

**Information Note
Cabinet Secretariat**

Title: Muskrat Falls Project CH0032 Amending Agreement

Issue: Update on Nalcor negotiations with Andritz Hydro Canada Inc. (Andritz) to develop an Amending Agreement (Agreement) for contract CH0032.

Background and Current Status:

- Andritz is a primary contractor for two major work scopes for the Muskrat Falls Project including: CH0030 (supply and install of turbines and generators) and CH0032 (supply and install of powerhouse and spillway hydro mechanical equipment). Both contracts were awarded in 2013.
- Andritz has claimed that the CH0032 Contract delivery scheduling has been impacted by Astaldi powerhouse and transition dam construction delays. Installation of supplied components cannot occur until required prior construction work is complete. Andritz has requested various project change orders approvals from Nalcor to compensate for the delays.
- In addition, in May of 2016, Andritz filed a Statement of Claim with the Newfoundland and Labrador Provincial Courts to recover its costs associated with the schedule delay of the CH0032 work scope. Andritz also filed an Extension of Time claim for both CH0030 and CH0032. Nalcor advises that the claim for CH0030 was resolved in July of 2017 and reviewed with the necessary stakeholders and approved within the June 2017 project budget. CH0032 remained active.
- While CH0032 commercial matters are active in the courts, commercial discussions have also been ongoing to settle outstanding issues. On November 1, 2017 a representative of the Muskrat Falls Oversight Committee and a representative from Natural Resources were briefed by Nalcor on the status of negotiations to settle claims with Andritz and a pending CH0032 Amending Agreement. In early November 2017, CH0032 commercial matters went to mediation.

Analysis:

- Nalcor advised that the settlement value for the CH0030 Extension of Time claim settled in July 2017 was approximately \$21 million and was already accounted for in the June 2017 project budget.
- Nalcor advises that the total claim value by Andritz associated with CH0032 is approximately \$129 million. Nalcor advised that the project team negotiators were given an internal mandate to negotiate on legitimate costs and a ceiling of approximately [REDACTED] as the Andritz claim for \$129 million was significantly inflated.
- The pending Agreement highlights include:
 - A total of [REDACTED] in settlement costs borne by Nalcor of which [REDACTED] will be payable within 30 days of execution of the Agreement;

- Preservation and extension of Liquidated Damages clauses and Letter of Credit held by Nalcor from the original agreement;
 - Adherence to the project milestone schedule outlined in the Nalcor June 2017 project budget update and a performance bonus for Andritz of approximately \$2 million to achieve key project milestone schedule dates; and
 - Andritz dropping all Statements of Claim relevant change orders against Nalcor.
- Under the settlement, the parties are required to develop a final Agreement by November 15, 2017.
 - Costs associated with the CH0032 settlement were budgeted for and included within the June 2017 project budget. These settlement costs will be drawn from the CH0032 work scope budget (approximately [REDACTED]) and the remaining balance from the planned contingency budget (approximately [REDACTED]). There is no new cost associated with the settlement that was not already included in the June 2017 project budget update.

[REDACTED] In December of 2016, the Astaldi Completion Agreement resolved all commercial matters between Nalcor and Astaldi up to that point in time.

- This new pending Agreement secures Andritz through to project completion of the CH0032 contract.
- There are no immediate plans by Nalcor to communicate details of this settlement at this time. In the June 2017 project budget update, Nalcor did indicate that part of the reason for project cost escalation was due to commercial disputes as a result of project delays and that additional cost would be incurred in this regard.
- Plans by Andritz for communication of the Agreement are unclear at this time. It is important to note that once an agreement is finalized, there may be requirements to report financial amounts in respective financial statements.
- Nalcor will be sharing details of the pending Agreement with the Government of Canada (NRCan) and the Independent Engineer (IE) on Thursday or Friday of this week. Nalcor advises there are no approvals required by the Government of Canada or IE.

Action Being Taken:

- NR will work with Nalcor to develop a communications plan regarding the Agreement.
- NR/Nalcor to seek Andritz's communication plan on the Agreement.
- Nalcor to brief Minister of NR on this pending Agreement.

Prepared/Approved by:

P. Carter/C. Bown

Reviewed by:

C. Osmond/K. Quinlan, Cabinet Secretariat

Approval:

A.M. Hann

November 8, 2017

Ann Marie Hann

BN-2017-00311
 Distribution List
 Premier G. Mercer
 K. Chaytor A M Hann
 B. Day J. Buckle
 K. Quinlan K. Stone
 P. Miles J. Samms
 M. Cannizzaro J. Card
 Date: November 9, 2017

Information Note Cabinet Secretariat

Title: Muskrat Falls Project CH0032 Amending Agreement

Issue: Update on Nalcor negotiations with Andritz Hydro Canada Inc. (Andritz) to develop an Amending Agreement (Agreement) for contract CH0032.

Background and Current Status:

- Andritz is a primary contractor for two major work scopes for the Muskrat Falls Project including: CH0030 (supply and install of turbines and generators) and CH0032 (supply and install of powerhouse and spillway hydro mechanical equipment). Both contracts were awarded in 2013.
- Andritz has claimed that the CH0032 Contract delivery scheduling has been impacted by Astaldi powerhouse and transition dam construction delays. Installation of supplied components cannot occur until required prior construction work is complete. Andritz has requested various project change orders approvals from Nalcor to compensate for the delays.
- In addition, in May of 2016, Andritz filed a Statement of Claim with the Newfoundland and Labrador Provincial Courts to recover its costs associated with the schedule delay of the CH0032 work scope. Andritz also filed an Extension of Time claim for both CH0030 and CH0032. Nalcor advises that the claim for CH0030 was resolved in July of 2017 and reviewed with the necessary stakeholders and approved within the June 2017 project budget. CH0032 remained active.
- While CH0032 commercial matters are active in the courts, commercial discussions have also been ongoing to settle outstanding issues. On November 1, 2017 a representative of the Muskrat Falls Oversight Committee and a representative from Natural Resources were briefed by Nalcor on the status of negotiations to settle claims with Andritz and a pending CH0032 Amending Agreement. In early November 2017, CH0032 commercial matters went to mediation.

Analysis:

- Nalcor advised that the settlement value for the CH0030 Extension of Time claim settled in July 2017 was approximately \$21 million and was already accounted for in the June 2017 project budget.
- Nalcor advises that the total claim value by Andritz associated with CH0032 is approximately \$129 million. Nalcor advised that the project team negotiators were given an internal mandate to negotiate on legitimate costs and a ceiling of approximately [REDACTED] as the Andritz claim for \$129 million was significantly inflated.
- The pending Agreement highlights include:
 - A total of [REDACTED] in settlement costs borne by Nalcor of which [REDACTED] will be payable within 30 days of execution of the Agreement;

- Preservation and extension of Liquidated Damages clauses and Letter of Credit held by Nalcor from the original agreement;
 - Adherence to the project milestone schedule outlined in the Nalcor June 2017 project budget update and a performance bonus for Andritz of approximately \$2 million to achieve key project milestone schedule dates; and
 - Andritz dropping all Statements of Claim relevant change orders against Nalcor.
- Under the settlement, the parties are required to develop a final Agreement by November 15, 2017.
 - Costs associated with the CH0032 settlement were budgeted for and included within the June 2017 project budget. These settlement costs will be drawn from the CH0032 work scope budget (approximately [REDACTED]) and the remaining balance from the planned contingency budget (approximately [REDACTED]). There is no new cost associated with the settlement that was not already included in the June 2017 project budget update.
 - [REDACTED] In December of 2016, the Astaldi Completion Agreement resolved all commercial matters between Nalcor and Astaldi up to that point in time.
 - This new pending Agreement secures Andritz through to project completion of the CH0032 contract.
 - There are no immediate plans by Nalcor to communicate details of this settlement at this time. In the June 2017 project budget update, Nalcor did indicate that part of the reason for project cost escalation was due to commercial disputes as a result of project delays and that additional cost would be incurred in this regard.
 - Plans by Andritz for communication of the Agreement are unclear at this time. It is important to note that once an agreement is finalized, there may be requirements to report financial amounts in respective financial statements.
 - Nalcor will be sharing details of the pending Agreement with the Government of Canada (NRCan) and the Independent Engineer (IE) on Thursday or Friday of this week. Nalcor advises there are no approvals required by the Government of Canada or IE.

Action Being Taken:

- NR will work with Nalcor to develop a communications plan regarding the Agreement.
- NR/Nalcor to seek Andritz's communication plan on the Agreement.
- Nalcor to brief Minister of NR on this pending Agreement.

Prepared/Approved by: P. Carter/C. Bown

Reviewed by: C. Osmond/K. Quinlan, Cabinet Secretariat

Approval: A.M. Hann

November 8, 2017