

**From:** [Peach, Bert](#)  
**To:** [Williams, Albert](#); [Reid, Elwood](#); [Benjannet, Hassine](#)  
**Subject:** FW: Lower Churchill Project, Expression of Interest G-002, Engineering Designand Project Support, Restricted Use and Non-Disclosure Agreement  
**Date:** Friday, February 20, 2009 2:31:12 PM  
**Attachments:** [Final EOI News Release - February 20, 2009.pdf](#)  
[SNC-Lavalin Inc. Letter and Non-Disclosure Agreement.pdf](#)

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FYI

-----Original Message-----

From: CliffRowe@nalcenergy.com [<mailto:CliffRowe@nalcenergy.com>]  
Sent: February 20, 2009 1:17 PM  
To: Peach, Bert  
Cc: CliffRowe@nalcenergy.com  
Subject: Lower Churchill Project, Expression of Interest G-002, Engineering Designand Project Support, Restricted Use and Non-Disclosure Agreement

Gentlemen, with reference to the above and our recent discussions, attached please find a letter from Nalcor Energy, requesting your review and acceptance of our Restricted Use and Non-Disclosure Agreement.

In parallel with the issuance of this email, we have issued Press Release to the local media indicating our planned release of this Expression of Interest (EOI). A copy has been provided hereto for your information.

As we previously discussed please be prepared to receive queries from the local engineering community, once they have read the Press Release and or our website where your company has been identified as a recipient of this Expression of Interest.

The complete Expression of Interest with all attachments will be made available to your company once we are in receipt of a signed Restricted Use and Non-Disclosure Agreement. We expect receipt of your signed Restricted Use and Non-Disclosure Agreement by no later than Monday February 23, 2009. The Expression of Interest documents will be placed within Nalcor Energy's (LCP) Document Control File Transfer Protocol (FTP) System for your retrieval. Access to the FTP Site will follow in a separate communique, with passwords, only after receipt of the Restricted Use and Non-Disclosure Agreement.

We have planned for this EOI to close on April 07, 2009 at 15:00 hours, on the basis that the Restricted Use and Non-Disclosure Agreement will be returned no later than Monday February 23, 2009.

All correspondence regarding this Expression of Interest will be directed to Clifford C. Rowe. Please acknowledge receipt of this email, and confirm your intent to respond by return email.

(See attached file: Final EOI News Release - February 20, 2009.pdf)(See attached file: SNC-Lavalin Inc. Letter and Non-Disclosure Agreement.pdf)

Regards Cliff Rowe

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Clifford C. Rowe  
Consultant, Contracts Coordinator,  
Nalcor Energy - Lower Churchill Project

Direct Line: (709) 737-7805

Toll Free: 1-888-576-5454 (Canada Only)

Fax: (709) 737-1985

Email: [cliffrowe@nalcorenergy.com](mailto:cliffrowe@nalcorenergy.com)

Website: [www.nalcorenergy.com](http://www.nalcorenergy.com)



## Lower Churchill Project issues Expression of Interest

February 20, 2009 – Nalcor Energy has issued an Expression of Interest (EOI) to six engineering and project management companies in order to determine their interest in bidding for the Lower Churchill Project’s detailed engineering design work.

“The release of this EOI is consistent with Nalcor Energy’s gateway planning methodology and will ensure that we are prepared for future activities should the Project proceed to the development phase,” said Gilbert Bennett, Vice President, Lower Churchill Project.

The six companies receiving the EOI are worldwide specialists in hydroelectric, transmission and civil construction and include:

- SNC-Lavalin Ltd.
- Hatch Ltd.
- Bechtel Infrastructure Corporation
- Black and Veatch
- MWH America’s Inc.
- URS Corporation

As part of the overall assessment of the submissions, the potential bidders will be required to provide details of their plans to optimize local and provincial benefits.

-30-

**Media Contact:**

Leona Barrington  
Senior Communications Specialist  
Lower Churchill Project  
709-737-1837, 693-7398  
leonabarrington@nalcorenergy.com



Hydro Place, 500 Columbus Drive.  
P.O. Box 12800, St. John's, NL  
Canada A1B 0C9  
t. 709.737.1833 or 1.888.576.5454  
f. 709.737.1985

Doc. No. 09-2/430

**February 20, 2009**

SNC-Lavalin Inc.  
1133 Topsail Road  
St. John's, NL A1N 5G2

Attention: Mr. Bert Peach

Subject: Lower Churchill Project  
Expression of Interest for Engineering Design and Project Support Agreement  
EOI No.: G-002

Dear Mr. Peach;

Nalcor Energy is preparing the subject Expression of Interest for issuance to your company. Prior to issuance we must be in receipt of a duly executed Restricted Use and Non-Disclosure Agreement which we have attached for your review and execution.

Upon receipt the undersigned will issue the Expression of Interest for an Engineering Design and Project Support Agreement to your company.

We expect that if you disclose any information relative to this Expression of Interest to any third party(s) that you will maintain on file similar Restricted Use and Non-Disclosure Agreements.

Please forward the executed agreement to the undersigned by facsimile at (709) 737-1985 or by email at [cliffrowe@nalcorenergy.com](mailto:cliffrowe@nalcorenergy.com).

Yours very truly,



Clifford C. Rowe  
Contracts Coordinator

Attachment: Restricted Use and Non-Disclosure Agreement (7 Pages).

**RESTRICTED USE  
AND NON-DISCLOSURE AGREEMENT**

This Agreement made as of the \_\_\_\_ day of \_\_\_\_\_ A.D. 2009.

**BETWEEN:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter referred to as “ ”)

**AND:**

**NALCOR ENERGY**, a body corporate constituted pursuant to the *Energy Corporation Act* being Chapter, S. N. 2007, c. E-11.01 and having its head office at the City of St. John’s, Province of Newfoundland and Labrador. (hereinafter referred to as “Company”),

(hereinafter referred to individually as a “Party” and collectively as the “Parties”)

**WHEREAS** the Parties are desirous of exchanging information generally for the purpose of a mutual interest in pursuing \_\_\_\_\_

(hereinafter referred to as the “Authorized Purpose”);

**AND WHEREAS** each Party desires to protect the confidentiality of the information that may be included in such exchange;

**AND WHEREAS** the Parties may exchange and/or disclose information in various forms and formats relating to the Authorized Purpose and that certain information may be non-public, confidential or proprietary in nature and the confidentiality of which the Parties desire to protect;

**NOW THEREFORE THIS INDENTURE WITNESSETH THAT** for and in consideration of the premises and mutual obligations contained herein and for other good and valuable consideration (the receipt, adequacy and sufficiency of which are hereby acknowledged), the Parties intending to be legally bound hereby agree as follows:

This Agreement made as of the \_\_\_\_ day of \_\_\_\_\_ A.D. 2009.

**1. DEFINITIONS**

For the purposes of this Agreement:

- (a) “Affiliate” means any Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, a Party.
- (b) “Agreement” means this Agreement as amended and supplemented from time to time.
- (c) “Confidential Information” means any and all oral, written, electronic, magnetic or optical data and machine-readable information and data and any accompanying support materials and documentation disclosed directly or indirectly by one Party to another or to any Affiliate in relation to the Authorized Purpose. Such confidential information may include but not be

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limited to any technical and geographical data, maps, drawings, data, surveys, memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements, financial and market information, environmental reports, evaluations, legal opinions, names of shareholders, partners or joint venture partners, business arrangements together with all associated analyses, compilations, studies or other documents prepared by a Receiving Party or its Representatives with respect to confidential information provided by the Disclosing Party or its Representatives. Ownership and title of Confidential Information of the Disclosing Party shall at all times remain exclusively vested in the Disclosing Party.

- (d) "Control" means, in the context of a relationship between two (2) or more Persons, control in any manner that results in control in fact, whether through direct or indirect ownership or control of fifty percent (50%) or more of voting shares, interests or trusts, representation on the board of directors or other governing body, or otherwise.
- (e) "Disclosing Party" means a Party that discloses Confidential Information to the other Party.
- (f) "Receiving Party" means a Party that receives Confidential Information from the other Party.
- (g) "Person" is to be interpreted broadly and includes, without limitation (i) any individual or group, and any firm, corporation, company, association, partnership, joint venture, trust, unincorporated organization, a state or political subdivision thereof, a government and every agency or instrumentality thereof or any other legal entity, and (ii) the media.
- (h) "Representatives" of a Party means shareholders, partners, directors, officers and employees of a Party or its Affiliate, as well as representatives, consultants, agents and financial, tax, legal and other advisors, engaged or retained by or assisting such Party in any way in connection with the Authorized Purpose.

**2. CONFIDENTIALITY AND RESTRICTED USE**

- 2.1 Disclosing Party agrees, subject to the terms and conditions of this Agreement, to disclose to a Receiving Party certain Confidential Information. The Disclosing Party shall have full discretion in determining what Confidential Information may be disclosed to a Receiving Party hereunder.
- 2.2 Subject to the terms and conditions of this Agreement, the Receiving Party shall not use the Confidential Information furnished to it by the Disclosing Party or its Representatives for any purpose other than for the Authorized Purpose and shall exercise due care and attention to maintain the confidentiality and secrecy of the Confidential Information.
- 2.3 The Receiving Party shall ensure that only those Representatives who need to have access to the Confidential Information shall have access to such Information and in such cases the Confidential Information shall only be used for the Authorized Purpose.
- 2.4 The Receiving Party shall not disclose the Confidential Information to any third party, directly or indirectly, without the prior written consent of the Disclosing Party, except as provided in Clause 2.5 and Article 3 hereof; and
- 2.5 Receiving Party may disclose Confidential Information to its Representatives who need to know such Information for the Authorized Purpose, subject to the foregoing requirements. Prior to such disclosure, each such Representative shall (a) be informed by the Receiving Party of the confidential nature of such Confidential Information, and (b) be requested or

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directed by the Receiving Party and such Representative shall agree, before receipt of such Confidential Information, to treat such Confidential Information in accordance with the terms and conditions of this Agreement as if it is a party hereto.

- 2.6 Receiving Party shall return and deliver, or cause to be returned and delivered, to the Disclosing Party, or destroy and certify such destruction of Confidential Information, including copies and abstracts thereof, and all documentation prepared by or in the possession of the Receiving Party or its Representatives relating to the Confidential Information of the Disclosing Party within thirty (30) days of a written request by the Disclosing Party. The foregoing notwithstanding, Receiving Party may retain one copy of such Information for archival purposes only and subject to compliance with the terms of this Agreement.
- 2.7 Either Party may terminate the negotiations and/or the exchange of Confidential Information upon providing the other Party with fifteen (15) days prior written notice, in accordance with the provisions of Article 5 - Notice, of its intent to terminate the negotiations related to the Authorized Purpose.
- 2.8 The Parties confirm and agree that the provisions of this Agreement shall remain in full force and effect with respect to the disclosure of any Confidential Information notwithstanding that the negotiations with respect to the Authorized Purpose have been terminated pursuant to Clause 2.7 and all Confidential Information shall remain confidential and subject to this Agreement.

**3. USE OF AND AUTHORIZED DISCLOSURE OF INFORMATION**

- 3.1 Each Party as a Receiving Party acknowledges and agrees with the other Party as a Disclosing Party that:
- (a) The Confidential Information is provided to the Receiving Party for the purpose of acquainting the Receiving Party with the Disclosing Party, its data and the business and operations of the Disclosing Party.
  - (b) The Disclosing Party and its Representatives do not make any representation or warranty, express or implies, as to the accuracy or completeness of the Confidential Information and that the Receiving Party is and shall rely upon its own investigations, due diligence and analyses in evaluating and satisfying itself as to all matters relating to the Confidential Information and the Disclosing Party and their business, affairs and assets or otherwise in any way related to the Authorized Purpose.
  - (c) The Disclosing Party and its Representatives and their respective directors, officers employees or agents shall not have any liability to the Receiving Party or its Representatives resulting from any use or reliance upon the Confidential Information by the Receiving Party or its Representatives.
  - (d) No license to Recipient, under any trademark, patent, or other intellectual property right, is either granted or implied by the conveying of Confidential Information to the Receiving Party.
  - (e) Nothing contained herein shall bind, require, or otherwise commit a Party or any Affiliate to proceed with any sale, acquisition, project, or other transaction of or with the other Party or any other entity.
- 3.2 Notwithstanding the foregoing, the obligations of restricted use and strict confidentiality set forth in this Agreement shall not extend to any information which:

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- (a) Receiving Party can clearly establish was known by Receiving Party or its Representatives prior to the disclosure thereof pursuant to this Agreement;
  - (b) is independently acquired or developed by the Receiving Party, or its Representatives without reference to the Confidential Information and without violating any obligations hereunder;
  - (c) is legally in possession of Receiving Party or its Representative prior to receipt thereof from Disclosing Party pursuant to this Agreement;
  - (d) enters the public domain through no fault of the Receiving Party or its Representatives;
  - (e) is disclosed to the Receiving Party or its Representatives, without restriction and without breach of this Agreement or any other obligation of confidentiality, by a third party who has the legal right to make such disclosure;
  - (f) is approved in writing for release by the Disclosing Party; or
  - (g) Receiving Party or any of its Representatives is legally required by law or by a governmental or court decree, order, regulation or rule or by any legal process to disclose whereby the Receiving Party will immediately provide notice to the Disclosing Party of such a requirement and assist the Disclosing Party, if required, in defending against disclosure of the Confidential Information.
  - (h) Company is at all times subject to the provisions of Newfoundland and Labrador legislation as such legislation may be amended or varied, including, but not limited to, the *Access to Information and Protection of Privacy Act*, SNL2002 c. A-1.1 as amended ("ATIPPA"). The Parties acknowledge that Company may incur disclosure obligations pursuant to the provisions of ATIPPA or other provincial legislation, and disclosure pursuant to such an obligation shall not be a breach of this Agreement. To the extent the Confidential Information meets the third party confidential information tests set out in ATIPPA, s. 27 of ATIPPA will require that disclosure of such information be refused if requested by a third party. Where there is a challenge to such refusal, a review by the Access to Information and Privacy Commissioner, and ultimately the Supreme Court of Newfoundland Trial Division may occur. Disclosing Party will be entitled to be represented and make arguments in support of non-disclosure at each step in this process.
  - (i) Any disclosure of Confidential Information pursuant to a legal obligation to make such disclosure shall not be a breach of this Agreement.
- 3.3 The Parties confirm and agree that the provisions of this Agreement shall remain in full force and effect for a period of three (3) years from the Effective Date of this Agreement with respect to any Confidential Information notwithstanding that this Agreement may be terminated or that the Confidential Information disclosed by the Receiving Party may have been returned or copies thereof destroyed prior to the expiration of the aforesaid time period.
- 3.4 Each Party hereto as a Receiving Party agrees that the other Party hereto as a Disclosing Party will be irreparably damaged if any provision of this Agreement is not performed by the Receiving Party or its Representatives in accordance with its terms and that monetary damages may not be sufficient to remedy any breach by the Receiving Party or its Representatives of any term or provision of this Agreement and each Receiving Party further agrees that the Disclosing Party shall be entitled to equitable relief, including



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injunctive and specific performance, in the event of any breach hereof and in addition to any other remedy available at law or in equity.

**4. PRESS RELEASES**

4.1 Except as permitted by this Agreement or required by applicable legislation, each Party shall not make any public announcement or disclosure in connection with the Authorized Purpose when the public announcement or disclosure specifically mentions both Parties and/or the Authorized Purpose, without the prior written consent of the other Party. Furthermore, if such press releases are approved by a Party, each Party shall consult with the other Party prior to issuing or making, and allow the other Party a reasonable opportunity to comment on the content of, any approved press releases or other public statements or disclosures with respect to the subject matter of this Agreement pertaining to the Authorized Purpose.

**5. NOTICES**

5.1 All notices, requests, demands, consents, waivers and other communications given hereunder shall be in writing, marked "Private and Confidential", and shall be deemed to have been duly given if delivered by hand or by sending same by facsimile communication or other similar form of communication to the following addresses:

If to \_\_\_\_\_, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention : \_\_\_\_\_  
Fax : ( ) \_\_\_\_\_

if to Nalcor Energy, to:

Nalcor Energy - Lower Churchill Project  
Hydro Place, 500 Columbus Drive  
P.O. Box 12800, St. John's, NL  
Canada A1B 0C9

Attention: Clifford C. Rowe  
Contracts Coordinator, Lower Churchill Project  
Fax: (709) 737-1985

Any such notice, request, consent, demand, waiver or other communication shall: (i) if delivered, be deemed to have been given or made at the time of delivery; and (ii) if sent by fax or other similar form of written communication, be deemed to have been given or made at the time in which it was successfully transmitted as evidenced by automatic confirmation of receipt.

**6. ENTIRE AGREEMENT**

6.1 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and any and all previous representations with respect to such subject matter, either oral or written, are hereby annulled and superseded.

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**7. SEVERABILITY**

7.1 The Parties acknowledge and agree that the restrictions contained in this Agreement are both reasonable and necessary to protect the commercial interests of the Parties and their Affiliates. Accordingly, if any provision of this Agreement is held to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect, and the Parties shall use their reasonable, good faith efforts to achieve the purpose of the invalid or unenforceable provision or part thereof by a new valid and enforceable stipulation.

**8. WAIVER AND AMENDMENTS**

8.1 It is understood and agreed that a failure or delay by any Party in exercising any right, power or privilege hereunder will not operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder; and

8.2 This Agreement may be amended or modified only by an instrument in writing signed by authorized representatives of both Parties to this Agreement.

**9. ASSIGNMENT**

9.1 It is agreed that neither this Agreement nor any of the rights or obligations of the Parties under this Agreement may be assigned, in whole or in part, by any Party without the prior written consent of the other Party.

**10. GOVERNING LAW AND FORUM**

10.1 This Agreement shall be governed by and interpreted according to the laws of the Province of Newfoundland and Labrador, and all actions, suits, and proceedings arising out of this Agreement shall be determined in a court of competent jurisdiction in the Province of Newfoundland and Labrador, subject to any right of appeal to the Supreme Court of Canada.

**11. COUNTERPARTS**

11.1 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**12. GENERAL**

12.1 The Parties acknowledge to one another that each respectively intends to perform its obligations as specified in this Agreement in good faith.

12.2 In this Agreement the use of the singular number includes the plural and vice versa.

12.3 Captions or descriptive words at the commencement of the various sections are inserted only for convenience and are in no way to be construed as a part of this Agreement or as a limitation upon the scope of the particular section to which they refer.

**RESTRICTED USE  
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**13. LANGUAGE OF AGREEMENT**

13.1 Documentation, required submittals and all other communications, whether verbal or written, shall be in English.

**IN WITNESS WHEREOF**, each Party has executed this Agreement by its duly authorized representatives.

**SIGNED, SEALED AND DELIVERED** by \_\_\_\_\_

\_\_\_\_\_, in the presence of:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SIGNED, SEALED AND DELIVERED** by  
Nalcor Energy, in the presence of

Nalcor Energy

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_