

BRIEFING NOTE**Meeting Date:****Agenda Item:**

Title: **Reference by the Government of Newfoundland and Labrador on the Muskrat Falls Project- Third Progress Report**

Action Required

Information

Other

Issue:

On June 13, 2011, the Board received a Reference (the Reference) from the Government of Newfoundland and Labrador, under section 5 of the *Electrical Power Control Act, 1994*, concerning the Muskrat Falls Project

Legislation:

The *Electrical Power Control Act, 1994*, RSNL 1990, c. E-5.1 and the *Public Utilities Act*, RSNL 1990.c.P-47

Background:

- The Reference directed the Board to review and report on whether the Muskrat Falls Project, as compared to the Isolated Island Option is the least- cost option for the supply of power to the Island interconnected system.
- The Board was further directed to consider and evaluate the forecasts and assumptions used by Nalcor and Hydro for the Island load, system planning assumptions, and the process for developing and comparing the estimated costs for the supply of power to the Island.
- The Board was further directed to assume that any power in excess of the needs of the Province is not monetized or utilized and the Board was directed to not consider the options or decisions respecting such excess power, including the Maritime Link.
- Tom Johnson has been appointed as the Consumer Advocate for the Reference
- The Terms of Reference state that Board's report is to be provided to the Minister of Natural Resources by December 30, 2011.
- The Board retained Fred Martin as its Technical Adviser and Manitoba Hydro International Ltd. (MHI) as its independent Engineering/Financial Consultant to assist with the review required for the Reference.
- This is the third written progress report and there have been several meetings held since the last written report to discuss the status of the work required for the Reference.

Analysis:

- Since the last progress report, dated July 27, 2011, MHI has held several technical meetings with Nalcor representatives to review various aspects of the Muskrat Falls Project and the

Isolated Island Option. MHI has determined that no further meetings are required but it does require the answers to Requests for Information (RFIs) and Nalcor's submission to finish its report. A preliminary draft report is scheduled to be received in early to mid-October, subject to receiving the required information from Nalcor.

- MHI has sent 116 RFIs, the Board has sent 107 RFIs, and the Consumer Advocate sent 15 on September 17 for a total of 238 RFIs. The most recent ones by the Board were sent on September 9 when 85 RFIs were sent. As of September 20, there are 22 outstanding responses to MHI's RFIs, while only 13 of the Board's RFIs have been answered and none of the Consumer Advocate's have been answered.
- Nalcor has not filed its submission and as of September 20th has not given a date by which it will file it. The original date stated by Nalcor for this submission was the end of July. Nalcor subsequently extended this date on a number of occasions and as of August 26th stated it was "under review".
- The original schedule contemplated Nalcor's submission the end of July, MHI's report on September 15, 2011, a Technical Conference in October and public consultations in late October and early November. This schedule provided approximately six weeks for the Board to write its report by the deadline of December 30, 2011.
- On July 21, 2011 the Board advised Nalcor that delays in the provision of information could jeopardize the schedule. Given the continuing problem with the receipt of the required information, on September 8, 2011 the Board requested a meeting with Nalcor to discuss the provision of information, including the filing of Nalcor's submission, and the implications of the delay in receiving information for the schedule. The meeting took place on September 12 with Nalcor attendees Geoff Young, Legal Counsel, Gilbert Bennett, Vice-President, Lower Churchill Project and David Harris, Manager of Rates & Regulatory.
- At the September 12th meeting Nalcor representatives were unable to say when its submission would be filed or when the outstanding RFIs would be answered. They did indicate that, in their opinion, certain of the recent RFIs were outside the Terms of Reference. Nalcor were asked to get back to the Board after they had completed its review to state which RFIs were in this category so there could be a further discussion. To date we have not heard from Nalcor on this issue.
- Given the lack of response from Nalcor at the September 12th meeting on the date for filing its submission and answering the outstanding RFIs, the Board wrote on September 14, 2011 to request that Nalcor advise by September 16, 2011 when the Board could expect to receive its submission. The response was not received, as required, by September 16th and still has not been.
- The issue of the process for confidential information was also discussed at the September 12th meeting. Nalcor was asked to provide, by September 19th a list of the information that it has filed that it claims is confidential and to advise the date that its screening process for confidentiality will be completed. The list of confidential information will be provided to the Consumer Advocate. This information has not been received from Nalcor as requested.
- It is essential that the Board have a firm commitment from Nalcor on the filing date for its submission and an indication when the RFIs will be answered so that a revised schedule can be completed. At this time it is obvious that the Board can't meet the deadline of December 30, 2011 for its report to Government. The information requested from Nalcor is critical to prepare a realistic schedule for the Reference, which involves requesting an extension from the Government.
- Board staff have communicated to Nalcor through discussion, including at meetings in June and July and most recently on September 12, 2011, and through correspondence, with the

most recent, being dated September 14, 2011, that it is critical that Nalcor's submission and the responses to information requests be received as soon as possible.

Action Plan and Recommendations:

This Briefing Note is filed for information and discussion.

Maureen Greene
Legal Counsel

2011-06-14

Action Taken:

Board Secretary

Date