



ANNEX A - Principal Legal Documents

The following is a listing and summary of the principle documents that facilitate the supply of power from Upper Churchill to Hydro Quebec.

Water Lease between the Government of Newfoundland and CFLCo - May 16, 1961 (“Water Lease”)

- This lease gives CFLCo the right to the waters of the catchment area of the Upper Churchill River and the exclusive right to harness the river to produce hydroelectricity. CFLCo is also given the right to do what is necessary in the development, transmission and supply of hydroelectric power produced on the Upper Churchill River, which would include the right to construct dams and acquire Crown Land.
- The term of the Water Lease is 99 years renewable (at CFLCo’s option) for another 99 years.
- CFLCo is required to pay to the Province an annual rental and royalty which amounts to approximately \$4 million on an annual basis.
- The Water Lease provides CFLCo, as a corporate entity, with an exemption relating to provincially imposed taxes, charges and fees. With respect to the development, transmission and supply of hydroelectric power, CFLCo is exempt from any increase in taxes existing as of July 14, 1966, and is also exempt from any liability with respect to any new or additional taxes and any new or additional charges, dues, fees, rents, etc. imposed by the Provincial Government after July 14, 1966. This exemption expires on August 31, 2016.
- The Water Lease is a statutory lease and therefore has the force and effect of statutory law.

Power Contract between CFLCo and Hydro-Quebec - May 12, 1969 (“Hydro-Quebec Power Contract”)

The principal terms of this Power Contract are as follows:

- The original term of the Hydro-Quebec Power Contract expires on August 31, 2016. It will then automatically be renewed for a further term of 25 years until August 31, 2041 (“Renewal Period”).

- The price of electricity during the first 40 years of this Contract was set on a downward sliding scale. It provided for five price changes during this period. The present rate (\$2.5426 per MWh) will remain in effect until August 31, 2016. During the Renewal Period the rate shall remain constant at a lower rate (\$2.00 per MWh).
- CFLCo is to make available to Hydro-Quebec Firm Capacity of approximately 4,100 MW in the winter and 3,860 MW in the summer, as well as whatever additional capacity can, in CFLCo's opinion, be made available when requested by Hydro-Quebec. In addition, CFLCo shall make available such energy from the plant as Hydro-Quebec may request.
- These obligations are subject to two limitations: first, CFLCo's requirement to supply power and energy to Twin Falls Power Corporation Limited (225 megawatts until December 31, 2014 and second, the Power Contract permits CFLCo to withhold up to 300 MWs of power per year from the power and energy agreed to be sold to Hydro-Quebec. This is to be sold by CFLCo only for consumption outside the Province of Quebec. CFLCo presently recaptures the full 300 MW.
- During the Renewal Period (post – 2016) the amount of power and energy that CFLCo will be required to sell to Hydro-Quebec under the Contract will be a set amount of energy per month ("Continuous Energy"). Currently, Hydro-Quebec has a right to all of the energy produced at the plant other than the Twinco block and the Recapture. The amount of the Continuous Energy is set at the end of the original term of the Power Contract and is based on the amount of energy delivered to Hydro – Quebec prior to the expiry of the original term.
- CFLCo is required to maintain in good repair and in accordance with sound utility practice, all required facilities at the Upper Churchill Falls plant.
- If CFLCo should at any time, when it is not prevented by an event of force majeure, be unwilling to operate the Upper Churchill Falls plant, then Hydro-Quebec, if it is not in default under the terms of the Contract, has the right to operate the plant for the account of CFLCo in accordance with sound utility practice, until such time as CFLCo itself resumes such operation.

Power Contract between CFLCo and Newfoundland and Labrador Hydro - March 9, 1998 ("NLH Power Contract")

- As noted above, CFLCo now recaptures 300 MW under the Hydro-Quebec Power Contract. All of this power is sold to NLH under this Power Contract on the same pricing terms as is applicable to the Hydro-Quebec Power Contract and for the same duration, i.e. August 31, 2041.

Guaranteed Winter Availability Contract between CFLCo and Hydro-Quebec - November 1, 1998 (“GWAC”)

- The purpose of the GWAC is to provide for maximum availability of all eleven generating units at the Churchill Falls plant during the winter months, as this is the peak demand period for Hydro-Quebec.
- Hydro-Quebec makes payments to CFLCo based upon the availability of these units during the winter months. As noted earlier, the terms of the Hydro - Quebec Power Contract require CFLCo to make available to Hydro-Quebec on request, any additional capacity that in CFLCo’s opinion can be made available. In essence, GWAC provides financial compensation to CFLCo for ensuring that additional capacity, in the amount of 682 MW, is available during the winter.
- The GWAC terminates upon the termination of the Hydro-Quebec Power Contract.

Shareholders’ Agreement between Newfoundland and Labrador Hydro, Hydro-Quebec and CFLCo - June 18, 1999 (“Shareholders’ Agreement”)

- Under this Agreement, NLH and Hydro-Quebec, as the shareholders of CFLCo, agree on certain corporate governance, operating and financial provisions related to the business and affairs of CFLCo. These include such things as restrictions on the transfer of shares, composition of the Board of Directors, decisions requiring the approval of both shareholders and others requiring a “special majority” of the Board of Directors, provisions relating to Twinco Power upon the expiration of the Twinco Sublease, creation of a Reserve Fund and an agreement as to a dividend policy. CFLCo is a party to the Agreement “to take cognizance of and to agree to comply with its terms and conditions.”
- The Shareholders’ Agreement expires on the earlier of date upon which either of the present shareholders (or an affiliate) no longer holds shares in CFLCo or August 31, 2041.

Water Management Agreement between CFLCo and Nalcor Energy – March 9, 2010 (“WMA”)

- The Electrical Power Control Act requires that two or more persons who have been granted rights by the Province to the same body of water as a source for the production of power and who utilize, or propose to utilize, or to develop and utilize the body of water as a source for the production of power, shall enter into an agreement for the purpose of achieving the most efficient production, transmission and distribution of power.

- The WMA provides for the coordination of the use of the waters of the Churchill River in the production of power and energy by CFLCo on the Upper Churchill River and by Nalcor on the Lower Churchill River. The purpose of this Agreement is to make for the most efficient use of the waters of the Churchill River in the production of power and energy on the river, but pursuant to the Act, it can in no way adversely affect any of the existing contractual obligations which CFLCo has to provide power and energy i.e. Hydro-Quebec Power Contract, NLH Power Contract, GWAC and Twinco obligations.
- The WMA shall be in effect until such time as one of the parties permanently ceases to operate a production facility on the Churchill River, or the parties agree to terminate it. In the latter case, the parties must agree on a new agreement to replace the WMA.

Footnotes

- 1 MHI reply to PUB Information Request 3. Available online at <http://www.pub.nf.ca/applications/MuskratFalls2011/files/rfi/MHI-Nalcor-3.pdf>.
- 2 James Hiller, "[The Labrador Boundary](http://www.heritage.nf.ca/law/boundary.html)," at www.heritage.nf.ca/law/boundary.html.
- 3 [Re Labrador Boundary](#) [1927], 2 DLR 401 (J.C.P.C).
- 4 Jason Churchill, "Pragmatic Federalism: The Politics behind the 1969 Churchill Falls Contract,"
- 5 Hydro-Quebec 2010 Annual Report, p.9.
- 6 Newfoundland and Labrador Hydro 2010 Consolidated Financial Statements, Note 18 – Segment Information, 2010.
- 7 Our Energy, Government of Newfoundland and Labrador, 2007, at p. 33.

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