Fuel is delivered by truck, ownership of the Fuel delivered by MIFN to NLH for the operation of the Power System shall be transferred when NLH's Plant operator signs the Fuel delivery slip that shall identify the quantity of Fuel delivered by MIFN. MIFN shall be responsible and liable for any Fuel spills resulting from the delivery of the Fuel by MIFN and shall reimburse NLH for any and all costs incurred by NLH as a result of such a spill.
- (d) Once Fuel delivery for the operation of the Power System commences to be effected through the underground pipeline system operated by MIFN ("Fuel Pipeline"), ownership of the Fuel sold and delivered by the Fuel Pipeline, and all risk of loss and damage caused by or resulting from the sale and delivery of the Fuel by the Fuel Pipeline, shall pass from MIFN to NLH upon successful completion of the passage of Fuel from the Fuel Pipeline beyond the inlet point where Valve #37 intersects the Fuel Pipeline {NK note: deletion due to definition being added}. The parties acknowledge that part of the Fuel Pipeline, including the inlet point where Valve 37 intersects the Fuel Pipeline, is located within the fenced boundary of the Plant. {NK checking with Orville re whether last sentence is clear.}

Deleted:

Deleted: , in accordance with the specifications in Schedule "A" as amended,

Deleted: of the operator and MIFN shall have the responsibilities of the fuel supplier

Inserted: and MIFN shall have the responsibilities of the fuel supplier as

Deleted: dated 2004-11-02

Deleted: , as shown on the photograph annexed hereto as Schedule "E"

Deleted: [I'm not sure I caught all of the wording for this section]

Section 3.07

- (a) MIFN shall sell the Fuel to NLH at the price paid by MIFN to the Fuel supplier plus the Delivery Charge.
- (b) MIFN shall provide NLH with supporting documentation to verify that the price of Fuel being charged to NLH, less the Delivery Charge, is the same as the price of the Fuel paid by MIFN to the supplier, and to verify that the Delivery Charge does not include any profit.

Deleted: the Fuel

**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**  
DRAFT-WITHOUT PREJUDICE

**Section 3.08** NLH shall maintain records with respect to residential and general service metered usage of electrical service on the Reserve based upon the rates for users for isolated system communities in Labrador as determined by the PUB. NLH will also maintain records with respect to the maintenance and repair of the Power System. Subject to an electrical customer's right to privacy, NLH will provide such records to the Operations Committee upon receiving a written request.

**Section 3.09**

- (a) Subject to Section 11.03, NLH shall provide services and bill customers on the Reserve in a similar manner and in accordance with the same rates, rules and regulations as other customers in Newfoundland and Labrador. NLH shall commence to read the meters on such electrical accounts within thirty (30) days of the effective date of the Operating Agreement, and shall commence billing customers within thirty (30) days of that meter reading.
- (b) MIFN as represented by its elected council shall not oppose NLH's billing of customers on the Reserve or the commencement by NLH of collection procedures, provided that the elected council of MIFN may assist any of its members or businesses established by MIFN or its members subject to collection procedures commenced by or on behalf of NLH where they request assistance and where that assistance does not oppose the principle that customers on the Reserve are to be billed by NLH.

Deleted: and

**Section 3.10**

- (a)
- (i) NLH shall prepare and submit to the Operations Committee an annual forecast budget of the operating and maintenance costs for the Power System for the next Fiscal Year. The Operations Committee shall review and approve, in a timely manner, the annual forecast budget for the operation and management of the Power System.
  - (ii) NLH shall prepare and submit to the Operations Committee an annual forecast budget of Capital Expenditures for the Power System for the next Fiscal Year. The Operations Committee shall review and approve, in a timely manner, the annual forecast budget for the Capital Expenditures for the Power System.
- (b) The annual forecast budget of operating and maintenance costs and for Capital Expenditures for the next Fiscal Year shall be submitted on or before February 15<sup>th</sup> in each preceding Fiscal Year.
- (c) NLH shall provide to the Operations Committee, in a timely manner, any reforecast of the aforesaid annual forecast budgets for operating and maintenance costs and Capital Expenditures, which shall be reviewed and approved by the Operations Committee in a timely manner.

**Section 3.11**



**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

- (a) Subject to Section 3.05, NLH shall identify and consult with the other parties through the Operations Committee on any significant operational or non-routine maintenance issues with respect to Power System reliability, safety and health or environmental protection and shall provide a forecast budget for any costs proposed to be incurred with respect to those issues in accordance with Section 3.10.
- (b) If, after consulting with the Operations Committee and Management Committee as required, there is no agreement by the parties with respect to work identified by NLH to address significant operational or non-routine maintenance issues concerning Power System reliability, health and safety and/or environmental protection (the "Disputed O&M Work") NLH may, acting reasonably, proceed with the Disputed O&M Work. NLH shall invoice MIFN for any disputed O&M Work separately from the Operating Deficit invoices.
- (c) MIFN shall not withhold payment of the invoice for any Disputed O&M Work but either MIFN or DIAND may refer the issue of the need to undertake that Disputed O&M Work to an arbitrator pursuant to Section 7.03.
- (d) If the issue of the need to undertake any Disputed O&M Work is resolved by the arbitrator in favour of MIFN or DIAND, then NLH shall credit or refund MIFN for the amount invoiced for that Disputed O&M Work determined by the arbitrator not to be necessary, along with provision for the payment of interest in accordance with Section 5.03, which interest shall commence to accrue from the date of payment by MIFN of the disputed invoice for the Disputed O&M Work.

Deleted: required, ,there

Deleted: Operation and Maintenance

Deleted: the

Deleted: e

Deleted: ;

Deleted: the

Deleted: e

Deleted: by MIFN of

**Section 3.12**

- (a) Subject to Section 3.05, NLH shall identify and consult with the other parties through the Operations Committee on any significant non-routine Capital Expenditures with respect to Power System reliability, safety and health or environmental protection and shall provide a forecast budget for any costs proposed to be incurred with respect to those Capital Expenditures in accordance with Section 3.10.
- (b) If the parties agree to proceed with these Capital Expenditures, the scope of the work to be performed may be provided pursuant to this Operating Agreement or, if required, be set out in a separate agreement between the parties.
- (c) If, after consulting with the Operations Committee and Management Committee as required, there is no agreement by the parties with respect to significant non-routine Capital Expenditures Work identified by NLH to address Power System reliability, health and safety and/or environmental protection (the "Disputed Capital Expenditures Work") NLH may, acting reasonably, proceed with the Disputed Capital Expenditures Work.
- (d) MIFN or DIAND may refer the issue of the need to undertake the Disputed Capital Expenditures Work to an arbitrator pursuant to Section 7.03. MIFN shall reimburse NLH for fifty per cent (50%) of the invoices for the Disputed Capital Expenditures Work, to a maximum of \_\_\_\_\_ pending the outcome of the arbitration.

Deleted: up

**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

- (e) If the issue of the need to incur the Disputed Capital Expenditures Work is resolved by the arbitrator in favour of MIFN or DIAND, then NLH shall credit or refund MIFN for the amount paid for the Disputed Capital Expenditures Work, along with provision for the payment of interest in accordance with Section 5.03, which interest shall commence to accrue from the date of payment by MIFN.
- (f) If the issue of the need to incur the Disputed Capital Expenditures Work is resolved by the arbitrator in favour of NLH, MIFN shall reimburse NLH for the balance owing for the Disputed Capital Expenditures Work, or that portion determined by the arbitrator to be payable by MIFN, along with payment of interest in accordance with Section 5.03, which interest shall commence to accrue from the date the invoice for the Disputed Capital Expenditures Work was payable.

Deleted: reimburse NLH

**Section 3.13** If NLH identifies and consults with the other parties through the Operations Committee on any significant operational or non-routine maintenance or Capital Expenditures work with respect to Power System reliability, safety and health or environmental protection and the Operations Committee or Management Committee are not in agreement to proceed with the aforesaid significant operation or non-routine maintenance or Capital Expenditures work ("Non-Approved Work") and NLH does not proceed with the Non-Approved Work then NLH shall not be responsible for any additional Operating Expenses or Capital Expenditures or any damages to or loss of property or equipment or personal injury or loss of life that result directly or indirectly from the failure to complete the Non-Approved Work ("Additional Liability"). MIFN shall be fully responsible for the Additional Liability and NLH shall be held harmless.

Deleted: work

Deleted: to

Deleted: equip,emt

## **ARTICLE 4**

### **COST SHARING ARRANGEMENT**

**Article 4.**

**Section 4.01** The obligation of MIFN to make payments to NLH for the Operating Deficit and Capital Expenditures herein is contingent upon receipt by MIFN of funding for these payments from DIAND, pursuant to the terms of a funding agreement between MIFN and DIAND.

**Section 4.02** The payment of any money by DIAND pursuant to this Operating Agreement is subject to there being an appropriation by Parliament for the particular service for the Fiscal Year in which any commitment hereunder could come in course of payment.

Deleted: y

**Section 4.03** MIFN shall pay to NLH fifty percent (50%) of the Operating Deficit incurred by NLH, and NLH shall be responsible for the other fifty per cent (50%) of the



REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005

DRAFT-WITHOUT PREJUDICE

Operating Deficit. Such payments shall be made to NLH in accordance with Article 5 – Payment and Set-Off at its head office in St. John's in the Province, or in such other place in the Province as NLH may designate.

**Section 4.04** Fifty per cent (50%) of the Operating Deficit shall be billed by NLH to MIFN on a monthly basis, in accordance with Section 5.01

**Section 4.05** Subject to Section 3.12, MIFN shall pay to NLH one hundred per cent (100%) of actual Capital Expenditures incurred by NLH and approved pursuant to Section 3.10 or Section 3.12. These Capital Expenditures shall be billed to MIFN by NLH on a monthly basis.

Deleted: quarterly

**Section 4.06** NLH shall not be charged for or liable to pay to MIFN any other fees, taxes, royalties, assessments or levies other than those which are specifically set out in this Operating Agreement or which are expressly agreed to in writing by the parties.[Formerly part of MIFN Fees definition]

ARTICLE 5  
PAYMENT AND SET-OFF

Article 5.

Section 5.01

- (a) NLH and MIFN shall invoice each other for amounts due and owing under this Operating Agreement on a monthly basis. All invoices issued by a party shall be paid within thirty (30) days of receipt of the invoice. The party issuing an invoice shall provide reasonable supporting documentation, including but not limited to suppliers' invoices where available, for the costs and expenses identified in the invoice. The party receiving the invoice shall review the invoice and make its best efforts to identify in writing any errors or problems with the invoice within forty-five (45) days of receipt of the invoice.
- (b) If a party disputes an invoice or amount owing, the party disputing the invoice shall not withhold payment of the invoice and shall pay the full amount of the invoice.
- (c) In the event that a party is unable to identify an error or problem with an invoice within forty-five (45) days of receipt of the invoice but subsequent to that forty-five (45) day period identifies an error or problem with an invoice, the party disputing an invoice must forward their written dispute with supporting documentation on or before the date of the next regularly scheduled meeting of the Operations Committee, provided however that invoices issued within thirty (30) days of a regularly scheduled Operations Committee meeting must be disputed in writing prior to the following meeting of the Operations Committee. The Operations Committee shall review the disputed invoice and make any necessary adjustment to the invoice(s) as agreed upon by the Operations

Deleted: , except invoices for Capital Expenditures which shall be invoiced by NLH to MIFN on a quarterly basis..

Deleted: five (

Deleted: and provide a written notice of the details of their dispute on or before payment of the invoice

**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

Committee. The party disputing the invoice may pursue the Dispute Resolution process set out in Article 7 if it is unsatisfied with the decision of the Operations Committee.

- (d) The failure by a party, pursuant to subsection 5.01(c), to identify in writing a dispute with an invoice to the Operations Committee shall be deemed, for the purposes of this Operating Agreement, to be acceptance of that invoice and shall not be subject to any further dispute by the parties unless mutually agreed upon by the parties or as otherwise agreed upon in this Operating Agreement.
- (e) If the matter is mutually resolved in favour of the party disputing the invoice by the Operations or Management Committees, or a determination is made pursuant to Article 7 - Dispute Resolution that all or part of the amount disputed was not payable, then the party that issued the invoice shall credit or refund to the party disputing the invoice the amount that was determined not to be payable along with provision for the payment of interest in accordance with Section 5.03, which interest shall commence to accrue from the date of payment of the disputed invoice.

Deleted: to

Deleted: before the next regularly scheduled meeting of the Operations Committee

Deleted: e invoices

Deleted: Invoices issued within thirty (30) days of a regularly scheduled Operations Committee meeting must be disputed in writing prior to the following meeting of the Operating Committee.

**Section 5.02** If there is a failure by a party to pay an invoice from the other party within thirty (30) days of receipt of the said invoice and there is an amount due and owing on an invoice for more than sixty (60) days from the date of receipt of the said invoice ("Overdue Amount") then the party issuing the invoice for the Overdue Amount may, without further notice, set off the Overdue Amount against any current or future amount owing to the defaulting party. The interest payable on the Overdue Amount shall be payable from the date of the receipt of the invoice to the date that the Overdue Amount is paid or set-off. The party setting off the Overdue Amount shall fully identify to the defaulting party that it has exercised its right of set off and shall provide details of the calculation of the set off against the amount owing to the defaulting party in a timely manner.

**Section 5.03** Interest shall accrue and be due and payable by a party on all outstanding amounts due and owing beyond the date upon which payment is due and payable at the rate of one and one-half percent (1-1/2%) percent per month. Interest will be compounded monthly as long as the payment of the full amount of the invoice and applicable interest remains overdue.

## **ARTICLE 6 TERMINATION OR SUSPENSION OF AGREEMENT**

### **Article 6.**

**Section 6.01** A party may suspend or terminate this Operating Agreement for the following material or fundamental breaches:

- (a) failure by MIFN or DIAND to provide NLH with the access rights to the Power System in accordance with the terms of a permit issued under s. 28(2) of the *Indian Act* such that the effect of same substantially prevents NLH from carrying out its obligations under this Operating Agreement;

Deleted: the



REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005

DRAFT-WITHOUT PREJUDICE

- (b) MIFN having (after exercise by NLH of its rights of set off), three or more fully or partially outstanding monthly invoices for either the Operating Deficit or Capital Expenditures or both at one point in time, or a total outstanding amount owing for the Operating Deficit of two hundred thousand dollars (\$200,000)
- (c) failure by MIFN or DIAND to address significant concerns identified by NLH with respect to health and safety of NLH.
- (d) failure by a party to comply with an arbitrator's decision in accordance with Section 7.03(f).

Deleted: F

**Section 6.02** NLH shall provide forty-five (45) days notice in writing to the Operations Committee of NLH's intention to suspend or terminate this Operating Agreement for the foregoing material or fundamental breaches.

Deleted: provide

**Section 6.03** For any other alleged material or fundamental breach or dispute, the parties shall not immediately terminate or suspend this Operating Agreement, except on mutual agreement of all the parties, but shall continue to operate in accordance with the terms and conditions of this Operating Agreement, pending the outcome of the dispute resolution process in Article 7.

## ARTICLE 7 DISPUTE RESOLUTION

### Article 7.

#### Section 7.01

- (a) If a party is of the opinion that another party is in material breach of this Operating Agreement, or there is an unresolved issue or dispute between parties to this Operating Agreement, that party shall forthwith give written notice to the other party(s) of the facts that relate to the alleged material breach, issue or dispute and the required or desired remedy (the "Notice of Dispute"). The party allegedly in breach shall fully respond in writing within twenty (20) days of receipt of the Notice of Dispute with its position and reason for same (the "Reply"). Each Reply shall contain a statement of those assertions of fact in the Notice of Dispute with which the party agrees, a summary of the different or additional facts relevant to the issue or issues as asserted by the party, and the suggested resolution or remedy to address the dispute.
- (b) the Notice of Dispute and Reply shall be copied to the members of the Operations Committee and Management Committee.
- (c) If the dispute remains unresolved by the exchange of the Notice of Dispute and Reply, the matter shall be referred to the Operations Committee, which shall meet within 20 days of the matter being referred to it.
- (d) If the dispute remains unresolved by a meeting of the Operations Committee, the Management Committee shall, within thirty (30) days meet (either in person or by telephone or other available electronic means) to discuss possible solutions and attempt to reach a consensus on the resolution of the dispute.

Deleted: forthwith

**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

**Section 7.02**

- (a) If the Management Committee has not reached agreement in writing on a resolution or remedy for the dispute within thirty (30) days of meeting, the issue or issues identified in the Notice of Dispute may be referred to arbitration pursuant to the *Commercial Arbitration Act, R.S.C. 1985, c. C-17*, as amended, except as modified by this Operating Agreement. [Can we use the Nfld Arbitration Act-Canada to advise]
- (b) The parties can agree to modify the time frames for arbitration set out in section 7.03.

**Section 7.03 Arbitration**

- (a) A single arbitrator, as selected by the Management Committee, shall determine the resolution to the issue or issues identified in the Notice of Dispute, If the parties are unable to agree on the arbitrator within sixty (60) days of the matter being referred to arbitration, he or she shall be appointed, upon request of a party, by a court pursuant to the provisions of the *Commercial Arbitration Act*.
- (b) Within forty-five (45) days after the appointment of the arbitrator the arbitrator shall, in consultation with the parties, set the date(s) and time(s) of sessions of the arbitration process.
- (c) The decision of the arbitrator shall be final and binding upon the parties, and shall set out a time frame for the relevant party's compliance with the decision, provided that the arbitrator may not order termination of this Agreement as a remedy except for breaches in section 6.01.
- (d) Unless otherwise ordered by the arbitrator, the party against whom the decision of the arbitrator is made shall bear the reasonable costs of the arbitration for all parties involved in the arbitration, including the fees and expenses of the arbitrator. Where the decision results in divided success, the arbitrator shall apportion the costs to be borne by the relevant parties. The parties agree that the arbitrator may award interim costs against a party for failure to abide by the arbitration process. Disputes between the parties with respect to these costs shall be referred back to the arbitrator for resolution;
- (e) In the event that a party fails to abide by a decision of the arbitrator, the other party(s) may suspend carrying out their obligations pursuant to this Operating Agreement until the decision of the arbitrator has been complied with.
- (f) If a party fails to fully comply with the decision of the arbitrator for a period in excess of sixty (60) days after the date the arbitrator's decision should have been complied with, the other party may provide written notice to the noncompliant party that this Operating Agreement shall be terminated if the noncompliant party does not fully comply with the arbitrator's decision within thirty (30) days of the written notice.

Deleted: ) days

Deleted: failures

**ARTICLE 8  
LIABILITY AND PROPERTY INSURANCE COVERAGE**



**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

**Article 8.**

**Section 8.01 Liability**

- (a) NLH shall not have any liability or responsibility for work or services performed pursuant to this Operating Agreement unless it is negligent in the performance of its duties and responsibilities.
- (b) NLH shall not have any liability or responsibility for design errors or omissions in providing work or services under this Operating Agreement, including any Capital Expenditures work performed ("Professional Errors and Omissions"). MIFN and DIAND confirm and agree that they hereby waive any legal remedies or rights it may have against NLH for Professional Errors and Omissions pertaining to work or services performed pursuant to this Operating Agreement.

**Section 8.02 Liability Insurance**

- (a) Subject to the foregoing and the exclusions in NLH's General Liability policy of insurance, NLH confirms and agrees to provide general liability insurance coverage with a limit of ten million (\$10,000,000) dollars per Fiscal Year to cover NLH's liability for bodily injury or property damage **resulting** from NLH's negligence in the performance of its duties and responsibilities under this Operations Agreement.
- (b) The cumulative liability of NLH in a Fiscal Year with respect to any or all claims arising out of the performance or non-performance of their obligations in connection with this Operating Agreement whether based on contract, indemnity, warranty, tort or otherwise shall not exceed the aforesaid limit of the general liability insurance coverage herein whether or not such damages are foreseeable or whether or not NLH has been advised of such damages.

Deleted: directly or indirectly

**Section 8.03 Property Insurance Coverage**

- (a) Subject to Section 3.04 and the exclusions in NLH's Property Insurance policy, NLH will provide All Risk property coverage that is limited to the total replacement value of the Plant subject to a \$50,000 per occurrence deductible ("Deductible"). If the damage or loss to the Plant is directly caused by the negligence of NLH in the performance of its duties and responsibilities under this Operating Agreement then NLH shall be responsible for the payment of the Deductible. MIFN shall be responsible for the payment of the Deductible in all other claims payable under this property insurance policy.

Formatted: No underline

**Section 8.04**

- (a) NLH shall continue to provide General Liability and Property insurance coverage as set out in Sections 8.01 and 8.02 during the term of this Operating Agreement, unless notice has been provided to the parties of the intention by NLH to discontinue this insurance coverage.
- (b) NLH shall provide in writing six months notice of intention to discontinue the insurance coverage set out in Sections 8.01 and 8.02, together with reasons for NLH's intention to discontinue such coverage.
- (c) Disputes between the parties with respect to the continuation of insurance coverage by NLH shall be referred to the Operations Committee and/or the

Deleted: d

**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

Management Committee for resolution, but if the dispute cannot be resolved by the Management Committee, the provisions of Article 7 shall apply.

**Section 8.05** Where NLH is unable to obtain the Property Insurance coverage provided in section 8.03, NLH shall provide written notice to MIFN pursuant to section 8.04, and upon expiration of the notice period, shall not be responsible or liable for any or all Property damage or loss to the Power System, [Note: In such a case MIFN shall obtain a similar policy of insurance and then Hydro's negligence would be covered and the insurer could subrogate to claim against Hydro if Hydro is negligent.]

**Deleted:** unless the loss or damage is the result of the negligent acts or omissions of NLH

**Deleted:** insurere

## ARTICLE 9 NOTICE

**Article 9.**

**Section 9.01** All notices under this Operations Agreement shall be in writing. Any notice to MIFN, DIAND or NLH shall be sufficiently served if given by registered mail, facsimile transmission, or by delivering the same:

(a) in the case of MIFN, to:

Mushuau Innu First Nation  
P.O. Box 190  
Natuashish, NL  
A0P 1A0

Attention: ??????  
Facsimile (709)

(b) in the case of DIAND, to:

Department of Indian and Northern Affairs  
Atlantic Regional Office  
P.O. Box 160  
40 Havelock Street  
Amherst, Nova Scotia  
BH4 3Z3

Attention: Executive Advisor-Newfoundland and Labrador Secretariat  
Facsimile (902) 661-6237

(c) in the case of NLH, to:

Newfoundland and Labrador Hydro



**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE  
P.O. Box 12400  
500 Columbus Drive  
St. John's, NL  
A1B 4K7

Attention: ?????????  
Facsimile (709) 737-????

**Section 9.02**

- (a) Any notice or invoice shall be deemed to be received:
- (i) five (5) business days after mailing if sent by registered mail,
  - (ii) on the next business day if sent by facsimile transmission, or
  - (iii) on the date of delivery if sent by personal delivery.
- (b) A party may, at any time and from time to time, change its address for notice, or the person designated to receive such notice, under this Article by giving notice in writing, in accordance with this Article, to the other party of this change.

**ARTICLE 10  
GOVERNING LAW AND FORUM**

**Article 10.**

**Section 10.01** This Operating Agreement shall be governed by and construed in accordance with the laws of the Province and the laws of Canada as applicable. Actions or other proceeding arising hereunder shall be determined by a court of competent jurisdiction in the Province, subject to applicable rights of appeal with the exception of proceedings for judicial review which fall within the exclusive jurisdiction of the Federal Court.

**ARTICLE 11  
TERM AND AMENDMENTS**

**Article 11.**

**Section 11.01**

- (a) This Operating Agreement shall be for a term of five (5) years, commencing on the Effective Date, and terminating on the 31<sup>st</sup> day of March 2010, with the option of renewing this Operating Agreement for three (3) additional five year periods.

Deleted: 1<sup>st</sup> day of 2005

**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

- (b) In the event that a party does not wish to renew this Operating Agreement for an additional five year period, that party shall provide one year's notice of intention to terminate this Operating Agreement, by March 31<sup>st</sup> of the year preceding the termination date, or upon such shorter notice as the parties may agree.
- (c) The parties agree that, unless a party has provided the notice set out in Section 11.01(b) herein, this Operating Agreement shall be automatically renewed for an additional five year period, for a maximum of three (3) renewals of additional five (5) year periods.
- (d) The maximum term of this Operating Agreement shall be twenty (20) years, terminating on the 31st day of March, 2025.

**Section 11.02** The provisions of this Operating Agreement may be amended in writing at any time, or terminated, with the written consent of all parties.

**Section 11.03** Notwithstanding Section 11.01, the parties agree that the terms and conditions of this Operating Agreement will be reviewed by the parties in the event of development of an energy project by the Province and NLH of the Lower Churchill during the term of this Operating Agreement. Any of the parties may during their participation or the participation of any entity representing them, in negotiations relating to this energy project, present positions and negotiate for terms relating to the payment of customer accounts and other matters without regard for and without being in breach of the provisions of this Operating Agreement.

## **ARTICLE 12 ACCOMMODATIONS**

**Article 12.**

**Section 12.01** NLH entered into an Accommodations Agreement with the Natuashish Housing Authority Inc. in 2003, a copy of which is attached hereto as Schedule "F". This Accommodations Agreement addresses NLH's accommodations requirements for the purpose of providing the scope of work and services under this Operating Agreement and requires that the Demised Premises as defined under that Agreement be provided and that the Accommodations Agreement be renewed and continue in full force and effect for the term of this Operations Agreement. If the Accommodations Agreement is not renewed or is terminated during the term of this Operating Agreement and accommodations acceptable to NLH, acting reasonably, are not provided to NLH's employees then NLH may either suspend all work and services where such accommodations are required until suitable accommodations are acceptable to NLH, in its sole discretion, or may find suitable accommodations in another neighboring community whereby DIAND and MIFN shall be jointly and severally liable and responsible for 100% of all additional costs and expenses incurred by NLH in providing such accommodations and such costs shall be treated in the same manner as Capital Expenditures in Article 4 – Cost Sharing Arrangement. In such case, NLH shall not be liable or responsible for any delays in the performance of



**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

the work and services and for any and all resulting property damages or losses attributable to the work and services not being performed in a timely manner.

**ARTICLE 13  
DAVIS INLET**

**Article 13.**

**Section 13.01** Upon execution of this Operating Agreement by all parties and subject to Section 13.03 herein, NLH shall, within sixty (60) days, prepare and file an application to abandon the provision of electrical service to the community of Davis Inlet in the Province. NLH will pursue this application expeditiously and MIFN and DIAND shall fully cooperate with and assist NLH in the support of this application, if requested by NLH.

**Section 13.02** Subject to the approval by DIAND of a decommissioning plan and budget provided by NLH, DIAND shall fully compensate NLH for all decommissioning costs associated with the destruction, dismantling and removal of the NLH diesel generating plant and associated facilities in Davis Inlet except the costs directly associated with the cleanup of hydrocarbon or PCB contamination of soil and water which shall be fully borne by NLH.

Deleted: provided that

**Section 13.03** MIFN shall, at its cost and in a timely manner, fully cooperate and assist NLH with the preparation of the application and hearing, if necessary, concerning the abandonment of the community of Davis Inlet and shall cooperate and assist NLH, where required, with respect to the decommissioning of the facilities in Davis Inlet. Canada shall, based upon budgets submitted to Canada in advance and approved by Canada, reimburse MIFN for reasonable costs incurred to cooperate with NLH for the application and hearing, if necessary, for the abandonment of the NLH diesel generating plant at Davis Inlet.

**ARTICLE 14  
ENTIRE AGREEMENT**

**Article 14.**

**Section 14.01** This Operating Agreement and any schedules attached hereto constitute the entire agreement between the parties and no other writing or conversations will be deemed a part of this Operating Agreement.

**ARTICLE 15  
UNENFORCEABLE PROVISION**

**Article 15.**

**Section 15.01**

**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

- (a) If any provision of this Operating Agreement is determined by a Court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions of this Operating Agreement, and each provision is declared to be separate, severable and distinct, and this Operating Agreement shall continue in force in accordance with the remaining provisions hereof; and
- (b) the parties shall use their best efforts to negotiate an alternative provision which achieves the objectives of the provision so declared to be invalid, unenforceable or otherwise contrary to law.

**ARTICLE 16  
PREVIOUS AGREEMENTS****Article 16.**

**Section 16.01** This Operating Agreement supersedes and revokes all previous agreements, understandings, and proposals made between the parties with respect to the provision of electrical services in the community of Natuashish and on the Reserve.

**ARTICLE 17  
SUCCESSORS AND ASSIGNS****Article 17.**

**Section 17.01** This Operating Agreement and everything contained herein shall enure to the benefit of and be binding upon each of the parties hereto, and their respective permitted successors and assigns.

**ARTICLE 18  
DOCTRINE OF CONTRA PROFERENTEM****Article 18.**

**Section 18.01** It is fully understood and agreed that the doctrine of *contra proferentem* shall not apply in the interpretation of this Operating Agreement.

**ARTICLE 19  
MEMBERS OF HOUSE OF COMMONS OR HOUSE OF ASSEMBLY****Article 19.**



**REVISED LTOA-SEPTEMBER 14<sup>th</sup> 2005**

DRAFT-WITHOUT PREJUDICE

**Section 19.01** No member of the House of Commons or House of Assembly shall be admitted to any share or part of this Operating Agreement or to any benefit to arise there from.

**IN WITNESS WHEREOF** the parties hereto have caused this Operating Agreement to be executed in accordance with their respective rules and regulations in that behalf at the places and on the dates hereinafter set forth.

**SIGNED, SEALED AND DELIVERED** )

by person(s) having full authority to )  
commit and bind MIFN at )

\_\_\_\_\_, Newfoundland and Labrador, )  
this day of )

\_\_\_\_\_, 2005, in )  
the presence of )

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

**MUSHUAU INNU FIRST NATION**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**THE COMMON SEAL** of Newfoundland )

and Labrador Hydro was hereunder )  
affixed at St. John's, Newfoundland and )

Labrador, this day of , )  
2005, )

in the presence of: )

)

)

)

)

)

)

)

)

)

)

**NEWFOUNDLAND AND LABRADOR  
HYDRO**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SCHEDULE A**

**Natuashish Diesel Fuel Product Quality**

Product shall be Type A diesel fuel as per Canadian General Standards Board CAN/CGSB-3.6-2000 as amended with exceptional properties as specified below.

<b>Property</b>		<b>Specified Limiting Value</b>
Flash point, °C	Min.	40.0
Kinematic viscosity at 40°C, mm <sup>2</sup> s (cSt)	Min.	1.30
	Max.	3.60
Distillation, 90% recovered, °C	Max.	290.0
Water and sediment % Volume	Max.	0.05
Acid number	Max.	0.10
Sulphur, % mass	Max.	0.30
Copper corrosion, 3 h at 100°C	Max.	No. 1
Carbon residue (Ramsbottom), on 10% bottoms, % mass	Max.	0.15
Ash, % mass	Max.	0.010
Ignition quality, Cetane number	Min.	40.0
Cloud point, C	Not more than	-40 °C
Pour Point, C	Not more than	-45 °C





"Nancy Kleer"  
<NKleer@oktlaw.com>  
10/03/2005 12:22 PM

To "Baird, Maeve" <maeve.baird@justice.gc.ca>,  
<WChamberlain@nlh.nl.ca>  
cc "Butler, Michael" <Michael.Butler@JUSTICE.GC.CA>  
bcc  
Subject RE: LTOA September 2005

WITHOUT PREJUDICE  
Maeve:

This captures the status of the issues well.

Nancy  
Nancy J. Kleer  
Olthuis, Kleer, Townshend  
Barristers & Solicitors  
229 College Street, Suite 312  
Toronto, ON M5T 1R4

PH: 416.981.9336  
F: 416.981.9350

\*\*\*\*\*

This e-mail message and any attachments may be privileged, confidential and subject to copyright. Any unauthorized review, copying, transmittal, use or disclosure is prohibited. If you are not the intended recipient you have received this message in error. Please immediately notify us by reply or collect telephone call to (416) 981-9330 and destroy this message and any attachments.

\*\*\*\*\*

**From:** Baird, Maeve [mailto:maeve.baird@justice.gc.ca]  
**Sent:** September 30, 2005 4:06 PM  
**To:** WChamberlain@nlh.nl.ca; Nancy Kleer  
**Cc:** Butler, Michael  
**Subject:** RE: LTOA September 2005

WITHOUT PREJUDICE

Wayne/Nancy:

further to our teleconference call on September 29th, I confirm that we reviewed the issues as outlined in the emails below. We also had a brief discussion about the concerns raised regarding payment of the electrical bills for MIFN facilities.

The following is my understanding of the current status of the outstanding issues (I am using the same issue numbering as that in Wayne's email below);

#1. 75% administrative overhead issue has been resolved;

#2&#3. Counsel have been unable to reach resolution on these issues and this should be referred to a full meeting of all parties for further negotiation and discussion;

#4. Monthly invoicing for O&M and Capital Expenditures is agreed on;

#5. This is related to items #2 and #3 and should be referred to the parties for a meeting and further discussion;

#6 We have been unable to reach resolution on the insurance issue and this should be referred to a meeting of the parties;

#7. Canada will confirm its position on this issue by next week, but this should be resolved between legal counsel;

#8. This issue is resolved.

#9. This issue is resolved.

#10. We acknowledge receipt of the proposed decommissioning plan and budget for Davis Inlet;

#11. Canada will confirm its position on this issue next week, but this can be resolved between legal counsel.

With respect to the issues originally listed in Nancy's email of September 15, 2005 (using her numbering);

#1. MIFN is to review the issue and advise NLH on its position, if it can't be resolved the participation of all parties may be required;

#2 & #3 These issues are related, and linked to MIFN's concerns about the electrification costs and requires participation of all parties to resolve;

#4. MIFN will confirm participation on the committees;

#5. NLH to provide a revised Local Operating Procedure for MIFN review and comment;

#6. The proposed wording in clause 3.06(d) is satisfactory, subject to determination of the fuel delivery point, based on NLH comments regarding the pipeline delivery point and the possible need for a meter on the fuel pipeline.

#7,#8,#9- all linked to #2,#3,#5 and #6 above and require resolution through full participation of all parties;

#10. MIFN and NLH to confirm their agreement regarding payment for the accommodations pending the final accommodations agreement.

With respect to the outstanding issues and a full meeting of the parties, MIFN has requested that the next such meeting take place in Natuashish.

If I have omitted or misstated anything from our telephone discussion, please let me know. We will be speaking with our client, DIAND, regarding a meeting of the parties to resolve the outstanding issues.



Maeve A. Baird  
Counsel  
Civil Litigation and Advisory Group  
Justice Canada  
Suite 1400 Duke Tower  
5251 Duke Street  
Halifax, Nova Scotia  
B3K 5H1  
Phone (902) 426-8791  
Facsimile (902) 426-8796

-----Original Message-----

**From:** WChamberlain@nlh.nl.ca [mailto:WChamberlain@nlh.nl.ca]

**Sent:** September 27, 2005 2:20 PM

**To:** Baird, Maeve

**Cc:** crich@nf.sympatico.ca; Butler, Michael; Nancy Kleer; opelley@nf.aibn.com;  
FMartin@nlh.nl.ca; KBoone@nlh.nl.ca; BNippard@nlh.nl.ca; GYoung@nlh.nl.ca

**Subject:** RE: LTOA September 2005

**Importance:** High

## **WITHOUT PREJUDICE**

Good afternoon;

We met last week to discuss the various outstanding items with respect to the LTOA and thought it best to communicate our position on some of the outstanding items.

I will first respond to the items listed by Maeve Baird in the attached e-mail of September 16, 2005.

**#1. The 75% overhead charge on all Operating Expenses except for Fuel, Fuel Delivery Charge and MIFN Fees is now resolved and requires no further discussion. We would expect this will no longer be flagged when the next draft of the LTOA is issued.**

**#2. & #3. These two items are related. We have clearly outlined our concerns with such Capital Work and Expenditures and thought we had met DIAND and MIFN half way on this issue. We were willing to accept half of the responsibility for the costs of such recommended Capital Expenditures and DIAND and MIFN would accept responsibility for the other half of these expenses where the need to undertake the work is being disputed by either DIAND or MIFN. The System is owned by MIFN and we have committed to operating the System pursuant to good**

utility practices and similar to other such diesel systems in Labrador yet we could be prevented from doing so by virtue of one of the parties not agreeing to have Hydro undertake significant capital work that cannot or should not be delayed. We are not going to expend money whereby either DIAND or MIFN do not feel it is necessary and we feel that in such cases the party disputing the need to undertake the work should be fully responsible for any liability resulting from such work being delayed. We are not prepared to accept the current language that is being proposed by DIAND.

#4. We would agree that there would be a separate invoice issued monthly for capital expenditures. Accordingly, there should be two monthly invoices: one for O&M and one for Capital Expenditures.

#5. In an effort to have this item removed from the list of outstanding items we would propose the following wording for Clause 6.01 (b): MIFN having (after exercise by NLH of its rights of set off), three or more fully or partially outstanding monthly invoices for the Operating Deficit or Capital Expenditures or both with an accumulated total value exceeding \$25,000 at one point in time, or a total outstanding amount owing for the Operating Deficit or Capital Expenditures or both of two hundred thousand dollars (\$200,000). This would address the concern related to a minor amount being outstanding.

#6. We cannot remove Clause 8.05 for the reasons stated in earlier emails. It is quite possible that this property policy could be cancelled or terminated for the reasons stated and we must have some provision addressing this situation should the circumstances be such that the plant coverage is terminated. We are prepared to try and accommodate your concern relating to Hydro's negligence whereby the proposed wording would mean that Hydro would be self insuring its negligence in any Fiscal Year to \$1 million should the property insurance coverage be terminated. If this is not acceptable then there is little else we can offer. Clause 8.05 would now read as follows: Where NLH is unable to obtain the Property Insurance coverage provided in section 8.03, NLH shall provide written notice to MIFN pursuant to section 8.04, and upon expiration of the notice period, NLH shall not be responsible or liable for any or all Property damage or loss to the Power System unless the loss or damage is the result of the negligent acts or omissions of NLH and unless the Property damage or loss is equal to or less than \$1 million in a Fiscal Year. For the purposes of clarity, where NLH is unable to obtain Property Insurance coverage, NLH's liability for NLH's negligent acts or omissions shall not exceed \$1 million in a Fiscal Year.

#7. With respect to Clause 8.02 we advised that we are prepared to revert to the original proposed wording which did not reference "directly or indirectly. To include both of these words may suggest that Hydro would be liable for all damages only when we were contributory negligent and accordingly we are prepared to accept responsibility for a proportionate share of where we are negligent. We await



your response.

**#8. We are agreeable to the proposed change to Clause 3.10(c).**

**#9. We are agreeable to the proposed change to Clauses 3.11, 3.12 and 3.13.**

**#10. The NLH proposed decommissioning plan and budget for Davis Inlet was forwarded to DIAND and MIFN representatives on September 20, 2005.**

**#11. NLH would prefer to have the Newfoundland legislation referenced for the reasons noted by Nancy Kleer in our last teleconference.**

**I will now reply to the list of outstanding items listed in Nancy Kleer's email of September 15, 2005.**

**#1. We have forwarded to DIAND and MIFN representatives on September 20, 2005 our response to MIFN's fuel delivery charge. We have also submitted for consideration one rate that could be used regardless of the delivery method and would be an incentive to all parties to deliver fuel by means of the pipeline which should be a more cost effective approach for all concerned.**

**#2. It was our understanding that MIFN had agreed that there would not be any mark up for profit in the Fuel price and the Fuel Delivery Charge. If this has not been agreed to by MIFN then we most certainly be against any such markup as it would significantly add to the operating expenses that Hydro has agreed to share and further remind MIFN that Hydro has not included any markup for profit in its services.**

**#3. This matter needs to be resolved by MIFN and DIAND as these facilities are to be defined in the LTOA.**

**#4. We await MIFN's response on the fact that MIFN has the same representative on both Committees.**

**#5. We await MIFN's response on Hydro's proposed resolution of disputes concerning measurement of Fuel delivered to the Plant by MIFN. We will likely have to revise the existing Local Operating procedures to ensure they accurately reflect the current practices.**

**#6. We await MIFN's comments on the proposed wording in Clause 3.06(d).**

**#7, #8 & #9. Please see comments above in response to Maeve Baird's list of items; Hydro response to items #2&#3, #5 and #6 above.**

**#10. We are in the process of reviewing the Accommodations Agreement but note**

**that the monthly rent has increased and less furniture and services are being provided. We will require more items than what MIFN is offering to provide.**

Lastly, I will have to revisit the pipeline delivery point because the MIFN meter would likely be in the pumphouse which would mean that the fuel in the pipeline could possibly be paid for by Hydro and as a result the fuel would be owned by Hydro. What we will likely need is a meter on the fuel pipeline inside Valve #37 which would then become the fuel transfer point. I need to discuss this further with our Operations personnel.

I trust the above satisfactorily outlines our concerns and look forward to our teleconference this week. I understand that the Operations Committee meeting went well last week.

Wayne D. Chamberlain  
Senior Legal Counsel  
Legal Department  
Newfoundland and Labrador Hydro  
Telephone: (709)737-1443  
Facsimile:(709)737-1782  
mailto:wchamberlain@nlh.nl.ca

Notice: This email communication is confidential and legally privileged. Any unauthorized reproduction, distribution or disclosure of this email or any attachments is strictly prohibited. Please destroy/delete this email communication and attachments and notify me if this email was misdirected to you.

"Baird, Maeve"  
<maeve.baird@justice.gc.ca>

09/16/2005 01:37 PM

To "Nancy Kleer" <NKleer@oktlaw.com>, <WChamberlain@nlh.nf.ca>  
cc "Butler, Michael" <Michael.Butler@JUSTICE.GC.CA>, <opelley@nf.aibn.com>, <crich@nf.sympatico.ca>  
Subje RE: LTOA September 2005  
ct

Nancy/Wayne;

further to my email on September 14, 2005, we have reviewed some of the outstanding issues with our client and advise as follows:

1. it is my understanding that we will agree to administrative overhead of 75% as set out in section 1(o) of the LTOA, and any issues with respect to the calculation as shown in the last O&M budget will be discussed at the next Operations Committee meeting scheduled for September 22nd;
2. with respect to section 3.12(d) we propose capping the maximum 50% reimbursement, for Disputed Capital Expenditures Work pending dispute resolution, at \$40,000. Therefore, for



Disputed Capital Expenditures Work estimated at \$80,000 or greater, we propose that a maximum of \$40,000 will be paid pending the outcome of dispute resolution. Again, I understand that this will be discussed at the Operations Committee meeting;

3. We do not agree to the inclusion of section 3.13. NLH has the option of proceeding with Disputed O&M work and being fully reimbursed pending the outcome of dispute resolution. There should be no need to indemnify NLH for the consequences of not proceeding with Disputed O&M work. As well, NLH has the option of proceeding with Disputed Capital Expenditures Work. We do not see why NLH would seek indemnification for not proceeding with such work. If serious consequences would result from the Disputed Capital Expenditures Work not being carried out, presumably NLH would exercise their professional expertise with respect to such matters and perform that work.

4. With respect to the proposal that Capital Expenditures will be billed monthly instead of quarterly, we do not have an issue with this, but would expect that there will be a separate invoice for Capital Expenditures and another for Operations and Maintenance;

5. Re section 6.01(b), we still have a concern with this provision. In theory, NLH would be in a position to terminate or suspend the LTOA for an amount outstanding of \$100. We therefore propose that the wording refer to three or more fully or substantially outstanding (being a minimum of 80% of the total) invoices, or a total outstanding for the Operating Deficit of \$250,000;

6. We have reviewed NLH's proposed section 8.05. As we have stated with respect to previous drafts of this LTOA, we cannot agree to indemnify NLH for its own negligence. We suggest that section 8.05 be removed from the LTOA.

7. We are still reviewing the effect of NLH's change to section 8.02(a), removing the phrase "directly or indirectly".

8. With respect to section 3.10(c) of the LTOA, our client has requested the following change regarding reforecasted budgets; "NLH shall provide to the Operations Committee, on a **quarterly** basis..." instead of in a timely manner. This would address concerns about last minute budget adjustments, which have apparently occurred.

9. We also suggest that the phrase "non-routine" to describe O&M and Capital Expenditures, as used in section 3.10 and 3.11 be changed to "non-budgeted", for clarity, as we're not sure what non-routine would cover;

10. We confirm that NLH's proposed decommissioning plan and budget for Davis Inlet should be directed to Joe McKinnon, and copied to MIFN. We understand this plan and budget will include NLH giving the current NLH building at Davis Inlet to MIFN;

11. We are still considering the issue of federal vs provincial arbitration legislation and will advise further on this.

I confirm that I am now not available for a teleconference on September 27th but have made arrangements for a teleconference on **September 28th at 10:30 am** (Atlantic), subject to Wayne's availability.

I confirm that I will be away from the province Sept. 19-23 and will not be accessing phone/email message during that week.

Maeve A. Baird  
Counsel  
Civil Litigation and Advisory Group  
Justice Canada  
Suite 1400 Duke Tower  
5251 Duke Street  
Halifax, Nova Scotia  
B3K 5H1  
Phone (902) 426-8791  
Facsimile (902) 426-8796

-----Original Message-----

**From:** Nancy Kleer [mailto:NKleer@oktlaw.com]  
**Sent:** September 15, 2005 5:44 AM  
**To:** Baird, Maeve; WChamberlain@nlh.nf.ca  
**Cc:** Butler, Michael; opelley@nf.aibn.com; crich@nf.sympatico.ca  
**Subject:** RE: LTOA September 2005

Maeve, Wayne:

Here's my mark-up of Maeve's version of the revised LTOA, made by track changes. If I didn't have any problems with your track-changes, Maeve, I'm fine with those changes but I didn't go through and "accept" the changes you'd made. They'll still appear as track changes.

Re the main issues I'm asking MIFN is to follow up on, the list I've asked Cajetan and Orville to consider and respond to me on is as follows:

1. Delivery Charge - we await NLH's comments on the schedule Orville provided some time ago.
2. re 3.07(b) and the definition of Delivery Charge- Can the delivery charge (and fuel price as well) include a profit mark-up for MIFN, given DIAND doesn't pay for 100% of MIFN facilities electrification costs?
3. List of MIFN Facilities - MIFN is waiting from DIAND for definitive info re how much DIAND covers for electricity costs per facility
4. 2.03- MIFN rep on Operations and maintenance committees
5. 3.06(b)- Orville to comment on concept Wayne raised, that Operating Procedure would be revised to include a mechanism to resolve the disputes about fuel quantity delivered. The mechanism NLH is proposing would be along the following lines: every year, MIFN either must have the truck gauges or fuel pipeline gauges calibrated at their own cost, or if they don't do that, the way to resolve disputes would be that NLH and MIFN would physically witness the dipping of the tanks done by hand, and if there's a dispute > 100 litres bn the dip records and the gauge records, the dip record would prevail over the gauge record.
6. 3.06(d) - Orville will review last sentence in draft, which was at NLH's suggestion.
7. 3.11, 3.12, 3.13 - re disputed O&M and Capital Work
8. 6.01(b) - event of termination
9. 8.05 - Property insurance
10. Accommodations agreement - I'll have a redraft out by the end of this week.

Maeve, I would add to DIAND's list:

1. DIAND also has to consider 3.11 (not just 3.12) as it relates to Wayne's proposed 3.13 -- NLH is asking MIFN to take on liability not just if NLH chooses not to Disputed Capital Expenditures Work, but also if NLH chooses not to do disputed O&M Work.
2. Monthly billing vs. quarterly billing for Capital Expenditures.

Re Sept . 28, that date would also work for me.

Nancy



Nancy J. Kleer  
Olthuis, Kleer, Townshend  
Barristers & Solicitors  
229 College Street, Suite 312  
Toronto, ON M5T 1R4

PH: 416.981.9336  
F: 416.981.9350

\*\*\*\*\*

This e-mail message and any attachments may be privileged, confidential and subject to copyright. Any unauthorized review, copying, transmittal, use or disclosure is prohibited. If you are not the intended recipient you have received this message in error. Please immediately notify us by reply or collect telephone call to (416) 981-9330 and destroy this message and any attachments.

---

**From:** Baird, Maeve [mailto:maeve.baird@justice.gc.ca]  
**Sent:** September 14, 2005 12:42 PM  
**To:** WChamberlain@nlh.nf.ca; Nancy Kleer  
**Cc:** Butler, Michael  
**Subject:** LTOA September 2005

<<335025.doc>>

Wayne/Nancy;

Attached find the revised LTOA, incorporating the changes discussed during yesterday's teleconference. Most changes have been tracked, except those resulting from accepting NLH changes and a couple where I forgot to turn on the track changes. Let me know if I missed anything. Provisions which are still under review by the parties are highlighted in yellow.

I will try to follow up by Friday, September 16th on the following issues;

- Administrative overhead;
- Sections 3.12 and 3.13 with respect to capital expenditures;
- Sections 8.02(a), liability insurance, and 8.05, property insurance;
- Section 7.03, use of provincial or federal arbitration legislation;
- Advise NLH to whom they should direct the proposed decommissioning plan and budget for Davis Inlet.

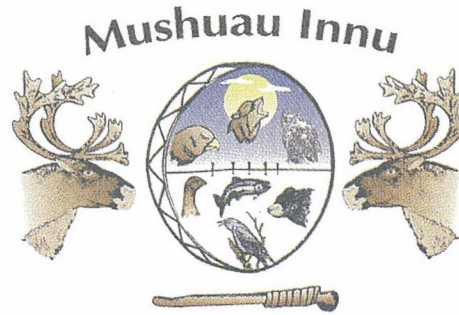
We were to have a follow up teleconference on September 27th at 10:30 am Atlantic time- it appears that the meeting I am attending in Moncton on the 26th may last through the 27th. I will confirm by the end of this week. If that happens, are you available to discuss this on the 28th?

*Maeve A. Baird  
Counsel  
Civil Litigation and Advisory Group  
Justice Canada*

*Suite 1400 Duke Tower  
5251 Duke Street  
Halifax, Nova Scotia  
B3K 5H1  
Phone (902) 426-8791  
Facsimile (902) 426-8796*



Mushuau Innu First Nation



P.O. Box 190 • Natuashish • Labrador, NL

A0P 1A0

Phone: (709) 478-8827/8902/8947 Fax: (709) 478-8841

Mr. Wayne D. Chamberlain  
Senior Legal Counsel  
Legal Department  
Newfoundland and Labrador Hydro  
P. O. Box 12400  
St. John's, Newfoundland A1B 4K7

October 26, 2006

Dear Mr. Chamberlain:

On September 19, 2006 representatives of the Mushuau Innu First Nation (MIFN) requested Newfoundland and Labrador Hydro (NLH) to refund 50% of the monthly operating costs paid to NLH by MIFN (since inception) to MIFN at a meeting that included representatives of NLH, Indian and Northern Affairs, Canada (INAC) and MIFN.

50% represents an approximate amount that would be recovered by NLH for hydro operations in isolated communities on the coast of Labrador.

In the past MIFN have explained to NLH that the abovementioned payments to NLH were being made from Innu Healing funds.

It has recently come to our attention that the NLH representatives on the MIFN Operating Committee (OPS Committee) suggest that this request be sent directly to your attention.

MIFN would appreciate a prompt response to this request.

Yours truly,

A handwritten signature in black ink, appearing to read "Simon Pokue".

for: Chief Simon Pokue

Copy to: Cajetan Rich, MIFN  
Joe McKinnon, INAC  
Orville Pelley, MIFN  
Bill Nippard, NLH  
Mark Davis, INAC



File No. \_\_\_\_\_

**NEWFOUNDLAND AND LABRADOR HYDRO**

Head Office: St. John's, Newfoundland P.O. Box 12400 A1B 4K7  
Telephone (709) 737-1400 • Fax (709) 737-1231 • Website: www.nlh.nf.ca

November 15, 2006

Chief Simon Pokue  
Mushuau Innu First Nation  
P.O. Box 190  
Natuashish, Labrador NL  
A0P 1A0

Dear Chief Pokue:

I acknowledge receipt of your letter dated October 26, 2006 and understand that the negotiations with respect to the Long Term Operating Agreement ("LTOA") concerning the operation and maintenance of the Natuashish electrical system were discontinued as a result of a disagreement between the Mushuau Innu First Nation ("MIFN") and INAC/DIAND. I hereby confirm that Newfoundland and Labrador Hydro ("Hydro") is prepared to and would like to resume the negotiations with respect to the LTOA whereby the outstanding matters can be resolved to the mutual agreement of Mushuau Innu First Nation, INAC/DIAND and Hydro.


We can appreciate your concern that the costs of the electrical system are being paid from the Innu Healing funds but we would consider this to be an issue between MIFN and INAC/DIAND. As noted in the LTOA meetings INAC/DIAND have fully or partially fund the operation and capital costs of other electrical systems on other Reserves across Canada and it has been Hydro's position that INAC/DIAND should have a similar responsibility here since they are the ones that constructed and currently own the electrical system.

The proposal that you have made with respect to refunding 50% of the monthly operating costs is a significant departure from the position that was being negotiated between MIFN, INAC/DIAND and Hydro with respect to the LTOA and accordingly I will have to consult with senior management before responding to your letter.



I will make my best efforts to have a response on your proposal within the next few weeks but I am sure you can appreciate that it may take some time to acquaint senior management with the issues.

Yours truly,

  
Wayne D. Chamberlain  
General Counsel and  
Corporate Secretary



File No. \_\_\_\_\_

**NEWFOUNDLAND AND LABRADOR HYDRO**

Head Office: St. John's, Newfoundland P.O. Box 12400 A1B 4K7  
Telephone (709) 737-1400 • Fax (709) 737-1231 • Website: www.nlh.nf.ca

January 18, 2007

Chief Simon Pokue  
Mushuau Innu First Nation  
P.O. Box 190  
Natuashish, Labrador NL  
A0P 1A0

Dear Chief Pokue:

Further to our letter of response dated November 15, 2006, we have further reviewed your request of October 26, 2006 to refund 50% of the monthly operating costs previously paid to our company by MIFN since inception. As noted in our earlier correspondence, it is our opinion that the negotiations with respect to the Long Term Operating Agreement ("LTOA") concerning the operation and maintenance of the Natuashish electrical system were proceeding well with a few outstanding unresolved issues when these negotiations were interrupted as a result of a disagreement between the Mushuau Innu First Nation ("MIFN") and INAC/DIAND. Despite attempts by senior management representatives of Newfoundland and Labrador Hydro ("Hydro") to resume the negotiations the other parties failed to respond and did not display any interest in resuming negotiations to conclude a LTOA. Once again, I can confirm that Hydro is prepared to and would like to resume the negotiations with respect to the LTOA in an effort to reaffirm our positions and resolve any outstanding issues to the mutual agreement of Mushuau Innu First Nation, INAC/DIAND and Hydro.

We were surprised to read in your correspondence of October 26, 2006 that the costs of the electrical system were being paid from the Innu Healing funds but would suggest that this arrangement is an issue that should be raised with INAC/DIAND and not Hydro as we have no responsibility or involvement in such funding arrangements.

Hydro's position from the outset of negotiations with MIFN and INAC/DIAND has been that it would not be responsible for the costs of operating the electrical systems



in the communities of Davis Inlet and Natuashish and that our responsibilities for the operation of Davis Inlet were paramount until we received approval from the Public Utilities Board to abandon these facilities. As you are not doubt aware, after the residents of Davis Inlet moved to Natuashish there were requests from the Band Council to provide electrical service to the arena and a other buildings because the arena was not completed in Natuashish. Accordingly, we are not prepared to depart from our original position to pay the operating costs of both communities since we did incur significant operational costs until the system was abandoned. In addition, it is very unlikely that the PUB will allocate the recovery of such costs of operating the Natuashish system in future operating budgets. For the aforementioned reasons we are unable to agree to refund 50% of the monthly operating costs from inception.

As noted in our previous correspondence, it is clear that INAC/DIAND, either directly or indirectly, fully or partially fund the operational and capital costs of other electrical systems on other Reserves in Canada and accordingly, it has been Hydro's position from the outset that INAC/DIAND has similar responsibilities in Natuashish since they constructed the system without making any arrangement for the operation of the system once it was built.


Your request to refund 50% of the monthly operating costs is a significant departure from the position that was being negotiated between MIFN, INAC/DIAND in 2005 considering that there were several unresolved issues that were the subject of these negotiations. I have consulted with senior management and it is our position that we do not own the electrical system in Natuashish and are operating the system on behalf of MIFN and as a result we need to successfully negotiate a LTOA that clearly outlines the duties and responsibilities of both parties and is mutually acceptable to MIFN and Hydro. In addition, it is unlikely that Hydro would receive approval from the PUB to allocate any refund of previous operating costs in future operating budgets.

We regret to advise that for the aforementioned reasons Hydro is unable at this time agree to your request but would advise that we are prepared to meet with you to discuss this further and would encourage both MIFN and INAC/DIAND to resume negotiations with respect to a LTOA . We are prepared to make our best efforts to work

with you to conclude in a timely manner a LTOA that is mutually acceptable to all parties.

I trust the above satisfactorily responds to your letter of October 26, 2006 and advise that we are prepared to meet with you to discuss this further.

Yours truly,

  
Wayne D. Chamberlain  
General Counsel and  
Corporate Secretary

cc. J. Haynes  
B. Nippard  
B. Moulton