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Sent: Friday, October 16, 2015 11:20 AM
To: jamesmeaney@nalconenergy.com
Cc: xmartis@fasken.com
Subject: Cost Overrun [IWOV-Legal.FID1640195]
Attachments: Scan_1.pdf

I have been asked to send you the attached to ensure we have an agenda to discuss the cost overrun situation and develop a more solid and timely reporting process around this issue.



Alison Manzer

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October 16, 2015

BY EMAIL PDF

Mr. James Meaney
 Nalcor Energy
 P.O. Box 12800
 500 Columbus Drive
 St. John's NL
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Dear Mr. Meaney:

Re: Cost Overruns Issue / Revised Reporting Protocol

I am writing further to our recent telephone conference, being the Muskrat Falls Project update call with Canada and the Independent Engineer on Monday, September 28, 2015. The review during the course of that call was surprising to both Canada and to the Independent Engineer, as to a number of matters but most particularly as to the cost overruns identified, for the first time, during the course of that call. Both Canada and the Independent Engineer feel that the buildup of these cost overruns, and a proper estimate of further anticipated cost overruns, should have been identified on a month to month basis in the course of the regular reporting, and the recently held site visits. Canada is not prepared to proceed with the current reporting regime, without amendment, as it cannot accept significant cost overruns building, and being identified, late in the review process, and before they are able to provide input to properly recognize Canada's concerns in the setting of cost estimates, and contingencies. Accordingly Canada requires that we hold an all hands meeting, and work to a revised reporting process which will avoid these types of unreported, and unresponsive, identification of delay and cost issues.

We have identified the matters where reporting needs amendment, and require that the meeting include, at least, as agenda items the following matters, appropriately recognizing the requirements of Canada, and the recommendations of the Independent Engineer.

We are generally available for a meeting next week (other than Thursday); because of travel restraints on Canada we would prefer Ottawa. While we recognize a full team may not be able to attend we believe an early meeting to start the dialogue is needed. We can then consider in and in St. Johns meeting is required to follow that as you suggested.

The meeting agenda will require discussion of the following:

1. Timely submission of Monthly Contractors Reports. The submitted reports should not lag by several months from the current reporting period. Ideally, they should be from the





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Page 2

previous month. In addition, the practice of submitting concurrent reports for several consecutive months should stop. There is little value in doing that particularly when all these reports are already obsolete. Only several contractors (namely Andritz-CH0032 and Nexans) are regular with their timely submissions while monthly progress reports from others like Astaldi and Gilbert (CH0008) have not been submitted to date. The situation with regard to Astaldi is particularly disturbing, and we must ensure that we are getting timely progress and related reports with regard to the very substantial Astaldi contract. This creates difficulties in assessing the proper management supervision is being undertaken, although we recognize the current commercial discussions, when suitable reports are not being provided.

2. Change Orders should be provided to the IE for information. The IE should be kept abreast of more significant Change Requests and/or Potential Claims discussions and development.

We believe that these should be provided on an as received basis, and suggest a two business day protocol after receipt to provision. While we recognize there are needs to internally access, and review with Nalcor and the shareholder, we must ensure that we have timely understanding and receive timely information, as to these matters.

3. Every two/three months there should be a meeting between Nalcor and the IE (with participation from Canada) to discuss unforeseen design changes, change requests, potential claims and disputes and the corresponding risk analysis and mitigation strategy (Nalcor's). These will continue until such time as contracting has been completed, and we are satisfied with progress; after that time meetings can be scheduled, taking into account site visits, as needed to review matters such as design changes, change requests, claims, disputes etc.. We require that the meeting schedule be set by November 15, 2015.
4. Monthly Progress Reports from Astaldi are not available. To date all issued contractor reports have been rejected by Nalcor due to inaccuracies in them. Reportedly, this situation is not expected to improve in the coming months. As a result, Nalcor should be providing (based on submitted Contractor's reports) monthly summary of the contract progress, cost, change orders and requests, potential claims and disputes, major challenges and issues for IE's review. We believe that the Independent Engineer should be reviewing the reports, notwithstanding inaccuracies, Nalcor can provide the reports identifying the inaccuracies they perceive in the Astaldi progress reports. This discussion is to supplement our note in agenda item #1. We require that delivery of this item commence by November 15, 2015.
5. IE (Nik Argirov) participation in Nalcor discussions/negotiations with Astaldi. We require that we have agreement to this participation, immediately, and that an outline of the current status to the discussions and negotiations be provided to Canada and the Independent Engineer.
6. IE (Nik Argirov) participation in the Supply and Install Mechanical and Electrical Auxiliaries – CH0031 (BOP) contract negotiations. We require that we have agreement



Page 3

to this participation, immediately, and that an outline of the current status to the discussions and negotiations be provided to Canada and the Independent Engineer.

7. IE (Nik Argirov) participation in the schedule acceleration / re-scheduling discussions between Nalcor, Astaldi, Andritz the BOP contractor and such other persons as may need to be involved. We require that we have agreement to this participation, immediately, and that an outline of the current status to the discussions and negotiations be provided to Canada and the Independent Engineer.

The Independent Engineer is responsible to ensure that Canada is kept appropriately, and timely, advised as to status, progress, costing, and in the context of that responsibility is required to ensure that the monthly approvals of the funding and progress draws are accurately and appropriately reflected. The Independent Engineer is also responsible to ensure that the cost overruns are suitably costed. At this time there is significant concern that appropriate contingencies and estimates have not been included with regard to the power house and HVDC transmission line, and the potential for further delay, or costs to avoid such delay. As a consequence we also require item #8 to the agenda to be a discussion of the contingency and estimate process, and a discussion as to a mutually acceptable number to use for the cost overrun estimates which will be used for the cost overrun process and protocol for this year. We suggest that this discussion must go forward sooner than later.

While we recognize this is an extensive agenda, we require that a meeting be set to review these matters on an as soon as possible basis, timely resolution of these matters is necessary to ensure that the cost overrun process, and funding, is suitably undertaken for the required December dates. In addition Canada is concerned that the incidents of delayed reporting of cost overrun build up does not occur in the future, and must have assurances as soon as reasonably possible, around these issues.

If this cannot be suitably done in this manner, then the Independent Engineer will need to take this into account in their approval of the monthly draws, their reporting of site and related visits, among other matters, which we would prefer to avoid. However Canada has its responsibilities to ensure suitable and appropriate management of the costing of the project, and the Independent Engineer has its responsibilities to Canada in this regard, all of which must be suitably recognized in the review and reporting process.

We trust we will hear from you on this matter.

Yours truly,
CASSELS BROCK & BLACKWELL LLP
per:

A handwritten signature in blue ink, appearing to read "Alison Manzer", is written over the "per:" line.

Alison R. Manzer
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