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From : "Bown, Charles W."  
To : "Maclean, Heather", "Scott, Paul G."  
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**Sent:** Mon Jul 16 11:10:04 2012  
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Hopefully this version opens for you...

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## **Background to ‘draft’ Maritime Link Approval Process Regulations**

In November 2010, Emera Inc. and Nalcor Energy executed a Term Sheet, setting out the terms under which the parties would develop the Muskrat Falls portion of the Lower Churchill hydroelectric project in Labrador and bring the electricity to the island of Newfoundland and onward to Nova Scotia. The term Sheet is premised on the assumption that Emera will receive 20 percent of the electricity from Muskrat falls generating station in return for a contribution of 20 percent of the costs of the different projects which together comprise the Lower Churchill projects. The Maritime Link comprises approximately 20% of the overall expected costs of the projects, and will be developed, constructed, owned and operated by Emera. Nalcor will develop, construct, own and operate the Muskrat Falls generation plant and the Labrador Island Link transmission line connecting Muskrat falls to the Island of Newfoundland. In addition, it is expected that up to an additional 40 percent of the electricity from Muskrat Falls will be available for purchase at market rates in Nova Scotia and elsewhere in eastern North America.

In May 2012, the Nova Scotia Legislature passed the *Maritime Link Act* giving authority to the Utility and Review Board (UARB) to review the project and establish a charge to be paid by Nova Scotia ratepayers to cover the costs of the Project.

The draft Maritime Link Regulations establish the parameters for that review process. After consultation with the UARB the Province of Nova Scotia is satisfied that normal Board processes will enable a proper review within a six-month period. This factor is critical for the timing and management of procurement and financing of the Maritime Link project.

The Regulations, enabled by provisions of the *Maritime Link Act*, are intended to guide and direct the review process for this complex transaction. The approval process starts with an application and includes a hearing by the UARB.

The Province of Nova Scotia believes there are no alternatives that provide the same level of strategic benefits as the Maritime Link; and that alternatives that could provide a measure of similar benefits are more costly. After consultation with the UARB, the Province is satisfied that this belief requires independent confirmation by the Board to satisfy the public interest in Nova Scotia.

Following the hearing process, procedural details of which will be established by the UARB as is normal practice in Nova Scotia, the UARB will approve the project if it is satisfied it represents the lowest cost long-term alternative for electricity ratepayers in Nova Scotia to meet both current legal requirements and the anticipated legal requirements resulting from federal policy to significantly restrict the future use of coal.

Once the UARB decision is issued, Emera will be required to file a project report with the UARB by the end of 2013.

After the project is complete, Emera will be required to file the final costs with the UARB, and seek approval of a charge covering project costs to be recovered from Nova Scotia ratepayers through Nova Scotia Power Inc. The UARB process to set the charge will be carried out in a normal fashion.

#### Next Steps

Formal Public Consultation regarding the draft Regulations (standard process in Nova Scotia) will commence on July 16, 2012 and will end on August 3, 2012. As a result of advice received, the Province may amend the draft regulations.

We also anticipate that there may be further amendments required to the Maritime Link Act to ensure that the project applicant has the powers and authorities conferred under the Public Utilities Act and other statutes related to the regulation of an electrical utility.

Comments on the draft regulations may be submitted to [maritimelink@gov.ns.ca](mailto:maritimelink@gov.ns.ca).

**‘Draft’ Regulations Respecting the Maritime Link Approval Process  
made by the Governor in Council pursuant to Section 6 of  
Chapter 9 of the Acts of 2012,  
the *Maritime Link Act***

#### **Citation**

**1** These regulations may be cited as the Maritime Link Approval Process Regulations.

#### **Definition**

**2** In these regulations,

“Act” means the *Maritime Link Act*;

“greenhouse gas” means a greenhouse gas as defined in the *Greenhouse Gas Emissions Regulations* made under the *Environment Act*;

“Emera” means Emera Incorporated, a body corporate incorporated under the laws of the Province and includes any of its affiliates;

“Nalcor Transactions” means the transactions contemplated with respect to the Maritime Link Project as set out in the term sheet dated November 18, 2010, between Emera and Nalcor Energy, and for greater certainty includes all of the following transactions as set out in agreements to be entered into between Emera and Nalcor Energy:

(i) the development of the Maritime Link by Emera,

- (ii) the provision to Emera of energy equivalent to 20% of the estimated capacity of the Muskrat Falls Generating Station,
- (iii) the provision to Nalcor Energy of certain transmission rights through the Province,
- (iv) the granting of transmission rights over the Maritime Link,
- (v) the sharing of responsibility for operating and maintaining the Maritime Link,
- (vi) the transfer of the Maritime Link to Nalcor Energy following a period of 35 years after energy is first delivered to Emera.

“Project costs” means all costs incurred by an applicant in connection with the Maritime Link Project.

#### **Designation as public utility**

- 3** An applicant is a public utility within the meaning of the *Public Utilities Act* and that the *Public Utilities Act* applies to an applicant.

#### **Requirement for Review Board approval**

- 4** (1) An applicant must apply to the Review Board for approval for the Maritime Link Project.
- (2) Until approval is granted under subsection (1), an applicant must not be approved for a rate, charge, tariff or other compensation for services as defined in the *Public Utilities Act*.
- (3) Upon approval under subsection (1), an applicant is entitled to recover the Project costs through a rate, charge, tariff or other compensation from Nova Scotia Power Incorporated in accordance with Section 9.
- (4) An applicant who makes an application under this Section:
- (i) is not required to make a separate application under Sections 35 or 35A of the *Public Utilities Act*;
  - (ii) once the Review Board has approved an assessment under section 9, the applicant is subject to sections 35 or 35A with respect to any new expenditures.

#### **Basis for Review Board approval**

- 5** (1) The Review Board must approve the Maritime Link Project if, on the evidence and submissions provided, the Review Board is satisfied that the project represents the lowest long-term cost alternative for electricity ratepayers in Nova

Scotia, consistent with obligations under the *Electricity Act*, and any obligations governing the release of greenhouse gases and air pollutants under the *Environment Act*, the *Canadian Environmental Protection Act* (Canada) and any associated agreements.

- (2) An applicant must provide the Review Board with the best information and evidence available at the time to address the conditions in subsection (1).
- (3) In its approval, the Review Board may order any terms and conditions it considers necessary.

**Board to set permissible higher limit on costs that require approval**

- 6
- (1) If requested by the applicant, the Review Board must establish a variance with respect to the approved cost of the Maritime Link Project.
  - (2) The size of the variance shall be set by the Review Board.
  - (3) If at any time there are excess Project costs that exceed the variance established under this section, the Applicant must have the excess costs approved by the Review Board.

**Deadlines for decision on approval**

- 7
- (1) If an applicant submits a complete application on or before August 31, 2012, the Review Board must make a decision under Section 4 on or before February 28, 2013.
  - (2) If an applicant submits a complete application on a date after August 31, 2012, the Review Board must make a decision under Section 4 no later than 180 days after the date the application is submitted.

**Project report**

- 8
- (1) An applicant must file a project report containing the details required by subsection (2) with the Board on or before December 31, 2013.
  - (2) The project report must set out all the following for the Maritime Link Project:
    - (a) detailed engineering and design information;
    - (b) updated and current cost estimates and actuals;
    - (c) any material changes to any of the information submitted to the Review Board under Section 5.

**Assessment and costing approval**

- 9
- (1) Before receiving energy under the Nalcor Transactions, an applicant must set an assessment against Nova Scotia Power Incorporated for the recovery of the

Project costs, and must apply to the Review Board for an approval of the assessment under Section 64 of the *Public Utilities Act*.

- (2) Nova Scotia Power Incorporated is entitled to recover any assessment made in respect of the project through its rates.

**Powers of Review Board**

- 10** Except as otherwise provided, the Board has all the powers provided to it under the *Utility and Review Board Act* and the *Public Utilities Act* to carry out its duties under the Act and these regulations.