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Subject: URGENT: Canada/CBB Memo for Nik/MWH on IE Report
Date: Wednesday, November 20, 2013 11:25:50 AM
Attachments: [_png](#)
[M_Consolidated_Comments_Instructions_Independent_Engineer_Nov_20_2013.DOCX](#)
Importance: High

Paul/Gilbert/Lance,

See below and attached. As discussed, we need to get our comments out tonight as well. To the extent ours align with / address Canada/CBB's comments that might be helpful.

If you think it would be worthwhile for us to get together this afternoon on this, I can come over to Torbay Rd. Let me know.

Jim



James Meaney, CFA
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You owe it to yourself, and your family, to make it home safely every day. What have you done today so that nobody gets hurt?

----- Forwarded by James Meaney/NLHydro on 11/20/2013 11:16 AM -----

From: "Manzer, Alison" <amanzer@casselsbrock.com>

To: David Pyper <dpyper@blairfranklin.com>, "JamesMeaney@nalcenergy.com" <JamesMeaney@nalcenergy.com>, "Kapoor, Anoop" <Anoop.Kapoor@NRCan-RNCan.gc.ca>, "Krupski, Joseph" <Joseph.Krupski@NRCan-RNCan.gc.ca>, "Newman, Charles" <CNewman@CasselsBrock.com>, John Medland <jmedland@blairfranklin.com>, "Anne Boudreau" <anne.boudreau@ic.gc.ca>, "Lazarus, Rhonda" <Rhonda.Lazarus@justice.gc.ca>

Date: 11/20/2013 10:57 AM

Subject: Memo for Nik - MWH - re report next steps [IWOV-Legal.FID1640195]

As instructed I have asked Nik for a call/ meeting to discuss report status and next steps – will advise as soon as I hear from him – trying for noon tomorrow. Idea is to send a memo ahead of time to outline the instructions and issues to have a coordinated approach.

Jim I know you team is pulling together the materials and comments on your end.

We also want a Canada view presented. This is a start only – has CBB and Anoop – David please revise as you see fit. Jim letting you see this start to assist in understanding our view of things. and hopefully to coordinate the ask and delivery, it may change considerably – I want to send to NIK by end of day.

 <p>CASSELS BROCK LAWYERS</p>	<p>Alison Manzer Direct: 416 869 5469 • Fax: 416 350 6938 • amanzer@casselsbrock.com 2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, Canada M5H 3C2 www.casselsbrock.com</p>
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M Consolidated Comments Instructions Independent Engineer Nov 20 2013.DOCX



DATE	November 20, 2013	MEMORANDUM
TO	File	
FROM	Alison R. Manzer	
OUR FILE #	27426-4	
RE	Consolidated Comments and Instructions to Independent Engineer November 20, 2013	

Lower Churchill Project

Specific Instructions

1. Scheduling: Extensive time has been spent on the scheduling issue, and we believe at this point in time it is suitable to focus on an assessment of the construction scheduling and its achievability rather than methodology. We recognize that there is a difference of view in the scheduling methods, one being fully automated and the other with manual interface, and we understand the difference in these scheduling models. If there is a specific, independent engineer level, concern or comment that should be made as to the difference between these two scheduling methods we would appreciate hearing that, preferably before the issuance of the report to consider its inclusion in the report. Our concerns however for the report are that we understand whether the schedule as presently outlined, with its milestone key dates, is achievable. As an instance, we note the river diversion was delayed one year, but the related construction achievement dates were only moved out four months, we would like commentary as to whether completion dates remain reasonable based upon the scheduling milestones that have been identified. The focus which would be most useful at this point in time would be general comment on the achievability of the schedule and its reasonableness, advice as to any controls which might be suitable, particularly given the contractors chosen, and we do not believe that a continued focus on a difference in methodology for scheduling is useful other than if specific impacts can be identified and outlined.
2. Northspur: We are all anxious that we achieve a clean report with regard to the Northspur and its stabilization. Of course we will not pre-decide what might be said, but would like to understand whether you need any further information or materials to be able to comment on the Northspur, as we would like to expedite the receipt of those materials to ensure we get suitable commentary in the report.
3. Contingency: We would like more clarity around the reporting comments on contingency, we would like to have a better view of pressures you see being placed on the contingency, a more directed focus on the adequacy of the contingency based upon the cost analysis, outlined subsequently; we believe that the contingency discussion should be more focused to the project than it is presently (generally just a comment on industry usual rather than a specific issue identification) identifying stress points and expected scope of calls on contingency.



4. Costs: We need to complete a reconciliation of the costs as they have come together against DG3, and are looking for direct reporting input to do so from Nalcor. We are aware that the delivery of information is with Nalcor at this point in time, and are aware of the cost overrun identified for the Astaldi contract. We are also aware that there is a modeling exercise coming up shortly, which we believe may be useful for you to attend to. Recognizing that this is a project which has a full Province of Newfoundland equity backing, that is the Province of Newfoundland must pay all costs to completion and commissioning of this project, including any overruns, and that the revenue agreements then cover all ongoing costs including resulting debt, this project is somewhat different in its cost analysis the Newfoundland equity funding commitment easing concerns regarding over runs which might be noted for the report. It is however important to understand where the costs may be heading, and a reconciliation to DG3, and comment as to the reasonableness of that reconciliation, is desired. We are hoping that you can confirm that you are reviewing the costs on this basis and report accordingly.

Specific Comments on Draft November 15, 2013

Material Concerns

1. Section 2.2.7: Regarding North Spur, there seems to be insufficient data to comment on the design analyses at the present time with clarification on installed rock support required and this must be corrected to allow comment.
2. Section 2.11 Delete this, it creates impression of inadequate inspection, and does not add value.
3. Section 4.3 (and of course others) the issue is that the contracts will not be in place; we have built in to the Project Finance Documents requirements around contracting and review, as well as the usual construction requirements – particularly as to 007 (but also others) I also note we have a Cost overrun process under discussion at this time to deal with costing issues (that combines with the NL equity assurance that covers all costs regardless of source) - We should consider dropping discussion of the controls not ready for comment.
4. Section 4.13 - IE cannot comment on construction schedule, this must be dealt with as per the instructions we require overall comment on achievability; IE can assume suitable control in accordance with good practice.
5. Sections 4.13 and 4.14 – This must be revised to comment not on process but on overall schedule achievability.
6. Section 6.1.4 - IE not able to comment on operations and maintenance because of status, we need to remove this comment noting scope of retainer for oversight to deal with in the next steps or recommendations.
7. Section 8.1 Delete the discussion as to why the IE was instructed and simply note the fact – this is an EA project with Canada being the very persons that did the EA and passed on compliance – the blank table is a poor visual, delete.



8. Section 8.3.1 Delete the discussion as to why the IE was instructed and simply note the fact. This is set out several places – we believe that clarification that a thorough and complete EA process was undertaken leading to that instruction needs to be included – it can simply say – because the project was the subject of a full environmental assessment process the IE's review was not requested.
9. Section 9 - Blair Franklin to review against the models presented and advise.
10. Section 9.2.1 - "IE is not in a position to offer an opinion as to whether all appropriate costs have been included in capital costs assumed in the financial models." We want to find a better way to make the statement given the current status and provide an assessment as to process.
11. Section 9 - On page 237, it seems related to HQ challenge and there is some info is outstanding from Nalcor, we believe this issue is complete and want comment accordingly.
12. Page 44 and 10.1.1 – CBB have confirmed that a revised agreement is not needed legally and this should be dropped as a comment as it is law not engineering.
13. Section 10.1.3 We need to find a way to get proper comment.
14. Section 10.1.8 We need to discuss and refine the comment.
15. Table 2-1: If data from Nalcor is outstanding this must be dealt with.
16. Page 30, Table 3-1, delete the request comment.
17. Page 32: Given many contracts have not been signed, MWH is seeking clarity on whether Govt. will want these to be reviewed, review for other contracts will be as they are signed and this can be noted as a post report comment in the recommendations.
18. Page 35; Outstanding IE request for info from Nalcor to be addressed.
19. Page 125 - "IE was not furnished with actual cost estimate details as part of oversight effort." IE is to be provided cost estimate details and this must be revised.
20. Tables for CH0007 - lot of info is not available. What was the budgeted amount for the work covered under this contract? Is it over budget? We require comment.
21. Table 4-7, 4-8,: P6 schedule still not available to IE, how do we resolve and get suitable comment.
22. Table 5 - For many of the base estimates, no details have been provided, how do we resolve this and delete this comment.
23. Figure 5-2: Drawdown schedule seems to be partial, we need to determine how to make more robust and determine suitable go forward.
24. Page 239 - North Spur items still pending and we must have a clean sign off on this aspect.



25. There is some concern expressed as to matters such as LC's and Bonds – full bonds would be prohibitively expensive – does any requirement arise from these notes - if not then tailor and reduce.
26. The scheduling and milestones by individual contracts is – of course – not complete because the contracts are not complete – we will deal with that in the construction oversight role; covenants; further required reports? Delete from this closing report the obviously blank tables etc. as it creates unnecessarily an impression of issues that do not exist (at least yet and can be controlled). The report should simply note those contracts are not let and would be reviewed, commented on and controlled in the ordinary course in keeping with the report platform.

Technical Cleanup

1. Section 1.2.2 highly unusual to include this sort of comment, it starts this off on an odd note.
2. Section 1.2.3 this statement is not true – there has been no request re ongoing data handling – need the new team set up soon to sort this one out.
3. Section 1.3.2 - the length of LTA shown is 1,100 km. Which is not correct.
4. Section 1.3.3 - The length shown for LIL is 380km. Which is not correct.
5. Section 4.6 : Nalcor to explain why contract has not been awarded since schedules date was in June. Is it related to Labrador-Island Link.
6. Section 6.2.5 - No info on maintenance provisions
7. CD0502 - the contract date is expected to be awarded on December 15. Has the contractor been selected? What was the budgeted amount and if contract has been received what is the range of bids compared to budgeted amounts? Same question applies to other contracts that are yet to be awarded and Nalcor has received bids?
8. Table 6-7 : Lack of expertise on biologists, is this material?
9. Page 241 - We want to understand: on recommendation 3, IE is saying provide P6 CPM after financial close. IE is recommending. Close without understanding the schedule of the project. Recommendations 4 - surprised to see that recommendation that Nalcor provide owner-prepared cost estimate within 10 days of financial close - why not now.