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Requirements to Satisfy Conditions Precedent for Federal Loan Guarantee

Presentation to Cabinet

November 26, 2013

Submissions

- Land Use and Joint Management Agreements for Subsea Components
- Maritime Link Exemptions
- Assignment of Churchill River Water Rights

Land Use and Joint Management Agreements for Subsea Components

Land Use and Joint Management Agreements

Purpose

- The Submission seeks authorization to sign:
 - Subsea Land Use Agreements with the Government of Canada regarding the lease of subsea lands for the transmission lines that will be laid:
 1. The Strait of Belle Isle (SOBI) – PWGSC, ENVC, IGA, LIL Partnership
 2. Cabot Strait (CAST) – PWGSC, ENVC, IGA, NS, NSPML
 - Joint Management Agreements which establish a mechanism for the parties to manage and administer the Land Use Agreements.
 - Reliance Agreement for the Independent Engineer

Land Use and Joint Management Agreements

- Labrador Island Link
 - Transmission infrastructure for the Labrador Island Link includes a subsea component across the Strait of Belle Isle.
 - Nalcor has identified a 500m wide corridor in which to place the 3 HVdc cables under the seabed and across the Strait from Forteau Point to Shoal Cove, approximately 30km in length.
- Maritime Link
 - Requires 2 HVdc cables from Cape Ray, NL to Point Aconi, NS, as well as land infrastructure.
 - The Subsea component includes 2 HVdc cables spanning approximately 180km.

Land Use and Joint Management Agreements

- Leases will be issued jointly by Canada, NL and NS
 - Will allow all 3 jurisdictions to avoid issues around ownership of seabed.
 - Prevents overlapping and conflicting rights to the same land.
- Leases provide certainty to project proponents for project financing.
- Lease terms are from 2013-2068, and may be extended for 3 further terms until 2111.
- Joint Management
 - Establish mechanism for parties to manage and administer the Land Use Agreements,
 - Separate agreements will be signed for each of CAST and SOBI.
 - Include provisions for the establishment of Management Committees to review compliance, review lessee requests and negotiate extensions.

Land Use and Joint Management Agreements

- Reliance Agreement
 - The LUA calls for IE Agreement and Reliance Agreement to be attached as Schedules
 - The IE will monitor and report on the installation and operation of the subsea cables, confirm that good engineering and safety practices are being followed, etc
 - Under the Reliance Agreement Canada and NL will be entitled to receive the IE reports, question and give direction to the IE

Dispute Resolution – Joint Management

- Joint Management Committee decisions are consensus based
- Dispute resolution process involves engagement of respective DM's and then Ministers. If still not resolved then the issue is sent to binding arbitration which will include a panel of 3 arbitrators.
- The laws of NL, NS and Canada apply.
- NL/NS jurisdiction is the Atlantic Accord boundary

Summary

- Long term leases for SOBI and CAST that are jointly managed
- Independent Engineer(s) will oversee construction and operations activities and provide reports to the Joint Management Committees
- Issues resolution requires consensus agreement
- Dispute Resolution Process

Land Use and Joint Management Agreements

Recommendations

- Sign Land Use and Joint Management Agreements with relevant parties to grant leases in the Strait of Belle Island and the Cabot Strait, and to enter into a Reliance Agreement for the Independent Engineer.

Maritime Link Exemptions

Maritime Link Exemptions

Purpose

- Protects certain contractual rights to Emera relating to the delivery of power from Muskrat Falls and Nalcor.
- Clarifies the jurisdiction of the PUB to avoid duplicate regulatory oversight and conflicting regulatory decisions with the UARB.

Maritime Link Exemptions

- Nalcor and Emera executed formal agreements that govern the ownership, development and operation of the Maritime Link and the Labrador Island Transmission Link.
- The Agreements also include:
 - The Energy and Capacity Agreement, which sets out the terms and conditions to deliver power from Muskrat Falls to NS.
 - The Maritime Link Joint Development Agreement, which requires Emera and NLH to enter into an agreement to manage the interconnection of NL transmission assets and the Maritime Link.

Maritime Link Exemptions

- The Maritime Link project includes new transmission infrastructure to NS and upgrades to the NL system and related control facilities on the Island, with costs incurred by Emera.
- Cost recovery will come from NS ratepayers.
- To support the requirement that Maritime Link cost recovery will not come from NL ratepayers, the Maritime Link Project needs to be excluded from various aspects of the PUA and EPCA.

Maritime Link Exemptions

- Public Utilities Act Exemptions will:
 - Clarify the jurisdiction of the PUB to the UARB to avoid duplicate regulatory oversight and conflicting regulatory decisions.
 - Allow Maritime Link costs to be recovered from NS ratepayers by allowing cost recovery to be under UARB jurisdiction.
 - Ensure the NL transmission system can continue to operate safely and reliably.

Maritime Link Exemptions

- Electrical Power Control Act Exemptions will:
 - Protect certain contractual rights to Emera relating to the delivery of power from Muskrat Falls and Nalcor.
 - Provide necessary assurance that in the case of a genuine emergency, the NS Block can be curtailed on a pro-rata basis.
 - Ensure that Emera has access to ECA and EAA contract remedies in the event of curtailment.

Summary

- There are contracts in place between Nalcor and Emera for the construction and management of the Maritime Link and for the sale of power.
- The exemptions ensure that:
 - Contractual commitments for the delivery of power can be executed
 - Ratepayers in NL do not pay for any part of Maritime Link
 - In the event of a genuine emergency, power to NS can be curtailed on a pro-rata basis

Maritime Link Exemptions

Recommendations

- Approval for an OC to bring into force regulations entitled Maritime Link Exemption Order, under the PUA and the EPCA.
- Provide direction to the PUB not to make an order under Section 8 of the EPCA relating to power designated for delivery under the Energy and Capacity Agreement.

Assignment of Churchill River Water Rights

Assignment of Churchill River Water Rights

Purpose

- Transfer the rights to the Lower Churchill River from Nalcor to Muskrat Falls Corporation.
- Muskrat Falls Corporation, a subsidiary of Nalcor, requires these rights as it will own, construct and operate the Muskrat Falls assets.

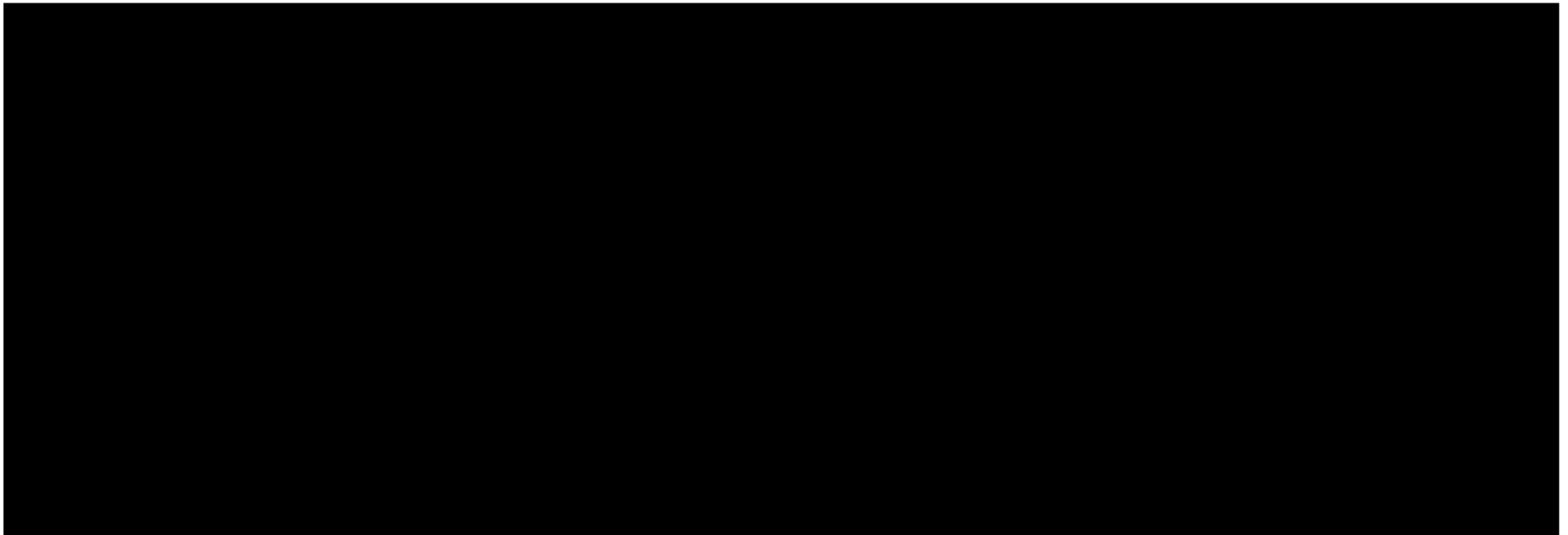
Assignment of Churchill River Water Rights

- The 2009 Lease provides Nalcor with the exclusive use of the Lower Churchill River for a period of 50 years.
- The Lease grants Nalcor certain rights, including:
 - The exclusive right to harness and make use of the Lower Churchill River
 - All power rights associated with the Lower Churchill River
 - Exclusive right to construct and utilize all works on the Lower Churchill River for the purposes of developing hydroelectric power.
 - Exclusive right to store and regulate so much of the Lower Churchill River as may be economic or beneficial for the purposes of developing of the Lower Churchill River.

Assignment of Churchill River Water Rights

- The rights under the 2009 Lease will be transferred via an Assignment and Assumption Agreement between Government, Nalcor and MFCo.
- This Agreement has an option for Nalcor to take back rights to the River related to Gull Island.
- The Agreement also provides Government's consent to MFCo granting a security interest in the Lease to Canada for the Muskrat portion only.

Assignment of Churchill River Water Rights



Summary

- Nalcor currently holds the water rights for the Lower Churchill River and has a water management agreement with CFLCO
- The water rights and WMA must be assigned to Muskrat Falls Corporation
- Gull Island will be expressly excluded as security and will be optioned back to Nalcor
- A new water management agreement will be required whenever the decision is made to develop Gull Island

Assignment of Churchill River Water Rights

Recommendations

- Authorize the Minister of NR, Nalcor Energy and the Muskrat Falls Corporation to enter into an Assignment and Assumption Agreement