

**Date :** 3/7/2011 1:15:42 PM  
**From :** "Bown, Charles W."  
**To :** "Skinner, Shawn"  
**Cc :** "Maclean, Heather" , "Humphries, Denise"  
**Subject :** Fw: Fw: DD and PUB request  
**Attachment :** Labrador Hydro Project Exemption Order.docx;pic30714.jpg;

Minister

Nalcor has provided commentary on your message from this morning. In short, they are no orders to PUB regarding lcp other than that in 2000. If left as is, this project would be subject to PUB review, however, we have not made the determination yet on what elements of the project, if any, will be subject to review. Are below.

Charles

Sent Via BlackBerry

----- Original Message -----

From: GYoung@nlh.nl.ca <GYoung@nlh.nl.ca>  
To: Bown, Charles W.  
Cc: EMartin@nalcorenergy.com <EMartin@nalcorenergy.com>  
Sent: Mon Mar 07 13:08:39 2011  
Subject: Re: Fw: DD and PUB request

Charles,

Further to my email of yesterday, it is correct that the PUB has, at present, no control/involvement in the LC Project. This is a little complicated because of the exemption orders. Of course, it is important to remember that generally the PUB has jurisdiction over these matters from two sources and for at least three different roles: it gets its planning jurisdiction under the Electrical Power Control Act, 1994, (EPCA); it has jurisdiction over Hydro's and NP's capital spending under the Public Utilities Act (PUA); and it has jurisdiction over customers' rates through the PUA.

If this project was not subject to an exemption order, the PUB would have jurisdiction over it because under section 6 of the EPCA, it has the authority and responsibility to ensure that adequate planning for future power sources occurs. Further, if Hydro was going to build the project (and again assuming there was no exemption order), then Hydro would need the PUB's approval of the project before money was sent on engineering and construction. This falls under the PUB's jurisdiction over Hydro's capital improvements under the PUA (section 41).

Under the Energy Corporation Act, Nalcor is not subject to the PUB's jurisdiction.

I am not aware of Orders in Council in 1979 or 2009 on this matter but I am aware of a 2000 OC (an excerpt of which I provided to you yesterday - the full versions with headings, etc. is attached here). Under that OC, Hydro is exempt from the EPCA and the PUA for its planning and construction activities of Hydro for the project.

There is another OC (2003) that directs the PUB to allow in Hydro's rates purchased power costs for projects for which Hydro has been made exempt from PUB jurisdiction by an exemption order. However, for the purpose of exempting the PUB's rate setting powers, the Lower Churchill Project is excluded from those projects for which Hydro is exempt. That means that NL Hydro's costs of purchasing power from the Lower Churchill Project are not exempt from PUB approval.

Therefore, unless there an OC dealing with this is issued in the future, the matter of Hydro collecting in its rates the LCP purchased power costs will be a matter for the PUB's discretion (under PUA, section 70). I would be very careful about any communications surrounding this because Government might indeed, in the future, wish to exempt LCP power purchase costs from the PUB's jurisdiction for the purpose of setting Hydro's rates.

Again, I hope this is helpful.

Geoff

(See attached file: Labrador Hydro Project Exemption Order.docx)

(Embedded image moved to Geoffrey P. Young  
file: pic30714.jpg) Senior Legal Counsel

Newfoundland and Labrador Hydro - a Nalcor Energy company  
t. 709 737-1277 f. 709 737 1782  
e. GYoung@nlh.nl.ca  
w. [www.nlh.nl.ca](http://www.nlh.nl.ca)

From: "Bown, Charles W." <crown@gov.nl.ca>  
To: <gyoung@nlh.nl.ca>  
Date: 03/07/2011 12:10 PM  
Subject: Fw: DD and PUB request

Please review below and comment

-----Original Message-----

From: Shawn Skinner  
To: Charles Bown  
To: Heather Maclean  
To: Denise Humphries  
Subject: DD and PUB request  
Sent: Mar 7, 2011 11:59 AM

Charles,

As a follow up to our conversation this weekend, I think Danny D is going to confirm with the PUB that they have no "control"/involvement with the LC Project.

He will spin this as Nalcor and Gov't having no independent watchdog over what we are doing and portray us as recklessly spending \$ and pursuing a project that is not needed.

As I understand it, there is an Order in Council from 1979 and another in 2009 that exempt the LCP and Nalcor from the PUB on this project.

Can you confirm my understanding??

Heather, you need to be thinking about how we will counter attack DD as soon as he comes out.

Shawn

Sent Via BlackBerry

"This email and any attached files are intended for the sole use of the primary and copied addressee(s) and may contain privileged and/or confidential information. Any distribution, use or copying by any means of this information is strictly prohibited. If you received this email in error, please delete it immediately and notify the sender."

NEWFOUNDLAND AND LABRADOR  
REGULATION 92/00

Labrador Hydro Project Exemption Order  
under the  
Electrical Power Control Act, 1994  
and the  
Public Utilities Act  
(O.C. 2000-206 &  
O.C. 2000-207)

(Filed December 14, 2000 )

Under the authority of section 5.2 of the Electrical Power Control Act, 1994 and section 4.1 of the Public Utilities Act , the Lieutenant Governor in Council makes the following Order.

Dated at St. John's , November 30, 2000 .

Gary Norris  
Clerk of the Executive Council

ORDER

Analysis

1. This Order may be cited as the *Labrador Hydro Project Exemption Order*.
2. In this Order, the "Labrador Hydro Project" means the planning for, including discussions with potential purchasers or partners, the environmental, economic and engineering study of and, where approved, the design and construction of some or all of
  - (a) generation and related facilities at Churchill Falls, Labrador;
  - (b) generation and related facilities at Gull Island, Labrador;
  - (c) generation and related facilities at Muskrat Falls, Labrador;
  - (d) dams , dykes or other works required for the generation of power at the sites referred to in paragraphs (a), (b) and (c);
  - (e) the transmission facilities necessary to deliver power generated at the sites referred to in paragraphs (a), (b) and (c) to the island portion of the province and the border of the Province of Quebec and Labrador; and
  - (f) other facilities related to the activities referred to in paragraphs (a) to (e).
3. Newfoundland and Labrador Hydro is exempt from the *Electrical Power Control Act, 1994* and the *Public Utilities Act* for all aspects of its activities pertaining to the Labrador Hydro Project as defined in section 2.