



March 8<sup>th</sup>, 2016

AH-Letter-PM-121

Muskrat Falls Corporation  
Lower Churchill Project Muskrat Falls Corporation  
350 Torbay Road Plaza, Suite No. 2  
St. John's, NL, A1A 4E1

**Attention:** Scott O'Brien – Project Manager, Muskrat Falls Generation

**Subject:** 1) CH0032: Supply and Install Powerhouse and Spillway Hydro-Mechanical Equipment  
2) Company's letter LTR-CH0032001-0260 – Performance Default Notice – March 4<sup>th</sup>, 2016

Dear Mr. O'Brien,

This letter is in response to your letter LTR-CH0032001-0260 dated March 4, 2016 in which you purport to notify Andritz Hydro (Contractor) of default and of Company's intent to draw on Contractor's Letter of Credit in the event Contractor fails to complete its work necessary for river diversion by June 15, 2016. Andritz Hydro is not in default of its obligations under the Contract, and Company has absolutely no grounds for even threatening to draw on Contractor's Letter of Credit, much less doing so.

From your March 4 letter, it is clear that Company does not appreciate the legal nature of the unilateral "change order" – basically directive – issued by Company to Contractor to accelerate Contractor's work to work toward a target date for river diversion of June 15. As Contractor noted in its letter of November 24, 2015 (AH-LETTER-PM-076), Company's directive does not contractually obligate Contractor to meet Company's desired date of June 15, nor does Company's directive expose Contractor to any damages for delay in achieving the June 15 ready for river diversion date requested by Company. The Contract is clear as to the milestones to which Contractor is bound and the liquidated damages Contractor owes for failing to achieve such milestones in a timely manner for reasons attributable to Contractor. All such contractually specified milestones have been extended to October 31, 2016 pursuant to Change Order No. 10. Contractor has no contractual obligation to achieve work ready for river diversion by June 15, 2016, and thus cannot possibly be in default for failing to meet such date.

In addition, the Contract specifically provides that the liquidated damages for the specified milestones carrying liquidated damages exposure constitute Company's sole and exclusive remedy for delay in Contractor's performance. As such, Company has no such entitlement to claim any damages from Contractor for anticipated delays to interim milestones, and most certainly has no such entitlement related to actual or alleged delay in achieving target or requested acceleration milestones, such as the June 15, 2016 date. Even if Company had any entitlement, Company could not declare Contractor in

default now – some 100 days before the target date – for delay that is still purely speculative.

While Contractor notes that Company has not issued a proper change order or unilateral directive pursuant to the terms of the Contract, and in fact appears to be abusing entirely the change process in this project to try to divert attention from Company's delay in providing Contractor site access on the project and avoid payment of Contractor's claim as a result thereof, Contractor does acknowledge that Company's directive creates an obligation to accelerate its works. This scope of this obligation is to exercise due diligence to accelerate the work toward the June 15, 2016 river diversion date in accordance with Contractor's acceleration proposal to Company, subject, of course, to Contractor's right to reimbursement for all of its costs associated with such efforts. Company's directive does not require Contractor to take extraordinary or commercially unreasonable measures to achieve Company's requested date, nor does it require Contractor to manipulate its schedule to show anything other than the actual projected completion dates for each of the scheduled activities. When and where any such dates can be improved, Contractor has done so, and will continue to do so and will update its schedule; however, Contractor will not change its schedule to show earlier dates where such dates are simply not achievable.

Since Company first approached Contractor regarding opportunities to accelerate its work, and absolutely since Company's issuance of its directive to accelerate, Contractor has diligently explored and pursued all reasonable avenues of and opportunities for acceleration, with Company's target date of June 15 in mind. Contractor would also like to remind Company that Contractor never reflected in any version of its acceleration proposal prior to the Company issuing the directive on November 12, 2015 an achievable completion date for Spillway Diversion earlier than July 15, 2016. Regardless, Contractor has worked tirelessly with its key on-site subcontractors and pushed for improvements to the schedule whenever possible and Contractor continues to do so. Contractor has kept Company informed of its progress and of any proposals for additional schedule improvements. Contractor has also provided Company with updated schedule information as it has become available to Contractor. The factual record for the project will demonstrate unequivocally that Contractor has complied with its obligations under the acceleration directive, as well as its general obligations of good faith and honesty.

It is not so clear that Company has acted in good faith toward Contractor on this project. After a lengthy delay in providing proper and required access to the site to Contractor, Company has continually pushed Contractor for acceleration proposals, while refusing to negotiate an appropriate lump sum price for such work. In particular, instead of providing feedback to Contractor's latest acceleration proposal issued on Oct 15, 2015 or providing the requested 2 week notice so Contractor would be in a position to prepare adequately for the acceleration efforts which could have started as early as Nov 1, 2015, Company instead waited until Nov 12, 2015 and then issued its unilateral directive, purporting to require Contractor to achieve a certain date, at whatever cost and effort,

but only offering to pay a patently inadequate price for such work. Most recently, Company has conveniently dismissed Contractor's site manager for no justifiable reason, creating disruption to Contractor's daily activities and requiring Contractor to divert some of its attention from acceleration to site resources and recruiting. Now, with Company's March 4 letter and threat to draw on Contractor's Letter of Credit – both prematurely and without legal merit – Contractor has serious concerns as to Company's motives and dedication to a successful project and complying with Company's own contractual and good faith obligations.

It is apparent that Company's March 4 letter was a direct result of Contractor's most recent schedule update and communication indicating slippage of approximately three weeks due to various site conditions, including, (a) late and limited access to the site to commence work; (b) lower labor productivity; (c) extra work Contractor has had to perform due to errors of others; and (d) time lost as a result of the harsh weather conditions and the fact that work planned for warmer months now must be performed during the colder months as a result of Company's initial project delays. Contractor regrets that such time has been lost and is doing all it can to find opportunities to recover some time in the schedule. Contractor will inform Company of any improvements of which it becomes aware and update its schedule accordingly.

Specifically regarding Company's allegations regarding Contractor's management of its subcontractors and work at site, Contractor has established various procedures from the start of the installation work for managing its subcontractors, including daily coordination meetings with all subcontractors to review the planned day and night shift activities, weekly reviews of subcontractors' manning and staffing plans, and assignment of experienced supervisors to monitor work quality and progress in the field for each subcontractor. In response to Company's requests, Contractor has also performed additional pre-installation risk assessments and reviews, held several workshops to improve site process effectiveness and given technical presentations of installation procedures to ensure that they are fully reviewed and understood prior to implementation. As to the staffing, Contractor has dispensed 7 additional individuals to site to assist with subcontractor management, and has put in place additional home-office resources as well to optimize the subcontractor performance. Contractor will be providing via separate letter notice of additional measures proposed by its concrete subcontractor to recover some key time in the schedule, together with the projected cost of such measures. Contractor's expectation continues to be that the costs associated with all of the measures taken toward accelerating the site work will be reimbursed by Company.

Contractor confirms that it will continue to comply with its contractual obligations, including its obligation to exercise due diligence to accelerate the works as much as possible toward achievement of a June 15 river diversion date pursuant to Company's directive. Such compliance and efforts include progressing and managing the works of the subcontractors.

Again, we wish to reiterate our concern with respect to Company's conduct and threat to use Contractor's Letter of Credit improperly. Contractor is clearly not in default, and Company's notice is invalid. Furthermore, Company has no entitlement to any amount under the Contract, let alone the Letter of Credit. Finally, Company has suffered no damages as a result of any of Contractor's acceleration activities. Contractor cautions Company to govern itself accordingly. Andritz Hydro will pursue all rights and remedies available to it against Company for a wrongful draw on the Letter of Credit.

Sincerely,

Yours Truly,



**Bill Mavromatis**  
**Project Manager**  
**Andritz Hydro Canada Inc.**

**CC:** Frank Gillespie, LCP Deputy Company Representative/Area Manager  
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