

**MEMORANDUM OF UNDERSTANDING ("MOU")**

THIS Memorandum of Understanding ("MOU") made as of this 30<sup>th</sup> day of March, 2010

**BETWEEN:** **Nalcor Energy**, a body corporate existing pursuant to the Energy Corporation Act being Chapter E-11.01 of the Statutes of Newfoundland and Labrador, 2007 (hereinafter referred to as "Nalcor")

**AND:** **Emera Inc.**, a company incorporated under the laws of the Province of Nova Scotia (hereinafter referred to as "Emera")

(hereinafter individually referred to as a "Party" and collectively as the "Parties")

**I. Purpose**

The Parties have expressed an interest in working together to investigate options that would optimize the existing energy resources of both Parties, assist the Parties in addressing future power and energy requirements in Newfoundland and Labrador and Nova Scotia, enable the Parties to develop hydroelectric, wind, and other renewable energy resources, and explore potential market opportunities in New England.

- a. Emera has expressed an interest in purchasing non-emitting, renewable electrical energy and capacity from Nalcor for use in Nova Scotia to reduce green house gas ("GHG") emissions in Nova Scotia;
- b. Nalcor is interested in exploring opportunities to reduce emissions from its Holyrood Generating Station by supplying electrical energy and capacity from Lower Churchill Generating Facilities via a transmission link to the Island portion of Newfoundland and Labrador. The Parties wish to explore opportunities to optimize and utilize the existing electrical systems in Nova Scotia and Newfoundland and Labrador; and
- c. The Parties have an interest in working together to jointly explore various transmission routes, interconnections and investments in Nova Scotia and Newfoundland and Labrador.

**II. Definitions**

- a. "Affiliate" means any Person that directly or indirectly, through one or more intermediaries, Controls, or is Controlled by, or is under common Control with a Party.

- b. **“Control”** means, in the context of a relationship between two (2) or more Persons, control in any manner that results in control in fact, whether through direct or indirect ownership or control of fifty percent (50%) or more of voting shares, interests or trusts, representation on the board of directors or other governing body, or otherwise.
- c. **“Maritime Link”** means an interconnection comprising either (a) HVDC submarine transmission cable from Newfoundland landing in Nova Scotia and related converter stations; or (b) HVDC submarine and related over-land transmission cable from Labrador landing initially in Newfoundland, and continuing via over-land transmission and HVDC submarine cable from Newfoundland landing in Nova Scotia, including converter stations.
- d. **“Lower Churchill Generating Facilities”** means assets required to generate and support the generation of hydro-electricity at the Gull Island and/or the Muskrat Falls sites on the Churchill River and related transmission assets in Labrador used to interconnect the generation assets into the Labrador transmission grid.
- e. **“Joint Property”** shall have the meaning as set out in Article XII.
- f. **“NDA”** shall have the meaning as set out in Article V.
- g. **“Person”** means and is to be interpreted broadly and includes, without limitation (i) any individual or group, and any firm, corporation, company, association, partnership, joint venture, trust, unincorporated organization, a state or political subdivision thereof or any other legal entity and (ii) the media.

### III. Scope

The purpose of this MOU is to provide a non-binding framework under which the Parties will explore the commercial and technical feasibility of:

- a. Interconnecting the Nova Scotia and Newfoundland and Labrador electrical systems through the construction of a Maritime Link;
- b. The sale of electrical energy and capacity; and
- c. The interchange of electrical energy and capacity between systems to optimize overall system costs in both Newfoundland and Labrador and Nova Scotia.

These activities are being assessed for electrical energy and capacity currently available to Nalcor from the Churchill Falls facility in Labrador (referred to as "Recapture Capacity and Energy"), and electrical energy and capacity that will be available from the Lower Churchill Generating Facilities.

The Parties are interested in determining if there is a commercially sound business case for advancing the interconnection of both Nova Scotia's and Newfoundland and Labrador's electrical systems as a regional energy solution which enables further reductions in GHG's and other emissions by both provinces and promotes future development of renewable energy sources

The Parties have agreed to assess the feasibility of the above proposed activities under the following three (3) supply and routing options:

- Option 1 – Construction of the Maritime Link to examine the operation of an integrated system, to assess suitable link capacities, transmission system reinforcements, and the delivery of sources of supply via the HQT, NBSO and NSPI transmission systems.
- Option 2 – Development of the Lower Churchill Generating Facilities with transmission of electrical energy and capacity to meet Nova Scotia and Newfoundland and Labrador requirements via the Hydro-Quebec and NBSO transmission grids and the Maritime Link.
- Option 3 - Development of the Lower Churchill Generating Facilities with transmission of electrical energy and capacity to meet demands in Nova Scotia and Newfoundland and Labrador via the Maritime Link, including exploring market opportunities in New England.

In completing the work outlined in this MOU, the Parties will consider technical, commercial, economic, regulatory, financial, ownership and environmental assessment and aboriginal issues. The Parties will develop a joint work plan to complete these activities.

The Parties may mutually agree in writing to revise the scope of work during the term of this MOU.

The purpose of the analysis is to determine if any of the options outlined herein warrant advancement to the next level of assessment. At the termination of this MOU, the Parties will agree on whether to proceed to a more in-depth level of analysis and detailed commercial negotiations. In the event the Parties decide to proceed to a more in-depth analysis and detailed commercial negotiations, the terms and conditions applicable to such analysis and negotiations will be subject to agreement by the Parties in a separate Memorandum of Understanding or other written instrument.

#### **IV. Term and Termination**

The Parties agree that the term of this MOU will commence upon the date of execution of the MOU, and shall expire on the earlier of (a) June 30, 2010 or (b) Thirty (30) calendar days after either Party gives written notice to the other Party of its intention to terminate this MOU pursuant to Article XIII.

If, as of June 30, 2010, the respective Parties have not completed sufficient work to arrive at a conclusion regarding feasibility and wish to continue to work together to jointly complete the work required to achieve the objectives of Article III, the Parties agree that the term of this MOU shall be extended for such period of time as the Parties mutually agree in writing is necessary in order to jointly complete such work.

#### **V. Confidential Information**

The Parties and Nova Scotia Power Inc. ("NSPI") have entered into a Restricted Use and Non-Disclosure Agreement made as of the 11<sup>th</sup> of January, 2008 ("NDA"). The Parties agree that this MOU, the terms and conditions herein, and all discussions, negotiations and information exchanged between the Parties in connection with this MOU shall constitute "Confidential Information" for the purposes of the NDA and shall be held in confidence in accordance with the terms of the NDA.

The Parties further acknowledge and agree that the analysis described in Article III herein and all related work constitutes "Confidential Information" for the purposes of the NDA and shall be held in confidence in accordance with the terms of the NDA subject to the following additional restrictions on disclosure. A Party shall not disclose the details or results of the above-noted analysis or any related work to a third party, other than:

- a) to its Representatives or to NSPI in accordance with the terms of the NDA; or,
- b) to the extent required by law;

prior to the completion of all work required to finalize such analysis and then only upon the express written agreement of the Parties as to the nature and extent of such disclosure. In addition to the restrictions on use and disclosure of Confidential Information in the NDA, a Party shall ensure its Representatives, or in the case of Emera, its Representatives and NSPI, are aware of the express restrictions on disclosure of the analysis and related work set out in this Article V, and shall require such Representatives or NSPI, as applicable, to treat information respecting the analysis and all related work in accordance with the terms and conditions of this Article V as if such parties were a party hereto.

The terms and conditions of this Article V shall survive termination or expiry of this MOU for a period equal to the duration of the restrictions on use and disclosure of Confidential Information set out in the NDA.

#### **VI. Assignment**

This MOU cannot be assigned by either Party to any third party including an Affiliate without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

#### **VII. External Communication**

Neither Party shall make any public announcement or disclosure of this MOU or the analysis outlined herein or any discussions in connection therewith prior to the written agreement of the Parties as to the nature and extent of information that may be disclosed to third parties pursuant to Article V. Provided the aforementioned conditions have been satisfied, a Party may make a public announcement or disclosure respecting this MOU or the subject matter outlined herein with the prior written consent of the other Party, which consent may not be unreasonably withheld. Further, if a public announcement or disclosure is approved by a Party in accordance with this Article, the Party making such approved disclosure shall



consult with the other Party prior to issuing or making, and shall allow the other Party a reasonable opportunity to comment on the content of, any approved press releases or other public statements or disclosures.

#### **VIII. Dispute Resolution**

The Parties shall use reasonable efforts to settle all disputes arising under this MOU as a matter of normal business and without recourse to either arbitration or litigation. If any disputes arise under this MOU, then the Parties shall first submit the dispute to the lead representatives of each Party as designated by each Party. If the lead representatives are unable to resolve the dispute, a Party may declare the dispute irresolvable by the lead representatives and, within thirty (30) days of such declaration, the Chief Executive Officer of each Party (or his or her designee) shall meet for no more that three (3) consecutive days in St. John's, Newfoundland and Labrador to attempt to resolve the dispute. If the Parties are unable to jointly agree on a solution a Party may then decide to terminate this MOU as per Article IV.

#### **IX. Amendments**

The terms and conditions of this MOU shall not be changed, waived, modified or varied in any manner whatsoever unless agreed to in writing by the Parties.

#### **X. Execution in Counterparts**

This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The exchange of copies of this MOU, and of signature pages by facsimile transmission, shall constitute effective execution and delivery of this MOU as to the Parties and may be used in lieu of the original MOU for all purposes. Signatures of the Parties transmitted by facsimile transmission shall be deemed to be their original signatures for all purposes. In proving this MOU it shall not be necessary to produce or account for more than one such counterpart signed by the Party against whom enforcement is sought.

#### **XI. Limitation of Liability**

Under no circumstances shall a Party be liable for consequential, incidental or indirect damages, lost profits or other business interruption damages, whether by statute, in tort or contract or otherwise, under or as a result of any breach of this MOU.

#### **XII. Costs and Joint Property Ownership Rights**

Each Party shall bear its own costs and expenses in connection with all matters relating to this MOU, including without limitation, the costs and expenses of its legal and other advisors.

Each Party agrees to bear its own internal costs and expenses in connection with the activities, work and advancement of the analysis outlined herein. The Parties may agree to jointly fund third party studies or initiatives, provided the Parties mutually agree to a protocol for cost sharing in advance of incurring any such jointly funded third party expense. All right, title and interest in and to jointly funded studies or initiatives, including, without limitation, intellectual property and other assets that are jointly acquired and approved pursuant to this MOU (herein referred to as "**Joint Property**") shall be owned jointly by the Parties and may be used by each Party for such Party's own business purposes, subject to

the terms of this MOU and the NDA. The rights of the Parties set out in this Article shall survive termination of this MOU.

For greater certainty, nothing in this MOU shall be deemed to affect a Party's existing right, title or interest in or to its intellectual property virtue of its transfer or disclosure to the other Party.

### **XIII. Notices**

All notices, requests and demands to or upon the respective Parties hereto to be effective shall be in writing, marked "Private and Confidential", and shall be deemed to have been duly given if delivered by hand, or by sending same by facsimile communication or other similar form of communication to the following addresses:

#### **If to Nalcor:**

Nalcor Energy  
500 Columbus Drive,  
P.O. Box 12800  
St. John's, NL  
A1B 0C9  
Attention: Corporate Secretary  
Facsimile: 709-737-1782

#### **If to Emera:**

Emera Inc.  
Barrington Tower  
1894 Barrington Street  
Halifax, NS  
B3J 2W5  
  
Attention: Corporate Secretary  
Facsimile: 902-428-6171

Any such notice, request, consent, demand waiver or other communication shall: (i) if delivered by hand, be deemed to have been given or made at the time of delivery; and (ii) if sent by facsimile or other similar form of written communication, be deemed to have been given or made at the time in which it was successfully transmitted as evidenced by automatic confirmation or receipt.

### **XIV. Binding Extent**

Except for the provisions in Article V (Confidential Information); Article VII (External Communication); Article XII (Costs and Joint Property Ownership Rights); and Article XV (Governing Law), which respective provisions the Parties intend to be and shall be legally binding and enforceable, this MOU is not intended to, and shall not, create any legal rights or obligations, and shall not be enforceable against or binding upon either Party. Such a binding relationship shall only be created in written agreements or term sheets that are expressly designated to be binding upon the Parties, execution and delivery of which are subject to the approval of the management of the Parties.

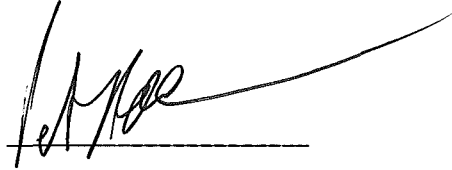
**XV. Governing Law and Forum**

This MOU shall be governed by and interpreted according to the laws of the Province of Newfoundland and Labrador, and all actions, suits, and proceedings arising out of this MOU shall be determined in a court of competent jurisdiction in the Province of Newfoundland and Labrador, subject to any right of appeal to the Supreme Court of Canada.

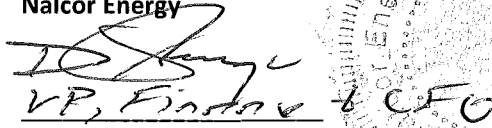
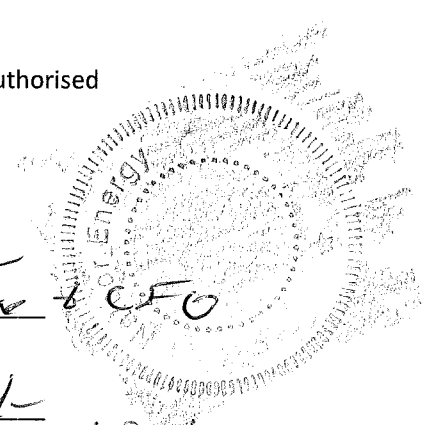
**IN WITNESS WHEREOF** each Party has executed this MOU by its duly authorised representatives:

**Executed and delivered by**

Nalcor Energy, in the presence of:

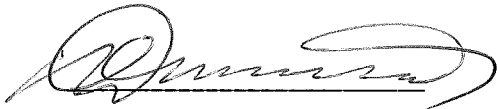


**Nalcor Energy**

  
VP, Finance & CFO

**Executed and delivered by**

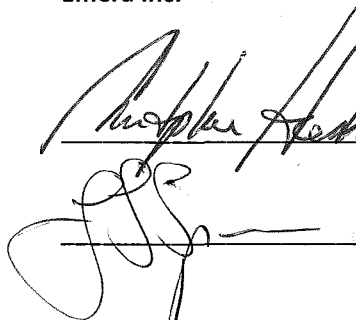
Emera Inc., in the presence of:



**Emera Inc.**

  
Chief Counsel & Corporate Secretary

**Christopher Huskisson**  
President and  
Chief Executive Officer



**JAMES G. SPURR**  
General Counsel

