

**FLG/PPA Report
Grant Thornton Responses to Nalcor's Reply
October 17, 2018**

Grant Thornton has reviewed Nalcor's reply to the Grant Thornton FLG/PPA report dated October 11, 2018. The following comments have been developed for each response provided.

A. Power Purchase Agreement

1. Page 32, Lines 17 to 19 – Grant Thornton states “The PPA does not provide any specific characteristics in describing the Base Block Energy for items such as required timing of delivery during peak hours or capacity required during specific time of day”.

Nalcor response – The characteristics of the Base Block Energy are addressed in Section 3.2 of the PPA. It entitles NLH to all Energy and Capacity from the MF Plant that is forecasted or scheduled by NLH on a firm and priority basis when required, subject to committed contracts (e.g. NS Block), capacity of the plant, availability of water and forgivable events.

Grant Thornton response – Grant Thornton agrees with the clarification provided in Nalcor's response. The PPA does state within Section 3.2 of the PPA the forecasting and scheduling principles of the Base Block Energy. Within this section, NLH is entitled to the Energy and Capacity from the MF Plant that is forecasted or scheduled by NLH on a firm and priority basis when required, subject to following restrictions and limitations: contracted commitments, capacity of the MF Plant, WMA limitations, hydrological conditions and forgivable events. The agreement does not state specific characteristics of the Base Block Energy similar to the Amended & Restated Energy and Capacity Agreement describing characteristics such as required timing of delivery during peak hours or capacity required during specific time of day given the firm and priority access provided in the PPA.

2. Page 35, Line 7 – Grant Thornton suggests there may be changes in the Base Block Energy.

Nalcor response – Base Block Energy is the amount of energy expressly provided for at Schedule 2 of the PPA. The PPA, including Schedule 2, can only be changed if the PPA is amended by the parties and consented to by its lenders (which is not anticipated).

Grant Thornton response – Grant Thornton agrees with the clarification provided in Nalcor's response. In totality, the mechanism included in the PPA will adjust the amount paid for changes in costs to be recovered. Changes in the Base Block Energy can only happen if the PPA is amended by the parties with further consent by the lenders.

3. Page 39, Line 25 through to Page 40, Line 23 – Grant Thornton provides its review of 2018 legislation with respect to open access.

Nalcor response – Grant Thornton's assessment of FERC and whether the NL transmission regime complies with FERC principles is more extensively reviewed in the Report of Nalcor's US FERC counsel, Van Ness Feldman at Appendix “A”. Further

legislation, cabinet decisions and orders of the PUB relevant to open access and its implementation in the Province that were not addressed by Grant Thornton in the FLG/PPA Report warrant consideration. These include

- a. OC2017 – 380 – Direction (pursuant to s. 5.1 of the EPCA) to the PUB to adopt a policy relating to open access in the transmission of electricity over the Province’s high-voltage transmission system including: (a) implementation of pro-forma Transmission Service Agreements, and rates and a rate methodology, approved on an interim basis under section 75 of the Public Utilities Act (“PUB Act”) pending further PUB review; and (b) Transmission Policies and Procedures and a Code of Conduct for transmission system operations, to be implemented by the NLSO.
- b. PUB Application (February 2018) – Application of the NLSO seeking approval of pro-forma Transmission Service Agreement and interim transmission rates and rate methodology and Transmission Policies and Procedures. Approval of the application was provided by *P.U. Order 3 (2018)* on February 9, 2018.

Grant Thornton response – Nalcor responses a. and b. relate to similar matters. Grant Thornton agrees with the further clarification provided by each of these items and notes that Grant Thornton’s findings are not impacted by these items.

- c. Amendments to EPCA and PUB Act (May 31, 2018) – Amendments to the EPCA and the PUB Act establishing NLH as the NLSO establishing amongst other things that it is the policy of NL that all sources and facilities for transmission and distribution of power in the province should be managed in a manner “that would result in open, non-discriminatory and non-preferential access to, interconnection with and service on the integrated electric system” and provides the PUB with dispute resolution authority to deal with such matters.

Grant Thornton response – Grant Thornton states on Page 39 Line 26 through to Page 40 Line 10, that OC2018-88 was passed which amended the EPCA and the PUB Act. Nalcor’s responses provides further explanation of the Order in Council and Grant Thornton notes that the findings are not impacted by this further clarification.

- d. Future PUB Process – Rates approved by the PUB in February 2018 did not include cost components of the LIL and LTA. When such assets go in service, updated rates including this assets will be submitted for approval to PUB.

Grant Thornton response – Grant Thornton agrees with the comments from Nalcor however the scope of Grant Thornton’s report does not involve analysis of future PUB processes.

B. THE EFFECT OF THE LEGISLATIVE MONOPOLY AND PPA ON FERC COMPLIANCE

4. Page 5, Lines 7 to 10 - Grant Thornton was asked to explain the effect of the legislative monopoly and the PPA on FERC compliance and indicated they were not able to definitively conclude whether FERC compliance is met.

Nalcor Response – Given the specialized nature of the subject matter, Nalcor engaged Washington based law firm Van Ness Feldman LLP in August 2011 to provide advice on the design and implementation of the transmission regime post-interconnection with the North American transmission grid. In addition, Van Ness Feldman has assisted Nalcor on relevant filings with FERC regarding market-based rate authorizations in support of exports sales into the U.S. wholesale markets. Nalcor has requested Van Ness Feldman to respond to such matters raised by Grant Thornton and the response is provided at Appendix A to this Reply.

Grant Thornton response – Grant Thornton's response is provided based on the format of the response prepared by Van Ness Feldman LLP. Sections A and B of the Appendix A to the Nalcor Response ("Appendix A") provide further detail about FERC's open access requirements, the applicability of those requirements to Canadian utilities, and how Canadian utilities comply with these requirements. The information provided by Nalcor in these sections does not contradict Grant Thornton's discussion of FERC's open access requirements on Page 37 Line 22 through to Page 38 Line 14. Sections A and B are generally consistent with Grant Thornton's conclusions that (1) foreign utilities seeking transmission service in the United States must offer comparable open access service (2) that reciprocity compliance can be achieved with or without implementing an OATT, and (3) that the determination of whether a utility is providing reciprocal service is a fact-specific analysis.

Section C of Appendix A provides specific information about the provision of transmission service within Newfoundland and Labrador, including additional detail regarding the implementation of the 2018 legislation establishing an open access framework and the NL System Operator. Based on the information provided, Nalcor states that open access transmission service is available on the NL Transmission System in a manner that satisfies FERC's reciprocity requirements. As explained on Page 40, Lines 13-23, Grant Thornton did not state that compliance with FERC's open access reciprocity requirements could not be met in Newfoundland and Labrador. Grant Thornton indicated that based on available information, it could not conclude how the open access framework established by the 2018 legislation has or would be implemented. However, Grant Thornton noted that if the framework was implemented in a manner similar to other open access frameworks in Canada, such as adopting an OATT, it would likely be found to satisfy FERC's reciprocity requirements.

Grant Thornton has no reason to dispute Nalcor's description and analysis of the open access framework, which Nalcor describes as currently being implemented by the NL System Operator. Assuming that Nalcor's description of the open access framework is a true and accurate reflection of service on the Nalcor system, it would appear that open access transmission service is being provided within Newfoundland and Labrador. As Grant Thornton noted at Page 5, Lines 7-8 and Page 40, Line 18, as applied to the

question of reciprocity on FERC-jurisdictional tariffs and related FERC services, this is ultimately a fact-specific determination to be made by FERC.

Section D of Appendix A provides specific comments and clarifications in response to the discussion of FERC-related matters in Grant Thornton's FLG/PPA Report. Grant Thornton provides specific responses to Section D of Appendix A (Specific Comments on the FLG/PPA Report), as follows:

1. Page 3, Lines 14-16 – Grant Thornton states that a 2012 amendment to EPCA provided Hydro the exclusive right to supply, *transmit*, distribute and sell electrical power or energy to the island portion of Newfoundland and Labrador.

Nalcor Response – The legislation does not require, nor does Hydro or Nalcor hold, an exclusive right to *transmit* electricity within Newfoundland and Labrador. Section 14.1(1)(a) of the EPCA states:

“Newfoundland and Labrador Hydro shall have the exclusive right to supply, distribute and sell electrical power or energy to a retailer or an industrial customer in respect of the business or operations of that retailer or industrial customer on the island portion of the province”

As explained above, there are multiple transmission owners within Newfoundland and Labrador and transmission service is independently scheduled and overseen by the NLSO.

Grant Thornton Response – Grant Thornton has no reason to dispute Nalcor's analysis of the EPCA. Nalcor is correct that the 2012 amendment did not explicitly reference *transmit* in its discussion of the exclusive rights provided to Newfoundland and Labrador Hydro. The title of this section of the legislation includes the term “transmit,” which creates ambiguity about how transmission of power is to be treated. Assuming Nalcor's analysis of the legislation is correct, Grant Thornton does not dispute Nalcor's conclusion that the legislation does not require Hydro or Nalcor to hold an exclusive right to transmit electricity. Also, assuming Nalcor's description of the open access framework implemented in Newfoundland and Labrador is accurate, it appears that the NL Transmission System provides for open access transmission service. As noted above and on Page 5, Lines 7-8 and Page 40, Line 18, this is ultimately a fact-specific determination to be made by FERC in connection with the applicability of reciprocity.

2. Page 4, Lines 20-21 – Grant Thornton indicates that one of the mandates of FERC is to ensure that transmission providers have on file pro forma OATTs.

Nalcor Response – For non-jurisdictional entities, such as Canadian utilities, FERC does not mandate the adoption of an OATT. The provision of open access transmission service also may occur through the use of bilateral transmission service agreements that provide comparable, open access service. The open access transmission framework for the NL Transmission System employs the use of bilateral transmission service agreements, augmented by common terms of service included within the NL Transmission Policies and Procedures. The rates, terms and conditions of transmission service for the NL Transmission System

have been submitted to the PUB and have been approved, on an interim basis, by PUB Order P.U. 3 (2018) pending further review of the overall application.

Grant Thornton Response – Grant Thornton states on Page 38, Lines 11-12 that FERC does *not* require foreign utilities to implement pro forma OATTs. Rather, FERC's regulations require foreign utilities to demonstrate that they provide comparable open access transmission service. While adopting an OATT is one way to make that demonstration, Nalcor is correct that the provision of open access transmission service may also occur through the use of bilateral transmission service agreements. Assuming that Nalcor's description of the bilateral transmission service agreements adopted under the open access framework described above is accurate, the open access framework could satisfy FERC's reciprocity requirements. However, this is ultimately a fact-specific determination to be made by FERC.

3. Page 4, Lines 23-26 / Page 24, Line 11-12 / Page 26, Lines 25-26 – Grant Thornton indicates that there is a legislative monopoly over transmission service that has implications for FERC compliance.

Nalcor Response – As indicated in D (1) above, the legislation does not mandate a monopoly on ownership and operation of transmission service within the Province. An open access transmission service regime has been adopted and implemented for the NL Transmission System.

Grant Thornton Response – As noted above, Grant Thornton has no reason to dispute Nalcor's analysis of the ECPA. Grant Thornton concludes on Page 40, Lines 20-23 that implementation of an open access framework similar to that described by Nalcor would likely lead to a determination by FERC that the NL Transmission System provides for comparable open access service in compliance with FERC's reciprocity requirements.

4. Page 5, Lines 1-8 – Grant Thornton references legislation passed in May 2018 that included treatment of an open access transmission framework and an observation that it is unclear whether compliance with reciprocity is now met.

Nalcor Response – Open access transmission service is being offered to third-party users over the NL Transmission System under common terms, conditions and rates at the present day. Further, Hydro has executed a network transmission service agreement and external point-to-point transmission service agreement through which its scheduling of transmission service over the NL Transmission System is subject to the same rates, terms and conditions for transmission service as being offered to third-parties. The framework that has been established and implemented fully meets open access reciprocity requirements.

Grant Thornton Response – As discussed above, assuming that Nalcor's description of the open access transmission service currently being offered over the NL Transmission System is accurate, the information provided by Nalcor suggests that the NL Transmission System would likely be found by FERC to be compliant with FERC's reciprocity requirements.

5. Page 5, Lines 9-10 - Grant Thornton states that “Assuming that NLH implements the framework in a manner similar to other Canadian transmission-owning utilities with OATTs and related open access requirements that have been found by FERC to be in compliance, FERC will likely make a similar determination with respect to NLH.”

Nalcor Response – For the reasons indicated in D (2) above, OATTs are not mandated and not all Canadian transmission-owning utilities have adopted OATTs. In Ontario, the Ontario Energy Board has approved “Uniform Transmission Rate Schedules” which set rates for the provision of transmission service and certain minimal criteria regarding the provision of transmission service. In lieu of an OATT, the OEB has approved a set of base terms and conditions of service and apply the Transmission System Code and Ontario Market Rules to transmitting utilities and customers using transmission facilities within the province. Similarly, the Alberta Electric System Operator has a posted series of rates, riders and terms and conditions of service—but not adopted an OATT. In fact, the AESO tariff does not provide for the categories of firm/non-firm point-to-point transmission service and service arrangements that are normally obtained in an open access system.

FERC recognizes the independent regulatory authorities governing the provision of transmission service within foreign jurisdictions. In this case, the PUB has been granted jurisdiction over the provision of open access transmission service within Newfoundland and Labrador and has the authority to entertain and resolve disputes regarding whether open, non-discriminatory transmission service is being provided.

Grant Thornton Response – Grant Thornton’s reference on Page 40, Lines 21-22 to “related open access requirements” is intended to recognize that FERC’s reciprocity requirements can be met by either implementing an OATT or otherwise demonstrating that open access transmission service is available. As Grant Thornton stated on Page 38, Lines 11-12, FERC does not require that a foreign utility implement an OATT to demonstrate compliance with its open access requirements. Thus, Grant Thornton agrees with Nalcor’s analysis of this issue.

6. Page 37, Line 11 through Page 38, Line 14 - Grant Thornton provides an overview of FERC and open access reciprocity requirements.

Nalcor Response – See Section C above.

Grant Thornton Response – As noted above, Grant Thornton does not dispute the accuracy of Nalcor’s description of the open access framework currently being implemented for the NL Transmission System, and assuming that Nalcor’s description is accurate, it would appear to satisfy FERC’s reciprocity requirements.

7. Page 38, Line 15 through to Page 39, Line 12 – Grant Thornton discusses the market based rate (MBR) authorization held by Nalcor Energy Marketing and

implications for continuation of its MBR authorization through maintenance of an open access transmission system.

Nalcor Response – An open access transmission system has been developed and implemented for the NL Transmission System. Nalcor Energy Marketing Corporation (“NEM”) continues to be authorized to sell energy into the U.S. under its FERC MBR authorization and also is receiving open access transmission service within ISO-NE, NYISO, Quebec, New Brunswick and Nova Scotia—reflecting its continued compliance with its open access obligations.

Grant Thornton Response – Grant Thornton has no reason to dispute Nalcor’s assertion that it continues to comply with the requirements necessary to maintain its MBR authority or to receive transmission service on the various entities described in its response. However, Grant Thornton is relying on the facts Nalcor has provided in its response with respect to its continued compliance with FERC’s reciprocity requirements. Assuming that Nalcor’s description is accurate, the open access framework adopted for the NL Transmission System indicates that Nalcor should continue to satisfy FERC’s reciprocity requirements. However, and as noted above, the question of whether Nalcor complies is ultimately a factual determination for FERC. In addition, Grant Thornton notes that based on its review, Nalcor received market-based rate authority in 2014 and Nalcor’s MBR authority has not been updated or challenged since its initial application. Accordingly, Grant Thornton is relying on Nalcor’s claims that no change in circumstances has occurred since the initial application and approval that would change FERC’s analysis.

8. Page 39, Lines 9-12 – Grant Thornton suggests that a determination must be made as to “whether Nalcor will be in compliance with FERC’s open access requirements” upon commissioning of the Projects.

Nalcor Response - The PUB has the jurisdiction and responsibility to review compliance with open access transmission requirements within Newfoundland and Labrador. FERC does not require non-jurisdictional utilities to seek its review and approval of the established open access regime. Instead, compliance with open access occurs through the exercise of the “reciprocity” term. Specifically, a transmission provider may deny a request for transmission service when it determines that a transmission- owning affiliate of the requesting transmission customer is not providing comparable, open access transmission service to third party customers. The granting of transmission service to NEM (as well as NSP Maritime affiliates) by transmission providers such as ISO New England, the New York Independent System Operator, Hydro Quebec TransEnergie and New Brunswick System Operator acts as confirmation that the relevant transmission provider has determined that its reciprocity term has been met.

Grant Thornton Response – Grant Thornton does not suggest that FERC will need to review and approve the particulars of the open access regime established in Newfoundland and Labrador. Rather, Grant Thornton concludes that, given the various changes to the Newfoundland and Labrador transmission system and concerns about a potential legislative monopoly, Nalcor will need to determine whether it remains in compliance with FERC’s open access reciprocity

requirements. This conclusion was based on the information available to Grant Thornton at that time regarding the status of the 2018 legislation providing for an open access framework to be implemented in Newfoundland and Labrador. Assuming that Nalcor's description in Part C is accurate, Grant Thornton has no reason to dispute Nalcor's conclusion that it continues to satisfy the open access reciprocity requirements established by FERC.

9. Page 39, Lines 17-24 – Grant Thornton states that recent EPCA amendments have “appeared to restrict the ability of third parties to secure open, non-discriminatory service over the Projects into the United States.”

Nalcor Response – The recent EPCA amendments do not restrict third-party access to transmission service over the NL Transmission System. Section 3(b)(iv.1) of the EPCA declares it to be the policy of NL that all sources and facilities for transmission and distribution of power in the province should be managed in a manner “that would result in open, non-discriminatory and non-preferential access to, interconnection with and service on the integrated electric system”. Section 14.5(1) of the EPCA provides that the system operator shall ensure that the transmission customers are provided with simultaneous, open, non-discriminatory and non-preferential access to current information with respect to the availability of transmission service, transmission tariff, etc. As described above, open access transmission service over the NL Transmission System is currently being offered to third parties on an open, non-discriminatory basis under rates, terms and conditions that have been filed with the PUB and are applied, on a comparable basis, to Hydro's own use of the transmission system. Further, NEM continues to be authorized to sell energy into the U.S. under its FERC MBR authorization and is receiving open access transmission service within ISO-NE, NYISO, Quebec, New Brunswick and Nova Scotia—reflecting its continued compliance with open access obligations.

Grant Thornton Response – As noted above, Grant Thornton has no reason to dispute Nalcor's analysis of the ECPA. And, assuming that Nalcor's description of the open access framework established on the NL Transmission System is accurate, it would appear that Nalcor continues to comply with FERC's reciprocity requirements.

10. Page 39, Line 25 through to Page 40, Line 23 - Discussion of open access requirements and ability to confirm compliance for the provincial transmission system.

Nalcor Response – See Section C and Responses, above, for a discussion of the open access transmission service regime that has been developed and implemented for the NL Transmission System, the PUB's jurisdiction over open access transmission service within Newfoundland and Labrador and the means by which reciprocity requirements are met.

Grant Thornton Response – As discussed above, Grant Thornton has no reason to dispute either the description of the open access transmission service regime that Nalcor describes as having been developed and implemented for the NL Transmission System or Nalcor's discussion of how that framework satisfies FERC's reciprocity requirements.