

Regulatory and Structural Steering Committee (RSSC)Meeting MinutesApril 15/08

Present:

Charles Bown (CB)
 David Bazeley (DB)
 Gilbert Bennett (GB)
 Derrick Sturge (DS)
 Mark Bradbury (MB)

General comment of CB: Must dovetail to larger process on long-term energy policy ongoing within NR.

It was agreed that the Committee would focus on the high level milestones document prepared by MB. An initial run-through of each item with a view to establishing need and priority was seen as a first step. The following notes outline the substance of discussion to date. Please advise of errors or omissions.

1:00 Resolve question re certainty of NLH revenue base and in particular, NP as a major customer. *Binding Termsheet → Sanction ; Execution → Financial Close*

Agreed that certainty of revenue base for Hydro is an important objective and needs to be addressed. *How this would be accomplished also needs to be addressed*

1:05 Address regulatory lag question *(implementation of new regulatory structure)*

Financial viability of regulated utility seen as an important component in Gull's success, but the reduction of regulatory lag not seen as a pressing item in itself. Can be viewed as a longer-term priority. *(must demonstrate that we are pursuing & will be ready for LCP operations)*

1:10 Resolve inconsistency between with long run marginal cost principles and price signaling.

Not seen as critical to Gull at this time. While it is important that the NL ratepayer be aware of the linkages between oil prices and electricity costs, it is felt that the current RSP mechanism provides for a speedy pass through of price signal via the one year recovery mechanism. The recent 6% increase in prices due to RSP adjustments that were oil price driven, and the resultant public reaction, is evidence of this.

(intermediate question... How do consumers respond?)

Regulatory and Structural Steering Committee (RSSC)Meeting MinutesApril 15/08

- 1:15 Optimization of regulated and non-regulated generation fleet, specifically to combine all generation assets under one entity.**

What is required from an industry perspective to make this happen?

This is seen as an important item by GB and necessary for close in 2010. We should take immediate steps to move this forward.

- 1:25 Need to conduct benchmarking analysis of rates in the Province both now and post LCP. Should be compared to other provinces to the extent feasible.**

A benchmarking of electricity prices in the province was performed as part of the most recent rate hearing and the information should be readily available (request to Controller's Dept for data has been submitted). Financial results as they pertain to the Infeed are continually updated and as oil prices continue to rise, the "hump" problem continues to dissipate. A contingency plan for the hump problem should nevertheless be devised that would include a consideration of communication challenges.

3.05 Forward looking cost recovery

See 1.05. *Not Critical*

3.10 Periodic price regulation

See 1.05. *Not Critical*

3.15 Separate regulation for link and generation but combined for network and supply.

- GB questions whether DC link needs to be regulated from a cost of service perspective. Sees risk in submitting Link costs to the purview of the regulator periodically. Suggests it be unregulated with a fixed tariff charge to either Hydro or Gull (to be determined) and possibly others (e.g. industrials?). In any case, we need to consider Linkco revenue source/s and related financing implications.
- Regulation for generation not considered advisable (heritage block approach instead)
- GB suggested separation of Linkco assets from Hydro's transmission system, with separate tariffs for each, all managed under the system operator.
- Do we want an RFP process for generation? Yes.
- Regulation of TWINCo transmission assets? CF transmission assets? Need to investigate integration with existing lines in Labrador in order to minimize tariff pancaking.
- Do we want to separate transmission and generation company entities? Discussion required as to benefits.
- Consider need for system operator for Atlantic Canada.

*did not land on a preferred approach;
more discussion required.*

Regulatory and Structural Steering Committee (RSSC)Meeting MinutesApril 15/08**3.20 Incorporation of the requirements of integrated grid**

This item is in recognition of the challenges associated with implementing a grid that contains a number of discrete players; i.e. Hydro transmission, Gull transmission, Linkco transmission, CF transmission and TWINCo transmission. Need to optimize.

3.25 New industrial customers treat as unregulated

- GB feels that only way to give industrials a cheaper rate is to give them a free ride on the link. This is not seen as ideal.
- Possibility that paper mills might shut down and become power generators?
- Need to know availability of Bowater power house
- BC got 80% of use at heritage block and rest at market. Need to send right price signal.
- Smart meter/off peak/on peak rates. Need to start conditioning for DSM.

3.30 Prepare a summary of the proposed regulatory framework.

- Park this item for now but DB mentioned need for White Paper that would encompass the items noted in this paper as well as other aspects of energy policy in the Province that need to be addressed. For market sounding later this year, PWC has indicated the following essential items under the heading of regulation and structure:

Actions Required for Market Sounding

Regulation and structure		
Confirmation of ECNL and NLH structure with in which LCP will be developed	Essential	It will be important to provide a clear explanation of where the Project will sit in ECNL and how it will be ring-fenced

Oct '08

Regulatory and Structural Steering Committee (RSSC)Meeting MinutesApril 15/08

		from other assets and investments; also to provide clarity on how the regulated and non-regulated parts of the business will interact in respect of the Project.
Confirmation of regulatory framework within which sales from LCP to NLH and from NLH to NP will take place	Essential	Explanation of whether the regulated revenues will be guaranteed through contracts or the regulatory framework will be important
Confirmation that the regulatory framework should support an investment grade credit rating for NLH	Essential	Important to show that NLH will be a credit-worthy counterparty, that there will be no need for a Provincial guarantee in relation to sales to NLH, and that there will be a clear distinction between the regulated business and the non-regulated business. This will require a clear regulatory framework definition and a plan for its implementation
Clarity over the approach to contracting with new industrial loads	Essential	Important to demonstrate that ECNL is offering market prices to industrial loads taking account of other market opportunities open to the Project.
Confirmation that the regulatory changes should address the requirements of joining the NA interconnected grid	Highly desirable	It will be important to demonstrate this in due course, but at this stage confirmation that the framework plans for this to happen should be sufficient
A clear plan for the implementation of regulatory and structural changes to meet the needs of the Project and responsibility for developing regulatory documentation	Essential	Regulatory and structural changes take time and ECNL needs to demonstrate that it has a plan to implement these changes in sufficient time.

This provides an indication of what to their mind at least, they see as needing to be accomplished by the Fall of this year. Clearly we will need to be quite far along in the resolution to certain key questions in this area. We will also need to be able to demonstrate how the identified changes can be accomplished within the confines of the Project Critical Path.

Requirement	Deadline for Commitment	Options	Common Issues	Option-specific Issues
Creditworthy provincial counterparty able to pass on costs to customers	Closing	“NLH” as purchaser, resells to NLH Dn, NP, regulated IC? (default service?)	Level of purchase and “take or pay” nature,	
		“NLH” as purchaser, sells commodity to all customers, NP as “distribution service” co on Island	Additional revenue from other users if any “heritage” concepts.	NP position?
		NP as customer for Island (has to be all Island?)		Sale of NLH Island dn assets
Source of guaranteed revenue for LinkCo	Sanction	Island purchaser	Fairness to Island customers - how to provide guaranteed minimum revenue but return extra income from OATT use	
		Genco		
OATT(s) with non-discriminatory (independent?) administration and regulatory oversight	?	One tariff, PUB regulated, system operator	CFLCo & Twinco (and NP?) lines	Labrador feels it pays for Island customers
		Multi-part tariff (Lab system, link, Island system) PUB regulated, system operator	System Operator in EC?NLH or Independent	Complexity, not FERC compliant?
Coordination of all (all Crown?) generation	?	Transfer all Crown generation to unregulated “Genco” (LC separate paper co?)	Public perception – needs heritage block commitment (regulated over time or legislated?)	
System Operator	?	In EC/NLH with Code of Conduct	Provision of necessary authority, esp over CFLCo, Twinco and NP assets Complex revenue distribution Interaction with Genco	Perception of bias
		Independent in NL		Cost and transition
		Atlantic Regional		Public perception, especially if HQ elsewhere

Draft for discussion

**Newfoundland and Labrador Hydro Financial Advisory Support
Regulatory changes required to support the project
March 2008**

not the overall
regulatory changes
that are required?
(point-of-view)

Introduction

Following a discussion between PwC, NLH and the Ministry of Natural Resources on 19 February, PwC agreed to identify the key regulatory changes affecting NLH's domestic market that would facilitate the perceived bankability of the PPA from LCPCo to NHL and thus the overall financing of the Lower Churchill Project (LCP).

Summary of key changes required

The changes we believe are required are summarised below. It should be read in conjunction with the Appendix A which provides justification and explanation for the changes.

- ECNL (via LCPCo) needs to enter into a long-term contractual arrangement (PPA) with NLH to demonstrate that it has a domestic anchor load; → Pre or Post Sanction?
- NLH needs to demonstrate to the Province and the PUB (on behalf of consumers) that:
 - it has secured a clean, green power source at an economic long-term price
 - the status quo benefits of the existing generation fleet accrue to existing consumers;
 - island consumers will not subsidise other customers including the export business in the longer term.
- NLH needs to demonstrate to ECNL, LCPCo and the financial community that it is a creditworthy off-taker (see regulatory framework below) by providing a bankable PPA (ie reliable and predictable prices and quantities); → ECNL or govt guarantee?
- The regulatory framework should support an investment grade credit rating and ensure efficient cost recovery, pass-through of uncontrollable costs, provide appropriate returns to regulated businesses and be transparent and non-discriminatory;
- Regulatory changes should address pass-through of PPA and transmission capacity bookings, creditworthiness of regulated entities, the requirements of joining the North American interconnected grid and the structural and commercial arrangements for NLH and ECNL.

The timescales for the implementation of the changes varies, although it is important that all are defined and agreed in formulaic detail before market sounding takes place and that implementation is well progressed on a pre-determined timetable before project funding is sought.

NLH regulatory framework changes

- Uncontrollable changes should be incorporated into a pass-through process;
- A regulated price for a pre-determined volume of power from the existing generation fleet should be determined based on delivered cost (the heritage block);
- The cost of carbon should be built into the cost to serve calculation, and resulting tariffs;
- NLH should receive a commercial return on equity;
- The PPA between LCPCo and NLH should form part of the cost to serve calculation;
- NLH's regulatory framework with Newfoundland Power should reflect the LCPCo PPA, ensuring volume certainty and cost pass-through over an extended time period;
- The PUB should run tenders for generation to meet additional demand growth over and above the volumes contracted for under the NLH PPA.

Structural changes linked to regulation

- New industrial or large commercial customers should be unregulated and served by LCPCo;
- The existing island generation fleet, LCP and other ECNL generation should be combined into a single unregulated GenCorp;

rate setting
- heritage block
- carbon
- ROE

Built-in
↓
- heritage
- LCP
↓
then bid for new?

Legislative changes
New Policy
New Regs
PUB Capacity
Dept. role

What is really
minimally required
for financing?
Sanction decision?

Full change
identification;
Action &
implementation
will take time.

PUB does not
have capacity
& new orgs
need to be
created.

What does
this mean?

Immediate rate
impact?
marginal pricing?
rate setting?

Draft for discussion

- The HVDC Island Link and the Maritime Link should be separate unregulated companies operating under an OATT and capacity booking procedures to ensure transparency and non-discrimination.

Inter-connected grid changes

- A system operator should be set up as a separate regulated division of NLH;
- The development of an OATT and booking procedures for the HVDC Island Link and the Maritime Link is required to protect the rate base, to comply with FERC requirements.

*mandate
(transparency)**Who develops? SO?*

Draft for discussion

Appendix A: Rationale for the changes proposed**Objectives for ECNL and NLH**

1. ECNL needs to fulfil the objectives of the Energy Plan including to:

- Secure an economic, long-term and clean source of power for the domestic NL market;
- Harness NL energy resources for the benefit of the Province.

In meeting these objectives, ECNL has been empowered to make a long-term strategic investment in the LCP. To finance this \$10 billion plus investment, limited recourse debt finance is required, for which purpose LCPCo needs to enter into long-term contractual arrangements (PPAs) with several major customers (anchor loads). These customers' PPA commitments will give them the right to the secure, economic, long-term and clean power with LCP can provide. NLH can be one such customer and in this way meet the first of the above 2 objectives of the Energy Plan. This involves two commitments recognising NLH's constraints as a regulated utility:

- To pay LCPCo for energy and generation capacity;
 - Reserve capacity on the HVDC Island Link.
2. NLH needs to demonstrate to consumers and the regulator that it has secured a clean, green power source at an economic long-term price, supporting the second objective of the Energy Plan above.
 3. NLH needs to demonstrate to consumers and the regulator that the status quo benefits of the existing generation fleet accrue to existing consumers, through ensuring that tariffs associated with the existing generation fleet remain identifiable.
 4. NLH needs to demonstrate to consumers and the regulator that the island consumers will not subsidise other customers including the export business in the longer term, both in terms of access to tariffs linked with the existing generation fleet and through development of an OATT.
 5. NLH needs to demonstrate to ECNL, LCPCo and the financial community that it is a creditworthy off-taker by providing a bankable PPA.

Regulatory objectives

1. The regulatory framework needs to be aligned with the reality of ECNL's task to fulfil the objectives of the Energy Plan, and the actions needed to make a long term strategic investment in the LCP.
2. The price control framework governing price setting on the island needs to recognise and pass through costs associated with the long term contract that NLH will enter into with LCPCo in order to secure an economic, long term and clean source of power for the domestic NL market. Thus the regulatory framework needs to become forward looking, anticipating such costs as they arise. Additionally it needs to be supportive of NLH's creditworthiness as an off-taker and long-term PPA counterparty for the LCP
3. This means that the regulatory framework should also ensure efficient cost recovery and pass-through of uncontrollable costs (such as fuel costs), provide appropriate returns to regulated businesses and be transparent and non-discriminatory.

Who receives water rights?
Who is borrowing for LCP?

! Create LCPCo

amend EPCA; not least cost option

PPA @ LCPCo

Genco's heritage block; rate blending

no pass-through on export power costs

ECNL / Govt guarantee?

?

post-2014?
new rate setting model

Draft for discussion

The changes required

The generic types of change that need to be addressed can be summarised as:

1. The regulatory framework governing NLH charging to its customers needs to:
 - a. Accommodate and ensure pass-through of its costs under the PPA with LCPCo, as well as associated costs for booking capacity on the HVDC Island Link;
 - b. Give NLH a creditworthy rating.
2. The ECNL and NLH organisation and commercial structures needs to ensure that they can most efficiently provide:
 - a. The organisation of generation and water resource to provide the supply security expected by customers (including NLH);
 - b. Substance to the regulatory concern and commercial test that the LCP contract is the optimal economic answer to future secure and clean power and that the status quo benefits of the existing NLH generation will accrue to the existing regulated customer base.
3. Incorporating the regulatory changes required to address becoming part of the North American inter-connected grid, with the associated need for an ISO and OATTS.

Within these changes, there are certain requirements that impact NLH as a regulated business, its ability to be a creditworthy counterparty to LCPCo and ensuring protection for the NL consumers. We define these to be short-term changes which should be defined and implemented as soon as possible (and definitely during 2008). There are other changes that are required to provide support to ECNL when it approaches the financial markets for funding for the LCP. These latter changes need to be agreed and their implementation planned by the time market sounding is undertaken (anticipated last quarter of 2008), and the implementation needs to be well under way by the time that funding is sought.

Regulatory framework changes

1. As discussed above, uncontrollable costs (such as the efficiency of Holyrood and diesel price risk) should be incorporated into a pass-through process within the cost to serve calculation, without a need to request their inclusion each time a change is required. Coupled with this should be an economic purchasing or efficiency obligation on NLH to ensure that it can demonstrate that it is only passing on additional costs that are necessary. Such a pass-through mechanism should cover both increases and decreases in uncontrollable costs. *Timescale: 2008*
2. A regulated price associated with a pre-determined volume of power produced from the existing generation fleet should be determined (which would be known as the heritage block). The price should reflect the delivered cost of power on the island (and so would vary according to the balance of thermal and hydro generation in the heritage block) and should be based on agreed hydrology levels. *Timescale: 2008*
3. The cost of carbon should be built into the cost to serve calculations to reflect the use of Holyrood. Although there is currently some uncertainty about the treatment of carbon in Canadian electricity markets, it is important that the use of clean hydro power rather than oil-fired generation is recognised in NL. By including an allowance for the cost of carbon in the tariffs, this will allow NLH (and LCP in the future) to capture a benefit for green power. Although this would be likely to increase tariffs, it would mean that the reasons for the increase were clearly linked to carbon rather than LCP, which would provide more economical power in the longer term. *Timescale: 2008*
4. NLH's current return on equity is significantly lower than that of Newfoundland Power (the other distributor on the island). If it is to demonstrate that it is a creditworthy off-taker,

when will rate changes occur?
How often?

thermal?

will this change / inclusion be automatic? who establishes price? will there be credits?

Draft for discussion

then NLH needs a commercial return on equity. This would also allow NLH to assess the implications of giving up the Government debt guarantee. *Timescale: 2008*

5. The PPA between LCPCo and NLH should be part of the cost to serve calculation, so that there is regulatory certainty that the costs of the PPA will be passed through to the consumers and to provide certainty of off-take revenue to the finance community. *Timescale: June 2008 for a Letter of Intent (minimum) with a PPA subject to financing by mid-2009 at the latest.*
6. The relationship between NLH and Newfoundland Power needs to reflect the PPA with LCPCo, with the regulatory framework ensuring that there is cost pass-through and volume certainty over an extended period. This is required to ensure that NLH is seen as a credit-worthy off-taker, to provide volume certainty through the anchor load domestic PPA and to minimise the risk of future regulatory change impacting on the price or volume transferred from NLH to NP. *Timescale: 2008*
7. The PUB should run tenders for generation to meet domestic demand growth over and above the volumes contracted for under the PPA with NLH, to ensure that the price is appropriate and that appropriate contractual terms are put in place for the tender volumes. Although this is primarily designed for timescales after the commercial operation of LCP, there may be the need for such tenders during the construction phase and the potential for short to medium term contracts to be entered into by LCPCo. *Timescale: Plan to be in place during 2008 with implementation during 2009/2010 and potential enhancements in the future.*

→ are we looking
up NP as a
distributor only?

PUB capacity
consultation

Structural changes linked to regulation

1. New industrial or large commercial customers should be unregulated and served by LCPCo. This will ensure that new customers pay a price based on the cost of the marginal power produced to meet their requirements and do not reduce the benefits of the heritage block tariff for existing consumers. In addition, the cost of any transmission or distribution infrastructure required to serve new customers should be charged to such customers as a connection fee to be paid up front. *Timescale: principal to be established mid-2008 with plan for process by late 2008. Discussions required to determine the threshold at which customers become unregulated – by mid 2008.*
2. The combining of the existing generation fleet, LCP and other ECNL generation into a single GenCorp which would be unregulated. This would allow ECNL to maximise revenues on behalf of the company, based on water management, island demand and available capacity. Procedures would need to be developed to ensure that additional revenues earned in respect of the existing generation fleet were channelled into NLH and reflected in overall tariffs. *Timescale: Plans to be developed in 2008, with detailed implementation plans and operational processes developed in 2009/2010 subject to financing and full implementation in the period up to commercial operations.*
3. The HVDC Island Link and the Maritime Link would be separate companies which would not be regulated per se. Since they would be subject to an OATT and capacity booking processes (see below), there would be regulatory oversight and transparency. The rationale for leaving them as unregulated businesses is that there would be more flexibility over financing. The companies would need to be set up before financing to enable capacity bookings to be made by NLH or LCPCo. *Timescale: proposals for the structure of the two companies and their commercial relationships with NLH and other ECNL companies and divisions should be determined during 2008 with detailed implementation plans and contracts developed during 2009/10 subject to financing.*

Draft for discussion

Inter-connected grid changes

1. A regulated System Operator should be set up within NLH so that when the LCP and HVDC Island Link come into operation, the power sector is already operating with a System Operator and there is clarity over the distinction between the regulated transmission business and the regulated distribution business. *Timescale: planning in 2008 with implementation during 2009/2010.*
2. The development of an OATT and booking procedures for the HVDC Island Link and the Maritime Link is required to protect the rate base (ie to ensure that costs associated with use of the new transmission lines are allocated to those that benefit from the power flows), to ensure that there are clear rules for access to the transmission from Labrador to the island and from NL to NS and to comply with FERC requirements. *Timescale: planning in 2008 with implementation plan in 2009 and full implementation in the 2 years before commercial operation. Rules for capacity booking to be established and implemented in late 2008 subject to financing.*

**Lower Churchill Project
Regulatory and Structural Steering Committee (RSSC)
Terms of Reference**

A. Role

The RSSC as the principle leadership group that will formulate policy and govern the implementation of recommendations as contained in the PWC November 7, 2007 paper entitled "Discussion of market and corporate restructuring options and relevant changes to the regulatory framework in order to optimize LCP financing and ensure infrastructure development options".

B. Responsibilities

- Examine recommendations contained in the paper and any related papers and formulate policy recommendations.
- Spearhead approval of policy recommendations through the appropriate channels.
- Manage implementation through strategy formulation, team lead and project manager selection, assignment of appropriate timelines and monitoring of progress.
- Manage communication with internal and external stakeholders throughout.
- Respond to issues and render policy decisions as they arise.

C. Consultation and Communication

The RSSC will seek advice and guidance from the CEO and the Deputy Minister Natural Resources as required.

D. Accountability and Reporting

The RCSS is accountable, as a body, to the CEO. The RCSS should prepare a monthly report for presentation to the CEO and DMNR outlining progress against plan. Ad hoc communication of committee activities should be routed through the Chair.

E. Authority and Decision-making

The RCSS's function is to recommend policy and corporate strategy within the scope of the assignment and to oversee the execution of the strategy. The RCSS is a decision-making body for the Corporation excepting matters requiring CEO or DMNR approval or those specifically addressed in Corporate Policy.

A meeting quorum is any three members.

F. Composition

The RCSS is comprised of certain senior executives of the Energy Corporation of Newfoundland and Labrador including the Vice President Lower Churchill Project, Vice President Finance and CFO and the Corporate Treasurer. The Assistant Deputy Minister Energy Policy for the Province of Newfoundland Labrador is also a member.

G. Chair

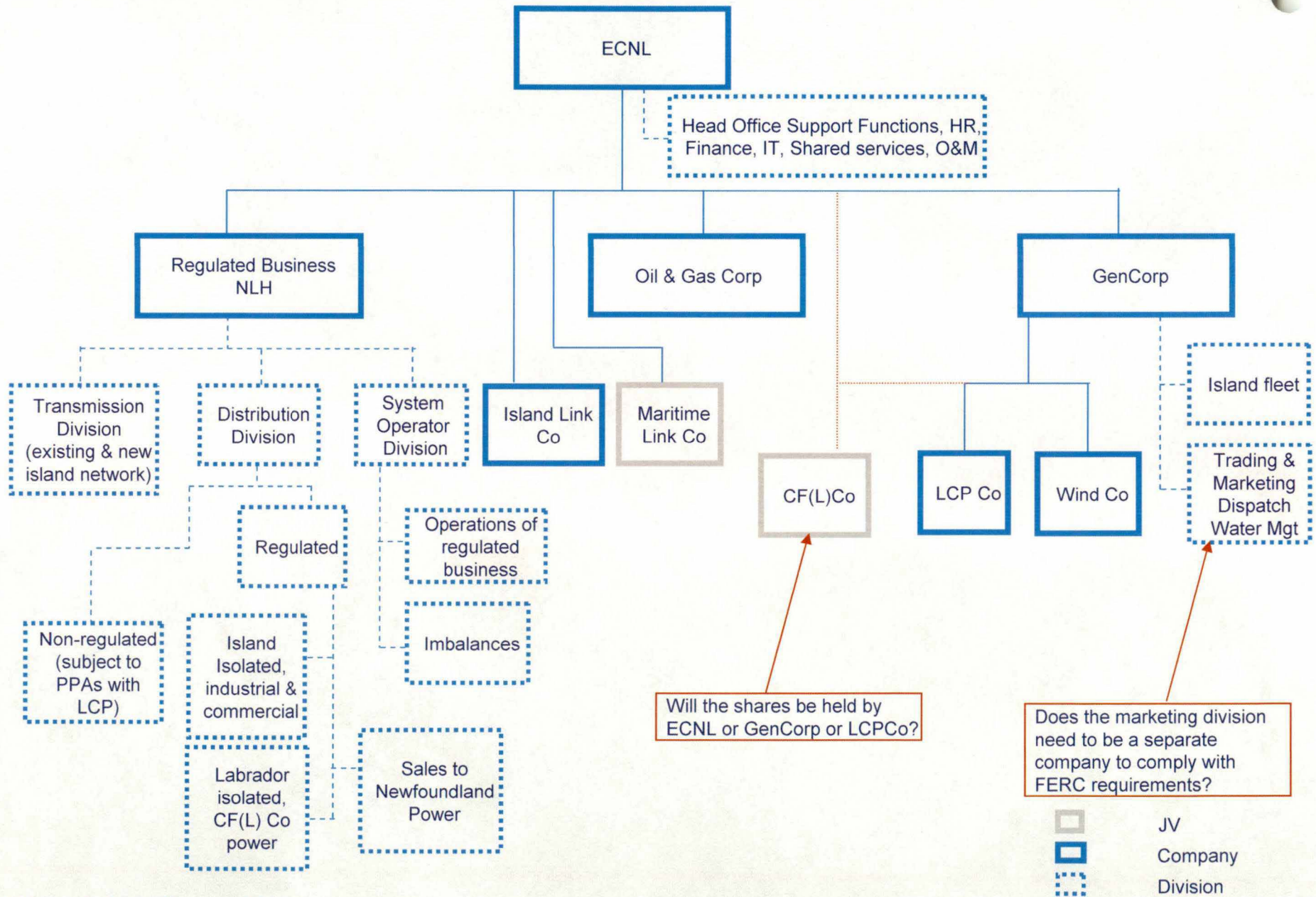
The Chair of the RCSS will be the Vice President Finance and Chief Financial Officer.

H. Staff Support

The Corporate Treasurer or their delegate will be responsible for minutes, agenda circulation, meeting arrangements, etc.

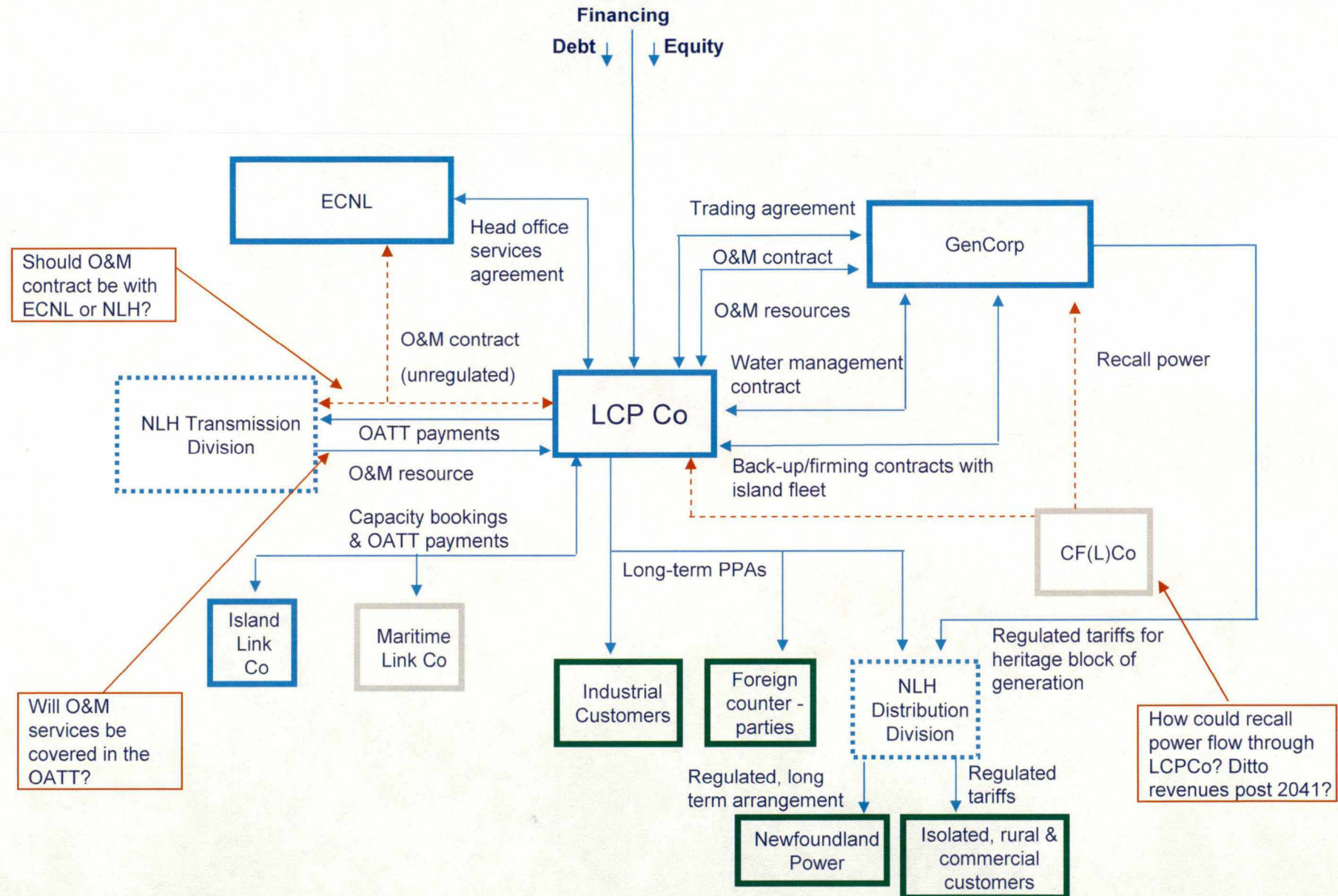
ECNL Structure

Draft for discussion



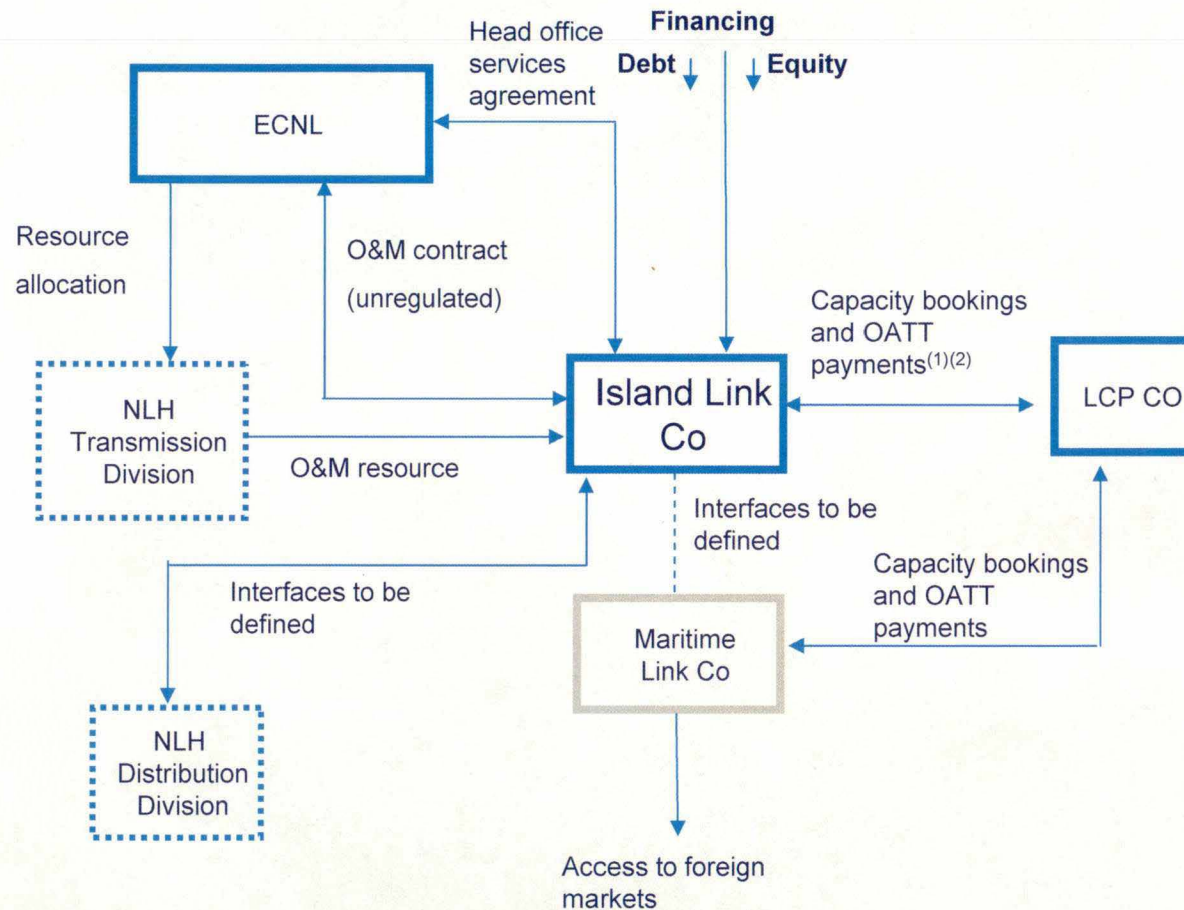
Contractual relationships: LCP Co

Draft for discussion



Contractual relationships: Island Link Co

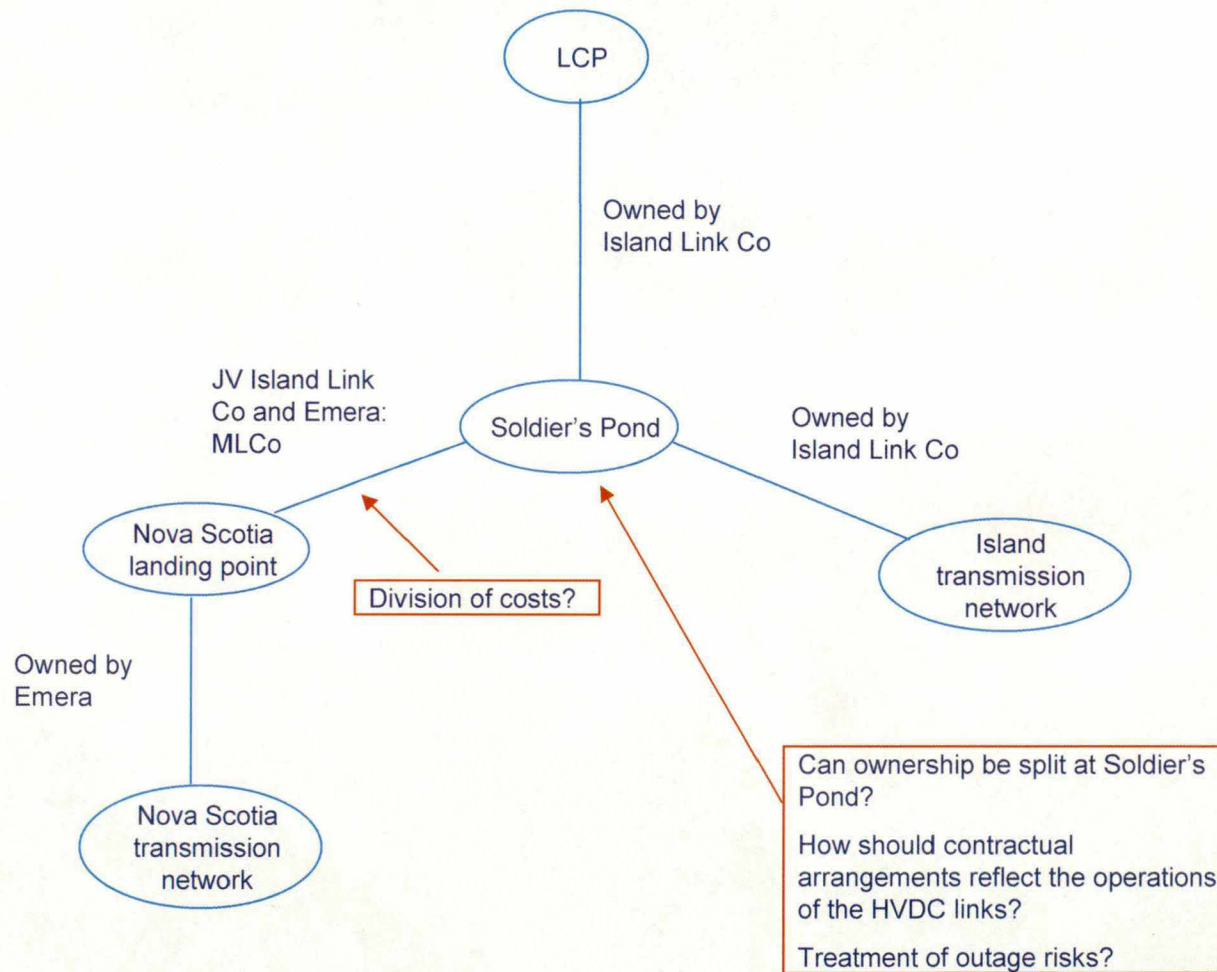
Draft for discussion



- (1) To facilitate sale to NLH distribution (and onward to Newfoundland Power) and first leg of sale to Maritime counterparties
- (2) Capacity booking locks out firm power booking and is an asset of LCP Co to facilitate their key market access and is a cash flow "risk" to LCP Co for it to recover in its PPAs with end users

Ownership of Island Link Co and Maritime Link Co

Draft for discussion



ECNL Regulated Business and interactions with the PUB

