



NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

120 Torbay Road, P.O. Box 21040, St. John's, Newfoundland and Labrador
Canada, A1A 5B2

ELECTRONIC DISTRIBUTION

2012 02 29

Mr. Ronald Penney
10 Inglis Place
St. John's, NL A1A 4L7

Mr. David Vardy
204 Fowler's Road
Conception Bay South, NL A1W 4J8

COUNSEL FOR NALCOR ENERGY

Mr. Thomas O'Reilly, Q.C.
Suite 1000 Scotia Centre
235 Water Street
St. John's, NL A1C 1B6

Mr. Denis Fleming, JD
Suite 1000 Scotia Centre
235 Water Street
St. John's, NL A1C 1B6

CONSUMER ADVOCATE

Mr. Thomas Johnson
Consumer Advocate
O'Dea Earle
323 Duckworth Street
P.O. Box 5955
St. John's, NL A1C 5X4

Dear Sirs:

Re: Reference from Lieutenant-Governor in Council on the Muskrat Falls Project (the "Muskrat Falls Review")

During the presentations on February 20, 2012, Mr. Ron Penny and Mr. Dave Vardy made reference to the report of the Joint Review Panel on the Lower Churchill Hydro Generation Project, dated August 2011, and asked that this report be formally entered into evidence before the Board.

At the close of presentations on February 23, 2012 the issue of whether the report of the Joint Review Panel should be placed on the record was discussed. Counsel for Nalcor stated that the document does not inform the proceedings and in the absence of an explanation as to the purpose for having it filed he raised an objection to the filing of the report. Counsel for the Board commented that while there are issues in the report in common with those in this review these issues have been addressed in this review and further that consideration would

have to be given to the weight to be assigned to any part of the report that could be relevant. The Consumer Advocate stated that he did not have a firm position. Mr. Vardy and Mr. Penny were not present during this discussion. The Board reserved its decision.

The report of the Joint Review Panel relates to the Lower Churchill development which includes the development of Muskrat Falls. While the report deals with a broad array of issues relating to the Lower Churchill development as presented to the Joint Review Panel, the Board believes that it would require an unduly strict approach to conclude that this report is not relevant to any of the issues raised in this review. The Board notes that this review is being conducted pursuant to a direction by Government under the *Electrical Power Control Act, 1994* and is not an evidence based quasi-judicial hearing. In the circumstances the strict rules of evidence do not apply. For example while evidence and testimony must normally be sworn, during this review, the Board has not required that any comments, information, or presentations be sworn. The Board will consider all relevant information, presentations and submissions submitted in this review and will assign the appropriate weight in answering the question set out by Government.

In relation to the suggestion of Counsel for Nalcor that Mr. Penny and Mr. Vardy failed to explain the purpose for asking that the report be filed the Board finds that an adequate explanation was provided during their presentation. Mr. Vardy stated that the Joint Review Panel identified a number of key risks which need to be mitigated (Transcript, February 20, 2012, pg. 50/8-11). Mr. Vardy explained that he believed that Nalcor should be requested to adjust the CPW for the isolated island option to reflect certain changes in reference to the recommendations of the Joint Review Panel. (Transcript, February 20, 2012, pg. 62/1-5) Mr. Vardy recommends that the Board accept the advice of the Joint Review Panel to adopt principles of integrated resource planning which place more weight on demand side management than on least cost supply planning. (Transcript, February 20, 2012, pg. 63/15-19) Mr. Penny recommends to the Board a thorough review of the work of the Joint Review Panel which made a number of recommendations which he believes continue to be valid. (Transcript, February 20, 2012, pgs 72/23-25; 73/1-13) Mr. Penny notes that the Joint Review Panel recommended that other supply options be considered, such as natural gas along with conservation and demand side management. (Transcript, February 20, 2012, pg. 74/21-24)

The Board acknowledges that the Joint Review Panel was constituted under different legislation, had a different mandate and dealt with many different issues. Further there was no in depth discussion or analysis of these considerations during this review. Nevertheless, the Board finds that these issues do not preclude the filing of the report but rather go to how the Board considers the report. Therefore this report will be entered on the record as an information item and labelled as Information # 2.

I trust this is satisfactory.
Yours truly,



Cheryl Blundon
Board Secretary