

LTR-CH0032001-0352

April 26<sup>th</sup>, 2016

AH-Letter-PM-168

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: Supply and Install Powerhouse and Spillway Hydro-Mechanical Equipment

**Re:** CHO 010 - Spillway Acceleration – Installation Subcontractor's (CANMEC) Letter to Contractor

Dear Mr. O'Brien,

Please find attached a letter received late last Friday from Contractor's subcontractor CANMEC. Yesterday, Contractor was in communication with CANMEC and they have reiterated their position as to the invalidity of the acceleration Change Order. During our discussion, CANMEC proposed that a meeting be held between Company, Contractor, and CANMEC in order to discuss, and attempt to agree, on the basis for the potential continuation of the acceleration. Contractor agrees that a meeting is in order to attempt to provide for the continuance of Company's acceleration program, and accordingly we request a 3-party meeting on an urgent basis.

Regarding CANMEC's legal position, Contractor is considering its response. In addition, however, Contractor is currently considering advice and evaluating options as to the legal implications of Company's refusal to pay Contractor's Invoices in respect of the acceleration Change Order, a refusal to pay that has had the cascade effect of creating the crisis Contractor now is experiencing with CANMEC. Contractor is also assessing its position with respect to Company's complete failure to engage in the dispute resolution process required by the Agreement, despite Contractor's Notices of Dispute issued to Company and repeated requests for first level meetings.

As Company is aware, to date Contractor has proceeded on the basis that Company was contractually entitled to issue Change Order CHO 010 for the sole purpose of accelerating the Work, even though Company has no contractual entitlement to unilaterally impose the terms of the change order, and Contractor has disputed such terms. Now, however, Company's refusal to pay anything at all for the acceleration work

performed thus far not only raises the issue of whether Company is conducting itself in good faith but, among other legal considerations, also raises the issue as to whether Company's conduct is indicative of an intention on Company's part to no longer be bound by the terms of Company's own change order - which would have the potential effect of rendering Change Order CHO 010 invalid, and would entitle Contractor to decelerate in order to mitigate the consequences of Company's breach. In any event, Contractor is of the view that the proposed meeting should take place as soon as possible. Kindly advise as to Company's willingness to meet and Company's availability.

Yours Truly,



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

**ATTACHMENT:** Letter from CANMEC dated April 22, 2016 (2 pages)

**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  
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Your reference

Our reference

## Without Prejudice

April 22, 2016

Mr. Bill Mavromatis, Project Manager  
ANDRITZ HYDRO CANADA INC.  
6100, Route Transcanadienne  
Pointe-Claire, Québec, Canada H9R 1B9

Dear Sirs:

### **Agreement between Andritz Hydro Limited ("Andritz") and Canmec Industriel Inc. ("Canmec") dated July 10th, 2014**

Our client, Canmec, has asked to respond to your letter HCM-CNM-075 bearing today's date addressed to Jean-David Turcotte.

The undersigned participated in the telephone meeting to which you refer in your letter. We understand that you did not participate in this telephone meeting, unless you were an unannounced participant.

The statements and positions exchanged during the discussion, which you summarize in your letter, are not complete or entirely accurate.

The positions expressed on behalf of Canmec during this telephone meeting can be summarized as follows:

- Canmec contests Andritz's right to impose on Canmec a revised schedule which it considers to be unrealistic; furthermore, the proposed fixed price indicated in Change Order 003 is totally inadequate and undervalued;
- Canmec does not recognize Andritz's right to impose acceleration of the Work by way of a Change Order;
- Such a fundamental modification to Canmec's obligations under the Agreement requires the consent of both parties;
- Even if Andritz was entitled to oblige Canmec to accelerate the Work by way of a Change Order, Canmec is entitled, under Section 26.13 of the Agreement, to refuse to execute such a Change Order.

It was never suggested during this telephone meeting that Canmec would immobilize, suspend, terminate or discontinue the Work. What was stated by Canmec was that absent an agreement on the payment terms for the performance of the Work in an accelerated mode, Canmec would continue to perform the Work, but would cease to incur the additional costs of the acceleration measures.

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Mr. Bill Mavromatis, Project Manager  
Without Prejudice



April 22, 2016

Canmec will only accept to pursue the acceleration measures if Andritz confirms its agreement to pay for the cost of the Work on a reimbursable basis, as contemplated in Section 5 of Exhibit 2 of the Agreement.

You state in your letter that Andritz is concerned about Canmec's financial situation. You must realize that Canmec's difficult financial situation is the direct result of Andritz's efforts to force Canmec to assume the burden of financing the majority of the additional costs incurred in order to accelerate the Work.

It should be obvious to Andritz that its undertaking to only pay \$2 580 167.00 to cover acceleration costs when Canmec's estimate of such costs was more than three (3) times that amount would necessarily have a significant negative effect on Canmec's financial position. In addition, delays caused by the Owner group and the Company group have further increased Canmec's cost of performing the Work.

Under the circumstances, we consider your request for "appropriate documentation evidencing Canmec's financial distress" to be unreasonable since it is obvious that Canmec's financial distress results from the non-payment of a substantial portion of the cost of the Work performed under the Agreement.

Your veiled threat to terminate the Agreement is not conducive to constructive discussions to resolve the issue which you yourself admit results from the unreasonable demands of the Owner. Furthermore, Canmec has not breached any of its obligations and it intends to continue with performance of the Work in accordance with the Agreement. Any attempt by Andritz to terminate the Agreement would render Andritz responsible for all losses and damages suffered by Canmec as a result thereof.

In conclusion, we formally request that Andritz confirm to us in writing, no later than Wednesday April 27, at 5:00 p.m. that:

- 1) Andritz will pay the full amount of Canmec's Special Payment Certificate SPC-002 dated March 23<sup>rd</sup>, 2016; and
- 2) Andritz accepts to amend the Agreement in order to provide for the payment of the Work performed in the acceleration mode on a reimbursable basis.

Failing receipt of such confirmation, Canmec will exercise its discretion to perform the Work as originally contemplated in the Agreement without incurring the additional costs associated with the acceleration of the Work, under reserve of its claim for all extra costs incurred to date.

We look forward to your cooperation in this matter.

Yours very truly,

A handwritten signature in blue ink, appearing to read 'Olivier F. Kott', with a long horizontal stroke extending to the right.

Olivier F. Kott  
Senior Partner

OFK/lh