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Summary:

WATER MANAGEMENT AGREEMENT: "Bernard Coffey", St. John's Lawyer and member of 2041 Inc is
Thursday, November 08, 2012 09:50PM Item # 18
VOCM - St. John's

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PETE SOUCY: And welcome back and we do have Mr. Bernard Coffey with us right now. He's the St. John's lawyer and member of 2041 Energy Inc. I've been talking about. Oops. We had him. Okay he's down there. My mistake. All right are you there, Mr. Coffey.

BERN COFFEY: I certainly am, Mr. Soucy and how are you?

PETE SOUCY: Wonderful. I really appreciate you taking the time to join us tonight.

BERN COFFEY: Go ahead.

PETE SOUCY: So listen we don't have, we have a bit of time and want to use it efficiently. We want to explain in as simple terms as we can what the issue is with the water management rights and what the potential fallout could be.

BERN COFFEY: Okay ah, to that is very difficult . .

PETE SOUCY: I know.

BERN COFFEY: . . . first of all. I mean I won't, people have to understand, for example, I was interviewed by a CBC Reporter out Halifax last week and I spent an hour and a half on the phone talking to him.

PETE SOUCY: Uh-hum.

BERN COFFEY: Taking him through the background.

PETE SOUCY: Uh-hum.

BERN COFFEY: So it's very difficult to do it in, you know, a matter of minutes. But I will say this okay: I think it's important for people to understand that, and many people of course because of their age don't because it happened, you know, before they were born or it happened when they were very young. But there was a significant amount of litigation involving the Upper Churchill as it's called back in the late '70s and early '80s.

BERN COFFEY: And in fact all the way through the '80s. And important decision occurred in 1984 when the Supreme Court of Canada unanimously overturned a Newfoundland Court of Appeal decision and, uhm, so they ruled to the effect that the Newfoundland Legislature at the time in using the legislation that they tried to use at the time could not undo the Upper Churchill contract. And the, my point being and the reason I've raised the matter now is is that it's not clear, obviously I don't believe it's clear that the water management agreement which the Newfoundland PUB imposed on CFLCo and Nalcor . .

PETE SOUCY: Uh-hum.

BERN COFFEY: . . . would be able to be implemented over Hydro Quebec's objection. And it's noteworthy that Hydro Quebec has most recently last week, in fact, told CBC in Halifax . .

PETE SOUCY: Uh-hum.

BERN COFFEY: . . . that they weren't going to say anything at this point. They wanted to say out of it.

PETE SOUCY: Right.

BERN COFFEY: For now. At least for now presumably.

PETE SOUCY: Right.

BERN COFFEY: The point being that they didn't say that we will not get involved. They just simply said we're not going comment at this point. Pete, it's important for people to understand that the Quebec contracts, Hydro Quebec contracts for power in Labrador are contracts for power, not just power, but power from the Churchill Falls plant.

PETE SOUCY: Right from that Upper Churchill hydro . .

BERN COFFEY: That plant.

PETE SOUCY: . . . generating plant, yeah.

BERN COFFEY: They are entitled to power from that plant.

PETE SOUCY: Right.

BERN COFFEY: They're not entitled to power from Muskrat Falls or from Gull Island.

PETE SOUCY: Uh-hum.

BERN COFFEY: And what the man, the water management agreement, you know, ostensibly is going to provide for is a regime whereby some of the electricity that Hydro Quebec would get after Muskrat Falls was built was presumably come from Muskrat Falls. And that of course would arguably breach Hydro Quebec's right to get all of its electricity . .

PETE SOUCY: Uh-hum.

BERN COFFEY: . . . under its power contracts from, from the plant at Churchill Falls, the Upper Churchill. Now this is one thing. There are . .

PETE SOUCY: So if the province, so if the province wanted to supplement that they owe Hydro Quebec with power from Muskrat Falls or down the road Gull Island, Quebec has the right to say no, our power is guaranteed to come from the Upper Churchill.

BERN COFFEY: Oh that is one certainly. I mean just from me looking at it that, that whether Quebec would argue, that Hydro Quebec would argue that one, I don't know. But it is certainly that occurred to me just in reading the contract.

PETE SOUCY: Right.

BERN COFFEY: Okay the contracts. And reading the water management agreement. In fact, Hydro Quebec would be, in that context taking the position we want the water management agreements enforced literally.

PETE SOUCY: Right.

BERN COFFEY: Ah and therefore, now the effect that has is this: is that unless this trading of electricity can occur between a plant a Muskrat Falls or the plants on the Lower Churchill and the plant on the Upper Churchill . .

PETE SOUCY: Uh-hum.

BERN COFFEY: . . . this trading of electricity back and forth to each other's customers.

PETE SOUCY: Uh-hum.

BERN COFFEY: Without that the water management agreement really doesn't work.

PETE SOUCY: Right.

BERN COFFEY: And people might say well okay what does that all mean? Well the, the, Nalcor itself back in 2009 told our PUB about the great difficulty that one would have developing electrical generation on the Lower Churchill without a water management agreement.

PETE SOUCY: Yeah.

BERN COFFEY: It's very problematic.

PETE SOUCY: So we have to get them to agree in writing that things can be handled the way that the water management agreement says before we really can . .

BERN COFFEY: . . . trading this electricity, yes.

PETE SOUCY: Before we can be comforter, comfortable and confident in going ahead and that there's not going be any issue. Now, Mr. Coffey . .

BERN COFFEY: Or have it, or we should have the courts decide it beforehand.

PETE SOUCY: Right.

BERN COFFEY: Before spending billions of dollars, one way or the other.

PETE SOUCY: Yeah.

BERN COFFEY: Get Hydro Quebec to agree . .

PETE SOUCY: Yeah.

BERN COFFEY: . . . specifically agree or failing that have the courts spell it out.

PETE SOUCY: Okay.

BERN COFFEY: One way or the other. Who's, who has which rights.

PETE SOUCY: I'm in a bit of a dilemma here because we have . . .

BERN COFFEY: Yeah.

PETE SOUCY: . . . literally two minutes left and I've got Mr. Gilbert Bennett on the other line wanting to . .

BERN COFFEY: Okay.

PETE SOUCY: . . . respond.

BERN COFFEY: Sure, go ahead.

PETE SOUCY: So what I'm, what I'm going to do is attempt to bring him on here with us. I've got to lock you in is what I'm told.

BERN COFFEY: Sure.

PETE SOUCY: Then I've got to bring Mr. Bennett on. Are you there, Mr. Bennett?

GILBERT BENNETT: Hi, Pete, how are you?

PETE SOUCY: How you doing? Like I say we literally have two minutes. So it's unfortunate we didn't get to this earlier in the show. But go ahead.

GILBERT BENNETT: No problem. And I think the key point here that, that Mr. Coffey is, is not, not communicating is that from an engineering perspective the power flows from Churchill Falls to the Hydro Quebecs . .

PETE SOUCY: Oh I'm sorry, oh man. We, we're going get, no I think we're going run out of time. Mr. Coffey you're there.

BERN COFFEY: Yes I am.

PETE SOUCY: We made a mistake here. We cut off Mr. Bennett. We're going try to get him back now.

BERN COFFEY: Sure.

PETE SOUCY: In this little amount of time we have. That was unfortunate given that we don't have a whole lot of time left. We may have to pick this up on Monday evening if possible. I'm just looking at Greg here now to see if there's any chance we can get Mr. Bennett back in time. It would be good if he could make at least one point. Uhm . . . And there, there he is. Sorry about that. We've got you.

GILBERT BENNETT: No problem. Okay the key point, the key point here is that Hydro Quebec gets what they've asked for under the power contract. The water management agreement specifically states just like the legislation, that, that enable the water management that we can't interfere with the Hydro Quebec contract. So Hydro Quebec has their deliveries and from an engineering perspective we manage the operation of the facilities within our province and that's a key engineering point, not a, not a legal one.

PETE SOUCY: Okay.

BERN COFFEY: My, my only comment on that would be, you know, that they did bargain for and have the right to get their power from Churchill Power. Now whether you want to substitute Muskrat Falls power for that and whether they will accept that or not, I don't know. Whether you can force them to accept it or get a court to force them to is the issue.

GILBERT BENNETT: You know, I think . .

BERN COFFEY: Before spending billions, I would suggest you attend to that.

GILBERT BENNETT: Yeah well with all due respect, I think the difficulty is they get electrons from the Newfoundland and Labrador system over the Churchill Falls interconnection. And that's what's required under the power contract from an engineering perspective and that's what they'll receive. So we, we make our deliveries from Churchill Falls over the transmission line to the appropriate delivery point and that's what they need under the contract.

PETE SOUCY: Mr. Bennett, you don't see an issue here. You don't see a legal uncertainty at all?

GILBERT BENNETT: No issue at all legally. We have multiple legal opinions on this point. We have no issue commercially. We understand the contract. And from a, from an engineering perspective we understand our delivery obligations. We've completed extensive modeling on the, on the hydrology and the system, the reservoir operations and we're confident that we can deliver Muskrat Falls power . .

PETE SOUCY: Okay.

GILBERT BENNETT: And meet Hydro Quebec's needs.

BERN COFFEY: Well Mr. . . [Inaudible]

PETE SOUCY: Last word, last word to Mr. Coffey.

BERN COFFEY: My only word would be this, Mr. Bennett, if you're that confident all right, we'll take, I would suggest you take it to court and in any case if you're wrong, if it turns out you're wrong and you're challenged and the courts say you're wrong are your lawyers, are your lawyers going pay or pick up the tab? That really is the issue.

GILBERT BENNETT: The key issue here . .

PETE SOUCY: Gentlemen, I'm afraid we're going have to leave it there. Let's pick it up again some other time. I really apologize we're out of time. I thank you both for joining us this evening.

GILBERT BENNETT: Thank you, Pete.

BERN COFFEY: Good night, Mr. Bennett. Good night, Mr. Soucy.

PETE SOUCY: Okay bye-bye. And that's too bad that we have lost our time there and we have to end it because that would have been a great conversation. And perhaps we'll be able to put that back together again at another time. Certainly hope so.