

**IN THE MATTER OF the
Commission of Inquiry
Respecting the Muskrat Falls
Project**

SUBMISSIONS OF KATHY DUNDERDALE

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Overview

1. These are the submissions of Kathy Dunderdale (“Dunderdale”) to the Commission of Inquiry Respecting the Muskrat Falls Project (the “Commission”).
2. Dunderdale was first elected to the House of Assembly on October 21, 2003. She was appointed Minister of Natural Resources on July 5, 2006, a position which she held until December 3, 2010 when she became the tenth Premier of Newfoundland and Labrador. Dunderdale was re-elected with a majority government in the general election held on October 11, 2011. She resigned from the Premiership on January 24, 2014.
3. Given her role as Minister of Natural Resources for over four years and her three-year term as Premier during the planning and sanctioning stages, Dunderdale was uniquely connected to the Muskrat Falls Project (the “MFP”). Dunderdale was granted full standing before the Inquiry given her involvement in the MFP as an elected member of the House of Assembly.
4. The government under which Dunderdale served, and later led, had significant policy objectives regarding the development of the province’s vast natural resources for the benefit of the people of the province. In the 2003, 2007 and 2011 general elections, the Progressive Conservative Party was given strong majority mandates to advance this energy policy.
5. Following on its election promise, the Williams government, in consultation with industry experts, began restructuring Newfoundland and Labrador Hydro (“Hydro”) and creating a new energy corporation in or about 2004. The purpose of this corporation was to amass and leverage experience and expertise in the energy sector, something that governments are ill-equipped to do. In 2005, Mr. Edmund Martin (“Mr. Martin”) was hired to lead the new energy corporation, now known as Nalcor Energy (“Nalcor”). Mr. Martin had been in

this role for nearly a year and the creation of Nalcor well advanced by the time Dunderdale was appointed Minister of Natural Resources in July of 2006.

6. Prior to her appointment as Minister of Natural Resources, Dunderdale had minimal, if any, exposure to the energy or natural resource sectors. Before entering politics, Dunderdale had a career in social work and the community sector. Her only cabinet post prior to Natural Resources was as Minister of Innovation, Trade and Rural Development. Dunderdale was not, and is not, an expert in energy projects or resource development, but expertise in any particular subject area is not a pre-requisite to being Minister of Natural Resources or Premier.
7. A fundamental role of a Cabinet Minister and the Premier is to make decisions based on the information supplied by the officials and experts who support the office, and to seek out such information if what is provided proves insufficient. Throughout her terms in elected office, Dunderdale frequently and consistently requested, challenged and relied on the advice of her officials and experts in respect of the MFP, including the advice she received from Nalcor. Importantly however, fundamental decisions in the development of the MFP, including the decision to sanction and proceed through financial close, were not made by Dunderdale alone. Decisions of such magnitude are beyond the authority of any one individual, including the Premier, and were made by the consensus of Cabinet based on the best information that was sought and provided.
8. Relying on the best advice and information provided by Nalcor, Dunderdale's government pursued the development of the MFP, on the understanding that the MFP was the least-cost option for meeting power demand on the Island. The MFP became the ballot box issue in the 2011 General Election and the Progressive Conservative Party led by Dunderdale, which campaigned under the slogan "New Energy", was re-elected with large majority government. Dunderdale accepted the results of the election as an endorsement

from the public to proceed with development of the MFP for the benefit of ratepayers, but only if it was confirmed that the MFP was the least-cost option to meet our power demands.

9. Dunderdale and her Cabinet participated in good faith in the sanction of the MFP based on her reasonable understanding, which was informed by experts at Nalcor, senior civil servants and a myriad of independent experts, that Newfoundland and Labrador had an impending need for power and that the MFP was the least-cost option for meeting that need.
10. At the time of sanction of the MFP in December 2012, Dunderdale believed, reasonably and in good faith, that the best cost and schedule estimates for the MFP had been prepared and made available to the public and that effective due diligence had been completed to protect the interests of the ratepayers and taxpayers in Newfoundland and Labrador.
11. It is Dunderdale's recollection that she, and other senior officials, knew, at the time of financial close, that the capital cost estimate for the MFP had increased from \$6.2 billion to \$6.5 billion, but that there was a plan for this cost increase to be mitigated, and that the increase was offset by additional financing savings and benefits. She was advised by Nalcor that disclosing this figure in the midst of contract negotiations would be harmful to the financial integrity of the project.
12. Dunderdale resigned the Premiership and subsequently retired from public office in early 2014. Dunderdale's resignation was unrelated to the MFP. In fact, Dunderdale believed at that time, based on the information provided to her, that the MFP was well on track. At no time prior to her retirement was Dunderdale made aware that there were serious risks threatening the MFP which could result in significant cost overruns. If such information

had been provided to her, Dunderdale would not have participated in the sanction or financial close of the MFP.

13. Expanding on the testimony given by her to the Commission in December 2018 and April 2019, Dunderdale submits as follows:
 - (a) The creation of Nalcor and the Energy Plan were policy objectives of the Williams government and were well advanced by the time that Dunderdale was appointed Minister of Natural Resources in July 2006. While Dunderdale advanced these policy objectives, she was not the architect. She turned a critical eye to the objectives and encouraged her Ministers to do the same.
 - (b) Nalcor was created to assemble the expertise required to advance government's energy policy objectives, to study power demands and supply options, and to advise government accordingly. Based on this work, the MFP was recommended to Dunderdale's government as the least-cost option to meet the province's power requirements.
 - (c) The MFP was sanctioned by Dunderdale's government on the basis of the advice of experts who stated definitively that Newfoundland and Labrador had an impending need for power and that the MFP was the least-cost option for supplying that power. All of the information supporting the sanction decision was made publicly available by Dunderdale's government.
 - (d) While Dunderdale's government relied on the expertise in Nalcor, Dunderdale supported and encouraged her Minister of Natural Resources, Mr. Kennedy, who had a contrarian view of the MFP, and committed to him the resources required to undertake a thorough independent review of the MFP in advance of sanction.

- (e) At the times of sanction and financial close, Dunderdale had a *bona fide* and reasonably held belief that Nalcor generally, and the MFP specifically, had been subject to significant detailed review and oversight by an abundance of independent experts and by core government departments.
- (f) Numerous studies of power demand and supply options completed by Nalcor and Newfoundland and Labrador Hydro supported the recommendation that the MFP was the least-cost option for meeting Newfoundland and Labrador's power supply needs.
- (g) Re-doing the cost estimates prepared by Nalcor and SNC-Lavalin was not feasible or reasonable. Government did, however, undertake an independent review of the reasonableness of the cost estimates and the Cumulative Present Worth (CPW) analysis. According to Stan Marshall, this approach is consistent with standard practice.
- (h) Dunderdale's government consistently made timely public disclosures of the most current and accurate information with respect to the MFP that was provided by Nalcor, except when the information was commercially sensitive.
- (i) Dunderdale was not involved in any decisions regarding the inclusion of risk contingencies in cost estimates or the completion of risk analysis reviews and she trusted her senior advisors and the experts at Nalcor to make such technical determinations as they deemed necessary. Specifically, Dunderdale had no knowledge that strategic risk was removed from scope of work for the review completed by Manitoba Hydro International ("MHI"), or that it would have been reasonable to include it.

- (j) Although exempt from review by legislation enacted by a previous government, Dunderdale's government asked the Public Utilities Board ("PUB") to complete a review of the MFP to provide an additional layer of oversight. While the PUB abrogated its responsibility to answer the questions asked of it, the PUB's expert, MHI did opine that the province had a need for power and that the MFP was the least cost option for meeting that need.

- (k) The Dunderdale government was responsible for negotiating and bringing home the federal loan guarantee which has saved ratepayers in the province over \$1 billion in financing costs.

- (l) At the time of financial close, Dunderdale reasonably believed that there had been significant, if not excessive, oversight of the MFP, including but not limited to the following:
 - (i) the Decision Gate process employed by Nalcor;
 - (ii) the Nalcor Board of Directors;
 - (iii) the requirement of Nalcor to hold public annual general meetings and to report annually to the House of Assembly;
 - (iv) the ability of the Auditor General to audit Nalcor at any time;
 - (v) the regular reporting by the CEO of Nalcor to Cabinet;
 - (vi) the review by Navigant Consulting Inc.;
 - (vii) the reference to the PUB and the independent reviews completed by MHI for the PUB;
 - (viii) the review by the Consumer Advocate;
 - (ix) the review completed by MHI for government;
 - (x) the internal reviews of the cost estimates and CPW analysis by the Departments of Natural Resources and Finance;
 - (xi) the reports prepared by Hatch Energy, Ziff Energy Group and Wood MacKenzie in respect of alternative supply options; and

- (xii) the engagement of the Independent Engineer and the due diligence completed by the Federal Government in advance of the federal loan guarantee.
- (m) Dunderdale had no reason to believe that the oversight of the MFP was inadequate.

The MFP was sanctioned in an era of high oil prices and robust industrial activity in the province.

- 14. While we now have the benefit of hindsight, in reviewing the decision to sanction the MFP, it is necessary to recall the economic context in which the sanction decision was made.
- 15. At the time of sanction in December 2012, the price of Brent crude was over \$100 per barrel. Future oil price projections prepared for government by PIRA Energy Group in October 2012 predicted oil prices would remain above \$100 per barrel until at least 2025 (P-00129, p 6).
- 16. Furthermore, at the time of sanction, the province was experiencing significant industrial activity with many more prospective projects on the horizon in the mining and oil and gas sectors.
- 17. Encouraging commercial and industrial activity and fostering a strong economy were central platforms of Dunderdale's government. Ensuring the province had a consistent and reliable power supply at the lowest possible cost was vital to promoting economic development. Without the promise of firm power there was no ability to retain or attract industry to the Province.
- 18. It was against this backdrop that the MFP was studied and sanctioned. At the times of sanction and financial close, Dunderdale did not have the benefit of hindsight that we now have through the proceedings before the Commission. The Commission's expert, Colaiacovo, opined on hindsight bias in his presentation to the Commission as follows:

After 7 years of events, it is impossible to not be biased

- *Delays and cost overruns are a reality now, but only a possibility at the time*
- *“Low fuel prices – low export prices” scenarios seems obvious, but that was not the case in 2012*

(P-04464, p 40)

19. In assessing Dunderdale’s participation in the development and sanctioning of the MFP, it is important to make judgment based on the context of the day and not based on hindsight bias. The unfairness inherent in inappropriately relying on hindsight was recognized by the Commissioner in his interpretation of the Terms of Reference:

In an investigative Inquiry, it is important to be reminded that implicit in being fair is the need to guard against inappropriate reliance on hindsight. Any evaluation of past conduct must be done in the context of the knowledge that was available at the time, not what we know today.

(Interpretation of the Terms of Reference for the Muskrat Falls Inquiry, p 8).

20. We acknowledge and appreciate that the Commissioner is alive to the influence of hindsight bias which has been prevalent throughout the Inquiry. A specific example of hindsight bias appears in the questions led and the positions held by the current Consumer Advocate who, throughout the Inquiry, has been extremely critical of the MFP and its sanction. This position is certainly completely in hindsight since the Consumer Advocate at the time of sanction supported the MFP (P-01648, p 12). The submissions of the Consumer Advocate should be weighted in view of this incredible bias.

Nalcor was created to promote and advance government’s energy policy objectives, including studying the development of the Lower Churchill.

21. The creation of a new energy corporation for the province was a commitment of the Progressive Conservative party in the 2003 general election (P-1586). After being elected with a majority government, the Danny Williams government engaged industry advisors to provide advice on the restructuring of Hydro and the creation of an energy corporation

(P-00183, p 1). This work was well advanced by the time Dunderdale was appointed Minister of Natural Resources in July 2006.

22. Mr. Martin was hired as President and Chief Executive Officer of *inter alia*, Hydro and Lower Churchill Development Corporation Limited in or about July 2005 (P-01544) and had been in this role for about one year by the time Dunderdale became Minister of Natural Resources. Dunderdale was not involved in hiring Mr. Martin.
23. Promoting and facilitating the development of the province's vast natural resources were significant policy objectives of the Williams and Dunderdale governments. Exploring the opportunities for harnessing the hydroelectric potential of the Churchill River was one such policy. Dunderdale, in her capacity as Minister and Premier, always maintained the position that resource development could not occur at any cost. Rather, such development had to be economical and in the best interests of the people of the province. This is confirmed by the testimony of Mr. Martin, wherein he said:

And I will also add, in addition to that that is not printed here, that Premier Williams and, in particular Premier Dunderdale, and even as minister, would caveat every statement, such as this, clearly that everything we did had to make economic and commercial sense.

(Edmund Martin Transcript, December 10, 2018, p 10).

24. Dunderdale and her government relied on the expertise at Nalcor to study resource development opportunities and to advise government on the economics and feasibility of such opportunities. Pursuing the development of the hydroelectric potential of the Churchill River for the benefit of the people of the province was a policy decision of the governments that Dunderdale served and led, as set out in the Energy Plan (P-00029):

To ensure this project [the Lower Churchill Hydroelectric Project] has every opportunity to move forward, the Provincial Government is leading its development through the Energy Corporation. The Energy Corporation has established a comprehensive and clearly-defined project execution plan and will continue to advance the project on multiple fronts, including

engineering and the environmental assessment process, analysis of market access options and market destinations, and a financing strategy.

(P-0029, p 40).

25. Nalcor was tasked with studying the development of the Lower Churchill and making a recommendation to government as to whether and how that development should proceed (Edmund Martin Transcript, December 18, 2018, p 7).
26. A fundamental element of the mandate given to Nalcor was to prepare electrical load forecasts and to study energy generation and supply options for the province. Section 5(1) of the *Energy Corporation Act* sets out the mandate that was given to Nalcor Energy:

5. (1) The objects of the corporation are to invest in, engage in, and carry out activities in all areas of the energy sector in the province and elsewhere, including,

(a) the development, generation, production, transmission, distribution, delivery, supply, sale, export, purchase and use of power from wind, water, steam, gas, coal, oil, hydrogen or other products used or useful in the production of power;

(b) the exploration for, development, production, refining, marketing and transportation of hydrocarbons and products from hydrocarbons;

(c) the manufacture, production, distribution and sale of energy related products and services; and

(d) research and development.

27. Throughout Dunderdale's tenures as Minister of Natural Resources and Premier she was regularly advised by Nalcor as to the province's energy requirements and options for meeting consumption demands. It was through this work that the MFP was recommended to Dunderdale's government as the least-cost option for meeting the power needs of Island ratepayers.
28. When considering power supply options for Island ratepayers, Nalcor and government are bound by the province's legislated power policy. Pursuant to section 3(b)(iii) of the of the *Electrical Power Control Act, 1994*:

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

...

(iii) that would result in power being delivered to consumers in the province at the lowest possible cost consistent with reliable service,

29. In pursuing the development of the Churchill River, Dunderdale's government was bound by this legislative provision. Accordingly, the MFP could only be sanctioned for the benefit of Island ratepayers if it was the lowest cost option for delivering power.

The governments which Dunderdale served and led were given three successive majority mandates to develop the province's energy resources, including the Lower Churchill.

30. A fundamental tenet of the Progressive Conservative Party's platform in the 2003 general election was to create a new energy corporation to lead the development of the province's vast natural resources, including the Lower Churchill (P-00277, p 29).
31. Again, in 2007, after the release of the Energy Plan, the Progressive Conservative Party was re-elected with a large majority government.
32. In October 2011 general election, between Decision Gates 2 and 3, the Progressive Conservative Party, under the leadership of Dunderdale, campaigned with the slogan "New Energy". The MFP was the ballot box issue in this election. Dunderdale and the Progressive Conservative Party were once again re-elected with a strong majority government, evidencing the public support for proceeding with the development of the MFP.
33. Having received a strong mandate from the people of the province, Dunderdale's government proceeded to thoroughly investigate the merits of the MFP. The election results alone were not sufficient support for the decision to sanction the MFP. Dunderdale's government decided that MFP would only be sanctioned for the benefit of

Island ratepayers if it was determined that it was the least-cost option for meeting the impending power requirements.

The decision to sanction was based on two fundamental questions: (1) do we need the power? and (2) what is the least-cost option? Any additional benefits were supplemental considerations.

34. When the recommendation was made by Nalcor Energy to pursue the development of the MFP for the benefit of Island ratepayers, Dunderdale’s government decided that the MFP would only be sanctioned if two fundamental questions could be answered in the affirmative: (1) does Newfoundland and Labrador need the power? and (2) is the MFP the “least cost option”? These fundamental questions would become the theme of significant scrutiny and reviews of the MFP that Dunderdale’s government would engage in between December 2010 and December 2013.
35. Newfoundland and Labrador Hydro advised government, that based on its load planning forecasts, there would be capacity deficits on the island starting in 2015 and energy deficits occurring in 2019 (P-0034, p 5). This provided the answer to the first of the two fundamental questions – Newfoundland and Labrador needed the power. This was confirmed by the PUB and its independent expert MHI (P-00048, p 46-47).
36. The question for Dunderdale’s government then became what would be the “least-cost option” to meet the province’s impending power needs. Based on the work completed by Nalcor, government was advised that the two preferred options for meeting the province’s power needs were the MFP and the isolated Island option. In determining which of these two options was the least-cost option, government relied on the Cumulative Present Worth (“CPW”) analysis completed by Nalcor which favoured the MFP by \$2.4 Billion (P-00160).
37. In his testimony before the Commission, Jerome Kennedy, who was Minister of Natural Resources at the time of sanction, stated:

right from the beginning Sir, early in this project, there were two questions that I was asking myself were: Do we need the power and which is the least-cost alternative? Was it Muskrat Falls or was it Isolated Island?

(Jerome Kennedy Transcript, December 3, 2018, p 8).

38. In her testimony before the Commission on December 18, 2018, Dunderdale also stressed that the decision to move through Decision Gate 2 was premised on these two fundamental questions:

And the big debate at this point in time in the development was whether or not which of the two projects – we were still going through CPW, and the big question was what was the – which project was least cost? That was one consideration, and the second big consideration was did we need the power.

(Kathy Dunderdale Transcript, December 18, 2018, p. 50-51)

39. It is clear that in determining whether to sanction the MFP, the question that government asked was whether the MFP was the least-cost option. If the MFP was found to not be the least-cost option, the Dunderdale government was prepared to walk away from the project.
40. Whether the MFP was the best option for the province overall having regard to the additional economic and social benefits was not relevant to the sanction decision. This is confirmed by the reference question that was put to the Public Utilities Board:

*The Board shall review and report to Government on whether the Projects represent **the least-cost option** for the supply of power to Island Connected Customers over the period of 2011-2067, as compared to the Isolated Island Option, this being the “Reference Question”. [Emphasis added].*

(P-00038, p 1).

41. A number of other benefits were identified as potentially resulting from the MFP. These included the significant economic and employment opportunities that the MFP would bring to the province, the opportunity to sell excess power for a profit, and the economic and environmental benefits of reducing the consumption of carbon. These additional benefits,

while attractive, did not factor into the decision to sanction the MFP. The decision to sanction the MFP was based entirely upon the understanding that the MFP was the least-cost option for dealing with the province's impending energy deficit. The additional social and economic benefits were viewed as bonuses to a project that was, on its own, economically viable and necessary.

The October 18, 2011 commitment letter was a standard component when seeking project financing and was of no legal effect unless the MFP was sanctioned by government.

42. Commitment letters are a standard component of commercial financing transactions. On the advice of her officials, Dunderdale signed a commitment letter dated October 18, 2011, based on her understanding that it would be of no force and effect unless and until government sanctioned the MFP (P-00868). Accordingly, while this document was necessary in order for government and Nalcor to proceed with the exploration of financing options, whether government ultimately proceeded with developing the MFP still hinged on the sanction decision.

43. As Mr. Thompson testified before the Commission, the October 18, 2011 commitment letter did not expose government to additional risk:

MR. THOMPSON: This was, you know, part of the overall strategy, you know, this stage we knew would be coming. We – it was – there was no additional perception of risk in the execution of it, given that it was always – we had been seeing this forthcoming, so, yeah, the project of course had its risks, but this was not a step that we didn't expect, and therefore, there was no incremental risk because of this step.

(Robert Thompson Transcript, November 14, 2018, p 52).

Securing the federal loan guarantee was a necessary pre-requisite for government's approval of the MFP.

44. In Dunderdale's view, securing a loan guarantee from the Federal Government was vital to proceeding with the development of the MFP. While Dunderdale believed, based on the information provided to her government by Nalcor, that the MFP was financially sound on

its own, securing a loan guarantee with the Federal Government would result in over \$1 billion in interest savings and confirmed to Dunderdale's government that the Government of Canada, based on its own independent due diligence, was satisfied with the financial integrity of the MFP.

45. Dunderdale unequivocally stated before the Commission that, without the federal loan guarantee, she would not have supported proceeding with the development of the MFP:

MS. DUNDERDALE: You know, it was – you know, I would have to go to the people of the province and say on principle, you know, I'm not prepared to go with this project without the loan guarantee.

...

MR. HISCOCK: And without the loan guarantee you would have gone to the people of the province and told them: Look, we've spent \$700 million, but that's it.

MS. DUNDERDALE: Yeah.

(Kathy Dunderdale Transcript, April 2, 2019, p 67).

46. Dunderdale's government was prepared to walk away from the development of the MFP at any time if issues with the integrity of the project were discovered. Dunderdale's successful negotiation of the federal loan guarantee, in the midst of a contentious relationship with the Government of Canada, further confirmed to her that the MFP was meritorious.

The decision to sanction the MFP was informed by numerous studies of power demand and supply options completed by Nalcor, Hydro and independent analysts.

47. Part of Nalcor's mandate is to study power demand and supply options for the province. Power generation and planning falls within the responsibility of Nalcor's subsidiary corporation, Newfoundland and Labrador Hydro ("Hydro"). In its July 2010 update report, Hydro's System Planning Department concluded:

Based on an examination of the System's existing plus committed capability, in light of the 2010 PLF [Planning Load Forecast] and the generation planning criteria, the Island system can expect capacity deficits starting in 2015 under both the HVdc link and Isolated Island scenarios but no energy deficits until post-2019. (P-00034, p 30).

48. The Energy Plan provided Nalcor with policy directions in respect of various electricity generation and supply options that government wished to consider. These included hydro-electric developments on the Lower and Upper Churchill, wind, refurbishing the Holyrood generation plant, natural gas fired generation, and other generation technologies such as gas cogeneration, biomass and tidal. Nalcor also considered purchasing power from Quebec until 2041.
49. In its submissions to the PUB in November 2011, Nalcor outlined the process that it followed in fulfilling its mandate of studying power supply options for the province. In its study of power supply options, Nalcor employed a “two phase screening process”. Phase 1 considered security of supply and reliability, cost to ratepayers, environmental considerations, risk and uncertainty, and financial viability of non-regulated elements. The power supply options that were not eliminated through phase 1 were grouped into two categories – “isolated island alternative” and “interconnected island alternative”. Phase 2 involved a cumulative present worth analysis. The result of this screening process was that Nalcor recommended the Project as the least-cost alternative for the supply of power generation to the province (P-00077).
50. Dunderdale was advised that Nalcor had exhaustively studied numerous power generation alternatives and that such studies favoured the MFP and the isolated Island option as the two least-cost reliable alternatives. The power generation alternatives which were considered by Nalcor are set out in the PUB submission and include: nuclear, natural gas, liquefied natural gas, coal, continued oil-fired generation at the Holyrood plant, simple cycle combustion turbine power plants, combined cycle combustion turbine power plants,

wind, biomass, solar, wave and tidal, Island hydroelectric, deferred Churchill Falls (until 2041), recall power from Churchill Falls, Gull Island, Muskrat Falls, and electricity import (P-00077, p 56 – 100).

51. In its forensic audit, Grant Thornton reviewed Nalcor's assessment of power supply alternatives. The Grant Thornton report did not find that any of the alternative options were unreasonably excluded by Nalcor at the time the decisions were made (P-0014, p 22-23).
52. The Dunderdale government reasonably relied on the studies of power generation alternatives which was understood to have been thoroughly completed by Nalcor. However, as an additional layer of oversight and to ensure the veracity of Nalcor's work, Dunderdale's government commissioned or requested Nalcor to commission the following additional studies by independent experts in advance of sanctioning the MFP:
 - (a) Report for Wind Integration Study – Isolated Island prepared by Hatch for Nalcor (P-00057);
 - (b) A review by Manitoba Hydro International commissioned by government which examined the wind studies for the isolated Island which were prepared for Nalcor (P-00059);
 - (c) A study of the availability and feasibility of natural gas for power generation on the Island by Ziff Energy Group commissioned by government (P-00060);
 - (d) The following reports prepared internally by government:
 - (i) Upper Churchill: Can we Wait Until 2041? (P-00061);
 - (ii) Gull Island: Why Not Develop Gull Island First? (P-00062); and

- (iii) Legal Options: s 92A, Good Faith and Regulatory Options in Quebec (P-00063);
 - (e) A review by Wood MacKenzie of the report on natural gas prepared by Ziff Energy Group commissioned by government (P-00064);
53. Each of these reports agreed with Nalcor’s exclusion of the respective power supply alternatives. Dunderdale and her government relied on the studies completed by Nalcor, as supported by the studies of independent analysts and internal government departments, in deciding to proceed toward sanctioning the MFP.
54. Based upon the extensive work completed by Nalcor and independent experts hired by government under Dunderdale’s leadership, Dunderdale had no reason to believe that the MFP was not the best option for meeting the province’s impending power needs.

Conservation and Demand Management programs were promoted by government, but Nalcor advised that this could not be relied on in load forecasting for the Island.

55. Government, through Nalcor, has an obligation to provide reliable and consistent power to the people of the Province. The Dunderdale government implemented Conservation and Demand Management (“CDM”) programs during its tenure. However, given that the Island was not connected to the North American Grid, government was advised by Nalcor that reductions in load demand due to CDM could not be heavily relied on in load forecasting. This was confirmed by Paul Humphries in his testimony before the Commission:

MR. HUMPHRIES: Well, the main reason is that when you’re looking at – particularly in the Isolated case, the expansion plan that you’re putting forward in the Isolated case, you had to have a high-level of confidence so that you could achieve that and you were gonna get the results you needed. Because it’s an Isolated system you don’t have the luxury of knocking on your neighbour’s door when you get in trouble and those types of things, so you had to be fairly confident about what’s in the plan –... you could achieve.

...

MR. HUMPHRIES: And when you look at CDM, while there was lots of information out there on potential, there was very little information there to give you the level of comfort that you were going to be able to achieve these results based on where we were, even up to 2012, with conservation and demand management.

(Paul Humphries Transcript, November 13, 2018, p 4).

56. Utilities connected to the North American grid have the luxury of being able to rely on CDM to reduce forecasts since, if their forecasts are low, the worst case scenario is that they have to buy power from alternate sources on the grid. In the isolated island of Newfoundland scenario, that luxury does not exist.

The option of buying power from Quebec until 2041 was considered and properly dismissed.

57. Nalcor advised government that it had considered the option of purchasing power from Hydro-Quebec but that Hydro-Quebec did not have the power capacity to enter into a long-term supply contract with Nalcor (Ed Martin Transcript, December 10, 2018, p 61-62; Kathy Dunderdale Transcript, December 18, 2018, p 69). It was the understanding of Dunderdale's government that this option was properly excluded from further consideration since Hydro-Quebec could not guarantee security of supply.
58. While security of supply was the primary basis upon which the Quebec purchase option was excluded, there were other factors at play which rendered the option of purchasing power from Quebec infeasible – (1) there was an understanding that purchasing firm power from Quebec would be expensive; (2) there would be a negative effect on Nalcor's negotiating leverage in 2041; and (3) the historical relationship between Quebec and Newfoundland and Labrador with respect to the Churchill River would make for difficult commercial negotiations.

59. As other supply options would not exist, purchasing power from Hydro-Quebec would require a secure supply of firm power. While Nalcor advised government that security of supply could not be guaranteed, even if it could be, a long-term firm power contract with Hydro-Quebec would be expensive. The Commission's expert, Mr. Colaiacovo, opined that the perception that a contract with Hydro-Quebec would be expensive was not unreasonable:

So, the perception in 2010 that a contract with Hydro-Québec would be expensive is actually not at all unreasonable. Another element to that is, that Hydro-Québec's – just to come back here to this slide – Hydro-Quebec's realized prices are a combination of their firm power and surplus power sales. You know, they sell firm power to certain customers at relatively high prices, and then they sell surplus power on the spot market at whatever price they can get.

And so what you see here is simply the average realized price. So, the firm price is going to be substantially higher than the average realized price, and the spot price will be substantially lower. So going back to that 2010 period and saying: Well, what would be the firm price for power from Quebec for a 25-year contract? Well, quite likely, that would be quite high.

(Pelino Colaiacovo Transcript, July 17, 2019, p. 12)

60. Based on the information that was communicated by Nalcor, it was Dunderdale's understanding that even if Hydro-Quebec could supply firm power under a long-term contract, the cost of such power would not be the least cost option.
61. Further, it could not be assumed that the expiry of the Upper Churchill power contract with Hydro-Quebec in 2041 will result in a windfall of cheap power to Newfoundland and Labrador. Churchill Falls (Labrador) Corporation ("CF(L)Co"), which owns and operates the Upper Churchill hydroelectric facility, is jointly owned by NL Hydro and Hydro-Quebec. Based on a report prepared by the Department of Natural Resources, in assessing the veracity of the 2041 option, it is necessary to consider Hydro-Quebec's minority stake in CF(L)Co. (P-00061, p 9). Specifically, it is necessary to understand that Hydro-Quebec

has a profit motive and that its interests may not align with those of Nalcor and the province.

62. Without a viable alternative supply option, Nalcor would have been in a weak negotiating position with Hydro-Quebec in 2041. This is confirmed in Colaiacovo's report to the Commission:

In short, for Hydro Quebec, the BATNA [Best Alternative to a Negotiated Agreement] to a new Churchill Falls arrangement might be no action, as long as the focus is exports. In other words, unless it faces an imminent domestic supply shock, Hydro Quebec could be in a position to "take it or leave it". It would have the incentive to maximize its share of Churchill Falls value, but all the while being prepared to walk away from the table. This might be considered the definition of a strong negotiating position. [Emphasis added].

(P-04445, p 28).

63. In his testimony before the Commission, Colaiacovo clearly opined that the development of the MFP has drastically improved the Province's negotiating position for 2041 as it has proven that there is an alternate route of getting power from the Province to the North American Grid, namely via undersea cable to Nova Scotia (Colaiacovo Transcript, July 18, 2019, pp 18, 24-27). In his opinion, without the MFP and the Maritime Link, negotiations with Quebec would have been like "negotiating with a gun to your head", which would likely result in another bad deal for the Province (Colaiacovo Transcript, July 17, 2019, p 33). In his report to the Commission, Colaiacovo concluded that the development of the MFP has strengthened Nalcor's negotiating position:

It is impossible to quantify the value that has been created by the real experience of the Project, given that the outcome of Churchill Falls negotiations is many years away. Nevertheless, it is a real consequence, and should be included as a benefit when considering the value of the Muskrat Falls Project, both to Nalcor and its provincial government shareholder, and potentially to ratepayers.

Nalcor's stronger negotiating position on Churchill Falls will result in more profit than would otherwise have been available. At the same time, Newfoundland ratepayers may have access to lower cost power from

Churchill Falls after 2041 (and potentially very low cost, depending on the choices made at the time about the use of Churchill Falls margin to potentially reduce the electricity price for domestic customers).

(P-04445, p 34).

64. A further ancillary factor rendering the Hydro-Quebec purchase option unattractive was the historically troubled relationship between the province and Quebec stemming from the 1969 Upper Churchill contract. Given the notoriously inequitable Upper Churchill deal, and Quebec's refusal to allow NL to route power through Quebec, any future agreement between the province and Hydro-Quebec would inevitably be publicly and politically unpalatable.
65. While Dunderdale had a generally positive relationship with then-Quebec Premier Jean Charest, there was not a significant deal of trust in negotiating with Hydro-Quebec given Hydro-Quebec's interference with further developments by Newfoundland and Labrador on the Churchill River (Dunderdale Transcript, December 18, 2018, p 69-70).
66. Additionally, as a result of the many legal actions taken by Nalcor and the province in respect of the Upper Churchill contract, it was expected that the negotiations between Nalcor and Hydro-Quebec would not be reasonable commercial negotiations. In his testimony before the Commission, Colaiacovo opined on this point:

So – but, beyond that, is it even reasonable to believe that there would have been a normal, quote unquote, commercial discussion between Nalcor and Hydro-Québec about a 25-year firm power contract in 2010. We have to bear in mind that already twice in the preceding decade Nalcor had taken various Québec organizations to court for rejecting transmission access applications. And then in 2010, a lawsuit was launched in Quebec's superior court over Churchill Falls. Three court cases in less than five years.

...

So, you know, the – I think that – in fairness to Nalcor, they were dismissive of the intervenor question in 2010, and they were dismissive with some justification because it was simply not a practical option, given everything

else that was going on.

(Pelino Colaiacovo, Transcript, July 17, p. 12 -13)

The MFP and Nalcor were subject to numerous reviews and oversight mechanisms, which at the time of financial close, Dunderdale understood were comprehensive and exhaustive.

67. A Premier is entitled to, and in fact must, rely on the expertise and advice of the public servants who support her. A Premier is not expected to be an expert in financial analysis or construction projects and the lack of such expertise does not disqualify her from being Premier. Dunderdale was never advised by her officials that the Decision Gate 3 cost estimate was inadequate or that any further review or analysis of the estimate was required or even reasonable. Unless she was presented with the recommendation from her officials to conduct a further review of the Decision Gate 3 estimate, it is unreasonable to conclude that Dunderdale ought to have ordered a further review. There has been no evidence led before the Commission that Dunderdale was given such recommendation.
68. There is evidence before the Commission that a recommendation was made by certain government officials in or about May 2011, some seventeen months prior to the DG3 cost estimate being released, to retain an independent consultant to review certain aspects of the Project (P-00807). This recommendation, as detailed in a Decision/ Direction Note, was approved by former Ministers Thomas Marshall and Shawn Skinner.
69. Partly in response to this Decision/ Direction Note, Cabinet discussed, and Government decided to submit a reference question to the Public Utilities Board (“PUB”) (P-00038). In his testimony on November 6, 2018, Thomas Marshall confirmed that he was satisfied with a reference to the PUB (Transcript, p. 12) in lieu of the form of review recommended in the Decision/ Direction Note.
70. Nalcor was established by government to advance its energy policy objectives. Nalcor was created to act at arm’s length from government, but in the best interests of the people

of the province in fulfilling its legislative mandate. As a Crown Corporation, Nalcor is not profit-driven, and Dunderdale and her government had no reason to believe that they could not rely on the information that Nalcor provided.

71. In many ways, Nalcor is much like a core department of government. Dunderdale was entitled to rely on the information she received from Nalcor without suspicion. In his evidence before the Commission, Stan Marshall, the current CEO of Nalcor stated as follows:

“You know, you got to – when you go forward with these things, you got to have a team to do it. You know, the government should be entitled to rely on Nalcor. That’s what special expertise would do. When Nalcor does it, it has a project team to do it.

You can’t be double- and triple-checking”

(Stan Marshall Transcript, July 2, 2019, p 137).

72. Despite this, there were numerous oversight mechanisms in place which were intended to keep Nalcor and its processes in check. The structure of Nalcor, as established by legislation, provides for the following oversight mechanisms:

- (a) Board of Directors;
- (b) annual public meetings;
- (c) Annual report to the House of Assembly; and
- (d) the ability of the Auditor General to audit Nalcor.

73. Additionally, Dunderdale’s government also implemented the following levels of oversight in respect of the MFP particularly:

- (a) requiring regular reporting by the CEO of Nalcor to Cabinet;
- (b) making a reference to the PUB (with adequate funding to retain expertise);
- (c) making a reference to the Consumer Advocate (with adequate funding to retain expertise);
- (d) retaining MHI to complete an independent review of the MFP at DG3;
- (e) listening to and considering the concerns voiced by the public and commissioning numerous independent reviews of the power supply alternatives considered by Nalcor in reaction to concerns voiced by the public; and
- (f) debating the sanction decision in the House of Assembly.

74. As a further layer of oversight, the development of the MFP followed a decision-gate process, which by definition, provides various opportunities to review the project as it evolves.

75. Without the benefit of hindsight, it appeared that the MFP was subject to significant, if not excessive, scrutiny and oversight.

Internal government departments reviewed the MFP in accordance with capability and capacity existing within government.

76. It is not within the capacity or reasonable expectations for government to regenerate the cost estimates prepared by Nalcor. As the Commission has heard, significant and detailed engineering work goes into preparing a cost estimate for a megaproject. The capacity to do this work does not exist within core government departments. This is why government created Nalcor, to do this work. Re-doing the work of Nalcor within the core government departments would amount to the creation of a “Nalcor 2” and an inappropriate duplication of effort and resources. ‘

77. While the capacity did not exist to prepare a second full project estimate, the Departments of Natural Resources and Finance were intimately engaged in reviewing the work completed by Nalcor. Notably, the Department of Natural Resources also completed its own Cumulative Present Worth analysis of the MFP. Robert Thompson, the former Clerk of the Executive Council, testified before the Commission as follows:

But given the significance of this issue at this time, I also wanted to have the economists in the Department of Natural Resources go through this with as much interrogation as they could to ensure we understood how it was modelled, the data inputs and so forth. We didn't go, of course, into testing the engineering and the capital cost estimating; that would've not been a capacity we had in the department. But in certain – in terms of analyzing the options analysis and the CPW differences between Isolated Island and the Interconnected Option and those kinds of issues, we had that capacity. So I wanted to make sure we were doing that separately, so at least, from my own point of view, I could be confident in saying to the minister, if necessary, whether or not all of this added up.

...

MR. LEARMONTH: Would the people that you are refereeing to in the Department of Natural Resources have the ability or background to do their own CPW analysis to...?

MR. THOMPSON: Yes. And they did.

(Robert Thompson Transcript, November 14, 2018, p 21-22)

78. Additionally, the Departments of Finance and Natural Resources were engaged in reviewing the inputs to the cost estimates prepared by Nalcor. It would be unreasonable and prohibitively costly for core government departments to re-engineer the MFP as an oversight mechanism, but they were engaged to review Nalcor's work. It was Dunderdale's understanding that the Departments of Finance and Natural Resources were engaged in reviewing the MFP consistent with their expertise and capacity, and that this was prudent and reasonable practice.

Nalcor was created with the capacity and expertise not existing within government to develop projects, such as the MFP, for the benefit of the people of the province.

79. Nalcor is not a profit-driven private entity entirely independent from government. Nalcor was created by the provincial government to harness the expertise and build capacity not existing within the core government departments to develop projects such as the MFP for the benefit of the people of the province.
80. As a Crown corporation, Nalcor is intended to act as an arm of government and government must be able to rely on the advice of Nalcor, unless there is reason to suspect that such reliance is undue. Government does not typically hire experts or create complex oversight mechanisms to review the work being done by other government agencies or core government departments. To do this would be prohibitively costly and would add unreasonable bureaucracy.
81. Despite this, given the magnitude and importance of the MFP, the Dunderdale government did treat Nalcor with reasonable scepticism and hired experts and added oversight mechanism's to review Nalcor's work.

Dunderdale's government appointed the best qualified persons to the Board of Directors of Nalcor that were available and willing to serve.

82. The Board of Directors of Nalcor, as with other Crown Corporations and government agencies in Newfoundland and Labrador, is uncompensated or compensated with nominal remuneration. This is a convention that pre-dates Dunderdale's time in office and which continues today. Finding qualified individuals with the necessary skill-sets who are willing to give their time for minimal remuneration is a challenge for any government. At no time during her tenure as Premier was Dunderdale presented with nominees credentialed in hydro-electric mega-project construction and willing to serve on the Board of Nalcor whom Dunderdale failed to appoint.

83. The Board of Directors of Nalcor is not the only Crown Corporation or provincial government agency that is responsible for huge budgets and ‘make-or-break’ decisions. The boards of the regional health authorities and the English school district are other prime examples. Therefore, compensating the Board of Nalcor opens the floodgates for other boards of Crown Corporations and government agencies to expect comparable compensation. The cost of reasonably compensating each of these Boards of Directors would not be insignificant. Furthermore, compensating government-appointed positions does typically attract public support, particularly in challenging fiscal environments. For these reasons, governments have never been eager to change this practice. The Dunderdale government was not unique in that regard.

84. Furthermore, for reasons of cost effectiveness, efficiency and to avoid conflicts of interest, the preferred approach is to hire specialized experts to advise a Board rather than to have such experts sit as members of the Board. During his testimony before the Commission, Mr. Martin stated:

For detailed analysis and report writing, it would be – you know, you’d have to go to the – you know, to the independent stuff and not the board member, if that’s your question. I mean, you know, the board would definitely not be – and not only would it be – I don’t even think it’s a cost thing. You wouldn’t have the board involved in... doing that kind of analysis.

(Edmund Martin Transcript, June 14, 2019, p 43-44).

85. Nalcor and the Nalcor Board had the resources and the ability to consult with independent experts as required.

86. Additionally, by retaining MHI, government hired the specialized expertise that the Board of Nalcor did not possess. The retention of MHI ensured that specialized expertise in the area of hydro mega-projects was provided and that the capacity of the Board of Nalcor was not excessively burdened in order to complete a detailed and independent review of the MFP.

The Dunderdale government consistently provided timely public disclosure of cost estimates based on the information it understood to be current and accurate with the exception of what it was advised to be commercially sensitive.

87. The Dunderdale government employed an open and transparent approach to the development of the MFP. When information regarding the MFP became available to government, public disclosure was promptly made of all such information with the exception of limited information that was classified as commercially sensitive.
88. During the House of Assembly proceedings in March 2012 during the lead up to Decision Gate 3, Mr. Kennedy, then Minister of Natural Resources, tabled 8 boxes containing 152 documents relating to the MFP in the House of Assembly. These documents were also supplied to the PUB as part of its review.
89. Public disclosure of information regarding the MFP was also occurring regularly through Nalcor. In addition to the public annual general meetings, Nalcor hosted numerous public information sessions between Decision Gates 2 and 3. Dunderdale had no reason to believe at that time that her government and the general public were not being provided current and accurate information in respect of the MFP.
90. When Dunderdale became aware of the Decision Gate 3 Cost Estimate of \$6.2 Billion, she promptly communicated this to the public at a press conference held on October 30, 2012 (P-00425). This was the cost estimate that Dunderdale understood to be current and accurate at that time.
91. Dunderdale was not aware of any increase to the Decision Gate 3 capital cost estimate until shortly before financial close. As she testified before the Commission, it is her recollection that she, along with other officials, were told at that time that the capital cost estimate had increased to \$6.5 Billion, but that there was a plan to mitigate this increase and that decreases in financing costs and additional benefits offset the increase. As

contract negotiations were ongoing, Dunderdale was advised that releasing the revised cost estimate at this time could negatively impact the negotiations and cause further cost increases.

92. There has been no documentary evidence presented to the Commission which confirms that Dunderdale was made aware of the capital cost increase prior to financial close. Indeed, senior government officials and Ministers who likely would have been advised deny having any such knowledge. Dunderdale maintains that she was never present at a meeting with Nalcor officials regarding the MFP without senior officials present.
93. Given the passage of time and the contradictory evidence before the Commission, Dunderdale acknowledges that it is possible that she was not aware of the capital cost increase at the time of financial close. It is, however, her best recollection that she and her senior officials were aware of this fact and that they were advised not to communicate it to the public until contract negotiations concluded.

Dunderdale was not involved in decisions regarding risk contingencies in cost and schedule estimates.

94. Dunderdale has no expertise in mega project construction. This is why she relied on the industry experts at Nalcor and her senior government officials to make the best decisions with respect to the technical aspects of the MFP. While she was regularly informed as to the risks that could potentially impact the MFP, those who advised her did not speak in terms of “strategic risk”, “tactical contingency” and “management reserve”. While Dunderdale was concerned with and informed regarding “risks” generally, she was not involved in any decisions regarding the inclusion or exclusion of “strategic risk” reserves or independent analyses of risks that could impact the MFP. These decisions were left to those who had the industry and subject area expertise.

Dunderdale was not aware that Manitoba Hydro International did not complete a risk analysis review in advance of DG3.

95. Dunderdale was not involved in discussions with MHI regarding the review completed in advance of DG3. Specifically, she was not aware that a risk analysis had been removed from MHI's review and she learned of this only through the evidence led before the Commission.

96. As Dunderdale is not an expert in mega-project construction, the inclusion or absence of a strategic risk analysis from MHI's review would not be noteworthy to her. She relied on her officials to ensure that best practices were followed and to advise her accordingly. Moreover, it is her understanding that senior civil servants also did not find the exclusion of a strategic risk analysis from MHI's review to be problematic since Nalcor did not communicate to Dunderdale's government in terms of specific categories of risk. The MHI Report prepared in advance of DG3 contains a section entitled "Risk Assessment" (P-00058, p 40). To anyone without specialized industry knowledge, such as Dunderdale and her government, it would appear that MHI did consider risk in its review of the MFP.

Dunderdale had no reason to believe that the probability factors utilized by Nalcor in preparing the project cost estimates were not in accordance with best industry practice.

97. Industry standards for probability factors in engineering estimating was a foreign concept to Dunderdale. As with all technical aspects of the MFP, Dunderdale relied on Nalcor to brief her on this subject and to provide their informed recommendation as to how to proceed. Dunderdale was advised by Nalcor that its estimates, including the use of P-50 probability factor, were in accordance with industry best practices. Dunderdale had no reason to doubt Nalcor's knowledge of the subject.

98. Dunderdale's government did not have the specialized expertise to challenge Nalcor's knowledge of technical aspects of the MFP. This is one of the reasons why Dunderdale's

government engaged MHI and other independent experts to review aspects of Nalcor's work. In the report prepared in advance of DG3, MHI opined:

MHI completed its analysis of both the Muskrat Falls and Labrador-Island HVc Link, identified as the Interconnected Island option, and the development of various power units on the Island, identified as the Isolated Island option. MHI has found Nalcor's work to be skilled, well-founded, and in accordance with industry practices. [Emphasis added].

(P-00058, p 80).

99. If Nalcor's estimates and its selection of a P-50 probability factor were not in accordance with industry practices, this was never communicated to Dunderdale.

Dunderdale was not aware of any concern with the schedule probability utilized by Nalcor.

100. Dunderdale was advised by Nalcor that there were risks associated with the MFP schedule but she was regularly reassured that all risks were being mitigated. It was only through the evidence led before the Commission that Dunderdale learned that a P-1 or P-3 probability factor had been associated with the schedule estimates. This is inconsistent with her understanding of the project schedule estimates at the time of sanction. If Dunderdale knew, at the time of sanction, that the project schedule had only a one or three percent chance of being completed on time, she would not have participated in the sanction of the MFP.

101. As with any large construction project, Dunderdale was aware that there were pressures on the project schedule, particularly in consideration of the Labrador climate. Nalcor advised her, however, that they were diligently working to mitigate any scheduling issues. Dunderdale was also informed that the schedule prepared by SNC-Lavalin was based on a 6-day work week, whereas Nalcor was anticipating a 7-day work week. This provided Dunderdale comfort that any pressures on the schedule could be mitigated.

102. Through the evidence led before the Commission, Dunderdale has learned that Westney Consulting Group completed a risk review of the project schedule. Dunderdale did not see these reports and was not briefed on them. At no time prior to sanction or financial close was Dunderdale alerted to any significant risk with the project schedule which would make completing the MFP on time an improbability.

The MFP is legislatively exempt from review by the Public Utilities Board, but the Dunderdale government submitted a reference to it as an additional layer of oversight.

103. The MFP is exempt from review by the PUB pursuant to the *Labrador Hydro Project Exemption Order* (P-00023) which was issued by Cabinet in 2000, before Dunderdale's term in office. Given this legislative exemption, Dunderdale's government had no legal requirement to submit the MFP to the PUB for review.
104. Between Decision Gates 2 and 3, there were requests from the public and Ministers within Dunderdale's government to complete some form of independent review of the MFP. In response to those requests, Dunderdale's government agreed to submit a reference to the PUB, effectively asking the PUB to determine whether the province needed the power and if so, whether the MFP was the least-cost option, as compared to the Isolated Island option, for attaining that power.
105. Government had the exclusive right to determine the scope of the reference question to be put to the PUB. It was decided that the question would be posed in the context of DG2. This allowed for a fair comparison between the isolated island and interconnected options. Additionally, at the time of the PUB reference, the DG3 numbers and analysis were incomplete. A reference question in the context of DG3 would have delayed the process and the MFP, resulting in additional cost to ratepayers and potentially souring relationships with Emera and others. The purpose of the reference question was to have the PUB analyze the DG2 decision for reasonableness. Unfortunately, the PUB failed to do so.

106. Given the many years of work that had been done by Nalcor that fed into the CPW analysis, the Dunderdale government believed that it was not necessary to ask the PUB to review all possible power options. It was believed that this work had already been effectively done by Nalcor and asking the PUB to redo it would be a duplication of efforts requiring a significant amount of time and money. Dunderdale's government had no reason to believe that the CPW analysis, which determined the Interconnected Island and the Isolated Island options to be the two least-cost options for meeting the province's power demands, was not accurate.
107. While Dunderdale's government granted the PUB the initial extension requested to complete its review (P-00045), government required the report in advance of the spring 2012 session of the House of Assembly to ensure that Members would not be constrained in their ability to debate the project and to ensure the project schedule could be maintained in the event that sanction was approved. When a further extension request was made by the PUB (P-00046), government began to lose faith in the PUB's ability to complete a timely review of the project.
108. The PUB report, which was delivered to government on March 30, 2012, concluded that it had insufficient information to determine whether MFP represented the least-cost option for power supply to Island customers (P-00052, p 6). Colaiacovo, in his presentation to the Commission, called this an "abdication of the responsibility to come to a conclusion" (P-04464, p 26).
109. Dunderdale's government was also of the view that the PUB's report amounted to an abdication of its responsibilities under the Terms of Reference that were provided to it. However, rather than proceeding to sanction without a full review having been completed, Dunderdale's government engaged the PUB's expert, MHI, to complete an independent review of the MFP in fulfillment of the responsibilities which the PUB abdicated.

110. Unlike the PUB, MHI came to a conclusion based on the information that was provided to it by Nalcor:

Given the analysis that MHI has conducted based on the data and reports provided by Nalcor, MHI recommends that Nalcor pursue the Interconnected Island option as the least cost alternative to meet future generation requirements to meet the expected electrical load in Newfoundland and Labrador.

(P-00058, p 12).

111. Equipped with an unequivocal opinion from the PUB's hand-selected independent expert, Dunderdale's government proceeded to sanction the MFP.

Conclusion

112. Dunderdale participated in the sanction and financial close of the MFP in good faith. In doing so she relied on the knowledge and advice she received from government officials, Nalcor and independent experts. She did so in accordance with the Province's energy policy and with a view to securing short and long-term financial and energy stability for the Province and to encourage future economic growth.
113. Dunderdale was assured by Nalcor and independent experts that the Province needed the power and that the MFP was the least cost option. Further to the detailed submissions set out herein, Dunderdale tasked her government with scrutinizing the information and recommendations provided by Nalcor. Among others, the Minister of Natural Resources did so and he was satisfied that we needed the power and that the MFP was the least cost option.
114. Prior to Dunderdale's departure from government in early 2014 she understood that the MFP was on track. Up to that point the Premier's office and the Departments of Natural Resources and Finance had been extremely engaged in the project, yet Dunderdale had

no knowledge of any strategic risk associated with the project, or any cost overruns beyond the \$6.5b which, she was advised, was being mitigated and was offset by other benefits. She had no knowledge of any likelihood of schedule overruns. Dunderdale cannot be held responsible for the significant increases in the costs of the MFP which have occurred since her retirement from public office. They would not have been foreseeable to anyone in her position.

115. Despite the significant cost overruns, the MFP still stands to benefit the Province in the near and distant future in light of the looming global environmental crisis. Moreover, the MFP will ensure the province has a stable and consistent supply of power to promote future economic growth.

116. In an era when clean energy sources are growing in importance, the MFP stands as tremendous asset that will benefit the people of the Province for generations to come. Indeed, despite the scrutiny that has been given to the development of mega-projects through the proceedings before the Commission, Premier Ball has recognized the importance of continuing to explore further development opportunities on the Churchill River, including Gull Island (Dwight Ball Transcript, July 4, 2019, p 83).

ALL OF WHICH IS RESPECTFULLY SUBMITTED on this 9th day of August, 2019.



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