

BRIEFING NOTE
FOR INTERNAL DISCUSSION PURPOSES

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. Nalcor filed its submission, required by the Terms of Reference, on November 10, 2011 and responded to all outstanding requests for information by November 24, 2011. Consideration needs to be given now to setting the schedule for the review required by the Reference.

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 stated that the Board’s report was to be provided to the Minister of Natural Resources by December 30, 2011.
- Delay in receiving the required information from Nalcor has delayed the review and the Minister of Natural Resources was so advised.
- 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 fifth written progress report. The last was dated October 18, 2011.

Analysis:

- Nalcor filed its submission required by the Terms of Reference on November 10, 2011. Nalcor initially advised that its submission would be filed by the end of July but subsequently, on a number of occasions, extended this date.
- The original preliminary 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 two months from the filing of the MHI report to the completion of the public phase of the process and six weeks for the Board to write its report by the deadline of December 30, 2011.
- A total of 297 RFIs were asked from July 19 to November 7, including 131 by MHI, 149 by the Board and 17 by the Consumer Advocate. All outstanding RFIs were responded to by Nalcor by November 24, 2011 with over one third coming in mid- to late November. 115 responses to RFIs were filed in the period November 14- 25 while 16 exhibits were filed from November 1- 25. These recent filings contained substantial new information not previously available to MHI on key areas.
- MHI completed their series of technical meetings with Nalcor in September and worked on a draft report to summarize their work to that date but couldn't complete their report until Nalcor's submission and outstanding RFIs were filed which MHI is now reviewing. The Consumer Advocate has advised that he will be filing new RFIs before Christmas. MHI and Board Staff are also preparing new RFIs, to be filed on the submission and recent RFI responses. Given the significance of the new information already filed, the potential for new information coming from the new RFIs and the Christmas period, the MHI final draft report will not be available until mid-January with the final report, tentatively available for public release by the end of January.
- The process for confidential information is ongoing. On December 2, 2011, Nalcor gave a status update. It advised that of the 66 confidential exhibits filed, 5 have been publicly released without change, 32 have been released as abridged or redacted, 14 will not be released at all and 15 remain to be screened. The screening process is to be completed by December 9, 2011. The availability of information deemed confidential by Nalcor continues to be an issue for the Consumer Advocate that will probably be pursued once the screening process is complete.
- 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 required information from Nalcor. On October 25, the Minister was sent a copy of the letter to Nalcor of the same date which stated that information from Nalcor including its submission and responses to RFIs and the completion of the process on confidential information was required before the Board could be in a position to re-assess the schedule.
- On October 26, 2011 the Board issued a press release stating that it was still waiting for information from Nalcor and could not determine a schedule for the review. It also stated

that the Government had been advised that an extension of the December 30, 2011 date for filing the report was required.

- Based on the preliminary schedule and key activities previously identified and the current status of matters, a realistic (but optimistic) date for completion of the report to Government would be June. Assuming a June30th completion date for the report to Government tentative dates for key activities are:

MHI Report	January 27
Public Notice re Participation	January30
Technical Reports	February 29
Technical Conference	March 26-30
Public Consultations	April 16-27
Report Writing	May-June

- This schedule provides for slightly longer periods for the filing of technical reports after the release of the MHI report, for preparation for the Technical Conference and for the public participation phase than the original schedule.
- The June completion date was discussed with C. Bown, Associate Minister of Natural Resources and T. Johnson, the Consumer Advocate. Government may be considering an earlier date (March 30) for the Board’s report. The Consumer Advocate has indicated that June 30 appears at this time to be realistic but is unable to be definitive until the MHI report is available and the issue of confidential information is resolved. He did indicate that a March 30th completion date was not achievable given the current status and the requirements of the Terms of Reference.
- Consideration needs to be given to the extension to be requested from Government for the completion of the review.

Action Plan and Recommendations:

It is recommended that Government be requested to extend the date for filing the Board’s report to June 29, 2012. If this date is confirmed the schedule can be discussed with the parties and finalized.

Maureen Greene
Legal Counsel

2011-12-05

Action Taken:

Board Secretary

Date