NR 2008-[redacted]

[redacted]

[redacted]

TITLE: Proclamation of the *Hydro Corporation Act, 2007*

ISSUE:

To seek approval for an Order-in-Council to proclaim and bring into force the *Hydro Corporation Act, 2007* that was assented on June 14, 2007.

RECOMMENDATION:

It is recommended that,

i) the Lieutenant-Governor in Council, under authority of section 41 of "*An Act Respecting The Newfoundland And Labrador Hydro-Electric Corporation*," SNL2007 Chapter H-17 (short title - *Hydro Corporation Act, 2007*), cause a proclamation to be issued for the signature of His Honour the Lieutenant Governor to bring the *Hydro Corporation Act, 2007* into force; and,

ii) immediately after proclamation of the *Hydro Corporation Act, 2007*, an Order in Council be issued, under section 5 (2) of the *Hydro Corporation Act, 2007*, authorizing Newfoundland and Labrador Hydro to continue to engage in certain activities outside its corporate objects. These activities are: the conclusion of the processes resulting from NLH's Transmission Service Requests to TransEnergie in Quebec, the Ontario Independent Electricity System Operator and the New Brunswick System Operator and the assignment of accepted agreements to the Energy Corporation or future subsidiaries; and the completion of an orderly transfer of shares in Churchill Falls (Labrador) Corporation to the Energy Corporation for Newfoundland and Labrador.

BACKGROUND:

On June 14, 2007, both the *Hydro Corporation Act, 2007* and the *Energy Corporation Act* received Royal assent, but were not immediately proclaimed. Proclamation for both Acts was

delayed as Newfoundland and Labrador Hydro (NLH) and government made preparations for establishing the new Energy Corporation for Newfoundland and Labrador (ECNL).

On October 11, 2007, the *Energy Corporation Act* was proclaimed, establishing ECNL as a legal entity under the Act. Since that time, ECNL and NLH officials have been engaged in setting up the new energy corporation and transferring assets, acquisitions and associated rights and obligations from NLH to ECNL. This is necessary as the new *Hydro Corporation Act, 2007* only permits NLH to engage in activities related to electricity within the province, unless otherwise authorized by the Lieutenant-Governor in Council. Section 4(2) of the *Hydro Corporation Act* had been amended in 2006 to allow NLH to engage in a much broader range of activities, as an interim step in the creation of the Energy Corporation.

The transfer process began in October 2007, and significant transfers have been completed, but NLH advises that it has not yet completely divested itself of all interests related to activities outside its stated objects, and therefore requests the approval of the Lieutenant Governor in Council to complete these activity transfers after the Act is proclaimed The outstanding items are the processes resulting from TransEnergie in Quebec, the Ontario Independent Electricity System Operator and the New Brunswick System Operator and the assignment of accepted agreements to the Energy Corporation or future subsidiaries; and the completion of an orderly transfer of shares in Churchill Falls (Labrador) Corporation to the Energy Corporation for Newfoundland and Labrador.

Currently, ECNL is in the process of securing credit agreements and needs to establish its consolidated financial position and statements (which include that of its subsidiaries). ECNL cannot include some important elements in its consolidated revenue from NLH, including the Recall Contract revenue and dividends from NLH, until it is the legal shareholder, which it will become under section 39 (1) of the *Hydro Corporation Act, 2007*, once proclaimed. Without these revenues in its consolidated financial picture or a government guarantee, ECNL officials inform that creditors would view it as less secure and this could result in higher borrowing rates.

Consequently, NLH and ECNL recommend that the *Hydro Corporation Act, 2007* be proclaimed with an accompanying Order in Council approving NLH's continued engagement in activities outside its stated objects necessary to ensure continuity and orderly transfer to ECNL.

ALTERNATIVES:

1. *Proclaim the Hydro Corporation Act, 2007 followed by issuance of an Order in Council allowing NLH to continue to engage in current activities outside its corporate objects until December 31, 2008.* This alternative is recommended. Proclamation will transfer the shares of NLH from Government to ECNL making it a legal subsidiary of ECNL. This will complete an element of government's plan for its energy corporation as stated in the Energy Plan that, "This Energy Corporation will be wholly owned by the province and will be the parent company of Newfoundland and Labrador Hydro (NLH), Churchill Falls Labrador (CF(L)Co) Corporation, other subsidiaries currently owned by NLH and new entities created to manage the province's investments in the energy sector."

2. *No Action.* This alternative is not recommended. The legislation creating ECNL was proclaimed in October 2007 and the transfer of non-electricity interests from NLH to ECNL is continuing. However, ECNL's borrowing could be negatively affected without NLH as its legal subsidiary.

LEGAL / LEGISLATIVE CONSIDERATIONS:

Section 41 of the *Hydro Corporation Act, 2007* states that, "This Act comes into force on a day to be proclaimed by the Lieutenant-Governor in Council." As well, section 40 of the *Hydro Corporation Act, 2007* states that, "The *Hydro Corporation Act* is repealed" which is effective on the day of proclamation of the *Hydro Corporation Act, 2007*. In addition to this Act, NLH is also subject to the *Electrical Power Control Act, 1994,* the *Public Utilities Act* and certain provisions of the *Corporations Act*.

The authority to allow NLH to continue to engage in activities outside its stated objects comes from section 5(2) of the *Hydro Corporation Act, 2007* which states, "Notwithstanding subsection (1), the corporation may engage in those other activities that the Lieutenant-Governor in Council may approve."

NLH's objects, under the *Hydro Corporation Act, 2007*, are outlined in section 5 (1) which states that, "The objects of the corporation are to develop and purchase power on an economic and efficient basis, and, in particular, to engage in the province and elsewhere in the development, generation, production, transmission, distribution, delivery, supply, sale, purchase and use of power from water, steam, gas, coal, oil, wind, hydrogen or other products used or useful in the production of power, and to supply power, at rates consistent with sound financial administration, for domestic, commercial, industrial or other uses in the province, and, subject to the prior approval of the Lieutenant-Governor in Council, outside of the province."

FINANCIAL CONSIDERATIONS:

Without the consolidated revenues of NLH under ECNL, ECNL officials advise that a government loan guarantee may be an alternative, otherwise, creditors may view ECNL as less secure and could result in higher borrowing rates.

INTERDEPARTMENTAL CONSIDERATIONS:

None.

LABRADOR OR ABORIGINAL CONSIDERATIONS:

None.

INTERGOVERNMENTAL CONSIDERATIONS:

None.

OTHER JURISDICTIONS:

Not applicable.

CONSULTATIONS:

The Department of Justice, ECNL and NLH have been consulted on this submission.

ENVIRONMENTAL CONSIDERATIONS:

None.

COMMUNICATIONS AND CONSULTATIONS SYNOPSIS:

See attached.

ANNEXES:

Annex A - Communications and Consultations Synopsis

KATHY DUNDERDALE
Minister of Natural Resources

May 2, 2008

Attachments (1)

Annex A - [redacted]

[redacted]

PROCLAMATION OF THE HYDRO CORPORATION ACT, 2007

1. Consulted With:	2. Date Drafted:	3. Anticipated Announcement Date:
Paul O. Parsons, DNR Charles Bown, ADM	March 19, 2008	Proclamation to be public when published in Gazette. Order in Council not anticipated to be made public although like any Order in Council it will be available to the public if requested.

Issue

Proclamation of Hydro Corporation Act, 2007 and subsequent exemption from part of act prohibiting NLH from engaging in non-regulated business activities until transfer of all assets to ECNL is complete.

4. Goal

- To show the province is moving ahead with its Energy Plan
- To show the proclamation and order in council reflect the Energy Plan goals and objectives
- To show these steps are the necessary and responsible steps for the province

5. Target Audience

- Boards of Newfoundland and Labrador Hydro and Energy Corporation
- Media
- General public
- MHAs
- Public Utilities Board

Anticipated Media Attention	Anticipated Reaction
Low: NLH and the Energy Corporation have an increasingly high profile in the province in light of their roles as electricity providers and petroleum project equity holders. These particular steps in the creation/restructuring of the corporation will likely be seen as clerical or corporate technicalities.	Mixed: This could draw criticism from media or the opposition. If they learn of the Order in Council they might say either: a) government misled the province last year when it said creating the energy corp was necessary to protect ratepayers from business losses in non-regulated activities; or b) if made public, the exemption order (Order in Council) could expose ratepayers to increased rates if ECNL incurs business losses through non-regulated activities.

6. Possible Headlines

Positive: Government makes important move in long-term energy strategy
Positive: Government positions Energy Corp for important financing
Negative: Government risking electricity rates increases

7. Messages

- The proclamation allows the Energy Corp to consolidate its financial statements and secure the best available interest rates during financing.
- The Order in Council will ensure that NLH is allowed to continue its non-regulated business development activities, including oil and gas developments, while the remainder of NLH's non-regulated assets are being transferred to the Energy Corporation.
- The steps are consistent with the province's Energy Plan, which is ensuring the province receives the best possible overall return from its energy resources.
- The Board of Commissioners of Public Utilities (PUB) regulates NLH, therefore, ratepayers should not incur costs related to unregulated activities of the Energy Corp or any of its subsidiaries or affiliated companies, including NLH.
- The PUB, under the PU Act and EPCA, regulates electricity rates in the province and must ensure that only regulated costs are captured in rates. Any losses that NLH or the ECNL might incur from unregulated business will have to be incurred by the corporation and not NL regulated electricity ratepayers.
- As holding company for the province's equity shares in energy developments, the Energy Corporation and its subsidiaries are keys to the province's success in maximizing overall benefits from energy resources.

8. Activities

- No special communications activities will follow the proclamation or Order in Council. The minister will respond to media request if they occur. The proclamation would become public once it is Gazetted. The Order in Council is not anticipated to be made public although like any Order in Council it will be available to the public if requested.

9. Sustaining the Message

- The minister and communications materials will continue to reflect the Energy Plan and steps government is taking to implement it.

Drafted by: Corey Snook, Communications and Marketing Manager

Approved by: Charles Bown, ADM

[redacted]

[redacted]

Attach To: NR2008-[redacted]
EPC2008

[redacted]

Proclamation of the Hydro Corporation Act, 2007

Title:

Branch Comment:

The Communications Branch generally agrees with the communications synopsis but notes the following:

- The Energy Corporation for Newfoundland and Labrador is not the "official" name of the province's energy corporation.
- The messages need not include a reference to the Order in Council (and not clear why the issue of the Order in Council is raised in the communications synopsis.)
- With the anticipation of a new piece of legislation coming before the HOA – *The Newfoundland and Labrador Oil and Gas Company Act* – there should be messages/Qs and As developed should there be a need to clarify the various pieces of legislation that have been developed as a result of the establishment of an energy corporation for the province.

Date: May 8, 2008
Prepared by: Carmel Turpin
Reviewed by: Josephine Cheeseman

[redacted] [redacted]

Attach to: NR2008-[redacted]
EPC2008-

[redacted]

Title **Proclamation of the *Hydro Corporation Act, 2007***

Summary of Proposal The Submission seeks authority for (i) the issuance of a proclamation by the Lieutenant Governor in Council to bring the *Hydro Corporation Act, 2007* into force; and (ii) subsequent issuance of an Order in Council authorizing Newfoundland and Labrador Hydro to continue to engage in certain activities outside its corporate objects.

Secretariat Comment

1. The *Hydro Corporation Act, 2007* and the *Energy Corporation Act* received Royal Assent in June 2007. The legislation provided for the creation of a new corporation to implement government's activities in the energy sector and to hold the shares of Newfoundland and Labrador Hydro and Hydro's existing subsidiaries. The legislation further limited Hydro's activities to the provision of regulated electricity services to provincial customers (although a provision was included in the new legislation to enable the Lieutenant Governor in Council to authorize activities outside the stated objects). Proclamation for both Acts was delayed as Hydro and Government made preparations for establishing the new Energy Corporation.

2. The *Energy Corporation Act* was proclaimed in October 2007, and since that time, officials of the Energy Corporation of Newfoundland and Labrador (ECNL) and Newfoundland and Labrador Hydro (NLH) have engaged in the transferring of assets, acquisitions, and associated rights and obligations from NLH to the ECNL. While significant transfers have been concluded, NLH advises that it has not completely divested itself of all interests related to activities outside NLH's stated objects in the new legislation. It seeks approval to proclaim the legislation for the reasons given below, and it also seeks approval for the issuance of an Order in Council to authorize Hydro to engage in certain activities outside its corporate objects.

3. The Submission notes that these activities pertain to NLH's Transmission Services Requests to TransEnergie in Quebec, the Ontario Independent Electricity System Operator, and the New Brunswick System Operator. ECNL has advised the Department that these ongoing processes will continue for 18 to 24 months before the applications can be assigned over to ECNL. Assigning the applications to ECNL now presents the risk of the project being bumped from the queue and requiring a refiling of the application. This action could potentially place consideration of the request behind other major hydro projects in Quebec which could have an impact on the cost of accessing this market.

4. The submission also notes that other outstanding activities that cannot be transferred to the Energy Corporation prior to proclamation at the current time, include the assignment of accepted agreements to the Energy Corporation and or future subsidiaries and the completion of shares in Churchill Falls (Labrador) Corporation to the Energy Corporation. The Department advises that following the proclamation of the *Hydro Corporation Act, 2007* the Department will be requesting Orders in Council to assign various agreements to the Energy Corporation and to transfer shares to the Energy Corporation from the Churchill Falls (Labrador) Corporation. Cabinet Secretariat notes that this is consistent with MC2007-0378, which authorized the Clerk of the Executive Council, following the

passage of the legislation in the House of Assembly, to issue any necessary Orders in Council arising from the direction in NR2007-019 (which approved the legislation) and NR2007-017 (which approved the establishment of Holdco and the drafting of legislation).

5. Notwithstanding these outstanding activities, it is necessary that the proclamation of the *Hydro Corporation Act, 2007* occur as soon as possible. Until the *Hydro Corporation Act, 2007* is proclaimed, ECNL is not a legal shareholder of NLH, and therefore cannot include certain revenues and dividends from NLH in its consolidated revenue, including the recall contract revenue. This inclusion is needed as ECNL attempts to secure credit agreements and therefore needs to establish its consolidated financial position and statements. Not factoring in these NLH revenues could result in higher borrowing rates from creditors with respect to funding for the development of the Lower Churchill River hydroelectric resource.

6. The Department advises that the recommended course of action may result in criticism of Government as it allows NLH to remain involved in certain activities not related to electricity. This could be magnified given that the *Hydro Corporation Act, 2007* was a measure to ensure separation of Hydro from these other activities and thereby insulate consumers from potential rate increases based on potential business risk and loss resulting from Hydro's participation in unregulated activities. The Department advises that the regulated activities of Newfoundland and Labrador Hydro are governed by the Board of Commissioners of the Public Utilities which ensures that only regulated costs are captured in rates and therefore ratepayers should not experience increased rates as a result of this arrangement.

7. The Rural Secretariat advises that given the legislative nature of the proposal a Rural lens need not be applied to this Submission.

8. [redacted]

9. The Communications Branch generally agrees with the communications synopsis but advises that: (i) The Energy Corporation for Newfoundland and Labrador is not the official name of the province's energy corporation; (ii) the key messages need not include a reference to the Order in Council; and (iii) in anticipation of *The Newfoundland and Labrador Oil and Gas Company Act* coming before the House of Assembly messaging should be developed to clarify the various pieces of legislation that have been developed as a result of the establishment of the Energy Corporation.

Budget Division Consultation The Department of Finance notes that based on the Energy Corporation's existing credit arrangements with a major bank (up to $200 million) and $315 million in funding included in the 2008-09 Budget, it would appear that cash flow should not be an issue for the Corporation in the near term. However, it is recognized that this proclamation is necessary to enable NLH to become a subsidiary of the Energy Corporation.

Secretariat Recommendation Cabinet Secretariat recommends approval of the Submission subject to finalization of the communications synopsis in consultation with the Communications and Consultations Branch.

JC/TF
May 9, 2008

[redacted]

[redacted]

Attach to: NR2008-[redacted]
EPC2008-[redacted]

[redacted]

Proclamation of the *Hydro Corporation Act, 2007*

The Submission of the Minister of Natural Resources seeking approval of Proclamation of the *Hydro Corporation Act, 2007* was considered by the Economic Policy Committee.

The Minister recommends that:

i) the Lieutenant-Governor in Council, under authority of section 41 of "*An Act Respecting The Newfoundland And Labrador Hydro-Electric Corporation*," SNL2007 Chapter H-17 (short title - *Hydro Corporation Act, 2007*), cause a proclamation to be issued for the signature of His Honour the Lieutenant Governor to bring the *Hydro Corporation Act, 2007* into force; and,

ii) immediately after proclamation of the *Hydro Corporation Act, 2007*, an Order in Council be issued, under section 5 (2) of the *Hydro Corporation Act, 2007*, authorizing Newfoundland and Labrador Hydro to continue to engage in certain activities outside its corporate objects. These activities are: the conclusion of the processes resulting from NLH's Transmission Service Requests to TransEnergie in Quebec, the Ontario Independent Electricity System Operator and the New Brunswick System Operator and the assignment of accepted agreements to the Energy Corporation or future subsidiaries; and the completion of an orderly transfer of shares in Churchill Falls (Labrador) Corporation to the Energy Corporation for Newfoundland and Labrador.

The Committee recommends approval of the Submission subject to finalization of the communications synopsis in consultation with the Communications and Consultations Branch.

May 14, 2008

[redacted]

2008/05/15

[redacted]

NR/DM
J. Chippett
C. Lake
E. Martin
J. Ottenheimer
J. Cheeseman
AG
Deputy Clerk
File

[redacted]

The submission of the Minister of Natural Resources respecting Proclamation of the Hydro Corporation Act, 2007 was considered.

The following direction was provided:

1) Approval was given for the issuance of an Order in Council, pursuant to section 41 of the "Hydro Corporation Act, 2007," to cause a proclamation to be issued for the signature of His Honour the Lieutenant Governor, to bring the Act into force upon the date of publication in the Newfoundland and Labrador Gazette;

2) Approval was given for the issuance of an Order in Council, upon proclamation of section 5(2) of the Hydro Corporation Act, 2007, to authorize Newfoundland and Labrador Hydro to continue to engage in certain activities outside its corporate objects. These activities are: the conclusion of the processes resulting from Newfoundland and Labrador Hydro's Transmission Service Requests to TransEnergie in Quebec, the Ontario Independent Electricity System Operator and the New Brunswick System Operator and the assignment of accepted agreements to the Energy Corporation or future subsidiaries; and the completion of an orderly transfer of shares in Churchill Falls (Labrador) Corporation to the Energy Corporation of Newfoundland and Labrador; and

3) The Department is directed to finalize the Communications Plan in consultation with the Communications and Consultation Branch.

(NO ACTION TO BE TAKEN ON ITEM 1 AND 2 UNTIL TWO ORDERS IN COUNCIL (OC2008-156 AND OC2008-157) ARE ISSUED)

Clerk of the Executive Council

[redacted]

[redacted]

2008/06/04

[redacted]

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

Under the authority of section 41 of the "Hydro Corporation Act, 2007," the Lieutenant Governor in Council is pleased to cause a proclamation to be issued for the signature of His Honour the Lieutenant Governor, to bring the Act into force upon the date of publication in the Newfoundland and Labrador Gazette.

Clerk of the Executive Council

[redacted]

[redacted]

2008/06/04

[redacted]

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

Upon proclamation of section 5(2) of the Hydro Corporation Act, 2007, the Lieutenant Governor in Council hereby authorizes Newfoundland and Labrador Hydro to continue to engage in certain activities outside its corporate objects. These activities are: the conclusion of the processes resulting from Newfoundland and Labrador Hydro's Transmission Service Requests to TransEnergie in Quebec, the Ontario Independent Electricity System Operator and the New Brunswick System Operator and the assignment of accepted agreements to the Energy Corporation or future subsidiaries; and the completion of an orderly transfer of shares in Churchill Falls (Labrador) Corporation to the Energy Corporation of Newfoundland and Labrador.

Clerk of the Executive Council

Email Message

From:	Quigley, David [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DQUIGLEY]
To:	Harvey, Brian [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BRIANHARVEY], Crummey, Jennifer L. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JENNIFERCRUMMEY]
Cc:	Farrell, Madonna [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MFARRELL], Morris, Joan E. [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JMORRIS], Saunders, Earl [EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=ESAUNDERS]
Sent:	5/8/2008 at 11:33 AM
Received:	5/8/2008 at 11:33 AM
Subject:	NR 2008-[redacted] proclamation of Hydro Corp Act 2007

Jennifer/Brian,

Have reviewed the above noted submission and have no comment to add from a financial perspective. Earl Saunders, Director of Debt management, also reviewed and offered following comment which he has already forwarded to Jamie Chippett.

(Earls comments: I don't really have any issues with the recommendation that the Hydro Corporation Act, 2007 be proclaimed . I guess everyone has known for some time now that ultimately Newfoundland and Labrador Hydro will become a subsidiary of the new Energy Corporation . Proclamation of the 2007 Act is necessary to accomplish this. As I read the Submission , the principal reason for proclaiming the Act now is that it will consolidate the financial structure of Energy Corp. and thereby assist in securing credit agreements . It is my understanding that the Energy Corp. has already put in place a credit arrangement with a major bank (up to $200 million , I believe , and without a Government guarantee) and then there's $315 million in funding included in the 2008 Budget . It would appear that cash flow shouldn't be an issue in the near term so, while acknowledging that it will eventually be necessary, I don't see that there's a pressing need to proclaim the 2007 Act.

Dave Quigley

Treasury Board Officer

Treasury Board Support Division