

**From:** Stanley, Todd  
**Sent:** Tuesday, July 23, 2013 5:45 AM  
**To:** Noble, Paul  
**Subject:** Fw: I suggest you connect tonight with communication folks. From NR and nalcor to get them plugged into this material. Nalcor needs to be reviewing this at legal and strategy level.

Department of Justice  
Government of Newfoundland and Labrador  
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**From:** Thompson, Robert  
**Sent:** Tuesday, July 23, 2013 12:21 AM Newfoundland Standard Time  
**To:** English, Tracy  
**Cc:** Tulk, Jennifer L; Ed Martin <[EMartin@nalcenergy.com](mailto:EMartin@nalcenergy.com)>; Bown, Charles W.; Stanley, Todd  
**Subject:** Re: I suggest you connect tonight with communication folks. From NR and nalcor to get them plugged into this material. Nalcor needs to be reviewing this at legal and strategy level.

Here is a consolidation of the text from several people today. I have not seen anything from Nalcor.

Therefore, please have this reviewed by Nalcor and government lawyers before it goes out. (Jennifer, please put a time limit on further discussion so we can work with a goal set by the Premier.)

Robert

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.

The timing of this move by HQ is not a coincidence. The Nova Scotia UARB announced on last Friday that it was making its 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. The Quebec case is timed to detract from the positive news about Nova Scotia approval of the project;

The case also seems tactically timed on the eve of the Council of the Federation meeting at which Premiers are working diligently to build a national energy strategy. As a co-lead of the national 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. Though Quebec attends COF, it has chosen not to participate in the energy strategy work. Quebec seems intent on stirring up resentment regarding Churchill Falls to justify its non-participation in the energy strategy.

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."

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.

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 after HQ refused to allow CFLCO to conclude an agreement with Nalcor voluntarily. PUB approved the water management agreement though, interestingly, when presented with an opportunity to participate in the PUB process, HQ sent a letter to PUB in Dec 2009, stating that it did not wish to intervene in the process. So why is it being so aggressive now?

This is an attempt by HQ to undermine a project when they have long coveted the Lower Churchill as one they would prefer develop with Nalcor on their own terms.

We have successfully broken the geographic stranglehold that Quebec has long held against developing the lower Churchill River. Quebec's action is more spite than substance. A consultant for the UARB put it this way: "Nalcor, which again is contributing the most and taking the most risk, is gaining a very significant strategic benefit with respect to its future dealings with Quebec on transmission-related issues, and it receives an immediate alternate route to the limited transmission capacity it currently enjoys."

It is also important to remember that Nalcor is seeking a ruling in Quebec Superior Court against the Regie d'energie's decisions that restrict Nalcor's ability to access transmission in Quebec for the Gull Island Project. 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. Quebec's action yesterday may possibly be HQ pursuing a legal strategy in relation to those cases.

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.

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.

Robert Thompson  
Clerk of the Executive Council and  
Secretary to Cabinet

On Jul 22, 2013, at 6:30 PM, "English, Tracy" <[TEnglish@gov.nl.ca](mailto:TEnglish@gov.nl.ca)> wrote:

I will send along to our communications officials and nalcor. Have you heard from anyone else?

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**From:** Thompson, Robert

**Sent:** Monday, July 22, 2013 07:53 PM

**To:** Tulk, Jennifer L; English, Tracy

**Subject:** I suggest you connect tonight with communication folks. From NR and nalcor to get them plugged into this material. Nalcor needs to be reviewing this at legal and strategy level.