

From: [Xeno Martis](#)
To: [\(CraigHippert@nalconenergy.com\)](#); [Auburn Warren \(AuburnWarren@nalconenergy.com\)](#); [Derrick Sturge \(dsturge@nalconenergy.com\)](#); [James Meaney \(JamesMeaney@nalconenergy.com\)](#); [Keng Legge](#); [Rob Hull \(RobHull@nalconenergy.com\)](#); [Scott Pelley \(ScottPelley@nalconenergy.com\)](#); [Bruce E. Fowler \(bfowler@blg.com\)](#); [John Green \(john.green@mcinnescooper.com\)](#); [Linda L. Bertoldi \(LBertoldi@blg.com\)](#); [Myrden Paul](#); [Morris Paul J.](#); [Pelletier, Randy](#); [Stanley, Todd](#)
Cc: [Angela Onesi](#); [Félix Gutierrez](#); [Alexandre Gagnon](#)
Subject: FW: Outstanding responses [IWOV-Legal.FID1640195]
Date: Monday, November 25, 2013 7:12:22 PM
Attachments: [image001.gif](#)

Please see below.

Please note that they are asking for changes to ESA and ESG for Cost Overrun Escrow Issue. Also, they want the right to assign following event of Default.

Xeno

From: Manzer, Alison [mailto:amanzer@casselsbrock.com]
Sent: November-25-13 5:34 PM
To: Xeno Martis
Cc: Newman, Charles; Anne Boudreau; Rhonda Lazarus ; Anoop Kapoor; Joseph Krupski
Subject: Outstanding responses [IWOV-Legal.FID1640195]

Collateral Agency Agreement:

We had three remaining issues – we are ok as per below provided we have a protocol to ensure Canada bears no liability for a failure to provide timely response. Canada is willing to have it go that if they do not respond the Collateral Agent can accept that as a Requisite Instructions for the matter as per their recommendation – if the requests is as to a construction advance then it is trued up in the next Request same as a Working capital advance. Canada is to have no liability for failure to respond and is willing to rely on the Collateral Agent.

OK for the 15 days.

In 4.6.1, for everything other than disbursements or releases of funds it's the "reasonable commercial lender" test. The two Business Days is just for disbursements and releases of funds. That's what had been asked for.

Also, in 4.2.3, we propose to refer to three (3) Business Days from the Collateral Agent so that we can have a decision just prior to the disbursement and we can make alternative arrangements if disbursement is declined.

Administrative Agreement

We are ok closing without this. This and a few other matters we will do an undertaking and require things to be in place for the bond pricing (or in this case the duties transferred to and accepted by someone else).

IE Report

Nik has called and asked for Canada to clarify instructions. Although we will not change engineering conclusions we will go through the mark up from Nalcor tonight and in the morning advise as to our instructions arising from these comments. The report must be in acceptable shape for closing – really by Wednesday.

We want Nalcor to start working on replacing the team with the go forward construction review team – Nik knows that is coming – we can get protocol and certificates finalized. Can close on this but will be in the undertaking to get done before bond pricing.

Omnibus Business Issues

As to the below; Canada is ok except for #6 where they will not agree and want the right to assign; Consultation do not agree to consult as to a few more of the defaults – relating to things you cannot fix – will send shortly but I think should not have an issue and #8 we need reminding as to what this ties into – to be sure as to agreement. You will have to decide how to proceed as we did not get to an all but are a long way from nothing.

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.

Note that we require the corresponding revisions – Cost Overruns in the Equity Agreements and the rest in the agreements as they belong.

GAA

We are circling up and will send what we think is final form by the morning.

Permit and land Use Certificates

We sent forms needed and have not had any feedback – we do need them for closing.

Canada Signing

We are told that the Minister will not do signing page style even with the pages being held. We have to get those to done and complete. we have lined things up but have no give o that issue.

Missing Stuff

Following is my list of what is currently outstanding and not otherwise listed above.

1. Emera Guarantee – Canada revising to send Nov 21
2. IIC – insurance will be placed for Dec. 1, report Nov. 20 – IIC indicted no issues
3. NS IGA
4. NL IGA
5. Finance Documents completed
6. NL legislation – awaiting OIC from Morris
7. UARB – well we all know that issue
8. EA and aboriginal – Anoop is dealing – advised letter underway
9. Equity support – issue as to Cost Overruns o/s needs to be drafted in
10. Revenue – step in agreement changes
11. Statutory easement – down to final issue re termination terms
12. IE final reliance agreement needed – with MWH – draft in to circulation Nov 19
13. Declarations, Indentures and Guarantee – to be finalized
14. Draw and certificate process for IE – part of reliance – ongoing
15. Assignment of agreements to Project and Devco still needed – we are pushing for that requested again Nov 19 – still o/s – Water Rights agreements – need some acknowledgements to cover concerns – email sent again Nov 25
16. SOBI – lease substantially agreed – mortgagee terms over weekend – will need to have a signing agreement to deal with the consultation issue
17. Gull Island spit request – requested to consent to the split of Gull and Muskrat rights – Water lease and Water management – assignments sent – needs some additional three party agreements – request sent
18. Fiscal and Paying Agent Agreement - reviewed – after account review Canada to advise any issues
19. Administration Agreement to be completed– Canada to advise if reviewed and ok – will need to go in to the undertaking
20. Blocked Account Agreements and account functioning to be settled after Nov 25 meeting
21. Definitions being tracked and master Definitions Agreement being updated as needed
22. Funds flow to be finished and review session (with TD) Nov 25
23. Notices of assignment for water rights – opinion required of McInnes
24. Bank Accounts have to be opened before funding – takes two weeks has to be started today
25. Block accounts agreements – mechanics have to be finalized – need these for funding – agreement to provide already in agreements – do actual block agreements next week
26. Paying Agent – needs meeting and discuss funding certificates and timing with the IE

I am now doing a review with team – will call after to circle up and you can let me know if I owe any responses.



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

This message, including any attachments, is privileged and may contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. Communication by email is not a secure medium and, as part of the transmission process, this message may be copied to servers operated by third parties while in transit. Unless you advise us to the contrary, by accepting communications that may contain your personal information from us via email, you are deemed to provide your consent to our transmission of the contents of this message in this manner. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email and permanently delete the original transmission from us, including any attachments, without making a copy.

Ce message contient des renseignements confidentiels ou privilégiés et est destiné seulement à la personne à qui il est adressé. Si vous avez reçu ce courriel par erreur, S.V.P. le retourner à l'expéditeur et le détruire. Une version détaillée des modalités et conditions d'utilisation se retrouve à l'adresse suivante http://www.fasken.com/fr/termsfuse_email/.

This email contains privileged or confidential information and is intended only for the named recipients. If you have received this email in error or are not a named recipient, please notify the sender and destroy the email. A detailed statement of the terms of use can be found at the following address http://www.fasken.com/termsfuse_email/.