

# Agreement CT0327-001 Construction of 350kV HVdc Transmission Line (MF to SP)

## Information Brief on Materially Significant Commercial Issues between Valard Construction LP (“Valard”) and Labrador-Island Link Limited Partnership (“Company”)

Prepared for:  
Lower Churchill Management Corporation (“Client”)

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Date: 10-Jan-2017

*Privileged and Confidential Information prepared in Contemplation of Litigation*

**Disclaimer:** Consultant has prepared this Information Brief solely for the purposes of providing Client with a high-level overview of the materially significant commercial issues known to exist between Company and Valard as of 31-Dec-2016. While the Consultant has endeavored to make use of documented history, any opinion offered by Consultant is just that, and it is recommended that Client form its own conclusions. Consultant offers no guarantee that the Information Brief captures all issues that may exist.

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Issue	Title	Issue Synopsis	Summary of Company’s Position & Current Situation	Relevant References
1	ROW Clearing and Access Management (Part B)	<p>A core element of the Work defined within the Agreement was the completion of all aspects of ROW Clearing and Access Management (referenced as Part B within Exhibit 1 – Scope of Work). Valard were responsible to further define the scope and develop the execution plan.</p> <p>Under the Agreement, Valard would perform this work on a cost reimbursable basis, managing the work being undertaken by clearing contractors (“Company’s Other Contractors”) under direct contract with Company, with Valard having options to self-perform where they could demonstrate to Company that this was beneficial. A target amount for the ROW Clearing and Access Work was set at \$238 million (equivalent to Valard estimate of \$273 million prepared during the Open Book Estimate less 9% margin for work completed on Company’s paper), while for each dollar saved below this amount Valard would receive 25% as performance incentive. Section 11 of Exhibit 2 – Compensation provides details of the commercial framework underpinning the Agreement.</p> <p>Early in the Work it became apparent that Valard were obfuscating their obligations in the Agreement for Part B (ref LTR-0008). This continued as 2015 unfolded, with access performance suffering, while access scope</p>	<p>Based upon Valard’s lack of assumption of accountability for Part B works, Company made a decision in September 2015 to step in and assume the lead for the work in order to ensure the work was completed, and met the envisioned “fit-for-purpose” standard.</p> <p>LTR-0069 issued 24-Sep-2015 recaps the situation at it exists and advises of Company’s decision to step in, thereby formally giving notice to Valard of Company’s intentions. The letter included the following key statements:</p> <p><i>“The net result of Valard’s lack of accountability for Part B has left Company and LCMC with no option but to intervene in field operations in order to correct direction and reduce unjustified risk transfer and cost to Company.”</i></p> <p><i>“... in order to come to a targeted win/win agreement and thereby enabling the formation of a strategic relationship between Nalcor Energy and Quanta, Company accepted the cost risk for ROW clearing and access works execution, while Valard assured it could properly manage this risk exposure to Company to an acceptable level. As of today, this has not occurred and Company’s cost exposure is significant.”</i></p> <p><i>“... Valard has requested release of LDs from Company due to ROW clearing and access performance. The legitimacy of such a request is insupportable as it can be clearly demonstrated that Valard has not, and continues to not, fulfill its obligations of the Agreement relating to the Part B Work. This failure is unacceptable and must be corrected forthwith by Valard.”</i></p> <p><i>“With regards to your request for relief from liquidated damages, we cannot consider any relief for the reasons stated above. We require immediate corrective action on the points noted herein and for Valard to fulfill all of its contractual obligations, including and especially those related to the Part B Work.</i></p> <p><i>Failure to do so will leave Company no choice but to pursue all remedies under the Agreement, including those that go beyond mere liquidated damages for delay. However, we wish to reach out</i></p>	<p>LTR-0009                      LTR-0069                      LTR-0077                      LTR-0105                      LTR-0312                      LTR-0326</p>

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		<p>continued to grow. Valard failed to meet its contractual obligations by preforming the scope as stated in the Agreement, while directed efforts towards exploiting their position under the Agreement, specifically by specifying the need for access standards that far exceeded the envisioned “fit-for-purpose” model so as to reduce Part A construction risk and increase productivity.</p> <p>There have been numerous letters exchanged between the Parties centering around the two fundamental issues of:</p> <ol style="list-style-type: none"> <li>1. Valard’s adherence to obligations under the Agreement for Part B; and</li> <li>2. Access construction standards and suitability.</li> </ol>	<p><i>and offer you an opportunity to avoid this course of action by taking immediate steps to address the management issues we have identified and to fulfill all contractual obligations.”</i></p> <p>Since issue of LTR-0069 Valard has yet to come forward and accept any responsibility for the growth the access scope from the envisioned amount of \$238 million to the forecasted \$450 million. In the meanwhile Company has focused on getting the access built and maintained to a level required to enable the timeliest completion of the transmission line. Despite Valard’s demands, in order to not prejudice our ability to recover future damages under the Agreement, Company did not formally de-scope Valard via issue of a Change Order to the Agreement. Post September 2015 LCMC adopted an edict to take control of Part B work to ensure that its interests were protected, as it was evident that Valard no longer had any incentive to manage its completion for the lowest possible cost.</p> <p>Valard has yet to-date presented any claim related to access works, or argument to support an extension to the Substantial Completion Date of 1-Jul-2017 contained within Exhibit 9 of the Agreement. Company through its Dispute Resolution Lead (B. Hallock) has engaged Berkley Research Group for the purposes of completing a forensic schedule review of the Work thereby providing the tool to assess any schedule claim extensions made by Valard.</p> <p>Company issued the last communication regarding the standard of access that has been constructed to-date on 17-Aug-2016 (LTR-326). Since that time formal communication has been minimal and centered around access maintenance.</p>	
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2	Snow Clearing of First 140km in Winter 2015/16	<p>At issue was Company’s rejection of Valard’s Change Request to self-perform snow clearing activity in the “First 140’ or Segment 1, Structures 1 to 400 (Muskrat Falls SY to Eagle Camp) for a second winter season, notably winter 2015/16 in order to support tower erection and stringing operations. LTR-113 issued by Company formally advises Valard of the rejection of the Change Request and that Company will not be held financial liable for completing this winter activity for a second season.</p> <p>LTR-105 issued by Company on 4-Dec-2015 provides an historical recount of the access construction and conditions in the in the ‘First 140’ or Segment 1, Structures 1 to 400 (Muskrat Falls SY to Eagle Camp). A read of this compendium of information will provide the reader with insight as to evolution of access works in this section.</p> <p>Total estimate value of this snow-clearing scope is estimated at between \$2 and \$4 million.</p>	<p>Company’s position regarding its obligations for snow clearing in the ‘First 140’ has been documented in its LTR-113 wherein it rejected Valard’s Change Request CHR-CT0327001-0020 for Winter Access Maintenance (km 0 to 140). For reference the following is extracted from this correspondence:</p> <p><i>“In Company’s letter LTR CT0327001-0105 – Right-of-Way Access km 0 to 140 issued on 4-Dec-2015 we outlined the facts surrounding the planning, development and maintenance of access in the noted area, including our dismay that despite clearly stating its intentions for such, Valard did not develop a detailed construction plan nor mobilize the required resources to undertake the Work in this area. Specifically Valard choose not to install guy anchors or tower foundations required to meet the Milestones contained in Exhibit 9 – Schedule in order to direct the resources of its struggling subcontractor Northstar to the HVac line, while for the foundation works in this zone did not meet the quality commensurate with that from the Standard of a Prudent Contractor which has underpinned the extensive rework and schedule delay to the Project. It is therefore Company’s opinion that in respect to the work in km 0 to 140 Valard was in non-compliance of the obligated covenants stated in Articles 2.9 (a) or (b) during the performance of the Work.</i></p> <p><i>Valard’s non-compliance to these covenants has created a situation wherein the Work in the km 0 to 140 was not completed to meet the Milestones set forth in Exhibit 9 – Schedule, thus the Work is extending into a second winter season. As stated in Company’s letter LTR CT0327001-0105, under Part B of the Work Company funded the preparation and maintenance of winter access in this area, however due to Valard’s non-compliance of these covenants, such access was not exploited thus resulted in financial exposure and hardship to Company.</i></p> <p><i>Based on Contractor’s breach of the above-noted obligations, a “Change” has not occurred, and therefore a Change Request and/or Change Order is not warranted, by virtue of the definition of “Change” in Article 1.2. As such Company will assume no liability associated with the completion of winter snow clearing and road maintenance in the area of km 0 to 140.”</i></p> <p>It has been Company’s view that this issue is closed. The last formal communication referencing this scope was LTR-164.</p>	<p>LTR-0105 LTR-0113 LTR-0164</p>

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3	Dead-end Tower Delivery Delay – First 140 (S1 1-400)	<p>Under the Agreement, Company free-issued tower steel by structure type for Valard to install. Company’s supplier, Jyoti Americas LLC, were responsible for the design and supply of approx. 34,000 MT of transmission structures at its Conroe, TX facility. Due to Jyoti America’s ongoing financial challenges / creditworthy woes, Company worked with Jyoti to relocate 60% of all fabrication from Conroe to both Dubai and India through sister firms Gulf Jyoti and Jyoti Structures.</p> <p>Due to the foregoing, initial tower deliveries were ‘just-in-time’ to supporting Valard’s planned construction schedule, thus requiring close coordination between Company and Valard in Q4-2014.</p> <p>In its LTR-164 Valard flagged that delay in the delivery of materials was a contributing factor to the overall delay of construction in the First 140.</p>	<p>There has been extensive and ongoing interface regarding free-issue material delivery, including a weekly meeting on the topic (see Aconex CM for MOM). While Company has acknowledged in LTR-69 that it did have some delay in free issuing all of the 41 self-support structures in the first 400 structures, it records indicate that Valard had sufficient material to support its crew mobilization. (Note: A post mortem material availability analysis for the First 140km was undertaken by Craig Roberts, which confirmed this view).</p> <p>To-date Company has not received any notice of delay resultant from claimed material delay. Should such a notice be received, an analysis of the merit of any claimed material deliveries would have to be undertaken, inclusive of material issue records verifying as to whether the material had been previously issued and perhaps misplaced by Valard (which has occurred). Should there be merit in Valard’s argument, then Company should consider that irrespective of material delay, any such delay would have been concurrent to Valard’s inability to install the self-support tower foundations without resulting in settlement beyond acceptable tolerances for tower installation. During this period Valard only had one (1) self-support foundation crew assigned to the HVdc line, which eventually grew to two crews in summer of 2015.</p> <p>Any claims of material delay in the First 140 must be addressed holistically as part of the broader situation that existed with Valard’s management of the ROW, poor workmanship leading to rework, and a lack of a planned, systematic mobilization program for the Work.</p>	LTR-0008 LTR-0164

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4	Part B Short Pay	<p>Pursuant to the provisions of Agreement, Valard are entitled for reimbursement of documented and approved costs for Part B – ROW Clearing and Access Management.</p> <p>Overall costs for Part B are approximately \$60 million, while approximately \$15 million has been deducted from payment certificates for a number of reasons including entitlement, no documentation, wrong rates, etc.</p> <p>Valard have struggled to justify the basis of these claimed costs.</p>	<p>There have been numerous exchanges between Company and Valard on this topic; most recently Quanta have become engaged and we are seeing positive action to bring resolution to the open items (e.g. fueling labor). Company’s position regarding Valard’s entitlement for reimbursement of claimed costs is well documented / substantiated. Expectation is that \$2 to \$4 million of the \$15 million claim costs are legitimate.</p> <p>This particular item continues to be worked towards resolution independent of any discussions and position taken by Company regarding Issue 1 – Valard’s management of Part B.</p>	<p>LTR-0099 LTR-0172 LTR-0289</p>

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5	Stringing Suspension – Standby Costs and Schedule Delay	<p>In LTR-358 issued on 6-Jun-2016, Company advised Valard that it had taken a decision to temporarily suspend stringing operations.</p> <p><i>“In accordance with Article 28.1 we hereby give Notice that you are to suspend HVdc conductor stringing operations. We are unable to confirm the duration of this suspension, however, early estimates suggest one (1) to three (3) months.”</i></p> <p>Shortly after receipt of LTR-358, both Valard crews were sent on an extended rotation while the majority of all stringing equipment was parked in several staging areas. A MOU was executed between the TCEA and the IBEW to facilitate those workers covered under the Collective Agreement to be paid a 40-hr work week while off. Valard are entitled to recovery of standby costs while under suspension.</p> <p>Crew 1 returned circa 20-Sep-2016, with the second crew returning approx. 10 days thereafter. Several meetings and significant email and verbal communication flow were held between the parties during the period of suspension in order to discuss entitlement for standby costs.</p> <p>Company has a comprehensive listing of all personnel and equipment affected during the suspension from which daily costs are available.</p>	<p>Company agrees that Valard are entitled for reimbursement of actual standby costs due to Company’s decision to suspend stringing operations.</p> <p>In Company’s LTR-388, it rejected Valard’s submitted payment certificate for costs associated with the stringing suspension because it did not comply with the intent and principles of the Agreement as it relates to reimbursement of Suspension expenses. In LTR-388, Company stated that Valard did not adhere to the requirements of Article 28 of the Agreement in its claim for standby costs, which specifically includes:</p> <p><i>“Company shall reimburse Contractor its reasonable expenses (which Contractor shall use its best efforts to mitigate)....”</i> and <i>“In no event shall Contractor be entitled to any compensation for indirect or consequential/asses, including lost profits and revenue_. ... ”</i></p> <p>In short, Valard must demonstrate out-of-pocket costs for labor, while equipment not redeployed elsewhere, are to paid in accordance to the standby rates contained in Exhibit 2.</p> <p>In Letter 388, Company also referred to Section 6 of Exhibit 2 - Compensation which states: <i>“No payment will be allowed for equipment that is not operating because the Work has been delayed or suspended by Contractor for its own reasons.”</i></p> <p>Company’s internal analysis has revealed that had Company not suspended stringing operations, then Valard would not of had enough stringing segments available to sustain activities of two stringing crews. In consideration of this, Valard would have had to shutdown one of the two crews. It is Company’s position that Valard would be not be entitled to recover suspension costs for the period of time that due to its poor performance on towers and foundations, it could not sustain the second stringing crew. A supporting schedule analysis has been undertaken by Company to support this position.</p>	<p>LTR-0258 LTR-0373 LTR-0388</p>

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6	IBEW Travel MOU	<p>Memorandum of Understanding (MOU) executed between IBEW 1620 and the Transmission Construction Employer’s Association (TCEA) regarding the amending of the Collective Agreement so ensure that time spent travelling is paid at premium rates. Specifically the TCEA (i.e. LITP) was seeking opportunity to reduce labor costs associated with non-productive time being expended by OTL / C4 contractors travelling to/from the worksite at the beginning and end of a shift, thus providing opportunity to reduce overall Project costs. With the execution of the Travel MOU between TCEA and the IBEW, all travel time would be paid a straight time and not trigger overtime or attract add-ons such as Health/Welfare and Pension or other premiums. For all contractors, it was LITP’s intention to recover these savings (estimated between \$10 to \$12 million).</p> <p>MOU was made effective 3-Sep-2016, with all ROW contractors immediately implementing, while Valard refused to implement. In its LTR-358 dated 29-Sep-2016, Valard suggests that:</p> <ul style="list-style-type: none"> <li>• There will be a reduction in productivity as a result of implementing the MOU;</li> <li>• Valard is not obligated to abide by the MOU which represents a fundamental Change to the Agreement without a Change Order entitling Valard to payment for all costs (plus mark-up) including lost productivity and delay, resulting from the Travel MOU; and</li> <li>• Risk of losing skilled trades</li> </ul> <p>To-date, no recoveries have been made against Valard with respect to the Travel MOU, while Valard continues to refuse to implement the MOU.</p>	<p>As stated in LTR-342, Company expects Valard to adhere to its obligations in Section 8 of Exhibit 2 – Compensation, specifically comply with the terms of the Project Labor Agreement, including all executed amendments. Valard are to implement the Travel MOU and ensure all travel time is not paid at a premium rate.</p> <p>David Clark, Sr. LR Advisor has prepared an internal memorandum reviewing Valard’s position on the Travel MOU (dated 29-Dec-2016) that provides detailed background on its development including consultation provided with Valard. D. Clark has also drafted a letter in response to LTR-358, in order to respond specifically to the points raised by Valard.</p> <p>It is Company’s view that the Travel MOU must be implemented by Valard in the same regard as both the other others or as other MOUs have been implemented in the past. There is little risk of attrition given the collective agreement rates are favorable in context of other projects across Canada, while the overall demand for resources across Canada are much less than when the Collective Agreement was negotiated in 2012-2013.</p> <p>With Valard’s execution of the Travel MOU, it has been Company’s intention to leverage the information provided by Valard to support its entitlement for Trade Labor Rate Escalation under Exhibit 2 – Compensation, to enable the calculation of the potential recoveries for the Travel MOU. It has been contemplated that both these items would be dealt with as a package.</p>	<p>LTR-0342 LTR-0358</p>



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7	Trade Labor Escalation	<p>In accordance to Section 12, Exhibit 2 – Compensation, Valard are entitled for reimbursement of trade labor rate escalation as the unit prices contained in the contract are based upon the May 2014 trade labor rate schedule contained in the Collective Agreement between TCEA and IBEW 1620. Section 12 presents the formula and references for calculation of it.</p> <p>Valard are obligated to submit and justify the value claimed for labor escalation, so as to allow the unit rates for work completed in each of the years May 2014 – May 2015, May 2015 – May 2016, May 2016 to May 2017, and post May 2017 to be adjusted to reflect the applicable change due to labor rate escalation. Note that escalation shall not apply after the Milestone Date for Substantial Completion as in Exhibit 9 – Schedule.</p> <p>Valard’s LTR-400 was recently submitted and attempts to provide the basis for the calculation of entitled trade labor escalation.</p>	<p>Valard are entitled for reimbursement of trade labor escalation pursuant to the provisions contained in Section 12 of Exhibit 2 – Compensation. Key considerations in the determination of entitlement include:</p> <ul style="list-style-type: none"> <li>• Validity of person-hours reported expended at each of regular, 1.5x and 2x rates. Payroll audit will likely be required to validate the accuracy of hours claimed.</li> <li>• Validity of calculations for adjustments in labor cost burdens.</li> </ul> <p>As it is well documented, Valard’s overall progress considerably lagged the Control Schedule contained in the Agreement which is relevant in the context of labor escalation since under the terms of Section 12, Company is exposed to the associated incremental costs for the trade labor rate escalation for any units of worked deferred. Valard’s overall performance shortfalls on the onset of the Work, which continued into Q1—Q2 2016, have resulted in a significant volume of the Work being shifted to the back-end of the schedule, thereby increasing Company’s overall financial exposure for escalation.</p> <p>Internally Company is of the view that Valard’s entitlement for trade labor escalation should be adjusted to reflect the planned volumes that were deferred as part of the overall schedule adjustment and claims related to the shift of the Substantial Completion Date. To-date Company has not advised of any intentions to adjust the net payable due to this overall program shift, however the intention was to calculation a value and use it as a lever with the overall expected settlement on Liquidated Damages due to forecasted delay in achieving the Substantial Completion Date.</p>	<p>LTR-0187 LTR-0400</p>

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8	Rock Busting for Foundation Installation	Valard are claiming for rock removal required for the installation of both earth and rock foundations. This issue has come up both under CT0319-001 and CT0327-001, with total claimed cost under each contact at approximately \$2 million and \$12 million respectively. Valard are claiming entitlement under Basis of Payment item C-71.	<p>It is Company interpretation that rock removal is clearly considered in the unit prices for both earth grillage and rock foundation installation.</p> <p>In Company’s LTR-282, we advised Valard that it very clear in the Drawings, Technical Specification and the Basis of Payment that foundation preparation is included in the Unit Prices for foundation installation. Refer to the following excerpts from the Agreement:</p> <ul style="list-style-type: none"> <li>Section 3 of Attachment 1 – Basis of Payment, Exhibit 2, states: <i>"Foundation prices shall include all necessary soils characterization, QA/QC work for foundation selection, Site preparation/levelling, and installation, including any applicable supply of concrete, grout and rebar."</i> The means and methods of how Valard complete foundation installation are within its control. Jackhammering is part of foundation installation and is included in the foundation Unit Prices.</li> <li>Section 3 of Attachment 1 – Basis of Payment, Exhibit 2, also states: <i>"Where it is necessary to blast material to facilitate site preparation, the Engineer and the Contractor shall agree on the amount of material that needs to be blasted and removed."</i> This item is intended for activities associated with site preparation such as removal of large volumes of rock boulders, reshaping cliff edges/slopes and quarry work; not for foundation installation Work.</li> </ul> <p>Valard has contested our position in its LTR-319. In any event we have continued to work through options to reduce the volume of rock to be removed as it benefits both Valard and Company. Site Instruction 119 and the application of the macro-pile are two examples of such.</p>	LTR-0282 LTR-0319 LTR-0375

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9	Dewatering during Foundation Installation	<p>At issue, is a claim by Valard that “excessive” dewatering requirements are required beyond what it has endeavored to characterize as reasonable or industry standard, and that Company has not designed a family of foundations suitable for all locations.</p> <p>The Technical Specification contained in the Agreement states that the Contractor is responsible to manage and control ground water so that it does not compromise the integrity of the foundation installation. Specifically the Technical Specification, Attachment A7, Section 3.7 – Dewatering states:</p> <p><i>“Every reasonable effort shall be made to maintain a dry hole. Contractor is responsible to ensure the proper discharge of water that is pumping from an excavation.”</i></p> <p>The existence and expectation of groundwater and a high water table was clearly stated in 350 kV HVdc Line Geotechnical Baseline (Document # ILK-SN-CD-6200-GT-RP-0001-01, Rev. B1). Appendix D, page 3 states:</p> <p><i>“Water Table - The groundwater level or water table is expected to be high, generally a metre or two beneath the ground surface, over most of the route. The entire route has been glaciated with generally poor drainage patterns, except in areas</i></p>	<p>In follow-up to a workshop held in St. John’s on 17-18 August 2016 to discuss various foundation installation issues, Company summarized its stated views in LTR-334, which included it’s position regarding dewatering and water management. Specifically the following was stated:</p> <ul style="list-style-type: none"> <li>• As it pertains to Note 5 of the Foundation Selection and Installation Decision Process, it is evident that the existence of ground water is not correlated to the bearing capacity of the soil. Company advised that Note 5 is not applicable and should be removed.</li> <li>• In the Workshop Valard stated, <i>“At sites with excessive water intrusion, Company has instructed Contractor to realign watercourses, install additional sumps, pumps, trenches and berms.”</i> Valard also stated, <i>“In cases of such extensive water control measures, the efforts undertaken by Contractor to dewater the excavation are beyond reasonable industry standards and are considered to be out-of-scope.”</i></li> <li>• Valard have also attempted to establish parameters around the scope of dewatering by referring to <i>“industry standards and practices”</i> and attempted to define what constitutes <i>“industry standards and practices”</i> in Note 8 of its Foundation Selection and Installation Decision Process. In our discussion on this topic we could not agree on appropriate parameters around what constitutes <i>“industry standards and practices”</i>. In the absence of arriving at an agreeable definition of <i>“industry standards and practices”</i>, Company referred Valard to the Technical Specification, Attachment A7, Section 3.7- Dewatering, specifically <i>“every reasonable effort shall be made to maintain a dry hole.”</i></li> <li>• With reference to the Geotechnical Baseline Report, it is clearly evident that significant water could be encountered and the requirement for dewatering was to be expected on all foundation installation activity.</li> <li>• In terms of what constitutes <i>“reasonable effort”</i>, it is not unreasonable to expect that Valard plan foundation installation activity using effective work methods and techniques for both surface and ground water management that reflect:             <ul style="list-style-type: none"> <li>○ That which would be expected from the Standard of a Prudent Contractor;</li> </ul> </li> </ul>	LTR-0334

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	<p><i>of significant relief. Rainfall records indicate that mean annual precipitation can be less than 1,000 mm to over 1,400 mm over the route. Many ponds, lakes and extensive wet bogs exist along the route."</i></p> <p>The report also states (page 4), "<i>water table varies seasonally and with location.</i>"</p> <p>It is clearly evident that significant water could be encountered and the requirement for dewatering was to be expected on all foundation installation activity.</p> <p>Despite this understanding, Valard are claiming that the amount of groundwater encountered during foundation installation is excessive and that Company should be compensating them extra costs for the effort incurred. Valard are continuing to submit LEMs for this activity, while Company continues to reject them.</p>	<ul style="list-style-type: none"> <li>○ Work executed by Personnel who are trained and competent in consistent application of these work methods and techniques; and</li> <li>○ Work executed using appropriate equipment, along with having an adequate complement of functioning equipment and materials at the structure box to handle foreseeable dewatering requirements.</li> </ul> <ul style="list-style-type: none"> <li>• Company has previously communicated our observations regarding poor practices and inconsistent application of recommended work methods and techniques for surface water and drainage control.</li> <li>• Company has advised Valard that where it can be demonstrated that water inflow cannot be controlled or excavation dewatered using reasonable effort, then a recommendation for further geotechnical investigation can be considered.</li> </ul> <p>The extent and occurrence of what Valard would consider as excessive dewatering is largely an historical issue associated with Labrador, as in Segment 3 Valard Quebec’s work methods and capability clearly demonstrated its ability to effectively manage both surface and ground water. Internally a desktop review of foundation installation practices between Valard Quebec and Valard Alberta highlight significant anomalies that reaffirm the poor work methods used by Valard Alberta.</p> <p>Company continues to reject any submitted LEMS for excessive dewatering activity that continued to be claimed by Valard.</p>	
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10	Foundation Excavation and Import Backfill above Neat Volumes	<p>Valard are claiming entitlement for additional costs when foundation soil conditions require:</p> <ol style="list-style-type: none"> <li>1. Over-excavation beyond neat volumes (1:1 slope) to ensure slope control is maintained;</li> <li>2. Installation of borrowed backfill beyond neat volumes, whether within our outside the 50m ‘free-zone’ for sourcing of backfill (beyond 50m is considered import and is paid at a pre-defined unit rate).</li> </ol> <p>The basis of payment under the Agreement is a unit rate scheme wherein Company compensates Valard an all-in rate for the installation of a pre-defined unit. In the case of foundation installation, Section 3 of Exhibit 2 – Compensation, Attachment 1 – Basis of Payment describes what is included in the foundation unit prices (emphasis added):</p> <p><i>“Foundation prices shall include all necessary soils characterization, QA/QC work for foundation selection, Site preparation/levelling, and installation, including any applicable supply of concrete, grout and rebar. For self-supporting towers, in the event that rock and soil foundations are required, Contractor shall be paid based on the type (combination) of foundations installed. <b>No payment shall be made for obtaining suitable backfill material that is within fifty (50) metres of the location of the foundation;</b> and any excess backfill/spoil material shall be spread along the ROW, in accordance with the direction of Engineer,</i></p>	<p>In follow-up to a workshop held in St. John’s on 17-18 August 2016 to discuss various foundation installation issues, Company summarized its stated views in LTR-334, which included it’s position regarding foundation excavation and import backfill above neat volumes.</p> <p>Company’s position on foundation over-excavation is as follows:</p> <ol style="list-style-type: none"> <li>1. All foundation excavation, regardless of the excavated quantity, is an integral part the Work, has been considered in the Basis of Payment and is included in the Unit Prices.</li> <li>2. Technical Specification, Attachment A7, Section 3.6 - Excavation states the following with respect to the requirement to perform over-excavation:                     <p><i>“Excavation shall be such that the center of the base of steel members of the foundations, when installed, shall not deviate from the center of the excavation by more than 100 mm for guyed towers and 50 mm for self-supporting. The depth specified on the various Drawings and Specifications shall be considered as minimums. All loose material shall be removed from the base o f the excavation.”</i></p> </li> <li>3. The condition that Valard purport that necessitates over-excavation (i.e. unstable soils) is addressed in Note 2.4 on all the foundation drawings (e.g., 350 kV HVdc Line Steel Foundations for Towers A1, A2, A3, A4 and 81 for 100 kPa and 250 kPa Soil Design Layout (Document# ILK-SN-CD-6200-TL-DD-0174-01) and is included in the Work. Note 2.4 states, <i>“In case of unstable son the contractor is responsible for providing temporary support around the perimeter of the excavation and shall comply with the latest provincial and federal OH&amp;S regulations.”</i></li> </ol> <p>The Work encompasses excavation of all material required for the safe and Acceptable installation of either a grillage or rock foundation. The need and extent of over excavation will vary from structure to structure, based on observed conditions. Valard have complete control over the work methods and techniques that enable this Work to be performed in the most efficient manner.</p>	LTR-0334

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	<p><i>and shall be deemed to be included in the applicable Unit Price.</i></p> <p><i>In the event that imported backfill is required (i.e. processed material / road gravel), the installation cost is deemed to be included in the price associated with the respective foundation type. The unit of measurement for the supply and transportation of the imported backfill is covered in the Earthwork Measurement of Payment section below.”</i></p> <p>Section 3 goes on to include the following stipulations with respect to earth grillage foundations (emphasis added):</p> <p><i>“Installation of grillage foundations shall be considered complete when the following has occurred and has been Accepted by the Engineer:</i></p> <ul style="list-style-type: none"> <li><i>• All necessary assembly, survey, staking, transportation, <b>excavation, slope control, heating and hoarding, dewatering / water flow control, installation and backfill</b> has been completed as per the Drawings;”</i></li> </ul> <p>Valard are continuing to submit LEMs for this activity, while Company continues to reject them.</p>	<p>Company’s position on foundation borrowed backfill beyond neat volumes is as follows:</p> <ol style="list-style-type: none"> <li>1. Company reminded Valard that quite early in the execution of the Work we agreed upon neat volumes that were applicable for borrowed backfill and Company have compensated Valard accordingly where borrowed backfill was agreed. The Agreement covers situations where additional borrowed backfill is required for pre-approved cribbage installation or modified grillage installation.</li> <li>2. Where over-excavation, beyond neat volumes, is a result of Valard’s work methods or crew-by-crew application of those work methods (i.e., some crews typically open up a much larger area than necessary) that is solely within Valard’s control and included in the Work and associated Unit Prices.</li> </ol> <p>Company continues to reject any submitted LEMS for over-excavation and borrowed backfill beyond neat volumes.</p>	
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Issue	Title	Issue Synopsis	Summary of Company’s Position & Current Situation	Relevant References
11	Foundation Selection and Foundation Settlement	<p>The Work includes the obligation of Valard to preform foundation selection for approval by Company, as stated in Exhibit 1 – Scope of Work:</p> <ul style="list-style-type: none"> <li>“Developing and performing foundation selection and installation process and program to determine the appropriate foundation type at each structure. This will include soil classification, and all necessary geotechnical QA/QC work for foundation selection and installation. All foundation selection shall be stamped by a professional geotechnical engineer registered with the Professional Engineers and Geoscientists of Newfoundland and Labrador (PEG-NL). Both the Contractor’s proposed foundation selection and installation process and the Subcontractor providing the geotechnical services is subject to review and Acceptance by the Engineer;”</li> <li>“The selection of the foundation type, as per the requirements of the Technical Specification - Part A, for each structure location;”</li> <li>“Design, including all necessary geotechnical investigation, supply and installation of pile foundations, if required. The tower leg shoes will be provided as per the Material Lists.”</li> </ul> <p>The Foundation Selection Process has been subject to a number of revisions, the last major update occurring in August (Rev 14) and was referenced in LTR-332/333. Fundamentally the process has</p>	<p>Historically Valard have alleged that Company was deficient in the following manner:</p> <ol style="list-style-type: none"> <li>Provided an unsuitable family of foundations;</li> <li>Exercised or delayed decision making with respect to approval of presented foundation recommendations; and</li> <li>Instructed the use of grillage foundations in saturated soils that lead to settlement and the need for Valard to remove and reinstall a number of foundations in Segment 1, Structures 1 to 400 zone.</li> </ol> <p>Company’s position on the subject of foundation selection has been featured prominently in several letters to Valard, including LTR-118 and LTR-304, while our concerns regarding poor quality of workmanship leading to foundation settlement have been discussed extensively going back to the start of the Work (LTR-44, 50)</p> <p>On the issue of foundation settlement, it has been Company’s view that the rework exists due to poor work practices and inadequate supervision by Valard. In our LTR-89 Company stated:</p> <p><i>“Company has reviewed Valard’s view on the issue of foundation settlement however disagrees with their conclusion that settlement greater than 6 mm is unavoidable. Company has observed that the greatest contributing factor to settlement remains in the means and methods in controlling frost during winter construction. This is common for out-of-specification foundations on both HVac and HVdc TLs, not because of underlying soil bearing or ground water. Furthermore foundations which were held open for long periods, exacerbate frost issues.”</i></p> <p>For each of these failed grillage foundations, Company has internally prepared a post-mortem installation analysis that supports the above statements made to Valard.</p> <p>Subsequent to the rework on Structure S1-70 and several others in the first 140km, Company has continued to monitor the as-installed condition in order to detect was post-installation settlement has occurred. Having gone through a complete frost cycle, Company feels highly confident that the foundations will not settle. The results of this survey analysis has been captured in Technical</p>	<p>LTR-0044                  LTR-0050                  LTR-0089                  LTR-0118                  LTR-0304                  LTR-0312                  LTR-0332                  LTR-0333</p>

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	<p>worked and largely remains unchanged since it was implemented under Agreement CT0319-001, rather small tweaking has occurred with each revision to reflect unique considerations as they were discovered as well as implementation of H-pile, micro-pile and modified earth grillage (bearing strength &gt;75kPa).</p> <p>Valard has reluctantly accepting their obligations under the Agreement with respect to foundation selection, in particular engaging a professional engineer (i.e. AMEC) to perform the selection. Valard’s adopted approach for foundation installation, specifically assuming by default that it was a grillage foundation until the installation crews determined that either a rock foundation or unsuitable for grillage, thus requiring further geotechnical information. This continued in Segments 1 and 2 leading to plenty of foundation skips, while Valard Quebec in Segment 3 adopted approaches that ensured all foundations were installed, with skips nearly non-existent (3 over 400 locations). Moving into Segment 4, Valard’s CM Dave Torgensen (who had just moved from the AC project) decided to conduct a test pitting program to the behest of Valard’s CEO. This test pitting was successful in increasing overall foundation installation productivity. Following the August 17 – 18 workshop, Company agreed to financial share the cost of the advanced test pitting and Change Order CHO-024 was executed.</p>	<p>Note – Re-installed Earth Grillage Survey Monitoring Program (document no. ILK-PT-MD-6200-TL-RP-0001-01) contained in Aconex.</p> <p>In late July Valard and Company agreed to a revised foundation selection program (Rev 14) and issue escalation process to address any potential delay in the foundation selection process and ensure timely collection of any required geotechnical information (reference LTR-332/333).</p> <p>In our agreement to the financially support and participate in the advanced test pitting, we stated the following rational:</p> <ul style="list-style-type: none"> <li>• Gather geotechnical information prior to installation of the foundation and ultimately provide for recommendation;</li> <li>• Provide an opportunity for all parties (AMEC, Valard, Company) to be present to view and discuss geotechnical information with an appreciation for suitable foundation;</li> <li>• Identify sites that require further geotechnical investigation ahead of construction;</li> <li>• Avoid delay in construction; and</li> <li>• Result in mutual agreement of foundation recommendations and avoid any impasse.</li> </ul> <p>With respect to Valard’s claim that Company’s delay in decision making negatively impact the foundation installation program, Company’s internal records (maintained by the Site Geotechnical Team – N. Boran) do not support such a claim, rather provide adequate evidence to support that turnaround times on decision making were well within Company’s rights within the Agreement.</p> <p>With the on-going advanced test pitting, supported by geotechnical investigation, combined with Valard having moved up the learning curve with respect to the level of effort, work methods and supervision required to successfully install earth grillage foundations, installation rates and quality have been very acceptable and without noise.</p>	
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12	ECNs 1 to 20	<p>Pricing for Company issued ECNs 1 to 20 has yet to be agreed between Company and Valard, thus facilitating full payment for many of the installed foundations installed in Segments 1 and 2.</p> <p>Company has responded to all submitted pricing on 8-Sep-2016 (LCP-CM-EMAIL-091320) accepting a number of proposed prices, as well as requesting clarification on several items, however Valard are yet to have responded to the open requests.</p> <p>The item was discussed as part of the 27-Nov-2016 Project Steering Committee Meeting (reference MOM attached to LTR-0387).</p>	<p>In the 27-Nov-2016 Project Steering Committee meeting, the following comments were captured as part of the Minutes of Meeting.</p> <p><i>“Discussion occurred on the open commercial items, including ECN’s 1 to 20, rock busting and backfill. Valard advised that they are reconsidering their submitted pricing for ECNs 1 to 20 pending confirmation of our position on rockbusting and backfill. J.Kean advised that we have stated our position, which is in accordance with the Agreement; nonetheless we remain available to should Valard wish to reaffirm the rationale for their position.”</i></p> <p>Company awaits Valard’s response to our questions regarding the pricing of ECN’s 1 to 20. In the interim, an agreement has been reached with Valard in early December to facilitate unit price payment of the intermediate rock foundation introduced as part of ECNs 1 to 20 as a deep rock foundation, thus flowing cash to Valard.</p>	<p>LTR-0082 LTR-0387</p>

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13	Schedule Delay in Achieving Substantial Completion Date	<p>In consideration of the current status of the Work Valard will be unable to meet the Substantial Completion Date of 1-Jul-2017 as contained in Exhibit 9 – Schedule. Liquidated damages (capped at 10% of Contract Price of \$880 million) for missing this date are as follows:</p> <ul style="list-style-type: none"> <li>• Grace period of 15 days</li> <li>• \$350k/day 16-July to 15-August 2017;</li> <li>• \$750k/day thereafter until cap reached</li> </ul> <p>Based upon the current forecasted completion date of 31-Oct-2017, Valard could be exposed to approximately \$67 million in LDs, while capping out would occur near the end of November.</p> <p>Valard’s CEO has on several occasion verbally expressed reprieve from LDs by extending the Substantial Completion Date under the basis that access construction delayed Valard, despite Valard having the obligation for ROW Clearing and Access Works. It must be noted that to-date Valard have not submitted any formal request for reprieve of LDs.</p>	<p>Company has on numerous occasions requested Valard for a recovery plan to address the performance shortfall and ensure that the Work is completed in as timely a basis as possible.</p> <p>In LTR-355 Valard formally submitted an updated schedule for the Work that supported a completion date of 31-Oct-2017 and therein requested a Change Order to realign the Agreement with this revised completion date. In Company’s LTR-370, it advised:</p> <p><i>“We acknowledge receipt of your correspondence (LTR-CT0327001-0355) dated 31-Oct-2016. On a point of clarity, we want to state that your submission does not represent a re-baseline schedule and there is no plan to issue a Change Order or otherwise modify your obligations as currently outlined in the Agreement.</i></p> <p><i>We appreciate the initiative and renewed focus to complete the Work and recover on schedule however the submission is a recovery plan; not a re-baseline schedule. The submission and management of a recovery plan is addressed in Exhibit 3 - Coordination Procedures, Section 7 - Schedule Management, Contractor Duties, item d); albeit the primary focus of this recovery schedule is to get the Work completed rather than keeping the Work on schedule.”</i></p> <p>Valard, with Company’s acknowledge, continues to manage the work in accordance to forecasted Completion Date of 31-Oct-2017 presented in October 2016. Based upon performance over the past six (6) months, Company has confidence that the presented schedule is reasonable and achievable. Valard continue to take actions required to ensure that this revised completion date is achieved including the mobilization of additional crews and equipment.</p> <p>While it is a matter of opinion and speculation as to Valard strategy for seeking reprieve of LDs, it is most certain that Valard’s expectation is that at a bare minimum all LDs are to be waived in lieu of their recovery efforts should they be able to achieve the 31-Oct-2017 Substantial Completion Date.</p>	<p>LTR-0129                      LTR-0166                      LTR-0215                      LTR-0370</p>