


CS16

20080501 - NR2008-  
Amendments to the Energy Corporation Act

NR2008-

**Title: Amendments to the Energy Corporation Act**

**ISSUE:**

Whether to introduce legislation amending the *Energy Corporation Act* to: (1) set forth the public disclosure requirements and legislative exemptions applicable to the Energy Corporation of Newfoundland and Labrador ("Energy Corporation") to allow it to operate in a commercially competitive environment; (2) outline the conditions under which the subsidiaries of the Energy Corporation are established and operate.

**RECOMMENDATION:**

It is recommended that:

1. Approval be given for the Bill, entitled *An Act to Amend the Energy Corporation Act*, which sets out the public reporting requirements and legislative exemptions for the Energy Corporation to allow it to operate in a commercially competitive environment and outlines the conditions under which the subsidiaries of the Energy Corporation will be established and operate, substantially in the form of a copy which is on file with the Clerk of the Executive Council, be introduced in the House of Assembly without further reference to Cabinet; and,
2. The Lieutenant Governor in Council approve the creation of OilCo (to be formally named at a later date) as a non-crown agent subsidiary of the Energy Corporation of Newfoundland and Labrador following proclamation of the Bill referenced herein. OilCo may invest in, engage in, and carry out activities relating to the exploration, development, production, refining, marketing and transportation of hydrocarbons and products of hydrocarbons

3. The Lieutenant Governor in Council direct that the legislative exemptions for the Energy Corporation and its subsidiaries contemplated in the Bill referenced herein, not apply to the Bull Arm Site Corporation (BASC) until such time as the Energy Corporation has completed a strategic review of BASC and presented the findings of this review to Cabinet.

**BACKGROUND:**

Cabinet Paper NR2008-█ proposed the creation of an oil and gas subsidiary of the Energy Corporation of Newfoundland and Labrador (ECNL). █ directed the Office of Legislative Counsel, in consultation with the Departments of Natural Resources, Finance and Justice and the Energy Corporation of Newfoundland and Labrador, to draft legislation, and/or to make necessary amendments to the Energy Corporation Act and other consequential amendments to other Acts, to create an oil and gas company as a subsidiary of the ECNL and set out the fundamental conditions under which it will operate, for final review by Cabinet prior to introduction in House of Assembly.

The rationale for NR2008-█ was the express need to establish an oil and gas subsidiary of ECNL to effectively manage the Province's interest in oil and gas projects but, unlike other crown corporations, would have a governance structure and disclosure requirements similar to private oil and gas companies. These requirements were recommended as being necessary for the subsidiary to operate effectively in a competitive business environment.





### **Energy Corporation**

Legislation creating the Province's Energy Corporation was passed in 2007. As outlined in the Energy Plan, the Energy Corporation was created to be the parent company which will manage the Province's investment and involvement in the development of all aspects of the Province's energy sector. Some of these activities are regulated monopoly activities, like Newfoundland and Labrador Hydro (NLH), while others are commercial, market-based endeavors.

The goals of the Energy Corporation include:

- ensuring as much legal protection of the assets of NLH and CF(L)Co as possible;
- ensuring appropriate public accountability for the Corporation and its subsidiaries; and
- ensuring the Corporation and its subsidiaries can operate in a commercially competitive business environment.

It was anticipated that subsidiary entities would be created under the Energy Corporation to provide a means to separate commercially competitive activities from the core traditional activities of NLH and Churchill Falls (Labrador) Company (CF(L)Co)). This will permit regulated and non-regulated activities to exist and grow under the overall umbrella of the Energy Corporation and provide for the best possible separation of potential liability exposure between the activities of the subsidiaries.

This proposed legislation is the next step in bringing this policy to fruition. The proposed legislation details the public disclosure requirements for ECNL and its subsidiaries, defines the corporate governance structure for subsidiaries, and allows it to operate in a commercially competitive environment.

While there are no other Canadian jurisdictions that currently have broad-based provincial energy corporations active in oil and gas development, such corporations do exist internationally, including OECD countries such as Norway and Denmark. In assessing an appropriate

accountability structure for ECNL and its subsidiaries, Natural Resources and the Energy Corporation undertook significant analysis and engaged external consultants Wood MacKenzie to ensure that the approach taken here is consistent with international best practices. Guidance was taken from Norwegian and Danish state-owned energy corporations as examples of models that meet meaningful public accountability requirements while reducing liability exposure and ensuring international competitiveness.

The proposed public disclosure framework, corporate governance structure, and means to allow it to operate in a commercially competitive business environment are outlined in detail below

**Public Accountability:**

The Energy Corporation and its subsidiaries are Crown corporations, and are currently subject to a range of public oversight legislation appropriate for public bodies. Some of this legislative framework is not appropriate for an entity actively engaged in a competitive commercial industry. The proposed amendments ensure meaningful public oversight and accountability while still permitting the Energy Corporation and its competitive subsidiaries to operate in a competitive environment.

NLH is a regulated utility and a monopoly and therefore does not require the same legislative changes as the Energy Corporation and its competitive subsidiaries. NLH is the sole provider of the Province's energy generation and transmission and therefore does not face the same competitive obstacles as other commercial enterprises. Further, the rate at which NLH can sell its electricity is determined by the Province's Board of Commissions of Public Utilities. For this reason, in the discussion to follow, the proposed legislative changes only apply to the Energy Corporation and its subsidiaries other than NLH.

The Province's Energy Corporation will be structured for transparency and accountability similar to publicly-traded companies listed on the leading Canadian market exchange and will be subject to similar financial reporting and disclosure requirements as listed companies. The proposed legislation provides an obligation to:

- Provide an Annual Report which shall be made available to the public;

- Hold an Annual General Meeting in Newfoundland and Labrador that is open to any resident of the Province (as defined by the Income Tax Act);
- Provide an Audited Annual Financial Statement which shall be made available to the public;
- Provide other reports required of listed companies. This currently would include a Quarterly Management Discussion and Analysis reports to the public which will provide an overview of the Energy Corporation's operations and activities.

The Corporation will also be required to prepare and provide a Shareholder Disclosure Policy satisfactory to the Minister of Natural Resources which shall bind the Energy Corporation and its subsidiaries. The purpose of this policy is to ensure that the Shareholder is appropriately informed of strategic directions, major decisions and operations of the Energy Corporation and its subsidiaries. It is contemplated that this policy, which is to be developed, will include disclosure to the Shareholder whenever there is a material change, including changes to the corporate structure, changes in capital structure, changes in financial results, changes in business and operations, acquisitions and dispositions, and changes in credit arrangements of the Energy Corporation or its subsidiaries.

Subsidiaries established by this Act will be fully accountable to the Energy Corporation's Board as shareholder. Also, their financial and operational information will be incorporated into the consolidated financial statements released by the Energy Corporation, and into the disclosure, discussion and other reports required to be made by the Energy Corporation under the proposed legislation.

**Corporate Structure:**

Under the proposed legislation, creation of Energy Corporation subsidiaries will be at the direction of Cabinet. In such authorizations, Cabinet will have the option of determining whether the subsidiary created will or will not be an agent of the Crown.

All subsidiaries will be governed by certain restrictions: they will only be able to engage in business activities within the scope of the Energy's Corporation permitted business activities,

and will have to seek prior approval from the Energy Corporation for certain activities. These activities include:

- Organizing or maintaining a subsidiary;
- The purchase, sale, or other disposition of shares of a subsidiary;
- Borrowing money from third parties for purposes related to the attainment of its objects;
- Securing the repayment of money borrowed from third parties; and
- Guaranteeing a loan.

A critical issue is the isolation to the greatest extent possible of the Energy Corporation, including its other assets such as Newfoundland and Labrador Hydro, and Government generally, from liability for potentially risky commercial activities that will be undertaken by subsidiaries such as Oilco.

The primary means to minimize this risk is to have subsidiaries which are not agents of the Crown. The Energy Corporation and Newfoundland and Labrador Hydro are Crown agents by statute; this means that their assets and liabilities are automatically assets and liabilities of Government, and that Government is ultimately liable or responsible for the activities of both.

However, private sector corporate arrangements rely upon the opposite; private sector subsidiary corporations are independent entities of their parent organizations, responsible for their own activities, assets and liabilities. It is this model that is being proposed by having non-Crown subsidiaries for the Energy Corporation. In this structure, the parent company controls the degree to which it is exposed to liability through contractual arrangements. This structure requires that the subsidiaries not be identified as agents of the parent corporation, and that the subsidiary enjoys operational independence from the parent corporation. [REDACTED]

[REDACTED]

Where Cabinet declares that a subsidiary will not be an agent of the Energy Corporation, a variety of special rules will govern that subsidiary. These rules are designed to ensure that the subsidiary conducts itself in such a way that the separation of liability from the Energy Corporation, and its status as not being a Crown agent, is protected to the greatest extent possible.

Non-Crown agent subsidiaries of the Energy Corporation will have their own Board of Directors. The purpose of having separate Boards for the subsidiaries is to:

- address liability concerns;
- ensure financing for the subsidiaries; and
- ensure operational flexibility of the subsidiaries.

The proposed amendments provide that the Board of Directors of the non-Crown agent subsidiaries will have a maximum of ten (10) members and a minimum of five (5) members. While a majority of Directors will also be members of the Energy Corporation's Board of Directors, the Board will always contain external appointees who are not a part of the management committee of the Energy Corporation or on the Energy Corporation's Board of Directors, or otherwise affiliated with the Energy Corporation. The external appointees will be appointed by the Energy Corporation's Board in the following proportions:

Number on Board	Number of External Members
5	2
6	2
7	3
8	3
9	4
10	4

The non-Crown agent subsidiary's Board will appoint the Chairperson and CEO of that subsidiary.

A separate Board for the subsidiaries is required to provide the increased liability protection for the assets of NLH, CF(L)Co, and all other subsidiaries discussed above. While no structure can provide a guarantee of liability protection, a separate Board structure in conjunction with limits

on the control exercised over subsidiaries by the Energy Corporation will provide the best possible separation of potential liabilities. This will provide as much protection as possible for the assets of NLH and CF(L)Co, consistent with the Energy Plan.

A separate Board structure will also permit operational flexibility for the subsidiaries in choosing financing models and entering into other commercial transactions. It is likely that counterparties to future financing and commercial arrangements will require confirmation that a subsidiary is a sufficiently separate entity from the Crown to ensure that Crown immunities will not impact upon a creditor's ability to enforce its security.

A separate Board for non-Crown agent subsidiaries will also limit the demands on the Energy Corporation's Board as the Boards of the subsidiaries will be able to focus solely on the needs of the subsidiary. The subsidiary Board will address matters that specifically pertain to that subsidiary, thereby freeing up time and resources of the Energy Corporation's Board and permitting the allocation of resources in a more streamlined and effective manner.

The subsidiaries themselves may require their own subsidiaries to isolate specific projects. The proposed legislative amendments provide the subsidiaries may form and wind up subsidiaries. The proposed provisions also permit the subsidiaries to purchase, exchange or dispose of shares in other corporations. All such activities will be subject to approval by the Board of the Energy Corporation.

The energy industry has different competitive drivers and operates in a different business environment than that faced by regulated utilities or any other Crown Corporation. A separate legal entity will allow the subsidiaries, such as OilCo, to compete on a similar corporate governance and business management basis as other industry partners and to be on equal ground when competing for third party capital. It will also permit the subsidiaries to be operationally efficient, competitive, profitable and accountable and will facilitate further commercial business opportunities. The subsidiaries will permit the capture of knowledge and expertise and meet the objectives of the Energy Plan. This structure is necessary to allow growth as a sustainable energy company in pursuit of strategic development of the Province's energy resources.

Equity infusion from the Province as Shareholder to the Energy Corporation and potentially its subsidiaries may be required to facilitate the subsidiaries' financial requirements for potential investments during the initial years of their existence. While it is anticipated that each subsidiary will eventually finance its own business requirements, in some cases, the subsidiaries will require additional funding from third parties. It is anticipated that the Province will guarantee loans of the subsidiaries directly, rather than the Energy Corporation. The purpose of this is to ensure a separation of liabilities of the subsidiaries and the Energy Corporation. If the Energy Corporation were to provide the guarantees, creditors could have recourse to other assets of the Energy Corporation, such as NLG or CF(L)Co, placing provincial ownership of these assets in jeopardy.

**Disclosure of Commercially Sensitive Information:**

Through its business development practices, the Energy Corporation and its subsidiaries will manage highly sensitive commercial information, analysis and strategies that have the potential to significantly impact the pursuit of growth strategies as well as the public markets of its partners. There are several pieces of legislation that afford the opportunity for commercially sensitive information to be released.

(1) Access to Information and Protection of Privacy Act

Currently, the Energy Corporation and its subsidiaries are subject to the *Access to Information and Protection of Privacy Act* (ATIPPA) and the potential for disclosure under ATIPPA puts the Energy Corporation and its subsidiaries at a competitive disadvantage.

Participating in a major project with global oil and gas partners often involves establishing a joint venture and the conclusion of a Joint Operating Agreement containing strict confidentiality and reporting requirements and restrictive covenants on partners. ECNL and its subsidiaries need to be able to enter into and honour such commitments. Partners may withhold or otherwise restrict the timely or complete access to information if there are disclosure risks, thereby greatly

reducing the value of ECNL participation. Potential business partners have indicated to ECNL that present exemptions under ATIPPA for commercially sensitive and third party information do not meet their confidentiality requirements. NR-JUS-ECNL analysis acknowledge that these concerns are at least partially justified..

Additionally, a supplier or competitor of the Energy Corporation, or one of its subsidiaries, could use the ATIPPA legislation to obtain commercially sensitive information, such as budgeting information, contracting strategy, or studies used to support a call for bids. This creates a real risk of lost business opportunities and loss of competitiveness.

The proposed legislation includes a provision there is an ability to deny the disclosure of “commercially sensitive information” originating from the Energy Corporation, its subsidiaries and / or third party business partners, regardless of where the information resides. That prohibition will apply to the Energy Corporation, its subsidiaries, and Government

(2) Auditor General Act

The Auditor General is currently authorized to undertake a full and comprehensive audit of the Energy Corporation and its subsidiaries. In the conduct of this audit, the Auditor General can access, audit and report on commercially sensitive information collected from third parties or generated by the Energy Corporation, including information employed in the assessment of business development opportunities such as Hebron, White Rose and Hibernia South. While there are confidentiality restrictions on the Auditor General respecting the disclosure of information obtained, these restrictions are subject to the Auditor General’s being entitled to make disclosure of such information that the Auditor General feels is necessary to include in his/her report to the House of Assembly.

The proposed amendment provides that the Energy Corporation will appoint an independent auditor who will provide audited annual financial statements which will be made available to the public. The independent Auditor will also assess the operational effectiveness of the Energy Corporation and provide a report to the Shareholder, which report would be confidential. Under this structure, the *Auditor General Act* would apply to the Energy Corporation and its

subsidiaries, but section 17 of the *Auditor General Act*, which otherwise requires full disclosure upon request, will be overridden by a provision that neither the Energy Corporation, its subsidiaries or Government will be required to disclose “commercially sensitive information” to the Auditor General.

As noted above, the potential for disclosure of commercially sensitive information through a public Auditor General Report will place the Energy Corporation and its subsidiaries at a commercial disadvantage. This restriction will prevent the unintentional release of commercially sensitive information.

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### (3) *Public Tender Act*

The *Public Tender Act* requires government funded bodies, which includes the Energy Corporation and its subsidiaries, to call for tenders to acquire works, goods or services, except in specific circumstances outlined in the *Public Tender Act*. Under the *Public Tender Act*, only under exceptional circumstances will a contract be awarded to someone other than the “preferred bidder,” being the bidder submitting the lowest qualified bid.

In the past, Government has required the consideration of the principles of full and fair opportunity, first consideration and adjacency in mega-projects which can be difficult to achieve for ECNL under the *Public Tender Act*. In particular, agreements for the Lower Churchill Project may mandate specific work to Labrador or Aboriginal contractors. While the provision of local benefits is an important focus in the Energy Plan, it is inconsistent with the *Public Tender Act*.

The long-term goal for OilCo is to become an operator of oil projects located in the offshore and onshore. As an operator, OilCo will need to ensure safety, reliability, timeliness and value of its

operations. Further, in relation to operations offshore, OilCo will be subject to the Accord Act and the Canada-Newfoundland Benefits Plan which states that there must be a plan to employ members of the labour force of Newfoundland and Labrador and to provide manufactures, contractors and service companies in the province with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity. In order to ensure this, the Energy Corporation and its subsidiaries, with the exception of NLH, require an exemption from the *Public Tender Act*.

An exemption from the *Public Tender Act* will allow for the consideration of the principle of adjacency and will remove a barrier to the maximization of the benefits of these “mega projects” to Newfoundland and Labrador and also ensure that first consideration of employment will be given to qualified personnel adjacent to the resources. Such an approach is consistent with the Energy Plan.

(4) *Citizen's Representative Act*

The *Citizen's Representative Act* has a broad power to investigate and report on decisions of governmental agencies. This will include the Energy Corporation and its subsidiaries. As noted above, the potential for disclosure places the Energy Corporation and its subsidiaries at a competitive disadvantage by permitting the disclosure of confidential and sensitive information.

The proposed solution is similar to that for the *Auditor General Act* above. The *Citizen's Representative Act* will continue to apply, but neither the Energy Corporation, nor its subsidiaries, nor Government will be required to disclose “commercially sensitive information” originating with the Energy Corporation, or its subsidiaries, excluding NLH.

**Other Amendments to the *Energy Corporation Act*:**

**Section 3(6)**

The proposed legislation will amend section 3(6) of the *Energy Corporation Act* to exempt the Energy Corporation and its subsidiaries from section 7 of the *Intergovernmental Affairs Act*

regarding intergovernmental agreements. The amended section will also sanction existing contracts which are not in compliance with section 7 of the *Intergovernmental Affairs Act*.

**Alternatives:**

1. Take no action. The Energy Corporation would have difficulty meeting previously negotiated obligations regarding equity participation in offshore projects and would encounter significant difficulty addressing the concerns of potential partners to successfully conclude ongoing negotiations. This alternative is not recommended.
2. Issue an Order in Council permitting the Energy Corporation to incorporate Subsidiaries under the Corporations Act. Created by this mechanism, a subsidiary would automatically be subject to all the restrictions Government has placed on the Energy Corporation. A subsidiary would also face the same difficulties as the Energy Corporation would under Alternative 1. This alternative is not recommended.
3. Give approval to the legislation amending the Energy Corporation Act to provide for new reporting and disclosure obligations with attendant legislative exemptions and also outlining the conditions under which subsidiaries will operate. Successful passage of the legislation will allow Energy Corporation and its subsidiaries to meet the obligations that have been or are being negotiated, and to do likewise in additional projects. This is the recommended alternative.

**LEGISLATIVE/REGULATORY CONSIDERATIONS:**

Creating Crown corporations is within the constitutional competence of the House of Assembly.

**FINANCIAL CONSIDERATIONS:**

**INTERDEPARTMENTAL CONSIDERATIONS:**

This submission was drafted in consultation with the Departments of Natural Resources and Justice. The Intergovernmental Affairs Secretariat has been advised and Justice has consulted internally with counsel responsible for affected legislative exemptions.

**LABRADOR OR ABORIGINAL CONSIDERATIONS:**

N/A

**INTERGOVERNMENTAL CONSIDERATIONS:**

The exemption from Section 7 of the *Intergovernmental Affairs Act* for the Energy Corporation and its subsidiaries applies only to agreements signed between crown agents. Where another government or department, or where a government or department is a Party to an agreement with the Energy Corporation, Section 7 of the *Intergovernmental Affairs Act* will apply.

**RURAL LENS:**

**OTHER JURISDICTIONS:**

In assessing an appropriate accountability structure for ECNL and its subsidiaries, Natural Resources and the Energy Corporation undertook significant analysis and engaged external consultants Wood MacKenzie to ensure that the approach taken here is consistent with international best practices. Guidance was taken from Norwegian and Danish state-owned energy corporations as examples of models that meet meaningful public accountability requirements while reducing liability exposure and ensuring international competitiveness.

**CONSULTATIONS:**

A working group consisting of representatives of the Departments of Natural Resources, Finance and Justice, and the Energy Corporation, were engaged in drafting this submission.

**SUSTAINABILITY CONSIDERATIONS:**

There are no sustainability considerations.

**COMMUNICATIONS AND CONSULTATION SYNOPSIS:**

Please see attached.

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**Kathy Dunderdale**  
**Minister of Natural Resources**

May 1, 2008

**LEGISLATIVE FRAMEWORK FOR OILCo/ECNL**

<b>Consulted With:</b> Chris Kieley, DM, NR Ed Martin, CEO, ECNL Charles Bown, ADM NR Christine Healy, DNR Randy Pelletier, Justice Jim Keating, ECNL Derrick Sturge, CFO, ECNL Wayne Chipman, ECNL Peter Hickman, ECNL Mark Bradbury, ECNL Dawn Dalley, ECNL	<b>Date Drafted:</b> March 3, 2008  <b>Revised:</b>  May 2, 2008	<b>Anticipated Announcement Date:</b>  When the legislation is introduced for second reading in the House of Assembly in May.
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**Issue**

The creation of a new Oil and Gas subsidiary (OilCo) of the energy corporation and the development of new governance and public accountability rules to guide the energy corporation and its subsidiaries.

**Communications Analysis**

**Public Environment**

The government has expanded the mandate of Newfoundland & Labrador Hydro (NLH) and created a parent company, the Energy Corporation of Newfoundland and Labrador (ECNL) as outlined in the provincial Energy Plan released in September 2007. This expanded mandate allows the province to participate in and benefit as a full partner in the NL offshore. This policy direction has been clearly communicated by the Government since taking office in 2003.

In 2006, the Provincial Government made amendments to the Hydro Corporation Act to facilitate the changes at NLH and in 2007 Government made further amendments to the Hydro Corporation Act and proclaimed the Energy Corporation Act. These legislative changes were designed to facilitate the expanded mandate laid out in the Energy Plan.

Overall, the public has been supportive of the changes to NLH and the creation of the Energy Corporation due to the benefits from these changes, including greater control of our energy resources and improved overall benefits from the resources. This has been supported with two announcements last year in the NL offshore: an MOU on Hebron and a final agreement for White Rose Expansion. Both of these announcements generated predominantly positive public commentary. NLH has also been public in its facilitation of wind development on the island with two projects slated for commissioning and first power in late 2008.

At the same time, however, the public has been very skeptical of transparency and accountability with the continued fallout from the Auditor General's report on MHA's constituency allowance

spending. The issues of openness and accountability have also been at the forefront of the recent health care issues and the release of reports related to faulty hormone receptor tests. This Government has committed itself to a higher level of transparency and accountability.

The Auditor General was at the centre of raising the constituency scandal. The new legislation prompted by the Green Report limited his ability comment on certain matters related to MHA spending. This change received significant media attention and media and political pundits suggested government was trying to limit disclosure.

Recent news reports have also been examining how municipally-owned entities in St. John's (SJSE and Metrobus) are not subject to transparency and access to information legislation, despite the fact they are in receipt of public funds.

### **Strategic Considerations**

- The Liberal Opposition will suggest government is trying to limit disclosure and will question what protection exists for taxpayers. It will need to be made clear that government is enabling the energy corporation and its subsidiaries to carry out the stated policy objectives of government, which includes being able to operate effectively in a competitive business environment. The energy corporation and its subsidiaries are still publicly accountable through the mechanisms that have been developed based on models that are consistent with international best practices.
- NDP Leader Lorraine Michael is generally supportive of the concept of a greater role for Newfoundland and Labrador Hydro, although the party platform calls for the Crown corporation to expand into areas of energy efficiency and conservation as well.
- Other critics might charge that government is giving ECNL blanket powers to enter into deals on behalf of the people of the province. It can be reiterated that the people of the province, through their Provincial Government, will continue to control the energy corporation's major decisions and investments, while providing the corporation with the autonomy it needs to successfully compete in the global energy industry.
- Hydro contracted Deloitte to review and compare how other jurisdictions structure their energy Crown corporations where there are energy investments and regulated activities and also contracted Wood McKenzie to review disclosure practises. The proposed ECNL legislative changes are in line with the identified best practices.

### **Target Audiences**

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|---|--|
| • St. John's Board of Trade                   | • Taxpayers  |
| • Oil and gas companies                       | • Electricity Customers                                |
| • Canadian Association of Petroleum Producers | • Opposition Parties                                   |
| • Chambers of Commerce                        | • MPs  |
| • NOIA (NL Oil & Gas Industries Assoc.)       | • IBEW   |
| • Canadian Assoc. of Petroleum Producers      | • Media (Local, national and oil and gas publications) |
| • Public Utilities Board                      |  |
| • Caucus                                      |  |
| • Industrial Customers                        |  |
| • Newfoundland Power                          |  |

**Consultations**

- The Province has consulted with Wood McKenzie and ECNL secured a legal opinion on appropriate governance and disclosure structures in other state-owned Energy Companies.

**Communications Objectives**

- To demonstrate that public accountability is paramount for the Provincial Government, the energy corporation and all its existing and future subsidiaries and an appropriate mechanism is in place to ensure the proper level of accountability for the people of the province.
- To communicate that government is changing legislation to allow ECNL subsidiaries engaged in competitive business activities to compete equally and effectively in the energy sector.
- To reiterate that these changes are necessary for ECNL to carry out government's stated policy objectives and that government will retain control of ECNL.
- To demonstrate why and how these legislative changes will protect commercially sensitive information.
- To communicate that the new structure will not affect electricity rates.
- To show that the assets of the direct subsidiaries of the energy corporation will be protected to fullest extent possible from any liabilities incurred by other direct subsidiaries.

**Messages****Key Messages**

- This legislation establishes a clear and effective public accountability and governance framework for the energy corporation and its subsidiaries. It is necessary for the energy corporation and its subsidiaries to operate effectively in a competitive business environment.
- This legislation provides the people of the province with access to information on the activities of the energy corporation and its subsidiaries by requiring the corporation to provide regularly-scheduled reports and public meetings.
- These legislative changes reflect the principals set out in the province's Energy Plan.
- The energy corporation will provide detailed information to the public through annual reports, annual general meetings, audited annual financial statements, and quarterly Management Discussion and Analysis reports.
- The energy corporation is unlike any of the province's other Crown corporations in that it is operating in a competitive business environment with publicly-traded private corporations.
- The people of the province, through their Provincial Government, will continue to control the energy corporation's major decisions and investments, while providing the corporation with the autonomy it needs to successfully compete in the global energy industry.

Messages – Commercially-Sensitive Information

- This legislation protects from public release any commercially-sensitive information held by the energy corporation and its subsidiaries.
- Commercially-sensitive information is any information the corporation obtains from other companies in the course of commercial negotiations or any information generated internally for the purposes of commercial negotiations.
- Allowing public release of commercially-sensitive information could provide other companies with information that could compromise the energy corporation's negotiating position.
- Allowing public release of other companies' commercially-sensitive information could violate confidentially agreements with those companies.

#### Messages – Other

- The changes to the Energy Corporation Act will ensure that Newfoundland and Labrador Hydro electricity rates will not be affected by any losses incurred in other subsidiaries of the energy corporation.
- The Public Tender Act must not apply to the energy corporation as doing so would create a direct conflict with policy positions and agreements requiring the province to give preference to contract bids that provide local and aboriginal benefits in keeping with principles of adjacency.
- This legislation balances the principle of transparency to the people of the province with our need for maintaining the confidentiality of competitive and sensitive business information.
- The oil and gas division's offshore work will be subject to regulation by the C-NOLPB in the same way other oil and gas companies owning and operating offshore Newfoundland and Labrador.
- NL Hydro is a monopoly and does not have the same operating requirements as the Oil & Gas Co, therefore its legislative requirements will not change and it will continue to be regulated by the Public Utilities Board.

#### Messages - Governance

- Any direct or indirect subsidiary of the energy corporation must have its own board of directors, with at least five and no greater than 10 members, appointed by the parent company.
- The majority of board members of any subsidiary must also be members of the energy corporation board.
- Subsidiary boards will always have external appointees who are not part of the management committee of the energy corporation, not on the board of the corporation and not otherwise affiliated with the corporation.
- Requiring separate boards of directors for subsidiaries adds a level of operational independence for the subsidiaries and protection for the parent's other assets.
- The energy corporation must receive Cabinet approval before creating any new subsidiaries.
- A detailed analysis from Deloitte's shows that structure of the new energy company follows standard practices of Crown corporations in other jurisdictions where the corporation is engaged in regulated and unregulated energy markets.

**Interdepartmental Coordination**

The Department of Natural Resources is coordinating the legislative changes with the energy corporation, NLH and the Departments of Finance and Justice, in consultation with the Premier's Office.

**The Announcement**

- The Minister will speak to the legislation in the House of Assembly.
- A technical briefing will be offered to the media and Opposition.
- A news release will be issued once the legislation is introduced in the House outlining government's intention and consideration will be given to having a media availability by the minister and Hydro CEO Ed Martin following the technical briefing.

**Minister's Involvement**

Minster Dunderdale will be the lead on the announcement, while ECNL will speak to any business or technical details that may arise as a result of the announcement.

**Materials**

A detailed Q&A and speaking notes will be prepared for the Minister for use in the House of Assembly and interviews to address the above strategic considerations and other issues that may arise.

Key messages will be provided to the Government House Leader and other members of the House appointed to speak to the legislation.

**Follow-Up**

The media will be monitored for reaction of the public, interest groups and other interested people. The Minister will respond accordingly.

**Drafted by:**

Corey Snook, Communications and Marketing Manager, 729-5777

**Approved by:** Tracy Barron, Director of Communications, 729-5282

## Email Message

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**From:** Carter, Ken L [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=KLCARTER]  
**To:** Johnstone, Terry J. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=Tjohnsto]  
**Cc:**  
**Sent:** 5/8/2008 at 3:02 PM  
**Received:** 5/8/2008 at 3:02 PM  
**Subject:** NR2008 [REDACTED]

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Amendments to the Energy Corporation

Terry,


We have no comment on the proposed direction. As this is a legislative and legal issue, we do not see the need for a Rural Lens.

Thanks,

Ken Carter

# Presentation to Cabinet

Act to Amend the Energy  
Corporation Act



Presented by: Natural Resources  
May 15, 2008

# Purpose of Amendments

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1. Establish appropriate governance and public accountability for Energy Corporation of Newfoundland and Labrador (ECNL) and subsidiaries
2. Protect, to the greatest extent possible, government and assets of ECNL from subsidiary liabilities
3. Enable ECNL to operate in a competitive business environment
  - Not privatization



# 1. Governance and Accountability

# Governance and Accountability

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- Amendments will ensure appropriate oversight and accountability to public and Shareholder
  - Recognize that ECNL is unlike other Crown corporations and will operate in a competitive business environment
- ECNL will be structured for transparency and accountability similar to publicly traded companies
- No changes are contemplated to Newfoundland and Labrador Hydro

# **Governance and Accountability**

## **- Reporting Requirements -**



- Annual Report available to the public
- Annual General Meeting open to residents of Province
- Audited Annual Financial Statement available to the public
- Shareholder Disclosure Policy
  - (information obtained not provided to public)
- Subject to Transparency and Accountability Act



## 2. Subsidiary Structure

# Subsidiary Structure

- ECNL's new business activities, including its subsidiaries, carry normal business risk
- The purpose of the proposed amendments is to protect, to the greatest extent possible, Government and ECNL assets from subsidiary liability
- There are two approaches:
  - Crown Agents
    - The assets and liabilities of these subsidiaries are automatically those of government
  - Non-Crown Agents
    - The assets and liabilities of these subsidiaries are not those of government
- The recommended way to do this is to create the right mix of crown and non-crown agents in the corporate structure

# Subsidiary Structure

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- Non-crown agent subsidiaries will have own Board of Directors
  - Majority of ECNL directors on Board
  - Board will select CEO
  
- Separate Boards for non-crown agent subsidiaries will:
  - Limit liability concerns, to the greatest extent possible
  - Enable financing flexibility
  - Enable operational flexibility

# Subsidiary Structure

## - Financing Considerations -

- All financing requirements will be subject to the approval of Cabinet at this time
- In the future, additional amendments may be required to adjust financing process
  - ECNL and its subsidiaries are intended to be financially self-supporting and may not require / desire government guarantees
- The proposed amendments also provide the flexibility for government to directly guarantee loans to ECNL
  - May be helpful for asset protection purposes



### 3. Competitive Business Environment

# Competitive Business Environment



- ECNL operates in an internationally competitive business environment similar to its peers; ExxonMobil, Chevron etc,
  - unlike any other Crown Corporation in NL
- ECNL and DNR undertook an international review of similar energy corporations.
- ECNL requires appropriate tools to operate in an internationally competitive business environment.
  - Required to negotiate business deals with private sector partners

# Competitive Business Environment

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- ECNL and subsidiaries will manage highly sensitive commercial information, analysis and strategies
- Currently, this information may be released under existing legislative regime, including:
  - ATIPPA
  - Auditor General Act
  - Citizen's Representative Act
- Release of this information could influence business arrangements and become a competitive disadvantage.
- Competitors could access strategic business information to undermine ECNL, and or its partners.

# Competitive Business Environment

## - ATIPPA -

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- Partners, such as oil companies, have indicated that present ATIPPA exemptions for commercially sensitive and third party information do not provide the degree of protection required in a competitive business environment
- Under current regime, suppliers or competitors of ECNL or its subsidiaries, could use the ATIPPA legislation to obtain information to threaten ECNL's, or its partners, competitive position
- Creates a real risk of lost business opportunities, value and competitiveness

# **Competitive Business Environment - Auditor General Act -**

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- AG can currently access, audit and report on commercially sensitive information
- Potential public disclosure of commercially sensitive information will place ECNL, its partners and subsidiaries at a commercial disadvantage

# **Competitive Business Environment**

## **- Citizen's Representative Act -**

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- Citizen's Representative can access confidential and sensitive information through investigations.
- Potential public disclosure of commercially sensitive information will place ECNL, its partners and subsidiaries at a commercial disadvantage

## **Competitive Business Environment - Recommended Solution -**

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- Prohibit the disclosure of “commercially sensitive information” originating from the ECNL, its subsidiaries, and/or third party business partners, regardless of where the information resides
  - ECNL will still be subject to appropriate legislation (i.e. ATIPPA, Auditor General Act and Citizen’s Representative Act)
- Prohibition will apply to ECNL, subsidiaries and Government
- Auditor General will have access to all information but will be prohibited from releasing commercially sensitive information

# Competitive Business Environment

## - Public Tender Act -

- The tender process is not appropriate for the provision of works, goods and services required on large construction projects.
  - Flexibility is required for large and complex bid packages where overall value, rather than price is the key factor
- Inconsistent with the Energy Plan and the Atlantic Accord
  - Full and fair opportunity
  - First consideration for employment and business
  - Adjacency
  - Local benefits
- Full exemption for ECNL and its subsidiaries, except NLH, is recommended
  - Bull Arm will also be exempted subject to completion of a strategic review

# **Competitive Business Environment - Intergovernmental Affairs Act -**

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- ECNL and its subsidiaries will regularly enter into agreements with other crown agents.
- IGA Act requires that all such agreements be also signed by the Minister of Intergovernmental Affairs. Authority to sign intergovernmental agreements requires Cabinet approval.
- The proposed amendment permits ECNL and its subsidiaries to enter into agreements with other crown agents. IGA Act still applies to agreements where another government is a party


# Summary

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- Proposed amendments will ensure ECNL meets accountability and disclosure process similar to a private company
- Proposed amendments will protect, to the greatest extent possible, Government and ECNL assets from subsidiary liabilities
- Proposed amendments will enable ECNL to participate effectively in an internationally competitive business environment

# Presentation to Cabinet

Act to Amend the Energy  
Corporation Act



Presented by: Natural Resources  
May 15, 2008



## Other Jurisdictions

# Norway

- Petoro and StatoilHydro
- *Freedom of Information Act* does not apply to information held by companies
  - Commercially sensitive documents can be held back indefinitely
  - Quarterly reports are provided by companies
- EU rules apply to tendering process (not equivalent to *Public Tender Act*)
- AG can audit financial statements on aggregated basis annually
  - Includes Statoil, Petoro, Gassco, Gassnova, Petroleum Directorate
- AG can undertake performance audit (“audit for value”) at behest of legislature if issue of “fundamental economic or major social importance”

# Denmark

- DONG - Danish Energy Corporation - 73% state owned
- *Freedom of Information* legislation applies to some parts of DONG
  - Information that is commercially or economically sensitive is exempt from disclosure
  - No right of appeal from refusal to release information
- No detailed financial information on DONG available publicly other than extremely audited financial statements and quarterly reports
- Wood Mackenzie to advise re public tendering

# Netherlands

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- EBN holds interest in gas field on behalf of Dutch government
- *Freedom of Information Act* does not apply to EBN
  - Commercially sensitive information held confidential indefinitely
- Public tender rules do not apply
- All state-owned companies are reviewed by Court of Audit every 5 years.
  - Wood Mackenzie confirming treatment of confidential information but high materiality threshold

# Canadian Examples

- CDIC / CHHC
  - Initially was not subject to *Access to information Act* or *Auditor General Act*
  - Corporation came under Acts in September 2005
- Hydro Quebec
  - Subject to access to information legislation
  - Public bodies can prohibit disclosure of commercially sensitive information
    - Very broad definition
  - Subject to review by Auditor General

## Email Message

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**From:** Bown, Charles W. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=CBOWN]  
**To:** Johnstone, Terry J. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=TJOHNSTO], Stanley, Todd [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=TODDSTANLEY]  
**Cc:** Chippett, Jamie [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JAMIECHIPPETT]  
**Sent:** 5/8/2008 at 5:09 PM  
**Received:** 5/8/2008 at 5:09 PM  
**Subject:** RE: Tw2008-[REDACTED] - Amendment to the Energy Corp. Act

---

Terry:

There are no other Crowns in NL or Canada that have this type of protection. That being said, there are no other Crowns in NL or Canada that have the objects of ECNL. CHHC is a holding corp and will be nothing more than that, whereas ECNL and its subsidiaries can be project operators in the same sense as a private corporation. We have reviewed other jurisdictions and, while there are similarities in certain areas, again there are none with the all these protections.

This is not a deliberate attempt to isolate ECNL from legislation. The rationale in the paper clearly identifies the commercial and economic drivers for this protection. [REDACTED]

Charles

---

From: Johnstone, Terry J.  
Sent: May 8, 2008 4:49 PM  
To: Bown, Charles W.; Stanley, Todd  
Cc: Chippett, Jamie  
Subject: Tw2008-022 -- Amendment to the Energy Corp. Act

Hi Charles & Todd

The Submission makes the following comments - more or less.

1. Currently, the Energy Corporation and its subsidiaries are subject to the Access to Information and Protection of Privacy Act (ATIPPA). The potential for disclosure under ATIPPA would place the Energy Corporation and its subsidiaries at a competitive disadvantage. The proposed legislation includes a provision to deny the disclosure of "commercially sensitive information" originating from the Energy

Corporation, its subsidiaries and / or third party business partners, regardless of where the information resides. That prohibition will apply to the Energy Corporation, its subsidiaries, and Government.

2. The proposed amendment provides that the Energy Corporation will appoint an independent auditor who will provide audited annual financial statements which will be made available to the public. The independent Auditor will also assess the operational effectiveness of the Energy Corporation and provide a confidential report to the Shareholder. Under this structure, the Auditor General Act would apply to the Energy Corporation and its subsidiaries, but section 17 of the Auditor General Act, that requires full disclosure upon request, will be overridden by a provision in the draft Bill allowing the Energy Corporation, its subsidiaries, or Government not to disclose "commercially sensitive information" to the Auditor General.

3. OilCo will be subject to the Accord Act and the Canada-Newfoundland Benefits Plan which states that there must be a plan to employ members of the labour force of Newfoundland and Labrador and to provide manufactures, contractors and service companies in the province with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity. In order to ensure this, this Submission proposes that the Energy Corporation and its subsidiaries, with the exception of NLH, be exempt from the Public Tender Act.

4. The Citizen's Representative Act will continue to apply, but neither the Energy Corporation, nor its subsidiaries, nor Government will be required to disclose "commercially sensitive information" originating with the Energy Corporation, or its subsidiaries, excluding NLH.

The question we have does the province have any other non-crown corporations and have similar exemption been given to other crown or non-crown corporations. If so could you give examples. Has this approach been used in other cdn jurisdictions.

Thanks - Terry

## Email Message

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**From:** Bown, Charles W. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=CBOWN]  
**To:** Johnstone, Terry J. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=TJOHNSTO]  
**Cc:**  
**Sent:** 5/8/2008 at 5:11 PM  
**Received:** 5/8/2008 at 5:11 PM  
**Subject:** RE: NR2008- [REDACTED] - Amendments to the Energy Corporation Act

---

Terry :  
The revised wording is in the IGA considerations section. JUS has been advised and the bill is being re-drafted  
Charles

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

From: Johnstone, Terry J.  
Sent: May 8, 2008 5:10 PM  
To: Bown, Charles W.  
Subject: RE: [REDACTED] - Amendments to the Energy Corporation Act

Charles - do you have revised wording for the IGA section. We can then make a recommendation that the bill be amended.

Terry

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

From: Bown, Charles W.  
Sent: Thursday, May 08, 2008 4:02 PM  
To: Johnstone, Terry J.  
Cc: Chippett, Jamie  
Subject: RE: [REDACTED] - Amendments to the Energy Corporation Act

My bad.....

The statements that I drafted for IGA considerations did not get transposed into the body of the paper. I agree with Tracy and the Bill will reflect the statement in the IGA considerations.

Charles

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

From: Johnstone, Terry J.  
Sent: May 8, 2008 3:44 PM  
To: Bown, Charles W.  
Cc: Chippett, Jamie  
Subject: FW: [REDACTED] - Amendments to the Energy Corporation Act

Hi Charles - do you have any comments in response to IGA's comments?

Terry

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

From: King, Tracy  
Sent: Thursday, May 08, 2008 3:35 PM  
To: Dutton, Sean; Johnstone, Terry J.  
Cc: Chippett, Jamie; Harvey, Michael  
Subject: RE: [REDACTED] - Amendments to the Energy Corporation Act

Terry,

IGAS does not support the proposed amendment to section 17.2 (in the paper section 3 (6)) of the Energy Corporation Act which would state that agreements entered into by the corporation or a subsidy and the Crown in right of Canada, the Crown in right of another province or another sovereign government is not an intergovernmental agreement. IGAS could support exempting agreements between the Energy Corporation and a similar government entity in another jurisdiction from the Act. This would set precedent with implications over the long-term that may not be immediately evident. The mandate of the Minister of Intergovernmental Affairs, as set out in section 6 of the Intergovernmental Affairs Act, is in part to be "responsible for the co-ordination of all policies, programs and activities of the government of the province and its agencies in relation to a sovereign government and its agencies" and conducting a continuing review of "all policies, programs and activities of the government of the province and its agencies in relation to a sovereign government and its agencies". This mandate may be compromised by the proposal under section 17. In general, it is the view of IGAS that any Crown entity entering an agreement with another jurisdiction, within Canada or internationally, should also entered into by the Minister of Intergovernmental Affairs and therefore, in accordance with government policy, such agreements should be the subject of a Cabinet submission to ensure the Cabinet has a full view of the activities of the Crown and its entities in relation to other governments. Please do not hesitate to call should you like to discuss further.

Regards,  
Tracy

Tracy King  
Director, Resource and Fiscal Policy  
Intergovernmental Affairs Secretariat  
t 709.729.2852  
f 709.729.5038

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

From: Dutton, Sean  
Sent: Thursday, May 08, 2008 2:28 PM  
To: Johnstone, Terry J.  
Cc: Chippett, Jamie; King, Tracy  
Subject: Re: [REDACTED] - Amendments to the Energy Corporation Act

Tracy is doing due diligence and will get back to you.

In general, I could accept an IGA Act exemption ONLY for crown corp to crown corp agreements. Any agreements also involving a Government (eg a Premier, Minister or Department) should still trigger our Act.

Tracy will advise on the fine print to ensure what is proposed captures this principle.

Sean

Sent Via BlackBerry

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

From: Johnstone, Terry J.  
To: Dutton, Sean  
Cc: Chippett, Jamie  
Sent: Thu May 08 14:22:38 2008  
Subject: [REDACTED] - Amendments to the Energy Corporation Act

Hi Sean - I am just finalizing my analysis on this paper - the paper indicates that IGA is aware of this paper.

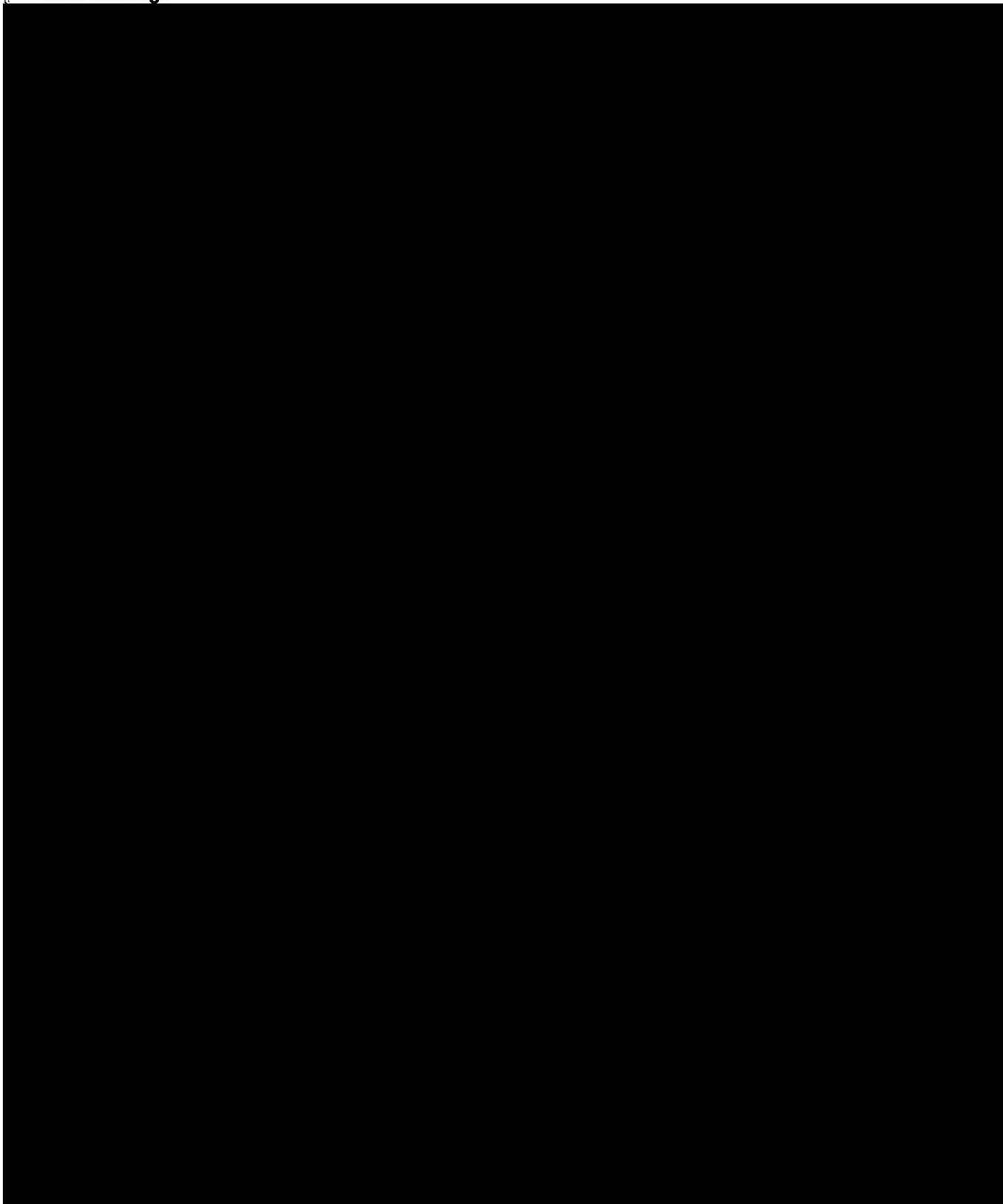
Can you confirm that IGA is aware of the paper and whether or not you support the statement on the bottom of p12 and top of p.13 ".amend section 3(6) of the Energy Corp Act to exempt the Energy Corp and its subsidiaries from IGA Act regarding intergovernmental agreements. The amended section will also sanction existing contracts which are not in compliance with section 7 of the IGA Act."

There is some urgency with getting this submission to EPC on Tuesday; therefore I would appreciate getting your feedback as soon as possible.

Thanks and sorry about the short notice on this.

Terry

Email Message



## Email Message

**From:** King, Tracy [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=TRACYKING]  
**To:** Dutton, Sean [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=Sdutton], Johnstone, Terry J. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=Tjohnsto]  
**Cc:** Chippett, Jamie [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=Jamiechippett], Harvey, Michael [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=Michaelharvey]  
**Sent:** 5/8/2008 at 3:34 PM  
**Received:** 5/8/2008 at 3:34 PM  
**Subject:** RE: NR2008- [REDACTED] Amendments to the Energy Corporation Act

Terry,  
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Regards,  
 Tracy

Tracy King  
 Director, Resource and Fiscal Policy  
 Intergovernmental Affairs Secretariat  
 t 709.729.2852  
 f 709.729.5038

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

From: Dutton, Sean  
 Sent: Thursday, May 08, 2008 2:28 PM  
 To: Johnstone, Terry J.  
 Cc: Chippett, Jamie; King, Tracy  
 Subject: Re: [REDACTED] Amendments to the Energy Corporation Act

Tracy is doing due diligence and will get back to you.

In general, I could accept an IGA Act exemption ONLY for crown corp to crown corp

agreements. Any agreements also involving a Government (eg a Premier, Minister or Department) should still trigger our Act.

Tracy will advise on the fine print to ensure what is proposed captures this principle.

Sean

Sent Via BlackBerry

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

From: Johnstone, Terry J.

To: Dutton, Sean

Cc: Chippett, Jamie

Sent: Thu May 08 14:22:38 2008

Subject: [REDACTED] - Amendments to the Energy Corporation Act

Hi Sean - I am just finalizing my analysis on this paper - the paper indicates that IGA is aware of this paper.

Can you confirm that IGA is aware of the paper and whether or not you support the statement on the bottom of p12 and top of p.13 ".amend section 3(6) of the Energy Corp Act to exempt the Energy Corp and its subsidiaries from IGA Act regarding intergovernmental agreements. The amended section will also sanction existing contracts which are not in compliance with section 7 of the IGA Act."

There is some urgency with getting this submission to EPC on Tuesday; therefore I would appreciate getting your feedback as soon as possible.

Thanks and sorry about the short notice on this.

Terry

## Email Message

---

**From:** Curtis, Ken [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=KCURTIS]  
**To:** Bown, Charles W. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=CBOWN], Chippett, Jamie  
[EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=JAMIECHIPPETT]  
**Cc:** Brewer, Donna [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=DBREWER], Johnstone, Terry J.  
[EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=TJOHNSTO], Morris, Joan E.  
[EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=JMORRIS]  
**Sent:** 5/13/2008 at 8:29 AM  
**Received:** 5/13/2008 at 8:29 AM  
**Subject:** RE: ECNL

---

Charles,

Thanks for the clarification.

I was using Hebron as an example of the larger point I was trying to make. Presumably, the process you outline for Hebron would also apply to any other project in the future that you illustrate as OtherProjectCo - Correct?

Thanks again,  
Ken

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

From: Bown, Charles W.  
Sent: Monday, May 12, 2008 10:30 PM  
To: Curtis, Ken; Chippett, Jamie  
Cc: Brewer, Donna; Johnstone, Terry J.; Morris, Joan E.  
Subject: RE: ECNL

Ken:

I used CF(L)Co in my first response as an example to respond to your question whether subsidiaries, or sub of subs, could exist where ECNL, or another subsidiary does not own 100%, not to represent how the Hebron Project would be structured.

Your subsequent questions pertained to Hebron as did my responses which were framed in a context that did not include any reference to CF(L)Co.

The structure of the ECNL business as it pertains to oil and gas activities is envisioned as described below:

```
ECNL
-- OilCo
----- HebronCo
----- WhiteroseCo
----- OtheroilprojectCo
----- etc
```

OilCo will be a non-crown agent subsidiary owned 100% by ECNL. HebronCo will be a non-crown agent subsidiary of OilCo that will hold the provinces 4.9% interest in Hebron.

As discussed in my earlier response, and described by Jim Keating this morning, HebronCo will be the corporate entity that signs on to the Hebron Joint Operating Agreement. We are not creating an operating a company in which we will be partners with Exxon, Chevron or another company; ie we will not be a 4.9% partner in THEHEBRONPROJECT Company; Chevron will be the operator of Hebron. The purpose of the JOA is to detail each parties responsibilities as it pertains to the development and management of the Hebron Project, including costs, revenues, production sharing, etc. We will own 100% of HebronCo which will hold 4.9% of Hebron; we have 4.9% and will continue to own 4.9%..... there can be no dilution.

The reason for structuring Hebron this way was discussed this morning. JOA's are the accepted practice for managing separate interests in a multi-party project. In addition to assigning obligations for costs and revenue sharing, the JOA also seeks to limit the amount of change that can occur within the partnership. As an example, it was cited this morning that one condition of the JOA is that if there are any changes within the one of the JOA parties, then their entire partnership must give consent to this change before it can have effect.

If we assume that ECNL signed the JOA, then at anytime in the future ECNL wanted to add a subsidiary, wanted to borrow funds, or made changes in its corporate structure, then the JOA partners would have to give consent. If this were the case, then, the JOA partners would never agree to acquiring rights or developing another oil and gas project, or for that matter, agree to develop the Lower Churchill project. This form of project participation would in fact be a dilution of the province's interests in all of its energy projects as the Hebron partners would have a veto over all our energy project decisions

That is why corporations create "paper companies" that hold an interest in a project managed by a JOA as it allows the companies freedom to manage their greater business and to limit the exposure of the project to its other corporate assets.

Charles

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

From: Curtis, Ken  
Sent: Monday, May 12, 2008 4:31 PM  
To: Bown, Charles W.; Chippett, Jamie  
Cc: Brewer, Donna; Johnstone, Terry J.; Morris, Joan E.  
Subject: RE: ECNL

Perhaps I'm over analyzing this point.....but if this is the case and Hebron Co isn't wholly owned by Oil Co (as you referenced below with the CFLCo example), is there a potential that our share of Hebron, or any other project, could be diluted to the other owners of Hebron Co?

To simply it, if we could potentially own 60% of Hebron Co and others own 40% of Hebron Co (or any other project down the road) would we end up potentially only owning 60% of our share of Hebron (3% versus 5%).

Hopefully, this will be last e-mail on this point.....

Thanks,  
Ken

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

From: Bown, Charles W.  
Sent: Monday, May 12, 2008 4:07 PM  
To: Curtis, Ken; Chippett, Jamie  
Cc: Brewer, Donna; Johnstone, Terry J.

Subject: Re: ECNL

No. ECNL will not own HebronCo. OilCo, which will be a non-crown agent, will own the shares of HebronCo. Therin lies the separation.

Charles

Sent Via BlackBerry

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

From: Curtis, Ken

To: Chippett, Jamie

Cc: Brewer, Donna; Bown, Charles W.; Johnstone, Terry J.

Sent: Mon May 12 15:52:51 2008

Subject: FW: ECNL

Jamie,

Since time is short, I'm sending you the e-mail exchange below for information. I've been trying to sort out the issue below with Charles to see if we need to flag a potential issue. It is unclear at the moment if this is an issue or not. I'll keep you posted.

Ken

---

From: Curtis, Ken

Sent: Monday, May 12, 2008 3:48 PM

To: Bown, Charles W.

Subject: FW: ECNL

One other question - doesn't your response role this up further. I thought the idea was to isolate the transaction to the lowest level so that the JOA partners would only have to approve the changes to the smallest unit. So the partners would only have to approve the changes to Hebron Co. Under your response, it appears that the partners would have to approve changes to ECNL. Again, I thought they were trying to achieve the opposite result.

---

From: Curtis, Ken

Sent: Monday, May 12, 2008 3:34 PM

To: Bown, Charles W.

Subject: FW: ECNL

Typo below which is corrected.

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

From: Curtis, Ken

Sent: Monday, May 12, 2008 3:28 PM

To: Bown, Charles W.

Subject: RE: ECNL

Perhaps a bad example - I was trying to figure out if a sub of a sub wasn't wholly owned if this could dilute the province's interest in a project. As you indicated it may not be wholly owned. The way I thought it worked for instance was that ECNL owned the shares in OilCo, OilCo owned the shares in Hebron Co and so on down the line.

If ECNL is going to own the subs of the subs how does this cover the operational

control issues?

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

From: Bown, Charles W.  
Sent: Monday, May 12, 2008 3:22 PM  
To: Curtis, Ken  
Subject: RE: ECNL

No. As Jim explained this morning, Hebron Co would be 100% owned by ECNL. It would be the corporate entity that signs on to the Hebron Joint Operating Agreement. This way, if there any changes in OilCo, then the Hebron JOA partners would not have to give consent. IN essence, it would be a paper company in the same fashion that the other JOA partners will establish.

Cahrles

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

From: Curtis, Ken  
Sent: May 12, 2008 3:18 PM  
To: Bown, Charles W.  
Subject: RE: ECNL

I guess an issue then could be that if OilCo set up HebronCo that wasn't wholly owned someone else could potentially end up owning a portion of our Hebron equity - Correct or not?

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

From: Bown, Charles W.  
Sent: Monday, May 12, 2008 3:13 PM  
To: Curtis, Ken  
Subject: RE: ECNL

It doesn't have to be wholly owned eg. CF(L)Co; however, all subsidiaries must fall within the objects of ECNL

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

From: Curtis, Ken  
Sent: May 12, 2008 3:11 PM  
To: Bown, Charles W.  
Subject: RE: ECNL

Would the subsidiary of a subsidiary be required to be wholly owned by the subsidiary and only undertake activities that are within the mandate of the subsidiary?

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

From: Bown, Charles W.  
Sent: Monday, May 12, 2008 2:45 PM  
To: Curtis, Ken  
Subject: Re: ECNL

Ok

Sent Via BlackBerry

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

From: Curtis, Ken  
To: Bown, Charles W.  
Sent: Mon May 12 14:42:43 2008

Subject: RE: ECNL

Does this accurately capture it?

Charles advises that under the current proposal there will not be a requirement for separate legislation for OilCo but Cabinet approval will be required to set-up OilCo. For a subsidiary of OilCo, the OilCo board will approve the creation of these subsidiaries.

Basically, for a subsidiary of ECNL Cabinet approval is required. However, subsidiaries of the subsidiary are approved by the Board of a subsidiary under the current proposal. There was a miscommunication on this point this morning.

## Email Message

**From:** Brewer, Donna [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DBREWER]  
**To:** Quigley, David [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DQUIGLEY], Morris, Joan E. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JMORRIS], Curtis, Ken [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=KCURTIS], O'Keefe, Wendy [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=WENDYO'KEEFE], Constantine, Robert [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RCONSTANTINE], Griffin, Jay [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JGRIFFIN], Smith, Paul C. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=SMITHP], Williams, Ronald [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RWILLIAMS], Myrden, Paul [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=PMYRDEN], Saunders, Earl [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=ESAUNDERS]  
**Cc:** Bown, Charles W. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=CBOWN], Chippett, Jamie [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JAMIECHIPPETT], Johnstone, Terry J. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=TJOHNSTO], Paddon, Terry [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=TPADDON]  
**Sent:** 5/8/2008 at 9:34 PM  
**Received:** 5/8/2008 at 9:34 PM  
**Subject:** RE: NR2008-████ Amendments to Energy Corp.Act

**Attachments:** finance comments to cabinet secretariat re nr2008-022.doc

Thanks Dave. I made some edits to your consolidated list and included same as an Annex to some general comments which Cabinet Secretariat may want to consider for this analysis. If you and Ken can touch base with Charles in the morning to discuss any further answers or comments which he or Todd can offer, that would be much appreciated.

Jamie will there be any presentation by Energy Corporation, NR and/or Justice officials at EPC or Cabinet?

I am expecting Terry may be in tomorrow and if he has had previously dealings with the Energy Corporation and/or NR on this matter but he may be able to provide some further perspective etc.

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**From:** Quigley, David  
**Sent:** May 8, 2008 6:31 PM  
**To:** Morris, Joan E.; Curtis, Ken; Brewer, Donna; O'Keefe, Wendy; Constantine, Robert; Griffin, Jay; Smith, Paul C.; Williams, Ronald  
**Subject:** ██████████ Amendments to Energy Corp.Act

This draft is subject to approval of all copied on this e-mail. Please advise of any changes before forwarding to Cabinet Secretariat (Terry Johnstone) in the a.m.  
Thanks

Terry,

In the absence of not having seen the legal opinion or the consultant's report nor the opportunity to review, in detail, the Bill referenced in recommendation #1 of the submission, the concerns/comments/questions of the Department of Finance are categorized into 3 major categories as follows:

A) Accountability (re: Accountability and Transparency Act; accountability to the A.G., to all parties, accountability in general):

1) What general information would be disclosed via the public "Annual Report", to promote accountability (consistent with spirit of Transparency and Accountability Act). Will the Transparency and Accountability Act apply, at least in part?

2) If Energy Corp and subsidiaries are borrowing funds and/or guaranteeing external funding then Finance should approve given "public money" aspect. Consider implication if Transparency and Accountability to apply (or not).

3) Given proposed Board structure, if subsidiary has Energy Corp board members who do not represent Government in addition to non-Government supplement on subsidiary board. is there a risk subsidiary board would make decisions without direct input of Government rep(s)..possible control compromise.

4) If exempt from PTA, what about applicability of Consultants Guidelines and Agmt on Internal Trade?

5) Energy Corp and subsidiaries should not be exempt under sections 11, 14, 15, 18 and 19 of Transparency and accountability legislation. These allow for some reasonable degree of accountability that should not compromise "commercial" flexibility.

6) Subject to "management certification" process applicable to publicly listed companies.

7) While "similar", Energy Corp subsidiaries would not be "private" and comparable to private to extent controlled by Government.

8) AG should have access for audit completeness (AG's scope is wider than typical private auditor...AG considers legislative/operational efficiencies/compliance and retains a focus on use/accountability of public funds). To address confidentiality concerns, perhaps AG could report to Cabinet but not publicly. Given the "removal" of some of the checks/balances from a govt perspective re: public money, this would provide some offsetting assurance.

9) What aspects of the Transparency and Accountability Framework will be not be addressed by the "equivalent" public disclosure requirements? Re the missing pieces what are the risks to the taxpayer from not having these in place? E.g. do they have to make public their strategic, operational or business plans?

10) Who appoints the Board for EC and who appoints the Board for the subsidiary. Does Government have any ability to step in and replace a Board or individual member if it has concerns with actions one of the subs may have taken?

11) What legislation will protect privacy if not ATIPPA - PIPEDA (the Industry Canada one?) Were there any consultations with the privacy commissioner?

12) Were there any consultations with the AG? Expect this will be a major communications issue. AG may feel that given the taxpayer is the shareholder he should have right to audit. Maybe there is a way to limit what AG can disclose vs. not letting him in at all??

13) Was Government Purchasing Agency consulted re the Public Tender Act issues?

B) Impact on Province's Financial Position / Liability Issues:

1) While not legally a Crown agent, OilCo would be considered a controlled entity for financial reporting purposes (Energy Corp owns sole share and represents majority of Board) and will accordingly be reflected within the Province's consolidated financial statements pursuant to GAAP ... unless other information suggests "control" resides outside of Government.

2) Whether legally a Crown agent or not, substantially still a "vehicle" of Government and Government would at least indirectly control assets/liabilities.

3) As a "publicly accountable" organization (defined by CICA), will be subject to application of International Financial Reporting Standards (IFRS) effective in 2011

(a major implication - measurement and reporting of assets/liabilities based on FMV).

4) Regardless of operational independence, subsidiaries still financially linked to Government.

5) If not an agent of the Crown (assets not Crown's, no immunity from certain laws, etc) then is there too much exposure to loss of public money?

6) While justified for commercial purposes, protection of creditor's ability to enforce security against Government must be considered in light of fact that subsidiaries are incurring liabilities/expenditures related to public money.

7) Each subsidiary would have to be individually assessed to determine whether control exists for purposes of determining whether Energy Corp would consolidate (financial statements).

8) In preparing Province's financial statements, subsidiary info may be required to assess for inclusion (especially if for some reason we deem controlled by Govt/Energy but Energy does not consolidate. If deemed to be part of Govt reporting entity, then Finance would require info necessary to prepare Province's financial stmts in accordance with CICA standards. AG could qualify if such info not provided and a qualification could impact credit rating.

9) What is the liability to the shareholder (the taxpayer)? And how is it limited?

10) From a public accounts perspective the assets and liabilities of the ECNL and NLH are not included in the consolidated assets and liabilities of the province. From a legal vs an accounting perspective the statement in the paper may be accurate i.e. their assets and liabilities are automatically assets and liabilities of government.

11) How would the activities of the subsidiary be accounted for in the Public Accounts? Would not the ECNL have to consolidate the activities of all its subsidiaries? Would not the liabilities of the subsidiaries impact the overall investment by the Government and therefore have an impact on net debt.



U



3) Shouldn't we be concerned that the Energy Corp. can authorize borrowings by its subsidiaries, but then seemingly have no accountability for repayment because the debt has a Government guarantee? Further, re: the Cabinet Paper that gave rise to the Energy Corp. and the new Hydro Act, wasn't the objective to ensure any debt incurred by subsidiaries was non-recourse and would not encumber the borrowing capacity of the Province . It looks here as if guarantees are contemplated and to the extent the rating agencies don't view such debt as self-supporting, the borrowing capacity of the Province will certainly be impacted.

4) Assume any equity infusion will be subject of separate cabinet papers and will require LCC approval. So if government was concerned that a sub was entering into a too risky project, it could veto same through non approval of equity.

5) Similarly, assume that the guarantee would in no way be automatic. That in accordance with LG Act - Minister of Finance approval required. In fact, would require LGC. Again if province had concern with any proposed borrowing it could be in a veto position through this mechanism. Assume they will expect waiver of any loan guarantee fee?

Questions/comments re: legislation:

1) Department officials advise that the borrowings of the subsidiary(ies) will be included in the total ECNL borrowings and that these equity and borrowings will have to go to Cabinet. Where is this indicated in the legislation? Also, where in legislation is LCG authority for the loan guarantee?

2) Also some question/concern re: use of the Income tax Act to determine 'residency' for those attending the Annual General Meetings (Donna Brewer/Jay Griffin e-mails refer).

3) Have there been discussions with the A.G. on this?

4) If a subsidiary is not an agent of the crown, would the A.G. not be restricted?

5) Would the Energy Corp be excluded from the Consultant Guidelines and Inter-provincial Trade Agreements as well?

Other Comments:

1) Financial Considerations Section of submission not completed.

3) Pg 11 - par before (3) Public Tender Act is repeated twice in error.

Davie Quigley

Treasury Board Officer

Treasury Board Support Division

## Email Message

**From:** Williams, Ronald [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RWILLIAMS]  
**To:** Brewer, Donna [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DBREWER], Johnstone, Terry J. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=TJOHNSTO], Curtis, Ken [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=KCURTIS], Constantine, Robert [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RCONSTANTINE]  
**Cc:** O'Keefe, Wendy [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=WENDYO'KEEFE], Morris, Joan E. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JMORRIS], Quigley, David [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DQUIGLEY], Griffin, Jay [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JGRIFFIN], Myrden, Paul [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=PMYRDEN], Smith, Paul C. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=SMITHP]  
**Sent:** 5/8/2008 at 4:32 PM  
**Received:** 5/8/2008 at 4:32 PM  
**Subject:** RE: Energy Corporation

I would agree with your comments on sect 1b.1 and 5.6.2 but I note that 5.6.2 refers to restricting AG as noted for only "...agentof the Crown" what if Sub is not an "agent" I guess AG not restricted

Sect 14.4.6 (e) this does not say that the 5 directors are ALSO directors of Energy Corp just that Energy Corp can appoint 5....so possibly non that were appointed by LGIC to Energy Corp on a sub.

Sect 17.2 obviously relates to former act ...not clear if the two procurement agreements (atlantic...Canada wide) do not apply to Energy Corp or Subs as this section is not talking about

Section 5.2 3 is somewhat like section 18 of Tranp. & Accblty Act but narrower not sure if definition excludes Energy and subs from that Act...for NR to chat with Vanessa

section 17.1 just PTA but no reference to Consultants Guidelines as being excluded Section 31 ...or Parag 6 re audit....nothing in this act that requires them to provide me with detailed info I may require as outlined in my comments on Tranp & Acct Act so they could end up having control over and delaying my ability to complete the Public Accts if Tranp & acctb Act is not applic. June 30 should be ok Generally many of our comments still are not addressed.

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

From: Brewer, Donna  
 Sent: Thursday, May 08, 2008 3:57 PM  
 To: Johnstone, Terry J.; Williams, Ronald; Curtis, Ken; Constantine, Robert  
 Cc: O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.

Subject: RE: Energy Corporation

Quick read

Section 1b.1 - definition very broad, in my view, effectively shuts the AG out. As per previous notes, suggest and Ron had similar comment, that meeting be held with AG to discuss what is trying to be accomplished, give him access but limit his reporting on same to Cabinet and the Board of Directors - see also section 5.6.2

5 - use of word entitlement - trust this does not imply that Government will have to provide financial assistance to enable them to attend - could we just say public annual general meeting or open to the public

5.2 June 30 ok for OCG re preparation of public accounts

5.2.2 not clear why excluding Hydro

Paul Myrden - note link to Securities Act

5.4 should the exceptions be approved by Minister of LGC

Ditto 5.5

Section 6 - what impact Ron would this have on how recorded in Public Accounts?

6d - is it clear who does the appointing - i.e. that it is the Board of the Corporation?

Will need to go back and check with respect to what in the Energy Corporation Act - relates to borrowing, guarantees etc. As we had noted, there are limits etc on the Corporation but does not appear to be any limits or LGC approval required for the subsidiary. We feel rating agencies would have concerns with this - Government has control over the borrowing of the Corp but not its subsidiaries. Yet Government may be required to guarantee this debt.

Does the Transparency and Accountability Act apply? Not seeing where it does not?

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

From: Johnstone, Terry J.

Sent: May 8, 2008 3:30 PM

To: Brewer, Donna; Williams, Ronald; Curtis, Ken; Constantine, Robert

Cc: O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.

Subject: RE: Energy Corporation

Hi - we just received the draft Bills for this (NR2008-022) and the Water Rights [REDACTED] - please see the attached email.

Terry

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

From: Brewer, Donna

Sent: Thursday, May 08, 2008 1:28 PM

To: Williams, Ronald; Curtis, Ken; Chippett, Jamie; Constantine, Robert

Cc: O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.; Johnstone, Terry J.

Subject: Re: Energy Corporation

I suggested to Ken we proceed with our meeting. Working from your document we can edit or add to. To provide Finance comments. Once we get replies from Charles Todd

we may need to edit same in the morning Department of Finance Executive Council  
Government of Newfoundland and Labrador P.O.Box 8700 St.John's, NL Canada A1B 4J6

Sent Via BlackBerry

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

From: Williams, Ronald  
To: Curtis, Ken; Chippett, Jamie; Brewer, Donna; Constantine, Robert  
Cc: Constantine, Robert; O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.; Johnstone, Terry J.  
Sent: Thu May 08 13:24:26 2008  
Subject: RE: Energy Corporation

I note that some of the questions are really not so much requiring a legal answer but are matters of sensitivity and due diligence which may require either a judgement call by NR/Energy or inclusion in any comment for cabinet info as they render their direction.

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

From: Curtis, Ken  
Sent: Thursday, May 08, 2008 1:19 PM  
To: Williams, Ronald; Chippett, Jamie; Brewer, Donna; Constantine, Robert  
Cc: Constantine, Robert; O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.; Johnstone, Terry J.  
Subject: RE: Energy Corporation

I spoke to Charles Bown at NR. He said that the questions from Donna and Ron have been e-mailed to Todd Stanley. Todd is breaking away from the meetings he is in to provide written responses. It will take a certain amount of time to review and answer the questions but we should get a response as soon as he can prepare them.

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

From: Williams, Ronald  
Sent: Thursday, May 08, 2008 1:00 PM  
To: Chippett, Jamie; Brewer, Donna; Curtis, Ken; Constantine, Robert  
Cc: Constantine, Robert; O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.; Johnstone, Terry J.  
Subject: RE: Energy Corporation

Please find attached OCG comments

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

From: Chippett, Jamie  
Sent: Thursday, May 08, 2008 12:10 PM  
To: Brewer, Donna; Curtis, Ken; Constantine, Robert  
Cc: Williams, Ronald; Constantine, Robert; O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.; Johnstone, Terry J.  
Subject: RE: Energy Corporation

Cabinet Officer is Terry Johnstone and I believe Debbie Paquette is looking at the paper as Todd is away. It is essential this go forward next week for purposes of having the legislation done this session. Will forward your comments to Terry now as well.

Jamie

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

From: Brewer, Donna  
Sent: Thursday, May 08, 2008 12:01 PM  
To: Curtis, Ken; Constantine, Robert

Cc: Williams, Ronald; Constantine, Robert; O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.; Chippett, Jamie  
Subject: RE: Energy Corporation

Here is my first stab re questions to Charles. Ken did you want to at least forward these now in light of restrictive timelines so he can get a start at addressing some of the comments/questions. Who is the Cabinet Officer on this one? Is there someone else in Justice assisting them in light of Todd's absence?

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

From: Curtis, Ken  
Sent: May 8, 2008 11:12 AM  
To: Brewer, Donna; Constantine, Robert  
Cc: Williams, Ronald; Constantine, Robert; O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay  
Subject: RE: Energy Corporation

I spoke to Charles to see who the Justice lawyer was. Todd Stanley was the lead. He is out of town on Hebron negotiations.

Since we don't have all the questions/issues determined, perhaps it is best to let Charles know we may need him this afternoon depending on what issues come up.

Can we try to get together as a group around 2 or 2:30 and let Charles know he may be needed between 3 and 4?

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

From: Brewer, Donna  
Sent: Thursday, May 08, 2008 11:05 AM  
To: Constantine, Robert; Curtis, Ken  
Cc: Williams, Ronald; Constantine, Robert; O'Keefe, Wendy; Morris, Joan E.; Quigley, David  
Subject: Re: Energy Corporation

Do you know if either Terry or Jay had issues. I have not seen the comments but led to believe Earl Ron and others may have concerns.

I have not fully read the paper yet but not clear what controls are in place to protect the taxpayer. Appears there are disclosure requirements to the shareholder but not sure at what point a shareholder could intervene or stop something should concerns arise.

Do you know who in Justice was working on this file

My concern is that EPC expects turnaround today. Jamie it appears given the importance of this issue and the absence of key people today that this may not be possible.

Just spoke to Sandr and she says we have no choice

If we need to pull Charles up today to address our questions we need to do that. Ken can you arrange for this afternoon. And pull everyone together.

Anne you may need to cancel other meetings Department of Finance Executive Council Government of Newfoundland and Labrador P.O.Box 8700 St.John's, NL Canada A1B 4J6

Sent Via BlackBerry

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

From: Constantine, Robert

To: Brewer, Donna; Curtis, Ken  
Cc: Williams, Ronald; Saunders, Earl; Quigley, David; Morris, Joan E.; O'Keefe, Wendy; Griffin, Jay  
Sent: Thu May 08 10:51:17 2008  
Subject: RE: Energy Corporation

Jay is back tomorrow.

Robert Constantine  
Assistant Deputy Minister  
Taxation and Fiscal Policy  
Department of Finance  
Tel: 709-729-2944  
Fax: 709-729-2070

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

From: Brewer, Donna  
Sent: May 8, 2008 10:49 AM  
To: Curtis, Ken; Constantine, Robert  
Cc: Williams, Ronald; Saunders, Earl; Quigley, David; Morris, Joan E.; O'Keefe, Wendy  
Subject: Re: Energy Corporation

At a minimum today

We should collect our questions and ensure they are forwarded to NR so they can consult with EC and or Justice as may be appropriate Department of Finance Executive Council Government of Newfoundland and Labrador P.O.Box 8700 St.John's, NL Canada A1B 4J6

Sent Via BlackBerry

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

From: Curtis, Ken  
To: Constantine, Robert; Brewer, Donna  
Cc: Williams, Ronald; Saunders, Earl; Quigley, David; Morris, Joan E.; O'Keefe, Wendy  
Sent: Thu May 08 10:47:02 2008  
Subject: RE: Energy Corporation

I think getting together is a good idea. I'm not sure if Earl & Jay will be back tomorrow. Perhaps we should get together first thing tomorrow, depending on availability of everyone and advise Cab Sec our comments will be provided in the morning. It would also give everyone a bit more time to review the paper rather than rushing comments today.

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

From: Constantine, Robert  
Sent: Thursday, May 08, 2008 10:39 AM  
To: Brewer, Donna  
Cc: Williams, Ronald; Saunders, Earl; Quigley, David; Curtis, Ken; Morris, Joan E.; O'Keefe, Wendy  
Subject: RE: Energy Corporation

Jay sat in on meetings, and Terry was briefed. Jay is off today. If you want to get together, please let me know.

Robert Constantine  
Assistant Deputy Minister  
Taxation and Fiscal Policy

Department of Finance  
Tel: 709-729-2944  
Fax: 709-729-2070

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

From: Brewer, Donna  
Sent: May 8, 2008 10:38 AM  
To: Constantine, Robert  
Cc: Williams, Ronald; Saunders, Earl; Quigley, David; Curtis, Ken; Morris, Joan E.; O'Keefe, Wendy  
Subject: Energy Corporation

Do we need to get together to collect our feedback on this paper

I note the MC which approved EC directed legislation be developed in consultation with NR Finance Justice and EC Who was involved from Finance?

Department of Finance  
Executive Council  
Government of Newfoundland and Labrador  
P.O.Box 8700  
St.John's, NL  
Canada  
A1B 4J6

Sent Via BlackBerry

## Email Message

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**From:** Williams, Ronald [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RWILLIAMS]  
**To:** Chippett, Jamie [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JAMIECHIPPETT], Brewer, Donna [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DBREWER], Curtis, Ken [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=KCURTIS], Constantine, Robert [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RCONSTANTINE]  
**Cc:** Constantine, Robert [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RCONSTANTINE], O'Keefe, Wendy [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=WENDYO'KEEFE], Morris, Joan E. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JMORRIS], Quigley, David [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DQUIGLEY], Griffin, Jay [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JGRIFFIN], Myrden, Paul [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=PMYRDEN], Smith, Paul C. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=SMITHP], Johnstone, Terry J. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=TJOHNSTO]  
**Sent:** 5/8/2008 at 1:00 PM  
**Received:** 5/8/2008 at 1:00 PM  
**Subject:** RE: Energy Corporation

---

**Attachments:** Comments - Energy Corp CP (May 2008).doc

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Please find attached OCG comments

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**Cc:** Williams, Ronald; Constantine, Robert; O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.; Johnstone, Terry J.  
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Sent Via BlackBerry

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Cc: Williams, Ronald; Saunders, Earl; Quigley, David; Morris, Joan E.; O'Keefe, Wendy; Griffin, Jay

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Assistant Deputy Minister  
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-----Original Message-----

From: Constantine, Robert  
Sent: Thursday, May 08, 2008 10:39 AM  
To: Brewer, Donna  
Cc: Williams, Ronald; Saunders, Earl; Quigley, David; Curtis, Ken; Morris, Joan E.; O'Keefe, Wendy  
Subject: RE: Energy Corporation

Jay sat in on meetings, and Terry was briefed. Jay is off today. If you want to get together, please let me know.

Robert Constantine  
Assistant Deputy Minister  
Taxation and Fiscal Policy  
Department of Finance  
Tel: 709-729-2944  
Fax: 709-729-2070

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

From: Brewer, Donna

Sent: May 8, 2008 10:38 AM

To: Constantine, Robert

Cc: Williams, Ronald; Saunders, Earl; Quigley, David; Curtis, Ken; Morris, Joan E.; O'Keefe, Wendy

Subject: Energy Corporation

Do we need to get together to collect our feedback on this paper

I note the MC which approved EC directed legislation be developed in consultation with NR Finance Justice and EC Who was involved from Finance?

Department of Finance

Executive Council

Government of Newfoundland and Labrador

P.O.Box 8700

St.John's, NL

Canada

A1B 4J6

Sent Via BlackBerry

TO BE ATTACHED TO: NR2008 

May 8, 2008

**A BILL****AN ACT TO AMEND THE ENERGY  
CORPORATION ACT***Analysis*

- |   |  |
|---|--|
| 1. S.2 Amdt.<br>Definitions                             | 3. S.14 Amdt.<br>General powers                  |
| 2. Ss.5.1 to 5.5 Added                                  | 4. S.14.1 Added<br>Subsidiaries                  |
| 5.1 Annual meeting                                      | 5. Ss.17.1 and 17.2 Added                        |
| 5.2 Annual report                                       | 17.1 Public Tender Act                           |
| 5.3 Quarterly reports                                   | 17.2 Intergovernmental<br>agreements             |
| 5.4 Form and content of<br>reports                      | 6. S.31R&S<br>Audit and financial state-<br>ment |
| 5.5 Disclosure policy                                   | 7. Commencement                                  |
| 5.6 Records of<br>commercially sensitive<br>information |  |

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

SNL2007 cE-11.01

**1. (1) Section 2 of the *Energy Corporation Act* is amended by  
adding immediately after paragraph (b) the following:**

**(b.1) "commercially sensitive information" means a fact, solution,  
plan, data or other form of information relating to the busi-  
ness affairs or activities of a person and includes**

**(i) information respecting technological processes, techni-  
cal solutions, manufacturing processes, work organiza-  
tion and logistics methods, and know-how,**

**(ii) trade secrets,**

**(iii) scientific or technical information,**

**(iv) strategic business planning information,**

**(v) financial information, other than aggregate financial  
information of the person, respecting details of com-  
mercial activity of the person including details respect-**

ing revenues, costs and commercial agreements and arrangements,

(vi) information respecting commercial negotiations,

(vii) strategic or business plans, and

(viii) commercial information of the same or similar kind to that referred to in subparagraphs (i) to (vii);

**(2) Section 2 of the Act is amended by deleting the word "and" at the end of paragraph (h) and adding immediately after that paragraph the following:**

(h.1) "public body" means a public body as defined in the *Access to Information and Protection of Privacy Act*;

(h.2) "record" means a record as defined in the *Access to Information and Protection of Privacy Act*;

(h.3) "subsidiary" means a subsidiary incorporated by the corporation; and

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

Annual meeting

**5.1 (1)** The corporation shall hold an annual meeting in the province which all residents of the province are entitled to attend.

(2) In subsection (1), "resident" means a person to whom the *Income Tax Act, 2000* applies.

Annual report

**5.2 (1)** The corporation shall each year, no later than June 30, prepare and submit to the minister a report on the activities of the corporation and its subsidiaries, other than Newfoundland and Labrador Hydro, in the previous fiscal year.

(2) A report required under subsection (1) shall include copies of the audited financial statements of the corporation and its subsidiaries, other than Newfoundland and Labrador Hydro, for the previous fiscal year.

(3) The minister may, on receipt of a report required under subsection (1), direct the corporation to provide additional information on its activities and the activities of one or more of its subsidiaries and the corporation shall provide the information in the form and detail and at the time the minister may direct.

(4) A report required under subsection (1) shall be made public by the minister by

- (a) presenting the report to the House of Assembly; and
- (b) other effective means, including electronically.

(5) Section 19.1 of the *House of Assembly Act* applies to a report required under subsection (1) as if the report were a report of an officer of the House of Assembly.

Quarterly reports

**5.3** The corporation shall prepare and publish quarterly reports.

Form and content of reports

**5.4** In addition to the requirements contained in subsection 5.2(2), the reports required under sections 5.2 and 5.3 shall be consistent in form and content with quarterly and annual reports that would be required of the corporation if

- (a) the corporation was a reporting issuer under the *Securities Act*; and
- (b) shares of the corporation were listed for trading on a principal Canadian market exchange in the year for which the report is being prepared,

subject to the exception to these requirements the minister may approve.

Disclosure policy

**5.5 (1)** The corporation shall prepare and make public a disclosure policy that meets the requirements of the minister.

(2) The disclosure policy referred to in subsection (1) shall be binding on the corporation and each of its subsidiaries.

Records of commercially sensitive information

**5.6 (1)** A record containing commercially sensitive information relating to the corporation, a subsidiary or a third party in the possession, custody or control of the corporation, a subsidiary or a public

body, shall not be required to be disclosed by the corporation, the subsidiary or the public body in response to a request for the information.

(2) Notwithstanding sections 14, 17 and 20 of the *Auditor General Act*, the corporation, a subsidiary that is designated as an agent of the Crown under subsection 14.1(5), an officer, member or employee of one of them is not required to provide commercially sensitive information, in any form, to the auditor general.

(3) Notwithstanding the *Citizens' Representative Act*, the corporation, a subsidiary that is designated as an agent of the Crown under subsection 14.1(5), a public body, an officer, member or employee of one of them is not required to provide commercially sensitive information, in any form, to the citizens' representative in the context of the investigation of a complaint under that Act.

**3. Subsection 14(3) of the Act is repealed.**

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

**Subsidiaries**

**14.1 (1)** Except with the prior approval of the Lieutenant-Governor in Council, the corporation shall not organize or maintain a subsidiary of the corporation or purchase, sell, otherwise dispose of or deal in shares of a subsidiary of the corporation or of another company, and where the approval is given, the corporation may do the things referred to in this subsection only where it is expressly mentioned in and to the extent provided by the approval.

(2) A subsidiary shall not engage in activities other than those in which the corporation may engage under section 5.

(3) A subsidiary shall not engage in an activity that, were it to be undertaken by the corporation, would require the prior approval of the Lieutenant-Governor in Council, including the creation of a subsidiary, without the prior approval of the corporation.

(4) The provisions of this Act, with the necessary changes, shall be considered to form the articles of incorporation, or a part of them, of a subsidiary.

(5) A subsidiary is not an agent of the Crown unless it is designated as an agent by the Lieutenant-Governor in Council.

(6) Where a subsidiary is not designated as an agent of the Crown under subsection (5),

- (a) the property of the subsidiary is not considered to be the property of the Crown or an agent of the Crown;
- (b) the debts and obligations of the subsidiary are not considered to be the debts and obligations of the Crown or an agent of the Crown;
- (c) the subsidiary shall be incorporated under the *Corporations Act* unless the approval provided under subsection (1) permits incorporation under the laws of another jurisdiction;
- (d) the board of directors of the subsidiary shall be composed of not less than 5 and not more than 10 members appointed by the corporation;
- (e) the board of directors of the subsidiary shall be composed of at least the following number of independent directors:
  - (i) where the board has 5 or 6 members, 2 independent directors,
  - (ii) where the board has 7 or 8 members, 3 independent directors, and
  - (iii) where the board has 9 or 10 members, 4 independent directors; and
- (f) the chief executive officer of the subsidiary shall be appointed by the board of directors of the subsidiary.

(7) In paragraph (6)(e), "independent director" means a person who is not a member of the board of directors of the corporation or an employee or officer of the corporation or another subsidiary.

**5. The Act is amended by adding immediately after section 17 the following:**

Public Tender Act

**17.1** The *Public Tender Act* does not apply to the corporation or a subsidiary.

**Intergovernmental  
agreements**

17.2 (1) An agreement between the corporation or a subsidiary and the Crown in right of Canada, the Crown in right of another province or another sovereign government is not an intergovernmental agreement.

(2) In this section, the terms

(a) "intergovernmental agreement"; and

(b) "sovereign government"

have the meaning given them in the *Intergovernmental Affairs Act*.

(3) Notwithstanding paragraph 2(h.3), in this section the term "subsidiary" includes Newfoundland and Labrador Hydro.

(4) An intergovernmental agreement entered into by the corporation or a subsidiary before the coming into force of this section is considered binding on the corporation or a subsidiary notwithstanding the agreement may not have been signed by the minister responsible for intergovernmental affairs or his or her designate as required by section 7 of the *Intergovernmental Affairs Act*.

6. Section 31 of the Act is repealed and the following substituted:

**Audit and financial  
statement**

31. (1) The board shall annually appoint an auditor who shall annually audit the financial statement of the corporation.

(2) The financial statement referred to in subsection (1) shall be signed by 2 directors and shall have attached to it the auditor's report.

(3) The remuneration of the auditors referred to in subsection (1) shall be fixed annually by the board and shall be paid by the corporation out of its funds.

(4) The report of the auditors shall state whether the financial statements present fairly the financial position of the corporation and the results of its operations for the period under review and whether the financial statements were prepared in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period.

(5) The Lieutenant-Governor in Council may, by order, designate or appoint other auditors for carrying out the specific audit of the corporation's accounts and business that he or she may specify in the order.

(6) For the purposes of an audit, examination or investigation conducted under subsection (5), the person designated or appointed by the Lieutenant-Governor in Council may request and shall be supplied by the board with all books, vouchers, records, schedules, working papers and other documentation which he or she considers necessary.

Commencement

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

©Earl G. Tucker, Queen's Printer

## Email Message

**From:** Griffin, Jay [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=JGRIFFIN]  
**To:** Brewer, Donna [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=DBREWER], Johnstone, Terry J.  
[EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=TJOHNSTO], Williams, Ronald  
[EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=RWILLIAMS], Curtis, Ken  
[EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=KCURTIS], Constantine, Robert  
[EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=RCONSTANTINE]  
**Cc:** O'Keefe, Wendy [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=WENDYO'KEEFE], Morris, Joan E.  
[EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=JMORRIS], Quigley, David  
[EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=DQUIGLEY], Myrden, Paul  
[EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=PMYRDEN], Smith, Paul C.  
[EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=SMITHP]  
**Sent:** 5/8/2008 at 4:04 PM  
**Received:** 5/8/2008 at 4:04 PM  
**Subject:** RE: Energy Corporation

I have a problem with using the Income Tax Act to determine residency for attendance at the AGM. Tax data is not sufficiently timely, and a person may indeed be resident, but have principal residence for tax purposes in another province.

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

**From:** Brewer, Donna  
**Sent:** May 8, 2008 3:57 PM  
**To:** Johnstone, Terry J.; Williams, Ronald; Curtis, Ken; Constantine, Robert  
**Cc:** O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.  
**Subject:** RE: Energy Corporation

Quick read

Section 1b.1 - definition very broad, in my view, effectively shuts the AG out. As per previous notes, suggest and Ron had similar comment, that meeting be held with AG to discuss what is trying to be accomplished, give him access but limit his reporting on same to Cabinet and the Board of Directors - see also section 5.6.2

5 - use of word entitlement - trust this does not imply that Government will have to provide financial assistance to enable them to attend - could we just say public annual general meeting or open to the public

5.2 June 30 ok for OCG re preparation of public accounts

5.2.2 not clear why excluding Hydro

Paul Myrden - note link to Securities Act

5.4 should the exceptions be approved by Minister of LGC  
Ditto 5.5

Section 6 - what impact Ron would this have on how recorded in Public Accounts?

6d - is it clear who does the appointing - i.e. that it is the Board of the Corporation?

Will need to go back and check with respect to what in the Energy Corporation Act - relates to borrowing, guarantees etc. As we had noted, there are limits etc on the Corporation but does not appear to be any limits or LGC approval required for the subsidiary. We feel rating agencies would have concerns with this - Government has control over the borrowing of the Corp but not its subsidiaries. Yet Government may be required to guarantee this debt.

Does the Transparency and Accountability Act apply? Not seeing where it does not?

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

From: Johnstone, Terry J.  
Sent: May 8, 2008 3:30 PM  
To: Brewer, Donna; Williams, Ronald; Curtis, Ken; Constantine, Robert  
Cc: O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.  
Subject: RE: Energy Corporation

Hi - we just received the draft Bills for this (NR2008-022) and the Water Rights  
( [REDACTED] ) - please see the attached email.

Terry

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

From: Brewer, Donna  
Sent: Thursday, May 08, 2008 1:28 PM  
To: Williams, Ronald; Curtis, Ken; Chippett, Jamie; Constantine, Robert  
Cc: O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.; Johnstone, Terry J.  
Subject: Re: Energy Corporation

I suggested to Ken we proceed with our meeting. Working from your document we can edit or add to. To provide Finance comments. Once we get replies from Charles Todd we may need to edit same in the morning Department of Finance Executive Council  
Government of Newfoundland and Labrador P.O.Box 8700 St.John's, NL Canada A1B 4J6

Sent Via BlackBerry

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

From: Williams, Ronald  
To: Curtis, Ken; Chippett, Jamie; Brewer, Donna; Constantine, Robert  
Cc: Constantine, Robert; O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.; Johnstone, Terry J.  
Sent: Thu May 08 13:24:26 2008  
Subject: RE: Energy Corporation

I note that some of the questions are really not so much requiring a legal answer but are matters of sensitivity and due diligence which may require either a judgement call by NR/Energy or inclusion in any comment for cabinet info as they render their direction.

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

From: Curtis, Ken

Sent: Thursday, May 08, 2008 1:19 PM  
To: Williams, Ronald; Chippett, Jamie; Brewer, Donna; Constantine, Robert  
Cc: Constantine, Robert; O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.; Johnstone, Terry J.  
Subject: RE: Energy Corporation

I spoke to Charles Bown at NR. He said that the questions from Donna and Ron have been e-mail to Todd Stanley. Todd is breaking away from the meetings he is in to provide written responses. It will take a certain amount of time to review and answer the questions but we should get a response as soon as he can prepare them.

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

From: Williams, Ronald  
Sent: Thursday, May 08, 2008 1:00 PM  
To: Chippett, Jamie; Brewer, Donna; Curtis, Ken; Constantine, Robert  
Cc: Constantine, Robert; O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.; Johnstone, Terry J.  
Subject: RE: Energy Corporation

Please find attached OCG comments

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

From: Chippett, Jamie  
Sent: Thursday, May 08, 2008 12:10 PM  
To: Brewer, Donna; Curtis, Ken; Constantine, Robert  
Cc: Williams, Ronald; Constantine, Robert; O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.; Johnstone, Terry J.  
Subject: RE: Energy Corporation

Cabinet Officer is Terry Johnstone and I believe Debbie Paquette is looking at the paper as Todd is away. It is essential this go forward next week for purposes of having the legislation done this session. Will forward your comments to Terry now as well.

Jamie

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

From: Brewer, Donna  
Sent: Thursday, May 08, 2008 12:01 PM  
To: Curtis, Ken; Constantine, Robert  
Cc: Williams, Ronald; Constantine, Robert; O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay; Myrden, Paul; Smith, Paul C.; Chippett, Jamie  
Subject: RE: Energy Corporation

Here is my first stab re questions to Charles. Ken did you want to at least forward these now in light of restrictive timelines so he can get a start at addressing some of the comments/questions. Who is the Cabinet Officer on this one? Is there someone else in Justice assisting them in light of Todd's absence?

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

From: Curtis, Ken  
Sent: May 8, 2008 11:12 AM  
To: Brewer, Donna; Constantine, Robert  
Cc: Williams, Ronald; Constantine, Robert; O'Keefe, Wendy; Morris, Joan E.; Quigley, David; Griffin, Jay  
Subject: RE: Energy Corporation

I spoke to Charles to see who the Justice lawyer was. Todd Stanley was the lead. He is out of town on Hebron negotiations.

Since we don't have all the questions/issues determined, perhaps it is best to let Charles know we may need him this afternoon depending on what issues come up.

Can we try to get together as a group around 2 or 2:30 and let Charles know he may be needed between 3 and 4?

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

From: Brewer, Donna  
Sent: Thursday, May 08, 2008 11:05 AM  
To: Constantine, Robert; Curtis, Ken  
Cc: Williams, Ronald; Constantine, Robert; O'Keefe, Wendy; Morris, Joan E.; Quigley, David  
Subject: Re: Energy Corporation

Do you know if either Terry or Jay had issues. I have not seen the comments but led to believe Earl Ron and others may have concerns.

I have not fully read the paper yet but not clear what controls are in place to protect the taxpayer. Appears there are disclosure requirements to the shareholder but not sure at what point a shareholder could intervene or stop something should concerns arise.

Do you know who in Justice was working on this file

My concern is that EPC expects turnaround today. Jamie it appears given the importance of this issue and the absence of key people today that this may not be possible.

Just spoke to Sandr and she says we have no choice

If we need to pull Charles up today to address our questions we need to do that. Ken can you arrange for this afternoon. And pull everyone together.

Anne you may need to cancel other meetings Department of Finance Executive Council Government of Newfoundland and Labrador P.O.Box 8700 St.John's, NL Canada A1B 4J6

Sent Via BlackBerry

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

From: Constantine, Robert  
To: Brewer, Donna; Curtis, Ken  
Cc: Williams, Ronald; Saunders, Earl; Quigley, David; Morris, Joan E.; O'Keefe, Wendy; Griffin, Jay  
Sent: Thu May 08 10:51:17 2008  
Subject: RE: Energy Corporation

Jay is back tomorrow.

Robert Constantine  
Assistant Deputy Minister  
Taxation and Fiscal Policy  
Department of Finance  
Tel: 709-729-2944  
Fax: 709-729-2070

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

From: Brewer, Donna  
Sent: May 8, 2008 10:49 AM  
To: Curtis, Ken; Constantine, Robert  
Cc: Williams, Ronald; Saunders, Earl; Quigley, David; Morris, Joan E.; O'Keefe,

Wendy  
Subject: Re: Energy Corporation

At a minimum today

We should collect our questions and ensure they are forwarded to NR so they can consult with EC and or Justice as may be appropriate Department of Finance Executive Council Government of Newfoundland and Labrador P.O.Box 8700 St.John's, NL Canada A1B 4J6

Sent Via BlackBerry

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

From: Curtis, Ken  
To: Constantine, Robert; Brewer, Donna  
Cc: Williams, Ronald; Saunders, Earl; Quigley, David; Morris, Joan E.; O'Keefe, Wendy  
Sent: Thu May 08 10:47:02 2008  
Subject: RE: Energy Corporation

I think getting together is a good idea. I'm not sure if Earl & Jay will be back tomorrow. Perhaps we should get together first thing tomorrow, depending on availability of everyone and advise Cab Sec our comments will be provided in the morning. It would also give everyone a bit more time to review the paper rather than rushing comments today.

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

From: Constantine, Robert  
Sent: Thursday, May 08, 2008 10:39 AM  
To: Brewer, Donna  
Cc: Williams, Ronald; Saunders, Earl; Quigley, David; Curtis, Ken; Morris, Joan E.; O'Keefe, Wendy  
Subject: RE: Energy Corporation

Jay sat in on meetings, and Terry was briefed. Jay is off today. If you want to get together, please let me know.

Robert Constantine  
Assistant Deputy Minister  
Taxation and Fiscal Policy  
Department of Finance  
Tel: 709-729-2944  
Fax: 709-729-2070

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

From: Brewer, Donna  
Sent: May 8, 2008 10:38 AM  
To: Constantine, Robert  
Cc: Williams, Ronald; Saunders, Earl; Quigley, David; Curtis, Ken; Morris, Joan E.; O'Keefe, Wendy  
Subject: Energy Corporation

Do we need to get together to collect our feedback on this paper

I note the MC which approved EC directed legislation be developed in consultation with NR Finance Justice and EC Who was involved from Finance?  
Department of Finance  
Executive Council  
Government of Newfoundland and Labrador  
P.O.Box 8700

St.John's, NL  
Canada  
A1B 4J6

Sent Via BlackBerry

## Email Message

**From:** Chippett, Jamie [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JAMIECHIPPETT]  
**To:** Bown, Charles W. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=CBOWN], Stanley, Todd [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=TODDSTANLEY], Curtis, Ken [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=KCURTIS], Quigley, David [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DQUIGLEY], Newhook, Vanessa [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=VNEWHOOK], Smith, Paul C. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=SMITHP], Johnstone, Terry J. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=TJOHNSTO], Saunders, Earl [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=ESAUNDERS], Myrden, Paul [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=PMYRDEN]  
**Cc:** Brewer, Donna [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DBREWER], Williams, Ronald [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RWILLIAMS]  
**Sent:** 5/12/2008 at 8:01 AM  
**Received:** 5/12/2008 at 8:01 AM  
**Subject:** Energy Corporation Act Amendments -10:30am meeting

Folks,

We will attempt to hold this meeting in the 9th floor boardroom at 10:30am this morning. I have cobbled together the list above as expected attendance based on emails from Ron and Donna on Friday. If there is duplication please work out who should attend - I think Donna had suggested some either/ors in her email on Friday.

By my read of the previous email chains and questions and answers our primary areas for discussion should be around:

- 1) applicability of the Transparency and Accountability Legislation;
- 2) borrowing and guarantee limits for the subsidiaries;
- 3) issues around exemptions from PTA/Consultants Guidelines etc, AG Act
- 4) intergovernmental agreements

I'm sure there will be other issues to discuss, but it would be appreciated if we stick to the core issues as much as possible such that we can determine where we may have difficulties and require amendments to the recommendation in the proposal. As

Committee si meeting on this tomorrow we do not want to wait too late in the day to provide Ministers with an analysis.

Thanks

Jamie

Attach To: NR2008-[REDACTED]  
EPC2008 [REDACTED]

**Amendments to the Energy Corporation Act**

**Title:**

**Branch**

**Comment:**

The Communications Branch has no concerns with the attached communications plan.

**Date:**

Friday, May 9, 2008

**Prepared by:**

Jennifer Duff

**Reviewed by:**

Attach to: NR2008-  
EPC2008-

## Title

## Amendments to the Energy Corporation Act

## Summary of Proposal

The Submission seeks authority for:

1. Approval for *An Act to Amend the Energy Corporation Act*, which sets out the public reporting requirements and legislative exemptions for the Energy Corporation, substantially in the form of a copy which is on file with the Clerk of the Executive Council, be introduced in the House of Assembly without further reference to Cabinet;
2. The Lieutenant Governor in Council approve the creation of OilCo (to be formally named at a later date) as a non-crown agent subsidiary of the Energy Corporation of Newfoundland and Labrador following proclamation of the Bill referenced herein. OilCo may invest in, engage in, and carry out activities relating to the exploration, development, production, refining, marketing and transportation of hydrocarbons and products of hydrocarbons; and,
3. The Lieutenant Governor in Council direct that the legislative exemptions for the Energy Corporation and its subsidiaries contemplated in the Bill referenced herein, not apply to the Bull Arm Site Corporation (BASC) until such time as the Energy Corporation has completed a strategic review of BASC and presented the findings of this review to Cabinet.

## Secretariat Comment

1. Legislation creating the Province's Energy Corporation was established in 2007. The Energy Corporation will be the parent company to manage the Province's investment and involvement in the energy sector. Some of these activities are regulated monopoly activities, such as Newfoundland and Labrador Hydro (NLH) and Churchill Falls (Labrador) Company (CF(L)Co)), while others are commercial, market-based endeavors. It was anticipated that subsidiary entities would be created to provide a means to separate commercially competitive activities from the core activities of NLH and CF(L)Co.
2. [REDACTED] directed Legislative Counsel, in consultation with Natural Resources, Finance, Justice and the Energy Corporation, to draft legislation, and/or to make necessary amendments to the *Energy Corporation Act* and consequential amendments to other Acts, to establish an oil and gas subsidiary of ECNL and set out the fundamental conditions under which it will operate; with final review by Cabinet prior to introduction in House of Assembly. Unlike other Crown corporations, the subsidiary would however have a governance structure and disclosure requirements similar to private oil and gas companies.
3. The Submission indicates that during the drafting of the proposed amendments it was discovered that there was a need to also: 1) expand many of the private sector disclosure protections to the Energy Corporation itself; and 2) create a mechanism for the creation of other subsidiaries. While no other Canadian jurisdictions currently have broad-based provincial energy corporations active in oil and gas development, such corporations do exist internationally, such as in Norway and Denmark. In assessing an appropriate accountability structure for ECNL and its subsidiaries Wood MacKenzie was retained to ensure that the approach taken is consistent with international best practices. Guidance was also taken from Norwegian and Danish state-owned energy corporations as examples of models that meet meaningful public accountability requirements while reducing liability exposure and

ensuring international competitiveness.

4. NLH is a regulated utility and a monopoly and therefore does not require the same legislative changes as the Energy Corporation and its competitive subsidiaries; all current legislative requirements of NLH will remain unchanged.

#### Corporate Structure

5. Under the proposed legislation, creation of Energy Corporation subsidiaries will be at the direction of Cabinet. Cabinet will have the option of determining whether the subsidiary created will or will not be an agent of the Crown. All subsidiaries will be governed by certain restrictions: they will only be able to engage in business activities within the scope of the Energy's Corporation permitted business activities, and will have to seek prior approval from the Energy Corporation for certain activities. These activities include:
  - a. Organizing or maintaining a subsidiary;
  - b. The purchase, sale, or other disposition of shares of a subsidiary;
  - c. Borrowing money from third parties for purposes related to the attainment of its objects;
  - d. Securing the repayment of money borrowed from third parties; and
  - e. Guaranteeing a loan.

Cabinet Secretariat notes that even upon approval of this proposal due to the applicability of the *Transparency and Accountability Act* as outlined in a subsequent section, the Energy Corporation cannot approve the borrowing of funds as outlined in c. as Lieutenant Governor in Council approval is required per section 11 of the *Act*.

6. The operating parameters set out in the submission are aimed at the isolation to the greatest extent possible of the Energy Corporation, including its other assets such as Newfoundland and Labrador Hydro and CF(L) Co, and Government generally, from liability for potentially risky commercial activities that will be undertaken by non-Crown agents subsidiaries such as Oilco.
7. It is proposed that this liability protection will be accomplished primarily by (i) having the Energy Corporation be permitted to create Non-Crown agent subsidiaries (with Lieutenant Governor In Council approval), which will have similar liability protection; and (ii) having each non-Crown agent subsidiary have their own Board of Directors. Legal advice indicates that the more operational control exercised over a subsidiary by a parent company, the greater the possibility that the separation of liability will not be upheld or recognized by a court, with the result that the parent corporation will be liable for the debts of the subsidiary.
  - a. By having the non-Crown agent subsidiaries operate more like private sector subsidiary corporations, the parent company controls the degree to which it is exposed to liability through contractual arrangements. This structure requires that the subsidiaries not be identified as agents of the parent corporation, and that the subsidiary enjoys operational independence from the parent corporation.
  - b. The Board of Directors of these non-Crown agent subsidiaries will have a maximum of ten (10) members and a minimum of five (5) members and that the majority of Directors will be members of the Energy Corporation's Board of Directors. The Board will also contain external appointees who are not a part of the management committee of the Energy Corporation or on the Energy Corporation's Board of Directors, or otherwise affiliated with the Energy Corporation. The external appointees will be appointed by the Energy Corporation's Board. The non-Crown agent subsidiary's Board will appoint the Chairperson and CEO of that subsidiary.

8. The Submission also seeks approval to create OilCo (to be formally named at a later date).

Incorporations under the *Corporations Act*, as proposed in this case, are pursuant to section 10 of the *Transparency and Accountability Act*, as a Non-Crown agent subsidiary of the Energy Corporation, to invest in, engage in, and carry out activities relating to the exploration, development, production, refining, marketing and transportation of hydrocarbons and products of hydrocarbons.

9. While no structure can provide a guarantee of liability protection, a separate Board structure in conjunction with limits on the control exercised over subsidiaries by the Energy Corporation will provide the best possible separation of potential liabilities. This will provide as much protection as possible for the assets of NLH and CF(L)Co, consistent with the Energy Plan. Officials with the Energy Corporation and Natural Resources have acknowledged that while the intent is to isolate Government from automatic liabilities with respect to the functioning of subsidiaries of the Energy Corporation, in the event of business losses or environmental mishaps, there may be circumstances where Government does not wish to abide by this separation and step into assist the subsidiary. Finance officials note that Ministers may want to consider whether the legal protection/choice provided will likely be exercised in practice by Government due to moral, ethical or other concerns (e.g. such as an environmental mishap). If exercising of this protection is likely to be difficult for Government, consideration could be given to whether to proceed in the manner proposed given the restriction of control required to obtain the resulting legal protection. Natural Resources has indicated that the intent in this instance is to provide Government with the "choice" to exercise its option to assist the subsidiary but to make best efforts not to place it in a situation where it is automatically liable.
10. The Submission also indicates that the subsidiaries may also require their own subsidiaries to isolate specific projects. The proposed legislative amendments state that subsidiaries may form and wind up subsidiaries. The proposed provisions also permit the subsidiaries to purchase, exchange or dispose of shares in other corporations. It should be noted that such activities will be subject to approval by the Board of the Energy Corporation, not Cabinet.

#### Public Accountability

11. The Energy Corporation and its subsidiaries are currently subject to a range of public oversight legislation appropriate for public bodies, which is not appropriate for a commercial enterprise. The Energy Corporation will be structured for transparency and accountability similar to publicly-traded companies listed on the leading Canadian market exchange and will be subject to similar financial reporting and disclosure requirements as listed companies. The proposed legislation provides an obligation to:
  - a. Provide an Annual Report which shall be made available to the public;
  - b. Hold an Annual General Meeting in Newfoundland and Labrador that is open to any resident of the Province;
  - c. Provide an Audited Annual Financial Statement which shall be made available to the public;
  - d. Provide other reports required of listed companies. This currently would include a Quarterly Management Discussion and Analysis reports to the public which will provide an overview of the Energy Corporation's operations and activities.
12. While the intent is to report as a publicly-traded company as set out in the submission, Cabinet Secretariat notes that the ECNL meets the definition of public body as defined in the *Transparency and Accountability Act* and is therefore subject to its provisions because 1) the majority of board members are appointed by Lieutenant Governor in Council or the Responsible Minister; or via an Act, and 2) the majority of shares are vested in Crown. Subsidiaries will be evaluated against the same criteria to determine inclusion. Non-Crown agent subsidiaries will also initially be defined as a public body based on being wholly or

majority owned by ECNL or Hydro (not an exhaustive list of scenarios) and those shares being vested in the Crown and are also subject to all provisions of the *Transparency and Accountability Act (TAA)* unless specifically exempted.

13. Where *TAA* applies, subsidiaries (including non-crown agents) are required to table Three Year Plans and Annual Reports; obtain Cabinet approval per Section 10 (including borrowing authority) to incorporate and requires the Minister to make a public statement in the House; obtain Department of Finance borrowing authority annually and the Minister of Finance will have to report in the House per Section 11.
14. The Department has advised that the intent is to evaluate the interaction of the *TAA* reporting requirements and the other public-reporting requirements outlined above within the next 12 months in consultation with Finance and Cabinet Secretariat (Planning and Coordination) to develop a plan to proceed. Until that time, NR advise that ECNL and its subsidiaries will be captured by the *TAA* and will abide by all current legislation. Finance officials have raised some concern with exempting ECNL and/or its subsidiaries from certain sections of the *TAA* and that further analysis will be required once NR and ECNL identify the specific exemptions that will be required.
15. Cabinet Secretariat notes that ECNL is able to make an equity investment in OilCo but that approval is not provided through this submission for OilCo to commence borrowing as is required by section 10 of the *TAA*. NR has indicated that borrowing is not anticipated by OilCo in the coming year as there are sufficient funds available through ECNL. The Department has also advised that until such time as amendments are sought with respect to the *TAA* in addition to seeking Cabinet approval for borrowing authority for OilCo or any other subsidiary as required under the *TAA*, individual Cabinet submissions will be provided to seek approvals on specific borrowing requirements which exceeds the *TAA* requirement for Minister of Finance's signature.

#### Loan Guarantees

16. NR has confirmed that where funds for subsidiaries are required to be guaranteed by Government, individual submissions will be made as would be the case where a private corporation seeks same from Government. The *Energy Corporation Act* provides direct authority for guarantees (s.19) and therefore these guarantees do not fall under the *Loan and Guarantee Act* and require only the Minister's signature upon Cabinet approval. NR advises that based on advice from Finance an amendment will be made to s.19 of the *Energy Corporation Act* to expand it to include guarantees for subsidiaries as well. Where a loan guarantee is requested, considered by Cabinet and subsequently approved, the Province will guarantee loans of the subsidiaries directly to ensure a separation of liabilities of the subsidiaries and the Energy Corporation. If the Energy Corporation were to provide the guarantees, creditors could have recourse to other assets of the Energy Corporation, such as NLG or CF(L)Co, placing provincial ownership of these assets in jeopardy. Treatment of loan guarantees are structured as proposed to improve timeliness of processing and lessen operational control.

#### Disclosure (Access to Information; Auditor General; Citizen's Representative)

17. The Submission proposes to preclude the disclosure of "commercially sensitive information" from Energy Corporation and its subsidiaries (excluding Bull Arm Site Corporation) under the *Access to Information and Protection of Privacy Act* (ATIPPA); the *Auditor General Act*; and, the *Citizen's Representative Act*.
  - The potential for disclosure under ATIPPA would place the Energy Corporation and its subsidiaries at a competitive disadvantage. The proposed legislation would deny the disclosure of "commercially sensitive information" originating from the Energy

Corporation, its subsidiaries and/or third party business partners, regardless of where the information resides. That prohibition will apply to the Energy Corporation, its subsidiaries, and Government.

- The amendment provides that the Energy Corporation will appoint an independent auditor who will provide audited annual financial statements which will be made available to the public. The independent auditor will also assess the operational effectiveness of the Energy Corporation and provide a confidential report to the Shareholder. Under this structure, the *Auditor General Act* would apply to the Energy Corporation and its subsidiaries, but section 17 of the *Auditor General Act*, that requires full disclosure upon request, will be overridden by a provision in the draft Bill allowing the Energy Corporation, its subsidiaries, or Government not to disclose "commercially sensitive information" to the Auditor General.
- The *Citizen's Representative Act* will continue to apply, but neither the Energy Corporation, nor its subsidiaries, nor Government will be required to disclose "commercially sensitive information" originating with the Energy Corporation, or its subsidiaries, excluding NLH.

#### Public Tender Act

18. In addition, it is proposed the Energy Corporation and its subsidiaries, with the exception of NLH, be exempt from the *Public Tender Act*. OilCo will be subject to the Accord Act and the Canada-Newfoundland Benefits Plan which states that there must be a plan to employ members of the labour force of Newfoundland and Labrador and to provide manufactures, contractors and service companies in the province with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity. The requested exemption is necessary to meet these requirements.

#### Assessment of Exemptions

19. NR advises that there are no other Crown Corporations in this Province or Canada that have this type of protection, since there are no other Crown Corporations that have the objects of ECNL. Up until 2 years ago, Canada Hibernia Holding Corporation (CHHC) was fully exempt from Freedom of Information and the Auditor General, NR notes however that CHHC is a holding corporation and is not intended to be anything more than that, whereas ECNL and its subsidiaries can be project operators in the same sense as a private corporation. The Department has reviewed other jurisdictions and, while there are similarities in certain areas, again there are none with all these protections, and feel that this approach is the least intrusive solution to addressing the commercial needs of ECNL.
20. Cabinet Secretariat notes these exemptions are a significant departure from the norm in terms of the disclosure requirements for public bodies. The Energy Corporation has advised the Department the absence of these exemptions will provide significant discomfort to potential private sector partners that the Energy Corporation and its subsidiaries try to engage and would therefore impede the Energy Corporation in exercising its mandate. The Department of Finance has also raised concerns about the exemption of commercially-sensitive information from the Auditor General and has questioned whether consultations with the Auditor General should be held in advance of the tabling of the Bill. Finance also suggests that an alternative approach may be to provide the Auditor General with full access but place a firm restriction on the ability to report findings publicly by directing that he report to the Lieutenant Governor in Council.

Ministers may wish to have a discussion regarding whether such consultation or the alternative course of action is warranted in this instance.

Other

21. The proposed legislation will amend section 17 of the *Energy Corporation Act* to exempt the Corporation and subsidiaries from section 7 of the *Intergovernmental Affairs Act* for intergovernmental agreements. The Submission indicates that this exemption will only apply to agreements signed between crown agents not where another government or department is a Party to an agreement with the Energy Corporation. It is further proposed that the amended section will also sanction existing contracts which are not in compliance with the *Intergovernmental Affairs Act*.
22. IGAS does not support the proposed amendment to section 17.2 (incorrectly referenced in the Submission as section 3(6)) of the draft bill as this would set precedent and could compromise the mandate of the Minister of Intergovernmental Affairs, as set out in section 6 of the *Intergovernmental Affairs Act*. In general, any Crown entity entering an agreement with another jurisdiction, within Canada or internationally, should also be entered into by the Minister of Intergovernmental Affairs and therefore, in accordance with government policy, be the subject of a Cabinet submission to provide a full view of the activities of the Crown and its entities in relation to other governments. IGAS could support exempting agreements between the Energy Corporation and a similar government entity in another jurisdiction from the *Act*. NR concurs with this and has agreed to revise the draft Bill to reflect the IGAS concern.
23. [REDACTED]
24. The Red Tape Secretariat advises a Regulatory Impact Analysis (RIA) is required and has been requested from the Department. Since the extent of the new regulatory requirements associated with this submission is not fully known as the final legislative amendments were not provided with the submission, ECNL will be advised to monitor these new requirements and report as part of the monthly reporting process.
25. The Rural Secretariat advises that the Rural lens does not need to be applied to this Submission since it applies equally to all residents, however notes a high number of children and families in Labrador may be impacted by the amendments.
26. Communications Branch concurs with the Communications Plan.

**Budget Division  
Consultation**

The Department of Finance identified three main concerns with the Submission and draft of the Bill including whether the *Transparency and Accountability Act* applies to the Energy Corporation and any of its subsidiaries; whether appropriate controls around borrowing were in place; and whether the exemption of commercially-sensitive information from the Auditor General's access is appropriate and should be discussed with the Auditor General in advance. These issues were addressed in the analysis above.

**Secretariat  
Recommendation**

Cabinet Secretariat recommends approval of the Submission subject to (i) revision of Recommendation 2 to reference that the creation of Oilco is pursuant to section 10 of the *Transparency and Accountability Act*; and, (ii) revision of the draft Bill to exempt agreements between the Energy Corporation and a similar government entity in another jurisdiction from the *Act*, but entering any other agreements with another jurisdiction, within Canada or internationally, would be entered into by the Minister of Intergovernmental Affairs and therefore, in accordance with government policy, such agreements should be the subject of a Cabinet submission to ensure the Cabinet has a full view of the activities of the Crown and its entities in relation to other governments.

Attach to: NR2008-  
EPC2008-

### **Amendments to the *Energy Corporation Act***

The Submission of the Minister of Natural Resources seeking approval of Amendments to the *Energy Corporation Act* was considered by the Economic Policy Committee.

The Minister recommends:

- i) Approval be given for the Bill, entitled *An Act to Amend the Energy Corporation Act*, which sets out the public reporting requirements and legislative exemptions for the Energy Corporation to allow it to operate in a commercially competitive environment and outlines the conditions under which the subsidiaries of the Energy Corporation will be established and operate, substantially in the form of a copy which is on file with the Clerk of the Executive Council, be introduced in the House of Assembly without further reference to Cabinet;
- ii) The Lieutenant Governor in Council approve the creation of OilCo (to be formally named at a later date) as a non-crown agent subsidiary of the Energy Corporation of Newfoundland and Labrador following proclamation of the Bill referenced herein. OilCo may invest in, engage in, and carry out activities relating to the exploration, development, production, refining, marketing and transportation of hydrocarbons and products of hydrocarbons; and
- iii) The Lieutenant Governor in Council direct that the legislative exemptions for the Energy Corporation and its subsidiaries contemplated in the Bill referenced herein, not apply to the Bull Arm Site Corporation (BASC) until such time as the Energy Corporation has completed a strategic review of BASC and presented the findings of this review to Cabinet.

**The Committee recommends approval of the Submission subject to (i) revision of Recommendation 2 to reference that the creation of Oilco is pursuant to section 10 of the *Transparency and Accountability Act*; and, (ii) revision of the draft Bill to exempt agreements between the Energy Corporation and a similar government entity in another jurisdiction from the *Act*, but entering any other agreements with another jurisdiction, within Canada or internationally, would be entered into by the Minister of Intergovernmental Affairs and therefore, in accordance with government policy, such agreements should be the subject of a Cabinet submission to ensure the Cabinet has a full view of the activities of the Crown and its entities in relation to other governments.**

May 14, 2008

2008/05/15

NR/DM  
IGA/DM  
J. Chippett  
J. Ottenheimer  
E. Martin  
C. Lake  
R. Dillon  
V. Newhook  
AG  
Deputy Clerk  
File

A Presentation was received from the Deputy Minister of the Department of Natural Resources and the submission of the Minister of Natural Resources respecting Amendments to the Energy Corporation Act was considered.

The following direction was provided:


1) Approval was given for a Bill entitled, "An Act to Amend the Energy Corporation Act," which sets out the public reporting requirements and legislative exemptions for the Energy Corporation to allow it to operate in a commercially competitive environment and outlines the conditions under which the subsidiaries of the Energy Corporation will be established and operate, substantially in the form of a copy which is on file with the Clerk of the Executive Council, subject to revisions to the draft bill:

i) to exempt agreements between the Energy Corporation and a similar government entity in another jurisdiction from the Act, but any other agreements with another jurisdiction, within Canada or internationally, would be entered into by the Minister for Intergovernmental Affairs and therefore, in accordance with government policy, such agreements should be the subject of a Cabinet submission to ensure the Cabinet has a full view of the activities of the Crown and its entities in relation to other governments; and

ii) to provide for review by the Auditor General, with commercially sensitive information not to be disclosed;

iii) to protect disclosure under the Access to Information and Protection of Privacy Act of commercially sensitive information;

2) The bill is to be reviewed by the Clerk of the Executive Council prior to introduction in the House of Assembly without further reference to Cabinet;


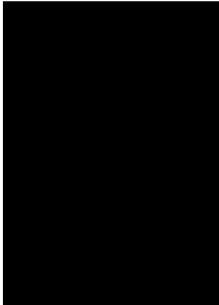


2008/05/15


3) Approval was given for the Clerk of the Executive Council, when required, to issue an Order in Council pursuant to section 10 of the Transparency and Accountability Act and section 14.1 of the Energy Corporation Act, to authorize the creation of OilCo (to be formally named at a later date), to be incorporated under the Corporations Act as a non-Crown agent subsidiary of the Energy Corporation of Newfoundland and Labrador, upon the coming into force of section 4 of "An Act to Amend the Energy Corporation Act." OilCo may invest in, engage in, and carry out activities relating to the exploration, development, production, refining, marketing and transportation of hydrocarbons and products of hydrocarbons;

4) The legislative exemptions for the Energy Corporation and its subsidiaries contemplated in the Bill will not apply to the Bull Arm Site Corporation until such time as the Energy Corporation has completed a strategic review of Bull Arm Site Corporation and presented the findings of this review to Cabinet.


Clerk of the Executive Council

  
2008/08/11

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NR/DM  
FIN/DM  
J. Ottenheimer  
E. Martin  
J. Chippett  
V. Newhook  
AG  
Deputy Clerk  
File



Under the authority of section 10 of the Transparency and Accountability Act and section 14.1 of the Energy Corporation Act, the Lieutenant Governor in Council hereby authorizes the creation of the Oil and Gas Corporation of Newfoundland and Labrador Inc., to be incorporated under the Corporations Act as a non-Crown agent subsidiary of the Energy Corporation of Newfoundland and Labrador, with the objects, powers, governance structure and authority to borrow money and incur debt as outlined in the Schedule on file with the Clerk of the Executive Council. The Minister of Natural Resources is directed to issue a public statement further to section 10 of the Transparency and Accountability Act. The Energy Corporation of Newfoundland and Labrador is directed to inform the Clerk of the Executive Council on the appointment of a chief executive officer by the Board of Directors of the Oil and Gas Corporation of Newfoundland and Labrador Inc.

Deputy Clerk of the Executive Council



## Email Message

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**From:** Griffin, Gerard [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=GERARDGRIFFIN]  
**To:** Johnstone, Terry J. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=TJOHNSTO]  
**Cc:** Winters, Scott [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE  
GROUP/CN=RECIPIENTS/CN=SCOTTWINTERS]  
**Sent:** 5/8/2008 at 4:38 PM  
**Received:** 5/8/2008 at 4:38 PM  
**Subject:** RE: NR2008- [REDACTED] -- Amendment to the Energy Corp Act

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Terry,

This submission has regulatory implications given the new requirements associated with the proposed legislation. Therefore, a Regulatory Impact Analysis (RIA) is required (but is not provided) with the submission.

Our office has contacted NL Hydro / Energy Corporation and requested the RIA. The RIA is to be completed, signed by the minister and forwarded as soon as possible to accompany the submission.

The extent of the new regulatory requirements associated with this submission is not known as the legislative amendments are not provided with the submission. NL Hydro / Energy Corporation will be advised to monitor these new requirements and report them as part of the monthly reporting process with the Red Tape Reduction Initiative.

Regards,

Gerard

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From: Johnstone, Terry J.  
Sent: Tuesday, May 06, 2008 1:16 PM  
To: Stanley, Todd; Curtis, Ken; Case, Barbara; Griffin, Gerard; Duff, Jennifer  
Cc: Chippett, Jamie  
Subject: [REDACTED] -- Amendment to the Energy Corp Act

Hi - could you please review this Submission and give me your comments by the close of business on Thursday, May 8 if at all possible. We received this Submission late

yesterday evening and will be on the EPC Agenda for Tuesday, May 13.

Sorry about the very short notice for this submission.

Thanks - Terry

PS - I just sent this a minute ago with the wrong number on the subject Line

## SCHEDULE TO [REDACTED]

**Oil and Gas Corporation of Newfoundland and Labrador Inc.****Purpose of Incorporation**

Oil and Gas Corporation of Newfoundland and Labrador Inc. is a provincial Crown corporation that:

- (i) will hold the Province's equity interests in, participate in, and partner with third parties with respect to activities related to hydrocarbon and hydrocarbon product developments.

**The Objects of the Crown Corporation are as follows:**

- (i) to invest in, engage in, and carry out activities in the Province and elsewhere with respect to:
  - a. the exploration for, development, production, refining, marketing and transportation of hydrocarbons and products from hydrocarbons;
  - b. research and development; and
  - c. those other activities that the Energy Corporation may approve.

**The powers of the Corporation are as follows:**

- (i) same general powers of the Energy Corporation including the ability to:
  - i. enter into contracts or other agreements and acquire and dispose of and otherwise deal with real and personal property and all rights of all kinds in the name of the corporation;
  - ii. acquire, lease, establish, construct, maintain and operate works in a part of the province or elsewhere in connection with the attainment of its objectives;
  - iii. purchase power from a person and generally use the power for the purposes of the corporation;
  - iv. contract with a person for the purchase of petroleum products, notwithstanding another Act;
  - v. acquire by purchase, lease or otherwise, property, both real and personal, and water privileges, rights, easements, privileges, proprietary rights, interests, and works of every description which the corporation considers necessary, convenient or advisable to acquire for or incidental to the exercise of the powers and duties of the corporation and the attainment of its objects;
  - vi. sell or otherwise dispose of its property, real or personal, of every nature and kind or an interest in it which is found by the corporation to be unnecessary for the purposes of the corporation,

- and grant an estate, term, easement, right or interest in, over or respecting the property;
- vii. deposit money or securities with a bank, trustee, trust company, or other depositary in Canada or outside of Canada ;
- viii. carry on business incidental and subsidiary to the carrying out of the objects and necessary to enable the corporation to profitably carry out those objects;
- ix. generally do all things which the corporation considers necessary, convenient or advisable for or incidental to the exercise of the powers and the discharge of the obligations of the corporation.
- x. acquire, lease, construct, maintain, operate and use in the province and elsewhere land, works, plants, buildings, structures, machinery, equipment, devices, pipe lines, tunnels and other property used or useful for carrying out the objects of the corporation; and
- xi. all other powers that are incidental or conducive to the attainment of the objects of the corporation;
- (ii) the corporation shall not engage in an activity that, were it to be undertaken by the Energy Corporation, would require the prior approval of the Lieutenant Governor in Council, including the creation of a subsidiary, without the prior approval of the Energy Corporation; and
- (iii) the *Public Tender Act* does not apply to the corporation, but the corporation must develop and adopt, subject to the approval of the Lieutenant Governor in Council, procurement principles that follow best industry practices for procurement and contracting including transparent supplier development, monitoring and reporting.

**The governance structure of the Corporation will be as follows:**

- (i) the corporation is a subsidiary of the Energy Corporation and is not an agent of the Crown;
- (ii) the property of the corporation is not the property of the Province or the Energy Corporation;
- (iii) the debts and obligations of the corporation are not the debts and obligations of the Province or the Energy Corporation;
- (iv) the Board of Directors shall be appointed by the Energy Corporation;
- (v) the Board of Directors shall be composed of not less than 5 and not more than 10 members, with the following number of independent directors:
  - a. where the board has 5 or 6 members, 2 independent directors,
  - b. where the board has 7 or 8 members, 3 independent directors,
  - c. where the board has 9 or 10 members, 4 independent directors; and
- (vi) the Chief Executive Officer of the corporation shall be appointed by the Board of Directors of the corporation.

**The authority of the Corporation to borrow money and incur debt will be as follows:**

- (i) to lend money to or invest in a subsidiary of the corporation;
- (ii) to guarantee the repayment by a subsidiary of the corporation of money advanced to that subsidiary by a lender, together with the payment of interest on it and of all charges incurred in connection with it;
- (iii) to guarantee the performance by a subsidiary of the corporation of an obligation of that subsidiary contracted by it with a person to perform, fulfill or observe a covenant, obligation or provision of an agreement, deed, bond, promissory note or other document or instrument;
- (iv) the corporation has some or all of the borrowing powers of Energy Corporation and more particularly described in sections 14.1 and 18 of the *Energy Corporation Act*, as amended by SNL2008 c31 (the "Act"), which provide the corporation with the authority to borrow and to secure the payment of money borrowed for purposes of carrying out its day to day operations, subject to the prior approval of the Minister of Finance pursuant to subsection 11(1) of the *Transparency and Accountability Act*. Such security related to money borrowed will be the same as the Energy Corporation and includes:
  - i. to issue bonds, debentures or other securities;
  - ii. to execute and deliver mortgages, assignments, conveyances, charges or other encumbrances of and over present and future title to property vested in the corporation; and
  - iii. to execute trust deeds, trust indenture or an agreement with a lender, trustee acting for the holders of bonds and debentures or other person; and
- (v) subject to prior approval of Lieutenant Governor in Council, the Minister of Finance may, guarantee loans of and performance by the corporation pursuant to sections 19 and 25 of the Act.