



Commission of Inquiry Respecting the Muskrat Falls Project

May 28, 2018

Guy Holburn
Holburn Consulting Inc.

By Email: gholburn@ [REDACTED]

Dear Professor Holburn:

Re: Commission of Inquiry Respecting the Muskrat Falls Project ("the Inquiry")

Further to our recent correspondence, this is to confirm your retention as an expert to the Inquiry on the following basis:

1. *Conflict of Interest*

You confirm that you are not now, nor have you been at any time, subject to any other mandate which would be in conflict with the acceptance of this retainer.

You confirm that you will not engage for the purposes of this mandate any research assistant who has or has had any other mandate which would be in conflict with the acceptance of this retainer.

2. *Scope of Retainer*

Your mandate is to provide services to the Inquiry as set out in **Schedule A** (hereinafter referred to as "Services").

3. *Professional Fees*

You shall be remunerated for the Services as set out in **Schedule B**.

4. *Disbursements*

Travel and related disbursements expended in performing the Services will be reimbursed, without markup, at actual cost.

5. Payment

The deduction and remittance of eligible taxes (income tax, social benefits, worker's compensation) and/or other similar taxes, fees, charges or amounts are your sole responsibility.

In the event that this agreement is canceled prior to its scheduled completion, the Inquiry will be responsible only for payment to you for actual work performed to the date of any such cancellation. The agreement may only be cancelled or terminated by the Inquiry.

6. Confidentiality

You confirm that this retainer is confidential and that you will not divulge the existence or purpose of this retainer unless it becomes a matter of public disclosure. You further confirm that you will sign the attached Confidentiality Undertaking (**Schedule C**), which forms part of this agreement. If you engage the services of any research assistant, you will ensure that they sign the attached Confidentiality Undertaking, and you will not share any confidential information with them until they have.

7. Relationship of Parties

It is understood and agreed that the relationship between you and the Inquiry is that of an independent contractor. You shall not be and shall not hold itself out as being an employee, partner, servant, affiliate or agent of the Inquiry for any purpose whatsoever. For greater certainty, you agree that the relationship between you and the Inquiry in no way entitles any potential plaintiff against your work to claim vicarious liability against the Inquiry.

8. Applicable Laws

This agreement will be governed by and interpreted according to the laws in force in Newfoundland and Labrador.

9. Publicity

You agree not to submit, publish, broadcast, disseminate or distribute in any manner any article, or disseminate or distribute in any manner any marketing or promotional material that contains any information relating to the business being conducted with the Inquiry without receiving prior written consent from the Inquiry.

10. Regulations

You will fully comply with all appropriate federal, provincial and/or state laws and regulations, as the case may be.

You shall meet (at your own expense) all municipal, local, provincial and/or state, and federal requirements applicable to the services performed by you, including but not limited to, all required licenses and permits.

11. Insurance

Contractor shall maintain all statutory workers compensation insurance in the Province in which it is registered, if required by law. Contractor may be required to provide a certificate evidencing such insurance or evidencing any exemption from requiring such insurance prior to performing any services hereunder and shall provide a copy of any such certification upon request.

12. Waivers

Any waiver by any party, whether express or implied, of any breach of any term, covenant or condition of this agreement shall not constitute a waiver as to any subsequent breach of the same or of any other term, covenant or condition thereof. Failure of a party to declare any breach upon the occurrence thereof, or any delay by any party in taking action with respect to any breach, shall not waive any such breach.

13. Notice

Any notice required to be given under this agreement shall be served:

on the Inquiry at the following address:

Commission of Inquiry Respecting the Muskrat Falls Project
Suite 502, Beothuck Building
20 Crosbie Place
St. John's, Newfoundland and Labrador A1B 3Y8
Attention: Chief Administrative Officer
Email: gerryberesford@muskratfallsinquiry.ca

and on the Contractor at the following address:

Guy Holburn
Holburn Consulting Inc.



14. Entire Agreement

This letter of retention (including the attached Schedules) constitutes the entire agreement with respect to your engagement. Any modification to this agreement must be in writing, signed by you and the Counsel to the Commission.

15. Severability

If any term, provision, covenant or condition of this agreement is declared invalid, illegal, unenforceable, ineffective or inoperative for any reason, such declaration shall not have the effect of invalidating or voiding the remainder of this agreement, and the parties agree that the part or parts of this agreement so held to be invalid, illegal, unenforceable, ineffective or inoperative will be deemed to have been stricken and the remainder will have the same force and effectiveness as if such part or parts had never been included.

16. Modifications of Agreement

This Agreement and any attachments or schedules hereto constitutes the entire agreement of the parties and supersedes all prior agreements and understandings, both written and oral, with respect to the subject matter and may be modified and amended only in writing, signed by both parties, unless otherwise specified within this Agreement.

17. Assignment

You shall not assign this agreement without the express prior written consent of the Inquiry.

Please confirm your acceptance of this mandate on the foregoing terms by signing and returning this letter it to my attention. We will countersign and return it to you.

If you have any questions or require further information, please feel free to contact me.

Yours very truly,



Barry Learmonth
Commission Counsel


Holburn Consulting Inc.

☒ I have authority to bind Holburn
Consulting Inc.



28 May, 2016
Date

Schedule A

**Commission of Inquiry Respecting the Muskrat Falls Project
Holburn Consulting Inc. Reports
Schedule A: Scope of Work and Term**

Holburn Consulting Inc. ("Consultant") will produce Report 1 and Report 2 as described below.

Contents of Report 1: The Impact of Exempting the Muskrats Falls Project from PUB Oversight

Report 1 will contain the following content:

1. Overview of government restrictions on PUB oversight of Lower Churchill development and subsequently of Muskrat Falls project
 - a. Exemptions from PUB oversight in 2000 and 2011 (what specifically was exempted, how were the exemptions enacted)
 - b. Stated reasons for exemptions
 - c. Restrictions on scope and timing of PUB review in 2012, and associated rationale
2. Overview of alternative government oversight mechanisms instituted
 - a. e.g. Oversight Committee of Deputy Ministers, expert consultants
3. Analysis of the impact of PUB oversight exemption on the development, costs and operation of the Muskrat Falls Project
 - a. Purpose and objectives of delegating oversight authority over utility investments and operations to independent regulatory agencies. Role of regulatory agencies relative to cabinet, legislature, and courts.
 - b. Best practice principles in design and operation of regulatory institutions
 - i. Best practice organization and structure:
 - Clarity of role and responsibilities (within broader government institutions)
 - Independence (autonomy from political influence)

- Internal structure, resources and expertise
- ii. Best practice processes:
 - Accountability (clearly defined processes and rationales for decisions, with appeal mechanisms)
 - Consultation (stakeholder/intervenor participation)
 - Transparency (openness of processes)
 - Communication (providing information to stakeholders in a timely and accessible manner)
 - Predictability (processes that facilitate planning by stakeholders)
 - Consistency (across market participants and over time)
 - Flexibility (using appropriate instruments in response to changing conditions)
- c. Advantages and disadvantages of delegating oversight to independent regulatory agencies
- d. Evaluation of the design and function of NL's PUB:
 - i. Comparison of PUB organization and processes against best practice principles
 - ii. Historical experience with prior investment/capital projects
- e. Assessment of whether PUB had the capability to effectively oversee the Muskrat Falls proposal and project
 - i. Resources, expertise, experience, independence
- f. Assessment of whether alternative oversight mechanisms sufficiently compensated for absence of PUB oversight
- g. Discussion of possible PUB decisions in hypothetical scenario where PUB had jurisdiction over the Muskrat Falls Project

4. Lessons from the experience of major electricity infrastructure projects developed by Crown corporations and private corporations in other jurisdictions

- a. The role of regulatory agencies and other oversight mechanisms in project evaluation, permitting, and approvals
 - b. Impact of regulatory governance on project development costs and delivery for the following possible examples:
 - i. Manitoba Hydro's Keeyask Hydroelectric project
 - ii. Ontario Power Generation's Darlington Nuclear Power Plant Refurbishment
 - iii. Alberta's Fort McMurray West Transmission Line
 - iv. British Columbia's Site C Hydroelectric project
5. Conclusion
- a. Summary discussion of whether exemption of Muskrat Falls Project from PUB oversight was in the public interest

Deliverables for Report 1

The Consultant will submit a draft version of Report 1 by September 15, 2018 and a final version by October 15, 2018.

The Consultant will be available to present Report 1 at a public hearing and will answer questions at the hearing from Commission Counsel and from parties' counsel.

Contents of Report 2: Best Practices in Corporate Governance of Crown Corporations

Report 1 will contain the following content:

- 1. Corporate governance in crown corporations – overview of what governance consists of and the objectives of governance arrangements
 - a. Board of directors as central governance institution (fiduciary duties)
- 2. Best practice principles of corporate governance of crown corporations
 - a. Clarity of board mandate and expectations
 - b. Board expertise (director selection and appointment processes)

- c. Board independence from government and management
- d. Board committee structures and responsibilities (audit, HR, risk/strategy)
- e. Board relationship with senior management (CEO selection, executive compensation practices, monitoring)
- f. Internal performance monitoring, control and reporting protocols
- g. Information and reporting protocols with Minister and government bodies

Deliverables for Report 2

The Consultant will submit a draft version of Report 1 by November 15, 2018 and a final version by December 15, 2018.

The Consultant will be available to present Report 2 at a public hearing and will answer questions at the hearing from Commission Counsel and from parties' counsel.

Extra Provision

The Consultant shall be responsible for ensuring that it has authority to use all material included in the paper for the purposes contemplated by this agreement.

The Consultant shall disclose any conflicts of interest or potential conflicts of interest to the Inquiry as soon as possible after it becomes aware of them.

As with all independent consultants retained by the Inquiry, the Consultant will sign a confidentiality undertaking with the Inquiry.

Commission Co-counsel will work with the Consultant to prepare for testimony at the Inquiry's public hearing. The Consultant's testimony will consist of a review of the highlights of its paper. Legal counsel for parties with standing may choose to cross examine the Consultant.

Schedule B

**Commission of Inquiry Respecting the Muskrat Falls Project
Holburn Consulting Inc. Reports
Schedule B: Remuneration**

In conducting the Work for the Inquiry, the Consultant will be remunerated as follows:

Report 1

- Fee – The Consultant will be compensated [REDACTED] plus HST to complete Report 1. One half of this fee will be paid on agreement, one half to be paid on the submission of the final report.
- Disbursements – The Consultant will be reimbursed for the costs of any travel and research assistance required for Report 1 up to a maximum of [REDACTED]
- Expert testimony fee – The Consultant will be paid [REDACTED] per hour plus HST for expert testimony and for preparation with Commission Counsel.
- Witness expenses – The Consultant will present a summary of Report 1 at a public hearing of the Inquiry. This will involve air travel to/from Ontario, hotel accommodations and per diem rate for meals plus incidentals. Airfare, hotel and car rental will be reimbursed at cost.

Report 2

- Fee – The Consultant will be compensated [REDACTED] plus HST to complete Report 2. One half of this fee will be paid on agreement, one half to be paid on the submission of the final report.
- Expert testimony fee – The Consultant will be paid [REDACTED] per hour plus HST for expert testimony and for preparation with Commission Counsel.
- Witness expenses – The Consultant will present a summary of Report 2 at a public hearing of the Inquiry. This will involve air travel to/from Ontario, hotel accommodations and per diem rate for meals plus incidentals. Airfare, hotel and car rental will be reimbursed at cost.

Schedule C

Commission of Inquiry Respecting the Muskrat Falls Project
Holburn Consulting Inc. Reports
Schedule C: Confidentiality Undertaking

I undertake to the Commission of Inquiry Respecting the Muskrat Falls Project (the Inquiry) to keep confidential any and all of the Inquiry's documents or information that are not in the public domain and to which I may become privy during the course of my assignment with the Inquiry. I understand that keeping documents or information confidential means that I cannot disclose any such documents or information to anyone other than the Commissioner, other Inquiry staff, or third parties to whom the Commissioner or Commission Counsel has explicitly instructed me to disclose.

I will not use these documents or information for any purpose other than my work for the Inquiry. I understand that confidential information includes both written material as well as that conveyed through discussion in the course of the Commission's daily business.

At the end of my assignment with the Inquiry, I will not make copies of, and will return, any and all documents that are subject to this undertaking.

Name: Guy Holburn

Signature: [Signature]

Date: May 24, 2018

Witness: LOMEL MOSTAFA

Signature: [Signature]

Date: May 28, 2018