CANADA

PROVINCE DE QUEBEC
DISTRICT OF MONTREAL

C.A.M. N° 500-09-026327-163
S.C.M. N°: 500-17-078217-133
CONFIDENTIAL

COURT OF APPEAL

CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED, having its head office at 500 Columbus Drive, in the city of St.John's, Newfoundland, A1B 4K7

APPELLANT - Defendant

v.

HYDRO-QUÉBEC, having its head office at 75 René-Lévesque Boulevard East, in the city and district of Montreal, Province of Quebec, H2Z 1A4

RESPONDENT – Plaintiff

NOTICE OF APPEAL

(Article 352 *C.C.P.*)

Appellant Churchill Falls (Labrador) Corporation Limited

Dated September 7, 2016

I. SUMMARY OF THE APPEAL

1. The Appellant hereby appeals from a final judgment of the Superior Court of Quebec, district of Montreal, rendered by the Honourable Martin Castonguay, j.c.s. on August 8, 2016. A copy of the judgment is filed herewith as **Schedule 1**.

2. The date of the notice of judgment is August 8, 2016.

3. The hearing before Justice Castonguay lasted 31 days.

4. In his judgment, the trial judge found in favor of Respondent Hydro-Québec ("**HQ**") and rendered the following declarations that were sought by HQ:

*"[1149] **ACCUEILLE** la requête pour jugement déclaratoire d'Hydro-Québec.*

*[1150] **DÉCLARE** qu'aux termes de l'Annexe III **(Contrat renouvelé)** du contrat intervenu le 12 mai 1969 entre Churchill Falls (Labrador) Corporation **(CF(L)Co)** et Hydro-Québec, Hydro-Québec jouit du droit exclusif d'acheter toute la puissance disponible et toute l'énergie produite à la centrale du Haut Churchill, telle que définie à l'article 1.1 du Contrat original et du Contrat renouvelé (à la définition de « Plant ») et telle qu'entretenue conformément aux articles 4.2.4 du Contrat original et 4.1.4 du Contrat renouvelé (Centrale), à l'exception de la puissance et de l'énergie associées:*

*i. Au bloc de 225 MW qui était réservé à CF(L)Co pour satisfaire ses obligations envers Twin Falls Power Corporation Limited jusqu'au 31 décembre 2014 et qui, sous réserve des conditions énoncées dans le « Shareholders' Agreement » intervenues entre Newfoundland & Labrador Hydro **(NLH),** Hydro-Québec et CF(L)Co le 18 juin 1999, pourra être vendu par CFLCo pour distribution et consommation au Labrador Ouest à compter du 1er janvier 2015 (Bloc Twinco); et;*

*ii. au bloc de 300 MW réservé à CF(L)Co pour vente à une tierce partie en vue d'une consommation d'énergie hors Québec **(Bloc de 300 MW)**.*

*[1151] **DÉCLARE** que les droits conférés à Hydro-Québec en vertu de l'article 4.1.1 du Contrat renouvelé, y compris son droit de programmation et de planification de la puissance et de l'énergie, ne sont d'aucune manière limités, circonscrits ou restreints, sur une base mensuelle, à l'achat de blocs assujettis à un plafond dont la quantité serait établie sur la base de la notion de « Continuous Energy » prévue au Contrat renouvelé, et qu'ils peuvent être exercés à l'égard de toute la puissance disponible et toute l'énergie produite à la Centrale, à l'exclusion de la puissance et de l'énergie associées au Bloc de 300 MW et au Bloc Twinco.*

*[1152] **DÉCLARE** qu'aux termes du Contrat renouvelé, Hydro-Québec n'est pas contrainte de limiter ses demandes de livraison d'énergie à des blocs assujettis à un plafond mensuel dont la quantité serait établie sur la base de la notion de « Continuous Energy » prévue au Contrat renouvelé.*

*[1153] **DÉCLARE** qu'aux termes du Contrat renouvelé, CF(L)Co a l'obligation de livrer à Hydro-Québec, sur demande de celle-ci, toute la puissance disponible et toute l'énergie produite à la Centrale, à l'exception de la puissance et de l'énergie associées au Bloc Twinco et le Bloc de 300 MW.*

*[1154] **DÉCLARE** que jusqu'au 31 août 2041, CF(L)Co ne jouira d'aucun droit sur aucune quantité de puissance et d'énergie produite à la Centrale, à l'exception de la puissance et de l'énergie associées au Bloc de 300 MW et du Bloc Twinco.*

*[1155] **DÉCLARE** que jusqu'au 31 août 2041, CF(L)Co ne pourra vendre à une tierce partie, y compris NLH, une quelconque quantité de puissance et d'énergie excédant les quantités associées au Bloc de 300 MW, et ce, sans égard au fait que lesdites ventes interviennent sur une base ferme ou prétendument « interruptible ».*

*[1156] **REJETTE** la contestation de Churchill Falls (Labrador) Corporation Limited.*

*[1157] **LE TOUT** avec les frais de justice en faveur d'Hydro-Québec incluant les frais reliés à l'expertise et la présence à la Cour de Monsieur Carlos Lapuerta uniquement."*

5. With respect, the judgment contains numerous determinative errors of fact and law, detailed below, which invalidate its conclusions and requires the intervention of the Court of Appeal.

II. GROUNDS OF APPEAL

A. Introduction and Overview

6. The present matter deals with the interpretation of Schedule III (the "**Renewal Contract**") of the Power Contract signed between the parties in 1969 (the "**Power Contract**"), the former of which constitutes a complete agreement that comes into force in September 2016 in accordance with a Renewal Clause (article 3.2 of the Power Contract) that stipulates that all the terms from the Power Contract not included in the Renewal Contract "shall have no force and effect beyond the expiry date".

7. In particular two questions were at issue between the parties - CF(L)Co, the owner of the power generation facilities and water rights, and HQ, the purchaser under the Renewal Contract. Firstly, what will be HQ's contractual energy entitlement under the Renewal Contract (the Continuous Energy issue) and secondly, whether CF(L)Co is entitled to use idle plant generating capacity to sell its own energy (not HQ's energy entitlement) at a rate exceeding 300MW on an interruptible basis in a manner that respects its contractual obligations to its existing customers (the Interruptible Power issue).

B. The Judgment erroneously fails to give effect and meaning to the terms of the Renewal Contract and modifies it under the guise of interpretation

8. The Renewal Contract is a detailed contract that stands on its own at the expiration of the Power Contract, and which contains provisions that are quite distinct from the Power Contract.

9. As detailed in the table below, many of the provisions contained in the Power Contract have been removed under the Renewal Contract and several new provisions have been added, notably in regards to the notion of Continuous Energy, such as the definition of **Continuous Energy**, a change of the **Object of the contract** at **s. 2.1**, **s. 7.1** (Price and Price Adjustments), and others.

10. With respect to the quantity of energy in particular, a review of the plain language of the Renewal Contract confirms that in accordance with the Object, CF(L)Co only agreed to sell to HQ each month an amount of energy defined as Continuous Energy (s. 2.1 RC), which will be determined according to a pre-defined formula (s. 1.1 RC), which essentially provides that Continuous Energy is a fixed and limited amount of energy,

based on the number of days in the month:

"2.1 Object

During the entire term hereof, Hydro-Quebec agrees to purchase from CFLCo and CFLCo agrees to sell to Hydro-Quebec each month the Continuous Energy and the Firm Capacity, at the price, on the terms and conditions, and in accordance with the provisions, set forth herein."

"1.1(Definitions)

II – Concerning Delivery, Energy and Capacity [...]

"Continuous Energy" means, in respect of any month, the number of kilowatthours obtainable, calculated to the nearest 1/100 of a billion kilowatthours, when the Annual Energy Base is multiplied by the number which corresponds to the number of days in the month concerned and the result is then divided by the number which corresponds to the number of days in the year concerned." (our emphasis)

11. Therefore the very Object of the Renewal contract has been modified to specify that the actual product being sold is Continuous Energy, the quantity of which is expressly defined as a fixed and limited quantity of energy per month for the duration of the Renewal Contract. Based on the 2012 data, Continuous Energy would likely be in the range of 2.4 to 2.5 TWh per month.

12. A comparative review of the language of the Power Contract and the Renewal Contract should have been entirely sufficient to dispose of HQ 's Motion, as the interpretation proposed by HQ is in direct contradiction with several provisions of the Renewal Contract and presumes an exclusive right to unlimited energy that is simply nowhere to be found in this contract:

Power Contract **(Express right to Energy in excess of the Annual Energy Base at 1/3 the price, with price adjustment mechanism)**	**Renewal Contract** **(Right only to fixed monthly amount of Continuous Energy)**
2.1 Object *During the existence of the present Power Contract Hydro-Quebec agrees to purchase from CFLCo and CFLCo agrees to sell to Hydro-Quebec each month [...] (ii) from and after the Effective Date, the **Energy Payable** and the Firm Capacity; all at the prices, on the terms and conditions, and in accordance with the provisions, set forth herein.*	*2.1 Object* *During the entire term hereof, Hydro-Quebec agrees to purchase from CFLCo and CFLCo agrees to sell to Hydro-Quebec each month the **Continuous Energy** and the Firm Capacity, at the price, on the terms and conditions, and in accordance with the provisions, set forth herein.*
"Energy Payable" means	*II – Concerning Delivery, Energy and*

(b) in respect of any month commencing on or after the Effective Date, (i) the amount of energy which is taken by Hydro-Quebec during such month plus (ii) the amount of energy equivalent to water spilled during such month, […]	*Capacity:*[…] *"Continuous Energy" means, in respect of any month, the number of kilowatthours obtainable, calculated to the nearest 1/100 of a billion kilowatthours, when the Annual Energy Base is multiplied by the number which corresponds to the number of days in the month concerned and the result is then divided by the number which corresponds to the number of days in the year concerned.*
8.4 Price After the Effective Date *After the Effective Date the monthly price for power and energy shall be:* *(i) the product of the Basic Contract Demand multiplied by 66.67% of the Applicable Rate (earned whether or not taken or made available), plus* *(ii) the product of Energy Payable as calculated for the month then ended multiplied by 33.33% of the Applicable Rate." […]*	*7.1 For all Continuous Energy, Hydro-Quebec shall pay CFLCo 2.0 mills per kilowatthour.* *In the event that in any month CFLCo is unable due to Plant deficiencies to make available at least 90% of the Continuous Energy, the price payable by Hydro-Quebec for such month shall be 2.0 mills per kilowatthour for that part only of the Continuous Energy which is made available.*
6.2 Sale and Purchase of Power and Energy *CFLCo shall deliver to Hydro-Quebec at the Delivery Point such power and energy as Hydro-Quebec may request, subject to the provisions of Sections 4.2 and 4.3.[…]*	Ø This provision was not incorporated in the Renewal contract. [No other provision concerning any right that Hydro-Quebec would have to energy other than Continuous Energy is present in the Renewal Contract]

13. The plain language of the Renewal Contract, which is no way ambiguous in regards to Continuous Energy, should thus have led the trial judge to conclude that Continuous Energy, as per its definition, and as per the object of the Contract, is the quantity of energy to which HQ will be entitled each month when the Renewal Contract comes into effect. While this quantity represents the vast portion of the estimated energy available, it is not all of the energy that can be generated by CF(L)Co's Plant and water rights. Any Excess Energy that can be produced from time to time clearly was not sold to HQ and thus belongs to CF(L)Co.

14. It is striking that in a 200 pages judgment, the trial judge failed to reproduce the above table which showed the clear difference between the contracts, failed to even quote the definition of Continuous Energy found in the Renewal Contract and did not

even mention any of the main provisions relied upon by CF(L)Co in his analysis of the questions at issue.

15. The notion of contractual group which he relies on at § 838 ff, and which was not even raised by HQ in its 238 pages outline of arguments, does not authorize the trial judge to replace the terms of the Renewal Contract with those of the original Power Contract. This is especially true considering the renewal provision itself, which specifically overrides all previous provisions contained in the original Power Contract, and which the trial judge entirely failed to give meaning to in his legal analysis:

> *"3.2 Renewal of Contract*
>
> *This Power Contract shall be renewed on the basis stated in this Section, for a further term of 25 years from the expiry date hereof.*
>
> *The renewed Power Contract shall be that set forth in Schedule III hereof, which shall come into force automatically without further signature being required.*
>
> *Any or all Articles or Sections of this Power Contract, other than this Section 3.2, as well as any or all undertakings or promises not specifically contained in Schedule III shall have no force and effect beyond the expiry date hereof and shall not thereafter be binding upon the parties to the renewed Power Contract."*

16. Even if there was an ambiguity created by the presence of the operational flexibility provision, as claimed by HQ, and even if there was a "contractual group" as determined by the trial judge, this does not mean that the trial judge is allowed to disregard the language of the Renewal Contract to assert its true meaning. It still remains the first and foremost guide of the intent of the parties, and the trial judge should have at least attempted to reconcile his interpretation with the terms of the contract, which he entirely failed to do.

17. For example, the judgment does not explain:

a. The difference in the objects of the Power Contract and the Renewal Contract;

b. Why Continuous Energy would be defined as a monthly quantity varying with the numbers of days in the month if it is not the physical monthly quantity of energy available to HQ;

c. What provision of the Renewal Contract would provide for the quantity of energy available for HQ if not for the clear definition of Continuous Energy, let alone what provision would allow HQ to receive all of the energy;

d. What is the effect of s. 6.2. of the original Power Contract not being included in the Renewal Contract;

e. How can the payment mechanism found at s. 7.1 be reconciled with the Court's interpretation that Continuous Energy is not a monthly limit, given that 7.1 limits the payments of HQ if CF(L)Co is unable to make available 90% of the very same monthly limit the Court concluded does not exist;

18. In other words, the trial judge did not interpret the Renewal Contract, but modified it under the guise of interpretation, which is the hallmark of an error of law which calls for the intervention of the Court of Appeal.

19. It is simply untenable in law and in logic to conclude that despite all of the changes described above, nothing changes for HQ and it gets to enjoy all of the same benefits and rights it had under the original contract, even if these rights are nowhere to be found in the text of the Renewal Contract.

20. This result not only flies in the face of the clear language of the Renewal Contract and all known principles of legal interpretation, it is particularly troubling considering that the price paid by HQ for these electricity products will decrease further by more than 21% under the Renewal Contract. If the parties had wanted things to remain entirely the same, they would not have drafted a separate contract with markedly distinct provisions, but would have enacted a simple renewal clause extending the original contract for 25 years.

21. It is worth noting that the trial judge qualifies the contracts between the parties as including a joint venture aspect "un volet entreprise en coparticipation" (§ 886) and as a "common adventure" between them to justify taking into account the expectations of HQ in the interpretation of the contract (§ 903). This is striking considering that CF(L)Co had itself raised a similar argument before the Superior Court in file 500-17-056518-106 (the "Good Faith" case) in support of its views that the contract needed to be revised to take into account its own expectations, an argument that was entirely dismissed by the Superior Court, which saw nothing in the same contracts beyond a pure buy and sale relationship, a conclusion which is still opposed by CF(L)Co but was not reversed by this honorable Court in appeal, albeit it recognized that the relationship included "some

interdependency" ("une certaine interdépendance"). Consequently it seems as a result of these two judgments that only HQ's expectations matter, and that the words of the contracts are only binding on CF(L)Co, while HQ is free to ignore them if they clash with its self-defined expectations.

C. The Judgment erroneously reverses the meaning of earlier draft contractual documents to modify a defined term in the Renewal Contract and concludes that Continuous Energy means all of the energy that can be produced at the Plant

22. In order to reach the conclusion that the term "Continuous Energy" in the Renewal Contract refers to all energy available at the plant, despite the clear contrary definition contained in the contract itself, the trial judge erroneously referenced on previous draft contractual documents which, according to him, would all define continuous energy as "all of the energy available at the agreed point of delivery" (§ 977 and 988).

23. More specifically, the trial judge refers to negotiations concerning the removal of the "Split Tariff" structure and affirms that in that context the parties had understood Continuous Energy to mean all of the production of the Plant, as evidenced by the following excerpt of a previous version of the Letter of Intent (the "**LOI**"), quoted by the court: *"[Continuous Energy] shall mean all energy made available at the agreed point of delivery"* (§ 988; see also § 977 and § 236-242). However, this quotation is a truncation of the terms of this document which completely reverses its meaning. In reality, and as is apparent from the below complete version of the very sentence quoted by the trial judge in support of his conclusion, this document defined Continuous Energy as a <u>finite limited monthly</u> quantity, consistent with the Renewal Contract and final version of LOI:

> *"The term « continuous energy » for the purposes hereof shall mean all energy made available at the agreed point of delivery, from all generating units commissioned less one unit, <u>up to but not exceeding</u> 105% of the corresponding amounts of energy shown in column 5 of the Table Article 9, and subject to the provisions of Article 8.1(a) below."*

9.0 CAPACITY AND ENERGY SURPLUS TO PRESENT REQUIREMENTS OF NEWFOUNDLAND
Estimated Amounts at Agreed Point of Delivery

Column 1 Date	Column 2 Units Installed	Column 3 Firm Capacity (KW)	Column 4 Spare Capacity (KW)	Column 5 Continuous Energy (Millions of KWH Per Month)
March 1, 1971	2	436,500	444,500	320.1
June 1, 1971	3	881,000	444,500	644.57

24. Not only is it wrong in law to use an earlier, draft version of the LOI to contradict and modify a specifically defined term contained both in the final version of the LOI and in the Renewal Contract, but moreover, a plain reading of said draft LOI, which again is the sole source of the trial's judge contradiction of the terms of the contract, reveals that, far from being in contradiction with said definition, is in harmony with it and confirms that Continuous Energy was always meant to be a finite and limited quantity below the maximum production of the Plant.

25. In reality all of the historical documents, including all drafts of the Letter of Intent (the LOI Exhibits P-64, D-75, D-78, D-81, P-134, D-83, P-138, P-139 P-143 and D-88) rather define continuous energy as a finite quantity of energy, distinct from the total production of the Plant, including the Renewal Contract itself and the final version of the LOI (Exhibits P-4 and D-12).

26. In fact, there is not a single draft or final version of the LOI or of the Contracts that supports the position that Continuous Energy means all of the Plant's production.

D. The judgment is internally inconsistent and contradictory in its analysis of the meaning of the notion of "Continuous Energy"

27. In addition to the above errors of law in the interpretation/modification of the Renewal Contract, the judgment is also internally contradictory and inconsistent in its interpretation of the notion of Continuous Energy.

28. Indeed, while the trial judge mentions repeatedly throughout the Judgment and ultimately concludes that the term Continuous Energy means all of the energy produced at the plant (§ 977), he nevertheless confirms at the same time that during the negotiation period, and certainly in the LOI, the term "Continuous Energy" was always coupled with "Excess Energy" (§ 983), which should therefore have excluded the possibility that the term Continuous Energy could include this very same excess energy.

29. However this is exactly what the Court ultimately concludes with respect to the Renewal Contract, thereby arriving at the contradictory and internally inconsistent result that the same parties would have used the same expression (i.e. "Continuous Energy") in both the Renewal Contract and the LOI, but that its meaning would somehow have changed to mean the complete opposite in the Renewal Contract i.e. that it would now incorporate excess energy.

30. Moreover, since the price paid by HQ is limited to a fixed monthly amount as per the definition of Continuous Energy (s. 7.1), the conclusion of the court that HQ is nevertheless entitled to all of the energy that can be produced at the plant should lead to the inescapable result that HQ will receive free energy when the production of the plant goes beyond the level of Continuous Energy.

31. However, the Court dismisses this concern by stating that while HQ would be allowed to take more energy in a given month, this would not change the overall annual limit fixed by the final AEB (§ 1053). The Court thus appears to recognize here that there is at least an annual limit, if not monthly, to the energy that HQ can request under the Renewal Contract. Yet the Court then seems to forgo this annual limit in the later part of its judgment since its formal conclusions make no mention of such limits and rather stipulate at § 1150 that HQ is entitled to the entire production of the Plant.

32. But either there is an annual limit or there is not. If there is an annual limit, HQ is not entitled to the entire production of the plant; If there is not, HQ will necessarily receive free energy if the plant is able to produce more than the numerical value of the final AEB. At any rate it is impossible to reconcile § 1053 of the judgment with the actual declarations granted by the Court.

33. In order to further justify that despite its interpretation, HQ would not receive free energy, the trial judge also concluded that the notion of final AEB, which establishes the numerical value of Continuous Energy, is an average of the past production of the plant that incorporates both years of low and high hydrology. However, this is a mathematical impossibility, since the level of the AEB is capped at a maximum of 32.2 TW/h under the terms of the contract (Section 9.3(ii)), thereby excluding the possibility that the AEB could conceptually represent a true average.

34. It is worth noting that the trial judge does not even mention this cap in his 200 pages judgment, despite the fact that this notion and its implication for the so-called average, was extensively debated at trial.

35. Be that as it may, the existence of excess energy above Continuous Energy is the very premise upon which HQ's declaratory judgment is based. If such energy does not exist, then the debate is moot. If it exists then it is logically impossible to deny that the

result of the court's interpretation of the contract is that it flows for free to HQ. The Court therefore failed to acknowledge the true consequences of its declaration.

E. Interruptible Power

36. In regards to the second question at issue in the declaratory judgment, namely the possibility for CF(L)Co to use idle generating capacity on an interruptible basis for sales of either recapture energy, Twinco block energy or excess energy, the Court agrees with CF(L)Co that the 300MW recapture clause does not constitute a limit on the capacity that can be used by CF(L)Co (§ 1135), which should have led the Court to conclude that, as owner of the plant, CF(L)Co was thus entitled to go above this 300MW capacity allotted in priority for its use, when idle capacity exists at the plant and is not required to meet HQ's requests.

37. However, the Court then mistakenly links this question with the question of Continuous Energy and concludes at § 1138 that having decided that no excess energy remains for CF(L)Co above Continuous Energy that it necessarily follows that it is not entitled to sell interruptible power.

38. By doing so, the Court again erroneously confuses the notions of energy and power (see for example § 1123, 1135 and 1141), which are entirely different concepts, and erroneously assumes that CF(L)Co uses HQ's energy entitlements when selling interruptible power. Yet, it was clear from the declaration requested, as well as the past practice, that CF(L)Co sought to use interruptible power solely to sell its own energy entitlements, but not HQ's energy. Even if CF(L)Co does not have access to any excess energy according to the Court, it still is the owner of the Recapture and Twinco blocks, and could therefore use idle capacity (i.e. unused turbines) to increase the rate of production and delivery of its own energy.

39. The judgment completely fails to address the question at issue between the parties in regards to interruptible power i.e. can CF(L)Co use capacity that is otherwise idle to produce energy other than HQ's entitlement, when that capacity is not needed to meet HQ's energy schedules?

40. The Court also seemingly forgets that CF(L)CO has from time to time access to additional capacity under s. 6.4 of the contract, and that it could at least make use of that capacity to sell Interruptible Power, as recognized by Hydro Quebec's own expert.

41. At the very least, the declarations should thus have been modified to confirm that CF(L)Co could use any unused Additional Capacity to sell Interruptible Power above 300MW.

F. The Conclusions of the Judgment are overbroad

42. Even assuming that the reasons of the judgment are entirely correct on both issues, which is expressly denied, the declaratory conclusions granted by the trial judge are clearly overbroad and go far beyond the positions debated between the parties and the evidence presented to the Court.

43. For instance, the declarations seem to grant to HQ an unlimited amount of power (not to be confused with energy) under the contract, while its power allotment is plainly limited to 4382.5MW (minus 300MW of Recapture) in the winter (plus 682 MW under the GWAC) and 4163.5MW in the summer (minus 300MW of Recapture) under s. Section 1.1 II (definition of "Firm Capacity") of the contract.

44. As a further example, conclusion 1150i states that the Twinco block can only be sold in Labrador West, while this remains an unresolved issue that was not and could not be before the court since it is entirely dependent on the interpretation of the Shareholders' Agreement between HQ and NLH (a party which was not even before the court), and which agreement is under the exclusive jurisdiction of the Newfoundland and Labrador courts.

45. In general, the trial judge by declaring that "*CF(L)Co shall not* benefit *from any right to any amount of power and energy generated by the Generating Station*" [our translation] save for two specific blocks, goes much beyond what was at issue between the parties and potentially affects CF(L)Co's rights as owner of the facility to other unspecified electricity products or ancillary services, all without having heard any debates on these issues.

46. Such conclusions essentially transform HQ's rights under the Renewal Contract to those of an owner of the plant, who would have all residual rights to the electricity products that can be produced at the Plant, rather than rights in its capacity as a customer of CF(L)Co, with specific entitlements that have been granted to it under the terms of the contracts. HQ's rights as a shareholder of CF(L)Co. are distinct from those under the Renewal Contract and are not in dispute in this case.

III. CONCLUSIONS SOUGHT

47. In light of the above, the Appellant will ask the Court of Appeal to:

ALLOW the appeal;

SET ASIDE the judgment in first instance and proceed to render the decision that ought to have been rendered;

GRANT the conclusions sought by Appellant in first instance, namely:

> ***DISMISS*** *Hydro-Quebec's Introductory Motion for Declaratory Judgment.*
>
> ***DECLARE*** *that under the terms of the Renewal Contract, the right of Hydro-Quebec to request and receive energy each month during the term of that contract is limited to the amount of Continuous Energy as defined under the said Renewal Contract, subject to the Minimum and Firm Capacity limits.*
>
> ***DECLARE*** *that in addition to the 300 MW of Recapture and in addition to the Twinco block, CF(L)Co is entitled under the Power Contract and the Renewal Contract to use the Churchill Falls power plant's available capacity to increase the rate of delivery of energy to third parties, provided that by so doing it continues to make available to Hydro-Quebec its requested power and energy scheduled in accordance with the terms and conditions of the contracts.*
>
> ***DECLARE*** *that, as owner and operator of the Churchill Falls power plant and holder of the hydraulic rights, CF(L)Co is entitled to operate the Churchill Falls plant as it deems appropriate and is entitled to derive revenues where possible from selling all electricity products that have not been specifically sold to Hydro-Quebec or third parties under the terms of a contract, provided that CF(L)Co fulfills its contractual obligations to Hydro-Quebec and third parties.*

THE WHOLE WITH COSTS.

Notice of this appeal is given to Me Lucie Lalonde, Hydro-Québec, to Me Pierre Bienvenu, Me Sophie Melchers, Me William Hesler, c.r., Me Dominic Dupoy, Me Horia Bundaru and Me Vincent Rochette, Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l., and to the Office of the Superior Court, district of Montreal.

TRUE COPY

Stikeman Elliott

STIKEMAN ELLIOTT LLP

MONTRÉAL, September 7, 2016

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