



# **Legislative Changes To Enable Muskrat Falls Project Financing**

Natural Resources

December 14, 2012

# Why Amend?



- Legislative changes are necessary to obtain the most desirable financing arrangement for the project, which is non-recourse borrowing.
- Non-recourse borrowing means the only assets pledged as security for the loans are project assets.
- Protecting non-project assets has always been a core principle of this Government's approach to Muskrat Falls development.
- For non-recourse financing, lenders need assurance that NLH can recover all project costs including debt repayment.
- The amendments also provide protection to the ratepayer.

# Why Now?



- The legislation must be in place before Nalcor can advance the lending process in early 2013 as planned in the current project schedule.

# Legislation Requiring Amendments



- To obtain the desired financing arrangements, changes are required in electricity-industry legislation:
  - *Electrical Power Control Act, 1994 (“EPCA”)*:
    - outlines province’s electricity policy and implementation, and provides LGIC with authority to direct PUB on policies and procedures.
  - *Energy Corporation Act (“ECA”)*:
    - establishes Nalcor Energy, its composition and powers.
  - *Hydro Corporation Act, 2007 (“HCA”)*
    - Establishes Hydro and governance, outlines NLH’s composition and powers
- No changes required to other electricity industry legislation such as *Public Utilities Act, Churchill Falls (Labrador) Corporation Limited (Lease) Act, Energy Corporation of Newfoundland and Labrador Water Rights Act*

# Amendment themes



Legislative amendments relate to:

- I. Project Definition
- II. Revenue Certainty
- III. Ratepayer Protection
- IV. Borrowing Authority
- V. Crown Asset Protection



# I. Project Definition



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- These amendments are specific for the Muskrat Falls project.
- Project will be specifically defined in ECA.
- Definition includes:
  - Project locations and components, all physical aspects, design and engineering, construction, operations, and maintenance.
  - All legal aspects of the projects such as contractual arrangements, land acquisitions, and financing.



## II. Revenue Certainty



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- To obtain non-recourse borrowing, lenders require certainty that electricity rates will cover all project costs.
- Legislative amendments are necessary to provide this certainty with respect to the stream of revenue from ratepayers.

## II. Revenue Certainty



### PUB

- Amendment provides Government with authority to direct the PUB with respect to including Muskrat Falls project costs in NLH's revenue requirement.
- Non-recourse financing requires assurance that the regulator must allow all project costs, including those related to debt.
- To accomplish this certainty, EPCA Section 5 will be amended to ensure Government can direct PUB regarding Muskrat costs.
- Amendments change no other aspects of PUB rate setting.



# III. Ratepayer Protection

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- Given that non-recourse financing requires revenue certainty, power purchase terms will be a “Take or Pay” arrangement whereby NLH will pay for Muskrat Falls power. This means that NLH has contractual payment obligations.
- As all NLH costs are ultimately paid by ratepayers, NLH must receive the equivalent revenue from ratepayers for these contractual obligations.
- Because of this, if NLH’s industrial or utility customers build or purchase additional supply for their own use or to sell to others, then there would be fewer ratepayers to share NLH’s contractual obligations for Muskrat Falls power.
- Government is amending legislation to protect ratepayers from such cost-increasing scenarios.
- The amendment (EPCA 5.8) maintains the customer base by ensuring that retailers and industrial electricity users:
  - must remain customers of NLH;
  - cannot source power from any entity but NLH

# III. Ratepayer Protection



- There are exceptions to the NLH exclusivity provisions (EPCA 5.8):
  - excludes industrial customers who are currently buying from retailers
  - excludes new self-generation in emergency circumstances
  - “grandfathers” existing generation by industrials and retailers
  - Government has authority to make further exceptions
- Amendments do not exclude generation for export or self-generation by commercial and residential customers



## IV. Borrowing Authority



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- Existing Nalcor borrowing limit of \$600 million is not sufficient for the Project.
- The amendment (ECA):
  - clarifies that Nalcor borrowing limit is an aggregate for the Nalcor parent plus all subsidiaries.
  - exempts borrowing for the project from the defined borrowing limit.
- The Project requires the flexibility to borrow what is necessary, prudent, and in line with financing obligations to develop the project. This borrowing must occur on a timely basis to meet project schedule.
- Nalcor and subsidiaries borrowing limit will remain \$600 million for non-project activities.



## V. Crown Asset Protection



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- Existing legislation defines Nalcor and NLH as agents of the Crown (ECA and HCA, respectively). Amendments to both Acts are required to ensure the Crown's assets are protected.
- In Nalcor's commercial arrangements with Emera, Nalcor will act in its own capacity and not as an agent of the Crown.
- NLH will be acting in its own capacity, not a Crown agent, with respect to executing contracts required for the project.
- Project borrowing will be completed through Nalcor subsidiaries which are not Crown agents.



Questions?