

From: auburnwarren@nalcenergy.com
To: Myrden, Paul; pmorris@gov.nl.ca
Subject: Fw: Proposed Text for Canada
Date: Friday, November 22, 2013 10:46:04 AM

Folks,

Please see below - we can walk you through this as it is a quick moving item. Could we jump on my bridge (1-877-██████████736; Conference Code: ██████████) as we need to get back to Canada ASAP?

Thanks!

Auburn



Auburn Warren, CA
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----- Forwarded by Auburn Warren/NLHydro on 11/22/2013 10:44 AM -----

From: Xeno Martis <xmartis@fasken.com>

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Date: 11/22/2013 10:43 AM

Subject: Proposed Text for Canada

Auburn,

Further to my call with Alison, below is the revised text. The only difference from last night's text is the fact that the funds in the Escrow Account are not taken into consideration for the purposes of the DER until the debt is exhausted.

Please let me know if I can propose the revised text to Allison.

"As per your request below, I have been authorised by Nalcor to articulate on their behalf the following offer to settle the outstanding business issues as between Nalcor and Canada. The offer is a global one and will need to be accepted as a whole but not in part.

1. On the cost overruns issue, Nalcor would agree to have funded cost overruns based on the Project budget as at financial closing (\$6.5B capital cost estimate and not the \$6.2B DG3 estimate) using substantially your definition of cost overruns. As such funding, if any, would only commence on the first anniversary of financial close. The

funding would otherwise take place as per your draft with monthly reporting as per your draft and annual top ups if any. All deposits in the escrow account are included in the DER as equity only after the credit facilities are exhausted. Once debt is exhausted, we would have access to the escrow account to fund project costs without further equity investment until the escrow account is exhausted and the Contingency equity contributions would commence until Commissioning is achieved. If at commissioning any balance remains in the escrow account, it is released and may be distributed to Nalcor;

2. The DSRA will be funded at the earlier to occur between Commissioning and the seventh anniversary of the first advance;
3. Payments under the revenue agreements remain as currently drafted which would include monthly debt service;
4. The permitted investments for the sinking funds to be in accordance with the memo distributed by John Medland following our call earlier this afternoon;
5. The amortisation for purposes of the sinking funds would occur at the earlier of Commissioning and the seventh anniversary of the first advance;
6. Canada may not assign any of the loans, even after an event of default and the expiry of the remedies consultation period;
7. The remedies consultation period shall be for 150 days and shall be applicable to all events of default as currently drafted in latest drafts of the Project finance Agreements. Nevertheless, after the 90th day following the commencement of the remedies consultation period, Canada would be permitted to issue notices such as the BAI notices but only to the borrowers without any registration or filing of such notices; and
8. The date certain will be February 28th, 2019"

Xeno

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