

From: English, Tracy
Sent: Monday, July 22, 2013 7:05 PM
To: Thompson, Robert; Bown, Charles W.; Stanley, Todd; Ed Martin
Cc: Tulk, Jennifer L; Carroll, Lynette
Subject: RE: HQ

Robert

I like the reference to COF. Could we go a bit further at state that:

3. The case seems tactically timed on the eve of the Council of the Federation meeting at which Premiers are working diligently to develop a national energy strategy. As a co-lead of the COF Energy Strategy, we have been working to address issues of national importance, including open and non-discriminatory access for the transmission of electricity within Canada. While we are working to build a national energy strategy, Quebec has chosen not to participate in the energy strategy work. Now, Quebec also seems intent on stirring up resentment regarding Churchill Falls to justify its case.

From: Thompson, Robert
Sent: Monday, July 22, 2013 6:36 PM
To: Bown, Charles W.; English, Tracy; Stanley, Todd; Ed Martin
Cc: Tulk, Jennifer L; Carroll, Lynette
Subject: Fwd: HQ

Folks,

The Premier wants to know what lines of attack she could take in response to HQ if she wished react with strength tomorrow. I have mused on a few message below. I would appreciate your feedback to strengthen these messages, suggest additional ones, or point out why they are weak. I will need your feedback tonight and then we can hand over to the communications folks to finalize. Thanks.

Robert

Robert Thompson
Clerk of the Executive Council and
Secretary to Cabinet

Begin forwarded message:

From: "Thompson, Robert" <rthompson@gov.nl.ca>
Date: July 22, 2013 5:00:54 PM EDT
To: "Kathy Dunderdale" <dunderdale@>
Cc: "Tulk, Jennifer L" <JenniferTulk@gov.nl.ca>, "Carroll, Lynette" <lynettecarrroll@gov.nl.ca>
Subject: HQ

Premier,

I agree. Strength better than indecisive. Working very fast, There are several lines of reply, each of which needs some development. I will ask NR and Nalcor for reaction. I presume you want to react by the morning.

1. This case is calculated to create uncertainty about Nalcor's management of hydro projects. It is ill-founded and represents aggression rather than sound legal analysis.
2. The case is timed to detract from the positive news about Nova Scotia approval of the project;
3. The case seems tactically timed on the eve of the Council of the Federation meeting at which Premiers are trying to build a national energy strategy. Though Quebec attends COF, it has chosen not to participate in the energy strategy work, and seems intent on stirring up resentment regarding Churchill Falls to justify its case;
4. HQ needs to get its facts straight. The HQ news release declares that "CF(L)Co may not, under any circumstances, sell quantities exceeding 300 MW to a third party, until expiry of the Contract.". Yet, the Nalcor annual report 2012 states that, "Churchill Falls sells 300 MW annually, the maximum provided for under the Power Contract, to Hydro for use in Labrador and export sales (recall energy). Churchill Falls also sells 225 MW (approximately 1.8 TWh) to Twin Falls to service the mining industry in Labrador West. In addition, Churchill Falls earns revenue from Hydro-Quebec under a Guaranteed Winter Availability Contract (GWAC). GWAC was signed with Hydro-Quebec in 1998 and provides additional revenue for the sale of up to 682 MW of seasonal availability to Hydro-Quebec during the months of November through March until the end of the Power Contract in 2041."
5. We can have confidence in Nalcor's legal team and the legal underpinnings of the water management regime of the province. Water management rules are governed by the law of Newfoundland and Labrador, not Quebec. And the rules approved for the Churchill River accommodate all the requirements of the Upper Churchill contract, while also supporting the business assumptions for Muskrat Falls.

Robert Thompson
Clerk of the Executive Council and
Secretary to Cabinet


On Jul 22, 2013, at 4:13 PM, "Kathy Dunderdale" <dunderdale@> wrote:

I think we should come out swinging on this. We cannot appear laid back on this issue.
Thoughts?

Sent from my BlackBerry 10 smartphone on the Bell network.

From: Thompson, Robert
Sent: Monday, July 22, 2013 5:23 PM
To: dunderdale@; Lynette Carroll; jennifertulk@gov.nl.ca
Subject: Fw: <http://news.hydroquebec.com/en/press-releases/hq/389/hydro-quebec-petitions-the-quebec-superior-court-to-confirm-certain-of-its-contract-rights/>

Pls see below the news release that explains the 2 items HQ is referring to court for clarification. They both address the rights of HQ to receive power supply. The news release says that HE is disagreeing with recent positions taken by CFLCO.



That's about all we know which is not much. The timing is interesting on the same day as the UARB decision and the same week as COF. It also occurs at a sensitive time as financial institutions were finalizing their bids for our debt placement. It is very aggressive to say the least.

You may have media lines determined. Seems we should express confidence in the legal structure of energy operations of CFLCO, not connect it yet to MF, though if asked if there is a connection we could withhold comment until our lawyers provide an assessment.

Robert

From: English, Tracy
Sent: Monday, July 22, 2013 1:33 PM
To: Thompson, Robert
Subject: FW: <http://news.hydroquebec.com/en/press-releases/hq/389/hydro-quebec-petitions-the-quebec-superior-court-to-confirm-certain-of-its-contract-rights/>

FYI

From: Bown, Charles W.
Sent: Monday, July 22, 2013 3:03 PM
To: English, Tracy
Subject: Fw: <http://news.hydroquebec.com/en/press-releases/hq/389/hydro-quebec-petitions-the-quebec-superior-court-to-confirm-certain-of-its-contract-rights/>

Please distribute..

Sent from my BlackBerry 10 smartphone on the Bell network.

From: GBennett@nalcorenergy.com
Sent: Monday, July 22, 2013 3:00 PM
To: Charles Bown
Subject: <http://news.hydroquebec.com/en/press-releases/hq/389/hydro-quebec-petitions-the-quebec-superior-court-to-confirm-certain-of-its-contract-rights/>

Charles,

This was just issued by HQ...

G

Press Releases

Churchill Falls Contract between Hydro-Québec and CF(L)CoHydro-Québec petitions the Québec Superior Court to confirm certain of its contract rights

Hydro-Québec is filing a motion today with the Québec Superior Court to obtain a declaratory judgment. The company is asking the Court to confirm that two recent positions taken by CF(L)Co with respect to the Churchill Falls Contract (the Contract) are ill-founded. The Québec Superior Court has exclusive jurisdiction to rule on any dispute arising out of the Contract. It should be noted that the Contract will be automatically renewed in 2016, for a 25-year period ending in 2041.

1 - Energy deliveries to which Hydro-Québec is entitled

Under the terms of the Contract which Hydro-Québec and CF(L)Co concluded in 1969, Hydro-Québec has certain essential rights, including:

- The exclusive right to purchase virtually all of the power and energy produced by Churchill Falls Generating Station until August 31, 2041;
- The right to benefit from operational flexibility.

According to the recent positions taken by CF(L)Co, Hydro-Québec would, for the entire Contract renewal period (2016 to 2041), be entitled only to fixed monthly blocks of energy. This position would deprive Hydro-Québec of the operational flexibility to determine the quantities of energy it can request from CF(L)Co. This operational flexibility enables Hydro-Québec to coordinate the operation of Churchill Falls with its entire generating fleet, and to do so both on a seasonal and a multi-year basis.

In Hydro-Québec's opinion, CF(L)Co's position is incompatible with several provisions of the Contract. Hydro-Québec wishes to have the Court confirm that it will not be obliged to limit its requests for energy deliveries to fixed monthly blocks from 2016 to 2041.

2 - Sale of quantities exceeding 300 MW by CF(L)Co

Under the Contract, until 2041, CF(L)Co has the right to recapture a 300-MW block of power and energy and sell it to a third party. However, this right has limitations: CF(L)Co may not, under any circumstances, sell quantities exceeding 300 MW to a third party, until expiry of the Contract. Yet, since June of 2012, CF(L)Co has sold quantities of more than 300 MW to Newfoundland and Labrador Hydro (NLH), a related provincial Crown corporation, causing the interruption of deliveries scheduled by Hydro-Québec under the Contract.

Hydro-Québec therefore wishes to confirm that, as long as the Contract is in effect, namely until August 31, 2041, CF(L)Co may not sell quantities of power and energy exceeding 300 MW to a third party, including NLH.

Information:

Gary Sutherland

Hydro-Québec

514 289-4418

sutherland.gary@hydro.qc.ca

<ATT001.jpg> **Gilbert J. Bennett, P. Eng.**
Vice President
Nalcor Energy - Lower Churchill Project
t. 709 737 1836
e. gbennett@nalcorenergy.com
w. nalcorenergy.com
1.888.576.5454

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