

1 Q. For each of the existing power contracts identified in part 2.2 on page 5 of the
2 Nalcor Pre-filed Evidence and at Tab 6 of the submission of CF(L)Co please identify,
3 with reference to the terms of the contracts, the rights of the parties to those
4 contracts that have the potential to be affected by a Water Management
5 Agreement.

6
7 A. The provisions of the WMA were drafted to avoid potential conflicts with
8 provisions of the PPCs. In particular, article 3.1 of the WMA states that "*nothing in*
9 *this Agreement shall adversely affect a provision of a contract for the supply of*
10 *Power and Energy entered into by a Supplier and a third party prior to this*
11 *Agreement, or a renewal of that contract (collectively "Prior Power Contract"), and*
12 *that all provisions of their Agreement and ancillary documents and agreements shall*
13 *be interpreted accordingly.*" (Our emphasis)

14 Therefore, the parties should be cautious in attempting to identify all potential
15 conflicts between the WMA and each PPC. The exercise has the potential to be
16 purely theoretical and hypothetical. The fact remains that the WMA must be
17 interpreted to avoid any conflict. In the event that a conflict arises between a
18 provision of a PPC and a provision of the WMA at a time that the LC is operational
19 and the WMA fully implemented, various mechanisms have been built into the
20 WMA to avoid any adverse effect.

21 Without limitation and with the above caveat, CF(L)Co identifies the following
22 potential conflicts as between the WMA and various provisions of the PPCs:

23 **1. HQ-CF(L)Co Power Contract**

24 Sections 3(2)(c) and 3(2)(d) of the Regulations stipulate that a WMA shall:

25 "(c) require the independent coordinator, based on the information received in paragraph
26 (b) and in the exercise of reasonable judgment, to establish short and long term production
27 schedules for all production facilities on a body of water, through the coordination of

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1 production scheduling of the suppliers on the body of water based upon the use of the
2 aggregate generating capacity, storage and transmission facilities or any supplier on the
3 respective body of water, in accordance with the objectives of these regulations and with
4 the water management agreement;

5 (d) require that suppliers adhere to the production schedules set by the independent
6 coordinator in paragraph (c);"

7 The requirements of sections 3(2)(c) and 3(2)(d) of the Regulations are found in
8 Sections 6.2(a) to (d), 6.3 and 4.2 of the WMA.

9 (i) Potential Conflict with Sections 2.1 and 6.2 of the Power Contract

10 Under section 2.1, Hydro-Québec ("HQ") has agreed to purchase, and CF(L)Co has
11 agreed to sell, certain energy and power during the term of the Power Contract.
12 When read together, sections 2.1 and 6.2 of the Power Contract grant HQ the right
13 to request the amount of energy and power it requires, subject to certain technical
14 limitations specifically provided for in section 6.2 (plant operation limitation,
15 existing power supply obligations, recapture and interruptions). Adherence to this
16 section 3(2)(d) of the Regulations (and 4.2 of the WMA) could limit HQ's ability
17 under sections 2.1 and 6.2 to request and purchase the amount of energy and
18 power it requires since the IC's schedule could limit such right. This obligation could
19 also limit CF(L)Co's obligation to sell the energy and power so requested by HQ.

20 (ii) Potential Conflict with Section 4.2.1 of the Power Contract

21 Section 4.2.1 of the Power Contract acknowledges "that it is desirable for HQ to
22 have the benefit of operational flexibility of CF(L)Co's facilities in relation to the HQ
23 system". Moreover, section 4.2.1(i) grants HQ the right to request CF(L)Co to
24 operate the plant in accordance with HQ's schedule of power requirements in
25 relation to the HQ system, provided such requests are not less than the Minimum
26 Capacity and, except where additional capacity becomes available, no more than

the Firm Capacity. Compliance with the obligation to adhere to the production schedules prepared by the IC (4.2 of the WMA) could limit HQ's discretion under section 4.2.1(i) and in doing so, would be inconsistent with such provision of the Power Contract.

(iii) Potential Conflict with Section 6.4 of the Power Contract

Section 6.4 states that *"The Firm Capacity shall be available at all times when Hydro-Quebec has requested it. In addition, whenever additional capacity can, in the opinion of CF(L)Co, be made available, such capacity shall also be available to Hydro-Quebec on request. (...) At no time (...) shall the power taken by Hydro-Quebec be less than Minimum Capacity."* Compliance with the obligation to adhere to the production schedules established by the IC (4.2 of the WMA) could subordinate the delivery of power to HQ to the IC's production schedules and therefore be inconsistent with section 6.4 of the Power Contract.

(iv) Elimination of the Potential Conflicts

Despite the potential conflicts identified, we note that the schedules established by the IC will be based on the information provided and regularly updated by CF(L)Co pursuant to section 3(2)(b) of the Regulations (4.3(c)(i) and 4.7 of the WMA), and will thus take into account the energy and power requirements of HQ, as regularly updated by HQ (s. 6.5 of the Power Contract). Furthermore, section 3(2)(c) of the Regulations (and 6.2 of the WMA) states that the production schedules will be established by the IC in accordance with the WMA. The WMA includes provisions which, in CF(L)Co's view, eliminate the potential conflicts described above (4.3(c), 4.7, 6.2(a) to (d) and 6.3 of the WMA).

Since CF(L)Co will regularly provide the IC with the demand requirements of HQ and regularly update any changes to same pursuant to section 3(2)(b) of the Regulations

(and 4.3(c)(i) and 4.7 of the WMA), and since the production schedules established by the IC are meant to be based upon those demand requirements pursuant to section 3(2)(c) of the Regulations and in accordance with the WMA (6.2 of the WMA), the likelihood of an actual conflict with the aforementioned provisions of the Power Contract is minimal. This is further supported by section 3(2)(e)(ii) of the Regulations (7.1(a) and (b) of the WMA), which provides that the generating capacity available to a supplier may in no event be less than the capacity of the production facilities owned by that supplier.

2. HQ-CF(L)Co Renewed Contract

Sections 3(2)(c) and 3(2)(d) of the Regulations stipulate that a WMA shall:

« (c) require the independent coordinator, based on the information received in paragraph (b) and in the exercise of reasonable judgment, to establish short and long term production schedules for all production facilities on a body of water, through the coordination of production scheduling of the suppliers on the body of water based upon the use of the aggregate generating capacity, storage and transmission facilities or any supplier on the respective body of water, in accordance with the objectives of these regulations and with the water management agreement;

(d) require that suppliers adhere to the production schedules set by the independent coordinator in paragraph (c);” (our emphasis)

The requirements of sections 3(2)(c) and 3(2)(d) of the Regulations are found in Sections 6.2(a) to (d), 6.3 and 4.2 of the WMA.

(i) Potential Conflict with Section 2.1 of the Renewed Contract

Under section 2.1, HQ has agreed to purchase, and CF(L)Co has agreed to sell, the Continuous Energy and the Firm Capacity during the term of the Renewed Contract. Adherence to this provision of the Regulations could result in such Continuous

1 Energy or Firm Capacity not being available to HQ and in doing so, would be
2 inconsistent with section 2.1 of the Renewed Contract.

3 (ii) Potential Conflict with Section 4.1.1 of the Renewed Contract

4 Section 4.1.1(i) grants HQ the right to request CF(L)Co to operate the plant in
5 accordance with HQ's schedule of power requirements in relation to the HQ's
6 system, provided such requests are not less than the Minimum Capacity and, except
7 where additional capacity becomes available, no more than the Firm Capacity.
8 Adherence to the production schedules prepared by the IC (4.2 of the WMA) could
9 limit HQ's discretion under section 4.1.1(i) and in doing so, would be inconsistent
10 with such provision of the Renewed Contract.

11 (iii) Potential Conflict with Section 5.2 of the Renewed Contract

12 Section 5.2 states that *"The Firm Capacity shall be available at all times when*
13 *Hydro-Quebec has requested it. In addition, whenever additional capacity can, in*
14 *the opinion of CF(L)Co, be made available, such capacity shall also be available to*
15 *Hydro-Quebec on request. (...) At no time (...) shall the power taken by Hydro-*
16 *Quebec be less than Minimum Capacity."* Adherence to the production schedule
17 established by the Regulations (and by the IC pursuant to 4.2 of the WMA) would
18 subordinate the delivery of power to HQ to the IC's production schedule and could
19 therefore be inconsistent with section 5.2 of the Renewed Contract.

20 (iv) Elimination of the Potential Conflicts

21 Despite the potential conflicts identified above, we first note that any potential for
22 conflict is avoided if the IC's production schedules are developed in such a way that
23 the Continuous Energy and the Firm Capacity are available at all times.

We further note that the schedules established by the IC will be based on the information provided and regularly updated by CF(L)Co pursuant to section 3(2)(b) of the Regulations (4.3(c)(i) and 4.7 of the WMA), and will thus take into account the energy and power requirements of HQ, as regularly updated by HQ (s. 5.3 of the Renewed Contract). Furthermore, section 3(2)(c) of the Regulations states that the production schedules will be established by the IC in accordance with the WMA. The WMA includes provisions which, in CF(L)Co's view, eliminate the potential conflicts described above (4.3(c), 4.7, 6.2(a) to (d) and 6.3 of the WMA).

In other words, since CF(L)Co will regularly provide the IC with the demand requirements of HQ and regularly update any changes to same, pursuant to section 3(2)(b) of the Regulations (and 4.3(c)(i) and 4.7 of the WMA), and since the production schedules established by the IC are meant to be based upon those demand requirements pursuant to section 3(2)(c) of the Regulations and in accordance with the WMA (6.2 of the WMA), the likelihood of an actual conflict with the aforementioned provisions of the Renewed Contract is minimal. This is further supported by section 3(2)(e)(ii) of the Regulations (7.1(a) and (b) of the WMA), which provides that the generating capacity available to a supplier may in no event be less than the capacity of the production facilities owned by that supplier.

3. GWAC

Sections 3(2)(c) and 3(2)(d) of the Regulations stipulate that a WMA shall:

"c) require the independent coordinator, based on the information received in paragraph (b) and in the exercise of reasonable judgment, to establish short and long term production schedules for all production facilities on a body of water, through the coordination of production scheduling of the suppliers on the body of water based upon the use of the aggregate generating capacity, storage and transmission facilities or any supplier on the

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1 respective body of water, in accordance with the objectives of these regulations and with
2 the water management agreement;

3 (d) require that suppliers adhere to the production schedules set by the independent
4 coordinator in paragraph (c);”

5 The requirements of Sections 3(2)(c) and 3(2)(d) of the Regulations are found in
6 Sections 6.2(a) to (d), 6.3 and 4.2 of the WMA. The requirement set out in
7 subsection (3)(2)(d) of the Regulations (4.2 of the WMA) that CF(L)Co adheres to
8 the production schedules established by the IC could conflict with section 2.1 of the
9 GWAC. Under section 2.1, CF(L)Co guarantees to HQ the availability of the
10 Additional Availability at the Delivery Point from November 1 through March 31 of
11 each year throughout the term of the Power Contract and the Renewed Contract
12 (the “**Availability Period**”). The “**Additional Availability**” consists of all additional
13 capacity of the plant in excess of the Firm Capacity, Recapture and other deductions
14 under the Power Contract, up to a maximum of 682MW. Adherence to the
15 production schedule of the IC could result in such Additional Availability not being
16 available to HQ at some point during the Availability Period and, in doing so, would
17 be inconsistent with section 2.1 of the GWAC.

18 In practice, such conflict would occur whenever HQ might request Additional
19 Capacity during the Availability Period and such Additional Capacity could not be
20 delivered to it pursuant to the IC’s production schedule. The potential for conflict is
21 avoided, however, if the IC’s production schedule is developed in such a way that
22 the Additional Availability is available at all times during the Availability Period.

23 Despite this potential conflict, we note that the schedules established by the IC will
24 be based on the information provided and regularly updated by CF(L)Co pursuant to
25 section 3(2)(b) of the Regulations (4.3(c)(i) and 4.7 of the WMA), and will thus take
26 into account the energy and power requirements of HQ, as regularly updated by HQ

1 pursuant to sections 4.2.1 and 4.2.2 of the GWAC. Furthermore, section 3(2)(c) of
2 the Regulations states that the production schedules will be established by the IC in
3 accordance with the WMA. The WMA includes provisions which, in CF(L)Co's view,
4 eliminate the potential conflicts described above (4.3(c), 4.7, 6.2(a) to (d) and 6.3 of
5 the WMA).

6 In other words, since CF(L)Co will regularly provide the IC with the demand
7 requirements of HQ and regularly update any changes to same pursuant to
8 section 3(2)(b) of the Regulations (4.3(c)(i) and 4.7 of the WMA), and since the
9 production schedules established by the IC are meant to be based upon those
10 demand requirements pursuant to section 3(2)(c) of the Regulations and in
11 accordance with the WMA (6.2 of the WMA), the likelihood of an actual conflict
12 with the aforementioned provisions of the Power Contract is minimal. This is
13 further supported by section 3(2)(e)(ii) of the Regulations (7.1(a) and (b) of the
14 WMA), which provides that the generating capacity available to a supplier may in
15 no event be less than the capacity of the production facilities owned by that
16 supplier.

17 **4. NLH Power Contract**

18 Sections 3(2)(c) and 3(2)(d) of the Regulations stipulate that a WMA shall:

19 "(c) require the independent coordinator, based on the information received in paragraph
20 (b) and in the exercise of reasonable judgment, to establish short and long term production
21 schedules for all production facilities on a body of water, through the coordination of
22 production scheduling of the suppliers on the body of water based upon the use of the
23 aggregate generating capacity, storage and transmission facilities or any supplier on the
24 respective body of water, in accordance with the objectives of these regulations and with
25 the water management agreement;

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1 (d) require that suppliers adhere to the production schedules set by the independent
2 coordinator in paragraph (c);"

3 The requirements of sections 3(2)(c) and 3(2)(d) of the Regulations are found in
4 Sections 6.2(a) to (d), 6.3 and 4.2 of the WMA.

5 (i) Potential Conflict with Articles 3.01 and 3.02 of the NLH Power
6 Contract

7 Compliance with 3(2)(d) of the Regulations (and 4.2 of the WMA) could potentially
8 conflict with articles 3.01 and 3.02 of the NLH Power Contract. Under articles 3.01
9 and 3.02, CF(L)Co is to provide to NLH certain Electricity (Amount of Power on
10 Order and Amount of Energy on Order) during the term of the NLH Power Contract.
11 Adherence to the production schedules set by the IC could result in such Electricity
12 not being available to NLH and in doing so, would be inconsistent with articles 3.01
13 and 3.02 of the NLH Power Contract.

14 In practice, a conflict would occur if the IC's production schedules resulted in
15 Electricity not being available to NLH. The potential for conflict is avoided, however,
16 if the IC's production schedules are developed in such a way that the Amount of
17 Power on Order and the Amount of Energy on Order are available at all times. In
18 this respect, we note that the schedules established by the IC will be based on the
19 information provided and regularly updated by CF(L)Co pursuant to section 3(2)(b)
20 of the Regulations (4.3(c)(i) and 4.7 of the WMA), and will thus take into account
21 the energy and power requirements of the NLH Power Contract. Furthermore,
22 section 3(2)(c) of the Regulations (and 6.2 of the WMA) states that the production
23 schedules will be established by the IC in accordance with the WMA. The WMA
24 includes provisions which, in CF(L)Co's view, eliminate the potential conflicts
25 described above (4.3(c), 4.7, 6.2(a) to (d) and 6.3 of the WMA).

(ii) Potential Conflict with Article 5.01 of the NLH Power Contract

Section 3(2)(d) of the Regulations could potentially conflict with article 5.01 of the NLH Power Contract. Article 5.01 of the NLH Power Contract provides that, when requested by NLH, CF(L)Co agrees to deliver to NLH surplus Energy (interruptible Energy) from its generating facilities and resulting from under utilization of the Energy reserved for its existing obligations when, in the sole discretion of CF(L)Co, such additional Energy can be made available. Adherence to the production schedules set by the IC could limit NLH's ability under article 5.01 to request and purchase additional interruptible Energy since the IC's production schedules could limit CF(L)Co's additional available interruptible Energy resulting from under utilization of stored Energy. This obligation could also limit CF(L)Co's potential to sell the additional interruptible Energy so requested by NLH, when, in the sole discretion of CF(L)Co, such additional Energy would be available if it was not for the obligation to conform to the IC's production schedules. Adherence to this provision of the Regulations (and 4.2 of the WMA) could subordinate the delivery and sale of additional interruptible Energy to NLH under the NLH Power Contract to the IC's production schedules.

In practice, a conflict would occur whenever NLH might request the delivery of additional interruptible Energy in quantities available in CF(L)Co's sole discretion, but differing from the IC's production schedules.

Despite the potential conflicts identified, we note that the schedules established by the IC will be based on the information provided and regularly updated by CF(L)Co pursuant to section 3(2)(b) of the Regulations (4.3(c)(i) and 4.7 of the WMA), and will thus take into account the energy and power requirements of NLH. Furthermore, section 3(2)(c) of the Regulations (and 6.2 of the WMA) states that the production schedules will be established by the IC in accordance with the WMA.

1 The WMA includes provisions which, in CF(L)Co's view, eliminate the potential
2 conflicts described above (4.3(c), 4.7, 6.2(a) to (d) and 6.3 of the WMA).

3 In other words, since CF(L)Co will regularly provide the IC with the demand
4 requirements of NLH and regularly update any changes to same pursuant to
5 section 3(2)(b) of the Regulations (4.3(c)(i) and 4.7 of the WMA), and since the
6 production schedules established by the IC are meant to be based upon those
7 demand requirements pursuant to section 3(2)(c) of the Regulations and in
8 accordance with the WMA (6.2 of the WMA), the likelihood of an actual conflict
9 with the aforementioned article of the NLH Power Contract is minimal.

10 **5. Twinco Sublease and Twinco Operating Lease**

11 Sections 3(2)(c) and 3(2)(d) of the Regulations stipulate that a WMA shall:

12 "(c) require the independent coordinator, based on the information received in paragraph
13 (b) and in the exercise of reasonable judgment, to establish short and long term production
14 schedules for all production facilities on a body of water, through the coordination of
15 production scheduling of the suppliers on the body of water based upon the use of the
16 aggregate generating capacity, storage and transmission facilities or any supplier on the
17 respective body of water, in accordance with the objectives of these regulations and with
18 the water management agreement;

19 (d) require that suppliers adhere to the production schedules set by the independent
20 coordinator in paragraph (c);"

21 The requirements of sections 3(2)(c) and 3(2)(d) of the Regulations are found in
22 Sections 6.2(a) to (d), 6.3 and 4.2 of the WMA.

23 Section 3(2)(d) of the Regulations could potentially conflict with clause 8,
24 subclauses 1 (a) and (b), of part IV of the Sublease. Under clause 8, subclause 1 (a),
25 of part IV of the Sublease, CF(L)Co shall deliver to Twinco the amount of power

1 which is equivalent to the power which the entire hydro-electric generating plant at
2 the Site, including its storage facilities, is designed to produce. Furthermore,
3 subclause 1 (b) of clause 8 of part IV of the Sublease provides that CF(L)Co shall
4 reserve additional power in favour of any person for whom Twinco, with the
5 written consent of CF(L)Co, had agreed to reserve additional power. Adherence to
6 this provision of the Regulations could result in CF(L)Co not being able to satisfy its
7 obligations to Twinco or any other third party pursuant to clause 8, subclauses 1 (a)
8 and (b) of part IV of the Sublease.

9 In practice, a conflict would occur whenever CF(L)Co's power requirements to
10 satisfy its obligations under clause 8, subclauses 1 (a) and (b), of part IV of the
11 Sublease could not be made available under the IC's production schedules.

12 Despite the potential conflicts identified, we note that the schedules established by
13 the IC will be based on the information provided and regularly updated by CF(L)Co
14 pursuant to section 3(2)(b) of the Regulations (4.3(c)(i) and 4.7 of the WMA), and
15 will thus take into account the energy and power requirements of the Sublease.
16 Furthermore, section 3(2)(c) of the Regulations (and 6.2 of the WMA) states that
17 the production schedules will be established by the IC in accordance with the WMA.
18 The WMA includes provisions which, in CF(L)Co's view, eliminate the potential
19 conflicts described above (4.3(c), 4.7, 6.2(a) to (d) and 6.3 of the WMA). As a result,
20 the likelihood of an actual conflict with the aforementioned provisions of the
21 Sublease is minimal.

22 Finally, it should be noted that the Twinco Sublease will expire December 31, 2014,
23 which is prior to the proposed WMA becoming fully operational.