


**From:** Bown, Charles W.  
**Sent:** Monday, July 22, 2013 8:58 PM  
**To:** Thompson, Robert  
**Cc:** English, Tracy; Stanley, Todd; Ed Martin; Tulk, Jennifer L; Carroll, Lynette; Gilbert Bennett  
**Subject:** Re: HQ

Robert

I agree with the approach and tone. There are a couple additional points below that I've added which are meant to be incremental to those you have provided. Separately, I've asked Gilbert to review your #4 to ensure that you've hit the right point.

Charles

1. the timing of this move by HQ is not a coincidence. The UARB announced on last Friday that they were making this announcement today and it has been widely known for many many months that the UARB was going to issue its report at the end of July.
2. this is an attempt by HQ to undermine a project when they have long coveted this project as one they would prefer develop with Nalcor on their own terms.
3. we have successfully broken the geographic stranglehold that Quebec has long held against developing the lower Churchill River. This is more spite that substance.
4. in 2007, this government announced its intention to coordinate water management on rivers in the province. Amendments to the Electrical Power Control Act were passed and Regulations were established. In November 2009, Nalcor applied to the PUB to establish an agreement for water management on the Churchill River 
5. it is also import to remember that Nalcor is seeking a ruling in Quebec Superior Court against the Regie d'energie's decisions to support HQ in restricting Nalcor's ability to access transmission in Quebec for the Gull Island Project.
6. also, CFLCo has brought an action against HQ in Quebec Superior Court alleging that HQ has not acted in "good faith" with respect to the 1969 Power Contract. This action is expected to be heard in court this September.
7. HQ's actions yesterday, in the context of their long desire to control power development in Labrador and in light of court actions being brought against them by Nalcor and CFLCo, are not surprising. This is a desperate act by a company used to getting its own way.
8. we are interested in an open transmission grid where all Canadians have the opportunity to benefit from renewable hydroelectric power. Nova Scotia, Emera, and the Government of Canada share this vision. That's why we are moving ahead with this project. We are interested in nation building, not dividing a country.

Sent from my iPad

On 2013-07-22, at 6:35 PM, "Thompson, Robert" <[rthompson@gov.nl.ca](mailto:rthompson@gov.nl.ca)> wrote:

Folks,

it the

Robert

Robert Thompson  
Clerk of the Executive Council and  
Secretary to Cabinet

Begin forwarded message:

**From:** "Thompson, Robert" <[rthompson@gov.nl.ca](mailto:rthompson@gov.nl.ca)>  
**Date:** July 22, 2013 5:00:54 PM EDT  
**To:** "Kathy Dunderdale" <[dunderdale@](mailto:dunderdale@)>  
**Cc:** "Tulk, Jennifer L" <[JenniferTulk@gov.nl.ca](mailto:JenniferTulk@gov.nl.ca)>, "Carroll, Lynette" <[lynettecarrroll@gov.nl.ca](mailto: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@\[REDACTED\]](mailto:dunderdale@[REDACTED])> wrote:

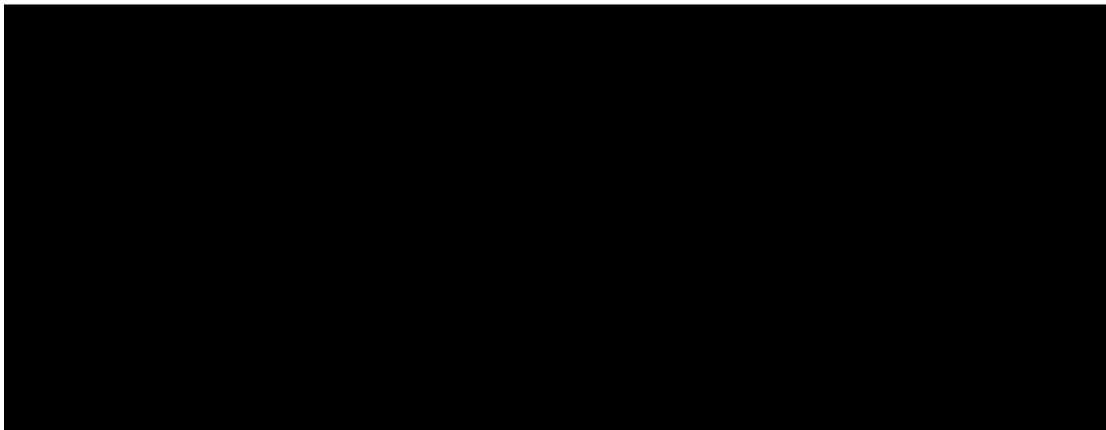
I think we should come out swinging on this. We cannot appear laid back on this issue. Thoughts?

Sent from my BlackBerry 10 smartphone on the Bell network.

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**From:** Thompson, Robert  
**Sent:** Monday, July 22, 2013 5:23 PM  
**To:** [dunderdale@\[REDACTED\]](mailto:dunderdale@[REDACTED]); Lynette Carroll; [jennifertulk@gov.nl.ca](mailto: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

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**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

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**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.

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**From:** [GBennett@nalconenergy.com](mailto:GBennett@nalconenergy.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

Montréal, July 22, 2013

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

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<ATT001.jpg> **Gilbert J. Bennett, P. Eng.**  
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