

INFORMATION/BRIEFING NOTE

Title: **Reference by the Government of Newfoundland and Labrador on the Muskrat Falls Project – Fourth 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. On September 14, 2011, the Board wrote Nalcor requesting certain information, including the date that its submission will be filed. No reply has been received.

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 the monetization of the excess power, including the Maritime Link.
- 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 Manitoba Hydro International Ltd. (MHI) as its independent Engineering/Financial Consultant to assist with the review required for the Reference.
- This is the fourth written progress report. The last was dated September 21, 2011.

Analysis:

- Nalcor has not filed its submission as required by the Terms of Reference and as of October 18th has not given a date by which it will file it. In June, Nalcor advised that its submission would be filed by the end of July. Nalcor subsequently extended this date on a number of occasions and on August 26th stated it was "under review".
- The original schedule contemplated Nalcor's submission being filed by 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.
- A total of 268 RFIs have been asked, including 125 by MHI, 128 by the Board and 15 by the Consumer Advocate. 144 RFIs have not been responded to as of October 18th.
 - MHI have completed their series of technical meetings with Nalcor and are working on a draft report to summarize their work to date but cannot complete the report until Nalcor's submission is filed and outstanding RFIs are answered.
 - On July 21, 2011 the Board advised Nalcor in writing 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, 2011 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 there still has not been a formal response.
 - 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. This information has not been received from Nalcor as requested.
 - On September 22, 2011 the Minister was advised that the Board would not be able to complete its report by December 30, 2011 and that a formal request for an extension of time would be made once the Board received the requested information from Nalcor.
 - On October 12, 2011, Nalcor's Manager of Rates & Regulatory advised in an email that Nalcor's submission "will be complete in November" but did not say when it would be filed with the Board.
 - 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 includes requesting an extension from the Government.
 - Board staff has communicated to Nalcor through discussion, including at meetings in June, July and September, 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.
 - The Board cannot proceed to revise the schedule for the review or to request a realistic extension of time to complete its review in the absence of the requested information from Nalcor.

- On July 26, 2011, the Board issued a media release which stated that MHI's report was expected to be filed in September and that in the fall the Board would publish a notice regarding public consultations which were expected to start in October. No public statement has been issued by the Board since July.

Action Plan and Recommendations:

Nalcor's failure to respond to the Board's request for information on the filing date for its submission and the responses to requests for information should be addressed.

It is recommended that Nalcor be written to advise that it has stymied the Board in moving forward with the review and that Government will be advised that the Board cannot move forward with the review at this time in light of Nalcor's failure to respond.

It is also recommended that a media statement be issued regarding the delay in the review.

Maureen Greene
Legal Counsel

2011-10-18

Action Taken:

Board Secretary

Date