

Direction/Decision Note
Department of Natural Resources

Title: Referral of Lower Churchill Project to the Board of Commissioners of Public Utilities (the Board)

Issue:

- A Decision is required on whether: 1) to refer to the Board of Commissioners of Public Utilities the question of whether the Lower Churchill project, as currently proposed, is the least cost option for future supply of electricity for the Island of Newfoundland, 2) to approve The Reference Question to the PUB included as Attachment A, and 3) to set the date of submission by the PUB of its report as December 30, 2011, but that the Clerk of the Executive Council, with approval of the Premier, be permitted to extend this date to January 31, 2012 , if requested by the Board.

Background:

- The current configuration proposed for the Lower Churchill project contemplates developing Muskrat Falls first, together with a transmission line to the Island of Newfoundland (Labrador Island Link). The justification is that in allowing Newfoundland and Labrador Hydro (NLH) to remove Holyrood from primary generation, as well as providing additional electricity to meet forecast needs for a long time, this represents the least-cost future scenario for Island ratepayers.
- The announcement of the project configuration was done in conjunction with announcing an agreement with Emera to build a transmission line to Nova Scotia (Maritime Link) and supply power to Nova Scotia Power, as well as creating a transmission route to other markets to allow monetization of the power that would be excess to Island needs.
- The Muskrat Falls generation and Labrador Island Link transmission facilities will be built by Nalcor, which is not regulated by the Board. NLH is normally fully regulated, and it is proposed that NLH would sign a contract (the PPA) to purchase Muskrat Falls power from Nalcor (or a new subsidiary).
- In the House of Assembly, the Premier has committed to some level of involvement for the Board in deciding the issue of whether the Lower Churchill is the least-cost alternative for Island ratepayers.
- In 2000, at a time when it was contemplated that NLH (as opposed to Nalcor which did not exist then) would build Lower Churchill, the utility's involvement was exempted from regulation by an Order in Council (OC2000-206). Nalcor is exempted from Board regulation by the *Energy Corporation Act*.
- The Lower Churchill project has a tight time line. The agreement with Emera is to be finalized by November 2011 and project sanction is scheduled for December 2011.

- Under section 5(1) of the *Electrical Power Control Act 1994*, Government can, through an Order in Council, refer any matter regarding electrical power to the Board. The Board is then bound to inquire and report back the Minister of Natural Resources. A public hearing on the matter thus referred is mandatory, but the Board has discretion on the hearing procedures.
- In October, 2004, Government referred a number of issues of concern in the insurance industry to the Board for review, using authority in the *Insurance Companies Act* similar in nature to s5(1) of the *Electrical Power Control Act 1994*. The Board held a hearing and reported in March, 2005 on the automobile insurance sector. A report on three other insurance markets followed a year later.
- Government appointed Thomas Johnson, as Consumer Advocate, to represent consumer interests during this review. A consumer advocate engages their own experts to review evidence and is able to challenge/question project assumptions.
- Such a referral to the Board has been discussed informally with the Board and the Consumer Advocate.
- Draft Orders in Council are on file with the Clerk of the Executive Council to 1) refer the question to the Board and, 2) to appoint the Consumer Advocate.
- Nalcor has requested that a provision be added to the Order to protect commercially sensitive information. The PUB has advised that it has well established processes in place to deal with commercially sensitive information and would prefer that the Order be silent on this matter. PUB notes that it withheld confidential information, at Nalcor's request, from Intervenor during the Water Management Agreement review process. Nalcor disagrees and a section has been added to the Reference Question to deal with the protection of commercially sensitive information.
- NR had originally proposed November 30, 2011 as the submission date by the Board of its report. The Board advised that, based on this date, public hearings would occur between mid-September and mid-October. Nalcor has agreed a maximum extension of January 31, 2012 before the project schedule would be impaired. The Board has agreed to a December 30, 2011 report submission date which provides for a 30 day allowance should it be required. Hearings would now be expected to occur from mid-October to mid-November.
- Any costs of the Board in respect of this review, including the costs of the consumer advocate, shall be paid by Nalcor.
- Draft Orders in Council are provided in Schedule B.

Alternatives:**1. Issue Orders in Council referring the issue to the Board and appointing Thomas Johnson to act as a Consumer Advocate. This is the recommended alternative.****Pros**

- Fulfills commitment to have the Board involved
- A Consumer Advocate will represent consumer interests and reduce the number of potential Intervenors
- The referral can require an appropriate deadline for reporting back

Cons

- Time frame will be very challenging for the Board
- Could be criticized as not allowing sufficient time for adequate review
- Requires the Board to hold a public hearing
- Either Government or Nalcor will need to pay the costs of the referral.

2. Take No Action. This alternative is not recommended.**Pros**

- None

Cons

- Does not fulfill Government's commitment.

Attachment A. The Reference Question to PUB

Attachment B Draft Orders in Council

Prepared / Approved by: Paul Scott/Charles W. Bown

Reviewed by: B. Delaney, Cabinet Secretariat.

Approved by: Minister Skinner

May 26, 2011

ATTACHMENT A - The Reference Question to PUB

In the Energy Plan, 2007, Government committed to the development of the Lower Churchill hydro resource. It has been determined that the least-cost option for the supply of power to the Island interconnected system over the period of 2011-2067 is the development of the Muskrat Falls generation facility and the Labrador-Island Link transmission line, as outlined in Schedule “A” attached hereto (the “Projects”), as compared to the isolated Island development scenario, as outlined in Schedule “B” attached hereto (the “Isolated Island Option”), both of which shall be outlined further in a submission made by Nalcor Energy (“Nalcor”) to the Board of Commissioners of Public Utilities (the “Board”). It is contemplated that Newfoundland and Labrador Hydro (“NLH”) would enter into a long-term power purchase agreement and transmission services agreement with Nalcor, or its subsidiaries, the costs of which would be included in NLH’s regulated cost of service with the full cost of the Projects being recovered from NLH’s Island interconnected system customers (the “Island Interconnected Customers”).

Pursuant to section 5 of the *Electrical Power Control Act, 1994* (the “EPCA”), Government hereby refers the following matter to the Board:

The Reference Question

The Board shall review and report to Government on whether the Projects represent the least-cost option for the supply of power to Island Interconnected Customers over the period of 2011-2067, as compared to the Isolated Island Option, this being the “Reference Question”.

In answering the Reference Question, the Board:

- shall consider and evaluate factors it considers relevant including NLH’s and Nalcor’s forecasts and assumptions for the Island load, system planning assumptions, and the processes for developing and comparing the estimated costs for the supply of power to Island Interconnected Customers; and
- shall assume that any power from the Projects which is in excess of the needs of the Province is not monetized or utilized, and therefore the Board shall not include consideration of the options and decisions respecting the monetization of the excess power from the Muskrat Falls generation facility, including the Maritime Link project.

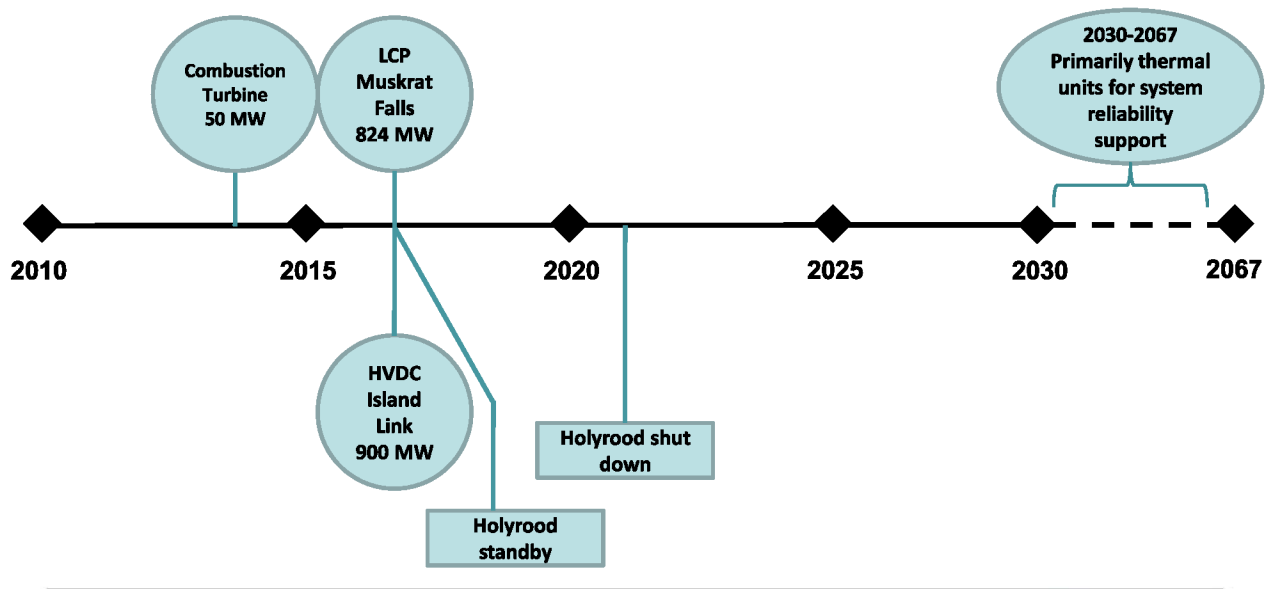
Where Nalcor or NLH determine that any information to be given to the Board for this review is commercially sensitive as defined in the *Energy Corporation Act*, it shall advise the Board, and the Board and its experts and consultants may use such information for this review but shall not release such information to any party.

For the purposes of this review, a consumer advocate shall be appointed pursuant to section 117 of the *Public Utilities Act*.

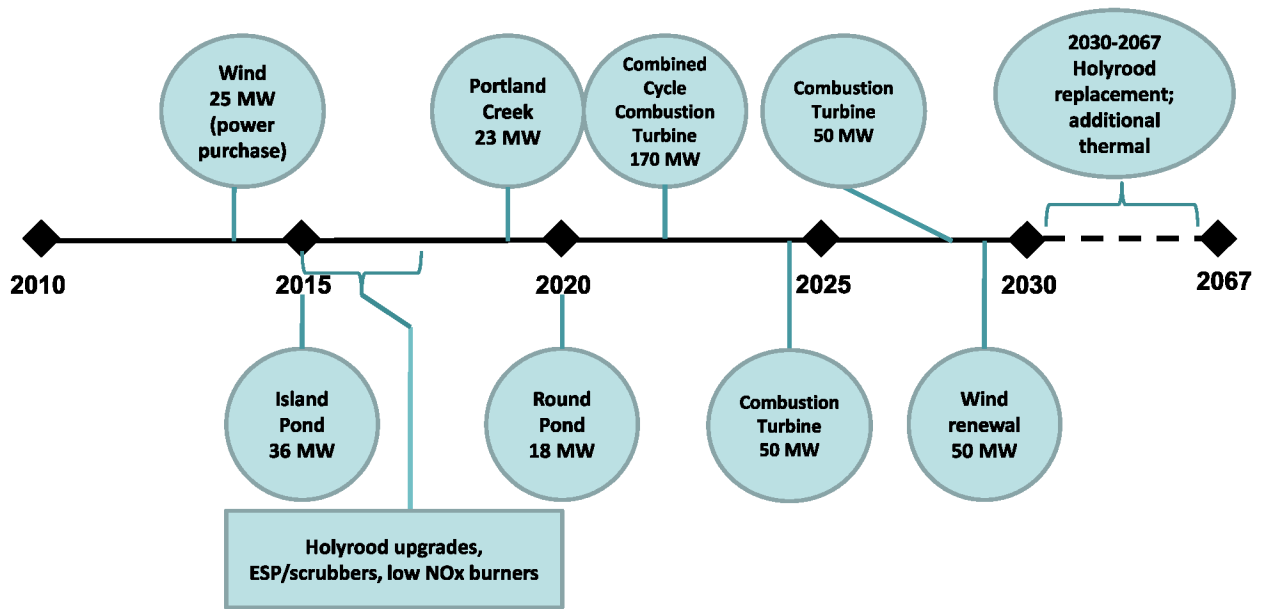
Any costs of the Board in respect of this review, including the costs of the consumer advocate, shall be paid by Nalcor.

The Board’s report shall be provided to the Minister of Natural Resources by December 30, 2011.

Schedule A – The Project



Schedule B - Isolated Island Option



ATTACHMENT B - Draft Orders in Council

Having considered the submission of the Department of Natural Resources the Lieutenant Governor in Council is pleased to order the following:

- (a) Under the authority of subsections 5(1) and (2) of the *Electrical Power Control Act, 1994*, the Lieutenant Governor in Council hereby refers to the Board of Commissioners of Public Utilities the Terms of Reference and the Reference Question attached as Schedule “A” hereto, including the criteria, factors and procedures contained therein;
- (b) Under the authority of subsection 4(1) of the *Energy Corporation Act*, and subsection 245 (1), (2) and (8) of the *Corporations Act* referenced therein, the Board of Directors of Nalcor Energy is instructed to pay the amounts submitted to Nalcor by the Board of Commissioners of Public Utilities pursuant to the instructions in Schedule “A”;
- (c) Under the authority of section 117 of the *Public Utilities Act*, the Lieutenant Governor in Council is pleased to appoint Mr. Thomas Johnson as consumer advocate for the purposes of participating in the review process arising out of the reference to the Board of Commissioners of Public Utilities referred in paragraph (a) above. This appointment shall be on terms acceptable to the Minister of Justice after consultation with the Board of Commissioners of Public Utilities. In accordance with the *Public Utilities Act* and the Terms of Reference attached hereto, all costs will be borne initially by the Board of Commissioners of Public Utilities and subsequently assessed to Nalcor Energy. Mr. Johnson shall prepare and file a Report with the Minister of Justice, in a form satisfactory to the Minister, outlining the details of the expenses incurred and the work performed within 45 days after the date of the Report being filed by the Board of Commissioners of Public Utilities in accordance with the Terms of Reference.

Schedule “A”

Terms of Reference

In the Energy Plan, 2007, Government committed to the development of the Lower Churchill hydro resource. It has been determined that the least-cost option for the supply of power to the Island interconnected system over the period of 2011-2067 is the development of the Muskrat Falls generation facility and the Labrador-Island Link transmission line, as outlined in Schedule “A” attached hereto (the “Projects”), as compared to the isolated Island development scenario, as outlined in Schedule “B” attached hereto (the “Isolated Island Option”), both of which shall be outlined further in a submission made by Nalcor Energy (“Nalcor”) to the Board of Commissioners of Public Utilities (the “Board”). It is contemplated that Newfoundland and Labrador Hydro (“NLH”) would enter into a long-term power purchase agreement and transmission services agreement with Nalcor, or its subsidiaries, the costs of which would be included in NLH’s regulated cost of service with the full cost of the Projects being recovered from NLH’s Island interconnected system customers (the “Island Interconnected Customers”).

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- shall consider and evaluate factors it considers relevant including NLH’s and Nalcor’s forecasts and assumptions for the Island load, system planning assumptions, and the processes for developing and comparing the estimated costs for the supply of power to Island Interconnected Customers; and
- shall assume that any power from the Projects which is in excess of the needs of the Province is not monetized or utilized, and therefore the Board shall not include consideration of the options and decisions respecting the monetization of the excess power from the Muskrat Falls generation facility, including the Maritime Link project.

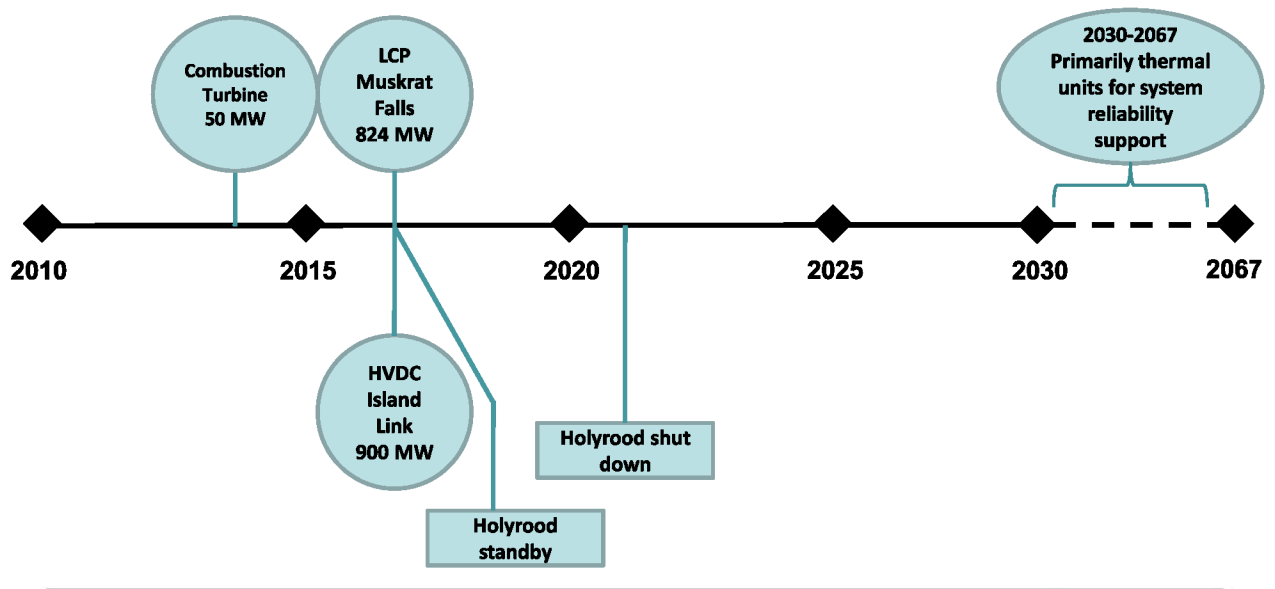
Where Nalcor or NLH determine that any information to be given to the Board for this review is commercially sensitive as defined in the *Energy Corporation Act*, it shall advise the Board, and the Board and its experts and consultants may use such information for this review but shall not release such information to any party.

For the purposes of this review, a consumer advocate shall be appointed pursuant to section 117 of the *Public Utilities Act*.

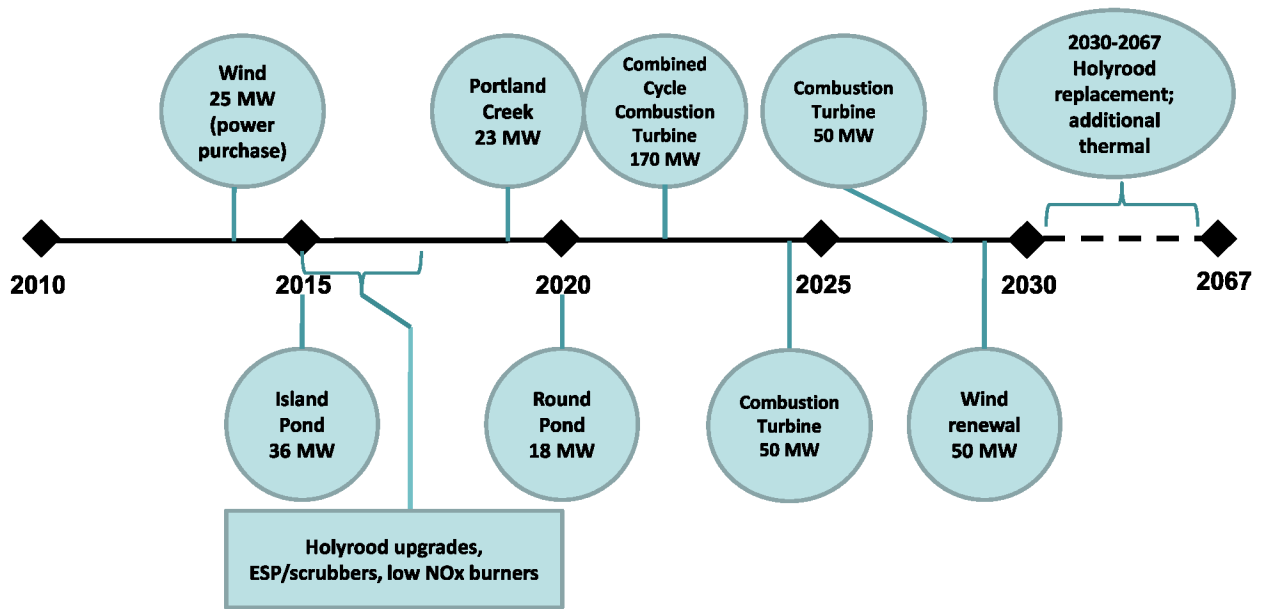
Any costs of the Board in respect of this review, including the costs of the consumer advocate, shall be paid by Nalcor.


The Board’s report shall be provided to the Minister of Natural Resources by December 30, 2011.

Schedule A – The Project




Schedule B - Isolated Island Option






2011/05/26

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NR/DM
A. Wells
JUS/DM
E. Martin
Deputy Clerk
File

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An Update respecting Referral of Lower Churchill Project to the Board of Commissioners of Public Utilities was received from the Minister of Natural Resources.

The following direction was provided:


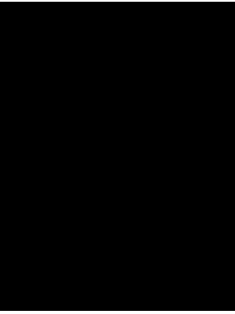
- 1) Approval was given for the issuance of an Order in Council, pursuant to section 5 of the Electrical Power Control Act, 1994, to refer to the Board of Commissioners of Public Utilities the question of whether the development of the Muskrat Falls generation facility and the Labrador-Island Link transmission line represent the least-cost option for the supply of power to Island Interconnected Customers over the period of 2011-2067, as compared to the Isolated Island Option, substantially along the lines of the Terms of Reference and Reference Question on file with the Clerk of the Executive Council, including the criteria, factors and procedures contained therein;
- 2) Approval was given, under the authority of subsection 4(1) of the Energy Corporation Act and subsections 245(1), (2) and (8) of the Corporations Act, to instruct the Board of Directors of Nalcor Energy to pay the amounts submitted to Nalcor by the Board of Commissioners of Public Utilities, pursuant to the instructions in the Terms of Reference on file with the Clerk of the Executive Council; and
- 3) Approval was given for the issuance of an Order in Council, pursuant to section 117 of the Public Utilities Act, to appoint Mr. Thomas Johnson as Consumer Advocate for the purposes of participating in the review process arising out of the reference to the Board of Commissioners of Public Utilities referred to in Item 1. This appointment shall be on terms acceptable to the Minister of Justice after consultation with the Board of Commissioners of Public Utilities. In accordance with the Public Utilities Act and the




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Terms of Reference on file with the Clerk of the Executive Council, all costs will be borne initially by the Board of Commissioners of Public Utilities and subsequently assessed to Nalcor Energy. Mr. Johnson shall prepare and file a Report with the Minister of Justice, in a form satisfactory to the Minister, outlining the details of expenses incurred and the work performed within 45 days after the date of the Report being filed by the Board of Commissioners of Public Utilities in accordance with the Terms of Reference. (NO ACTION IS TO BE TAKEN ON ITEMS 1 AND 3 UNTIL TWO ORDERS IN COUNCIL (OC2011- and OC2011- ARE ISSUED)

Deputy Clerk of the Executive Council



2011/06/09

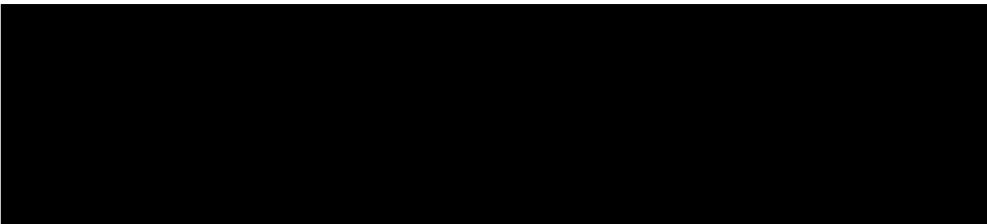
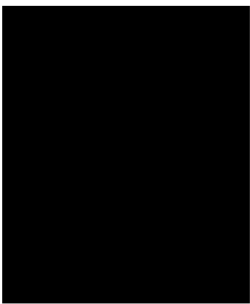
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A. Wells
JUS/DM
E. Martin
Deputy Clerk
File


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Under the authority of section 5 of the Electrical Power Control Act, 1994, the Lieutenant Governor in Council is pleased to refer to the Board of Commissioners of Public Utilities the question of whether the development of the Muskrat Falls generation facility and the Labrador-Island Link transmission line represent the least-cost option for the supply of power to Island Interconnected Customers over the period of 2011-2067, as compared to the Isolated Island Option, substantially along the lines of the Terms of Reference and Reference Question on file with the Clerk of the Executive Council, including the criteria, factors and procedures contained therein.

Deputy Clerk of the Executive Council



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JUS/DM
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Deputy Clerk
File

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Deputy Clerk of the Executive Council