



April 20th, 2016

AH-Letter-PM-163

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: CH0032-001: Supply and Install Powerhouse and Spillway Hydro-Mechanical Equipment
Notice of Dispute

Re: CHO 010 – Invoice and Payment Certificate

Ref: Company's letter LTR-CH0032001-0330 – dated April 13th, 2016

Dear Mr. O'Brien:

This letter shall serve as a response to Company's letter of April 13, 2016 (LTR-CH0032001-0330), as well as a formal Notice of Dispute pursuant to Section 39.1 of the Agreement between Company and Contractor. The particulars of the Dispute, as required by the Agreement, are provided in Appendix 1, attached hereto.

Company's April 13 letter confirms to Contractor that Company does not intend to pay Contractor for legitimate work Contractor has performed to accelerate the Work under the Agreement at Company's direction – Work that requires acceleration due to Company's extreme delay in completion of its civil work at Site. Specifically, Company continues to claim CHO 010 represents a valid Change Order issued on a lump sum basis, and thus Contractor is bound to the payment terms of such Change Order and the Agreement's invoicing procedures for lump sum work, such as submission of Payment Certificates. Company also appears to view the river diversion target date of June 15, 2016 stated in CHO 010 as binding on Contractor as a schedule milestone.

First, as Company is aware, despite Contractor's entitlement to invoice for its acceleration work under CHO 010 as cost reimbursable work not requiring a Payment Certificate, Company provided a Payment Certificate anyway, without prejudice to its position, to facilitate Company's evaluation and payment of Contractor's invoice. Accordingly, Company cannot assert Contractor's failure to follow contractual invoicing procedures as grounds for not paying Contractor for the work invoiced.

Second, Contractor vigorously disputes Company's assessment of progress of the acceleration work as 2.39% as stated in Company's April 13 letter. This assertion is



made in bad faith, especially considering the amount of obvious and known effort expended by Contractor and its Subcontractors at Site and the sheer number of personnel who have been working diligently since mobilization just following Company's issuance of CHO 010 in November of 2015. Company's methodology in assessing Contractor's progress is completely inappropriate in that Company fails to account for the impact of winter conditions on the acceleration work, as well as the effort Contractor has had to expend to address other unforeseen issues for which it is not responsible, such as defects in the work performed by others.

Third, and most important, CHO 010 does not constitute a valid lump sum Change Order pursuant to the Agreement, and accordingly, Contractor is not bound to the payment terms of CHO 010. Company's attempt to limit payment of the accelerated work directed by CHO 010 to a lump sum pre-determined by Company and not agreed by Contractor is improper and not authorized by the Agreement. Company's continued adherence to its position, after extensive negotiation, particularly now with over CAD \$5M in effort expended for the exclusive benefit of Company, is nothing short of remarkable. And Company's application of CHO 010 to only authorize payment on Contractor's invoice of CAD \$5,004,962.44 in an amount of CAD \$80,550.50 (2.39% of the "lump sum" amount reflected in CHO 010) is, again, a blatant act of bad faith. Adding in Company's recent notification of its intent to withhold its own costs from the CAD \$80,550.50 it might have paid Contractor for acceleration work (LTR-CH0032001-0330), and Contractor has no choice but to assume that Company never intended to pay Contractor for any of its acceleration effort and, instead, has conveniently ignored contractual change order convention and failed to engage in good faith negotiation in order to have Contractor fully finance Company's project delays.

As Contractor has maintained since Company's issuance of CHO 010, and as specifically and clearly articulated in Contractor's letter of November 24, 2015 (AH-Letter-PM-076), CHO 010 does not constitute a valid lump sum Change Order under the Agreement. While Contractor accepted that Company had the authority to issue a reimbursable Change Order to perform the Changes and Contractor confirmed that it would perform the Changes outlined in CHO-010 with all due diligence, Contractor has never accepted either the price or payment method terms of CHO-010 or the schedule requirement in CHO-010 to achieve river diversion by June 15, 2016, although Contractor has been diligently attempting to meet Company's target date for river diversion. Contractor disputes that Company had any authority under the Agreement to unilaterally determine the price, the payment method, or the schedule impact resulting from the Changes it makes to the Work, including any directed acceleration of the Work. Company's attempt to unilaterally impose a new schedule milestone (river diversion on June 15, 2016) is especially problematic given the repeated representations by Contractor to Company during negotiations, correspondence and schedule updates that



a June 15, 2016 river diversion date is extremely challenging and possibly not attainable even with best efforts and no unforeseen circumstances.

The Agreement provides for agreement on lump sum Change Orders; the Agreement also addresses what happens when Changes are requested or directed but no agreement on price is reached. In these situations, work is considered to be performed on a cost reimbursable basis, and Company is obligated to pay for the work on such basis once Company directs the work to proceed. Company was put on notice by Contractor that all acceleration work performed by Contractor prior to and in absence of agreement between the parties as to the terms of a Change Order on the acceleration work, including price, payment terms and target completion date, was done in full reservation of all rights, including rights with respect to claiming all costs incurred as a result of Contractor's acceleration efforts, regardless of the actual date the Contractor equipment is ready for river diversion. Company was also advised that in absence of an agreement otherwise, Contractor would invoice the Company for the acceleration work on a cost reimbursable basis. Now that Company is refusing to pay Contractor on this basis, Contractor has no choice but to issue this Notice of Dispute.

Company's April 13 letter constitutes a willful abuse of Contractor's right to payment under the Agreement and under CHO 010. As such, Contractor is entitled to various remedies, including recovery of all costs incurred as a result of the acceleration of the Work, plus interest on all amounts not timely paid by Company. As stated above, this letter shall serve as Contractor's Notice of Dispute pursuant to Section 39.1 of the Agreement as to the particulars provided in Appendix 1. Contractor requests immediate scheduling of the first level meeting between senior project managers. Contractor's project manager is available to meet in St. Johns on April 27th or 28th.

In addition, Contractor reminds Company that it has failed to engage in the dispute resolution process with respect to Contractor's previous Notice of Dispute regarding Company's rights to draw on the Contractor's Letter of Credit. As addressed in Contractor's Letter AH-Letter-PM-149 (LTR-CH0032001-0325), a Dispute still exists with respect to that issue, and Company is obligated to proceed with the dispute resolution process specified in the Agreement. Company's failure to engage in the dispute resolution process mandated by the Agreement constitutes a breach of contract and further evidence of bad faith on Company's part.

Contractor will continue to diligently pursue all acceleration efforts toward the Company's target date of river diversion by June 15, 2016, but Contractor requires Company's assurance that it will desist from its bad faith contract practices and honor its obligations to compensate Contractor fairly for its acceleration efforts.



Yours Truly,

A handwritten signature in blue ink, appearing to read "Bill Mavromatis".

Bill Mavromatis
Project Manager
Andritz Hydro Canada Inc.

ATTACHMENT: Appendix 1 – Particulars of Dispute (1 page)

CC: Frank Gillespie, LCP Deputy Company Representative/Area Manager
Bruce Drover, LCP Package Leader - Hydro Mechanical Equipment
Line Tremblay, LCP Senior Contract Administrator
Nicole Hu – AH Commercial Manager
Jean Rochon – AH Large Hydro Manager Operations
Daniel Carrier – AH Vice President
Tim Ryan – AH President
Veronica O'Brien – AH Regional General Counsel - North America



Appendix 1

Particulars of Dispute Submitted by Contractor April 20, 2016

1. CHO 010 does not constitute a properly issued lump sum Change Order limiting compensation for all of Contractor's accelerated work to try to achieve river diversion by June 15, 2016 to CAD \$3,370,314.
2. Company cannot unilaterally impose a new milestone to Contractor's schedule through CHO 010 of river diversion by June 15, 2016.
3. Contractor is entitled to invoice Company for acceleration work directed by CHO 010 on a monthly cost-reimbursable basis without submission of Payment Certificates.