

CIMFP Exhibit P-03212

Page 1

EXHIBIT 14
PERFORMANCE SECURITY

SG
10

Exhibit 14
Performance Security
CD0501

PERFORMANCE BOND

No. _____ \$ _____

KNOW ALL MEN BY THESE PRESENTS THAT

_____ as Principal, hereinafter called the Principal, and _____, a corporation created and existing under the laws of _____, and duly authorized to transact the business of Suretyship in _____, as Surety, hereinafter called the Surety, are held and firmly bound unto _____ as Obligee, hereinafter called the Obligee, in the amount of _____ Dollars, (\$ _____) lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a written contract with the Obligee, dated the _____ day of _____, for _____ in accordance with the contract documents submitted therefore which are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly and faithfully perform the Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever the Principal shall be, and declared by the Obligee to be, in default under the Contract, the Obligee having performed the Obligee's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1. complete the Contract in accordance with its terms and conditions or
2. obtain a bid or bids for submission to the Obligee for completing the Contract in accordance with its terms and conditions, and upon determination by the Obligee and the Surety of the lowest responsible bidder arrange for a contract between such bidder and the Obligee and make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract price", as used in this paragraph, shall mean the total amount payable by the Obligee to the Principal under the Contract, less the amount properly paid by the Obligee to the Principal.

Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

ED SG

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

The attached Rider, signed by the Principal and the Surety, is part of and incorporated into this Bond.

No right of action shall accrue on this Bond, to or for the use of, any person or corporation other than the Obligee named herein, or the heirs, executors, administrators, assigns or successors of the Obligee.

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond this day of _____ .

SIGNED AND SEALED in the presence of:

)	[*NAME OF PRINCIPAL]	(SEAL)
)		
Witness)		
)	[*NAME OF SURETY]	(SEAL)
)		
Witness)		

56
Ed

RIDER TO PERFORMANCE BOND NO.

TO BE ATTACHED TO AND FORM PART OF PERFORMANCE BOND NO. _____, dated concurrently with the execution of this Rider, issued by the _____, as Surety, on behalf of _____, as Principal, and in favour of _____, as Obligee.

WHEREAS, upon the request of the Principal and Obligee, and in consideration of \$1.00 and other valuable consideration the receipt and sufficiency of which is acknowledged by the Surety, **IT IS UNDERSTOOD AND AGREED THAT** the above described bond is hereby amended to include the following paragraphs:

1. Surety hereby waives notice of any change to the Contract or the related subcontracts, including changes to time of performance, scope of work and price.
2. No waiver by the Obligee of any provision of the Contract shall release the Surety of its obligations given under this Bond although in no event shall the obligations of the Surety under the Bond exceed those of the Principal.
3. To the limit of the amount of this Bond, if there is a failure by the Principal to perform or otherwise to fulfil its obligations under and comply with the terms of the Contract which has neither been remedied by the Principal or expressly waived by the Obligee in writing, and if the Principal is declared in default and the Surety is called upon under this Bond, then the Surety is obligated to the Obligee for all obligations of the Principal under the Contract, including:
 - (a) the responsibilities of the Principal for correction of defective design, work and materials, and for completion of the Contract;
 - (b) the fulfilment by the Principal of all Performance Guarantees, as defined and specified in the Contract; and
 - (c) the obligation to pay liquidated damages, as specified in the Contract.
4. For purposes of any suit under this Bond, final payment shall be deemed to fall due on the date of the Final Completion Certificate, as defined in the Contract.
5. This Performance Bond shall expire three (3) years after the date on the Substantial Completion Certificate, as defined in the Contract.

IT IS FURTHER UNDERSTOOD AND AGREED THAT nothing herein shall be held to change, alter or vary the terms of the above described Bond except as hereinbefore set forth.

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Performance Bond Rider this _____ day of _____.

TO SG

Exhibit 14
Performance Security
CD0501

SIGNED AND SEALED in the presence of:

)		
)	[*NAME OF PRINCIPAL]	(SEAL)
Witness)		
)		
)	[*NAME OF SURETY]	(SEAL)
Witness)		

SG
4/2

Exhibit 14
Performance Security
CD0501

(date of issue)

To: *(CLIENT LEGAL NAME)*
(address)

From: *(ISSUING BANK)*
(address)

Subject: Our Irrevocable Standby Letter of Credit - Performance Number *(#)*

WHEREAS *(legal name of applicant)* having its head office at *(address of applicant)* (hereinafter referred to as the "Applicant"), has signed a contract bearing the effective date of *(insert date)*, and reference number *(insert number)* with Nalcor Energy having its head office at 500 Columbus Drive, St. John's, NL A1B 0C9 (hereinafter referred to as the "Beneficiary"), for *(insert contract description)* (hereinafter referred to as the "Contract");

WHEREAS under Article 7 of the Contract, the Applicant is required to provide to the Beneficiary an Irrevocable Standby Letter of Credit - Performance in the amount of *(insert)* % of the Contract Price, which amount being *(insert)* Dollars (\$*****) to secure the performance of its obligations under the Contract;

We, *(name and address of bank)* (hereinafter referred to as the "Bank"), for the account of the Applicant, hereby issue in favor of the Beneficiary our transferable Irrevocable Standby Letter of Credit – Performance in the amount of *(insert)* Dollars (\$*****) (hereinafter referred to as the "Credit"). We hereby irrevocably and unconditionally undertake to pay to the Beneficiary at sight, without protest or notification, and without inquiring any further proof or conditions, and without consideration for any objections or protests which the Applicant may make, any sum or sums not exceeding the aggregate sum of *(insert)* Dollars (\$*****), free of all imposts, taxes, duties, charges, fees, withholdings and/or deductions whatsoever both present and future, of any nature whatsoever and by whomsoever imposed, and without set-off or counterclaim, upon presentation to the Bank of a demand in writing duly signed by two (2) Beneficiary's officers against this Credit, provided the demand is in the form set out in Exhibit "A" hereto, which forms an integral part of this Credit, and that such demand is made no later than on the *(insert)* day of *(insert month, year)* (hereinafter referred to as the "Expiry Date") or any new expiry date (as defined below). Only the Beneficiary or a transferee may make drawings under this Credit.

This Credit shall be automatically extended for one (1) year periods from the Expiry Date or from any subsequent expiry date (hereinafter referred to as "New Expiry Date") successively, unless the bank sends by express courier to the Beneficiary at the above-mentioned address also copy to the Applicant, a written notice at least sixty (60) days prior to the Expiry Date or a New Expiry Date, stating that the Bank elects not to extend this Credit for any such additional

SK
40

Exhibit 14
Performance Security
CD0501

period. In the event the Bank elects not to extend the Expiry Date or any New Expiry Date of this Credit, then the Bank hereby unconditionally and irrevocably undertakes to pay to the Beneficiary the total amount then outstanding under this Credit upon presentation to the Bank by the Beneficiary, prior to the Expiry Date or the New Expiry Date, of a demand for payment stating that the Bank has elected not to extend this Credit and that the Beneficiary is therefore entitled to such payment, provided the demand is in the form set out in Exhibit "B" attached hereto, which forms an integral part of this Credit.

Notwithstanding the foregoing, in no event will this Credit extend beyond *(insert date)* (hereinafter referred to as the "Final Expiry Date").

This Credit may be automatically reduced by a certificate issued by the Beneficiary to the Bank stating the amount of reduction applicable to this Credit and presented to the Bank by the Applicant or the Beneficiary.

The terms of this Credit set forth in full the terms of our undertaking and this undertaking is not in any way modified, amended or amplified by reference to any document, instrument referred to in this Credit, or in which this Credit is referred to, or to which this Credit is related, and any such reference does not incorporate by reference any document, instrument or agreement.

Partial drawings are authorized. All costs related to this Credit are for the account of the Applicant.

The Beneficiary may transfer its rights under this Credit in their entirety (but not in part) to any transferee. Transfer of the Beneficiary's rights under this Credit to any such transferee shall be effected only upon the presentation to us of this Credit accompanied by a transfer letter in the form attached hereto as Exhibit C, and we consent to such transfer without charges or fees of any kind. Upon such transfer, the transferee shall have no further rights to transfer this Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication no. 600) and for matters not covered by the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce, (ICC Publication no. 600) it shall be governed by and interpreted in accordance with the laws of the Province of Newfoundland and Labrador and the laws of Canada, applicable therein.

(NAME OF BANK)

per: _____

EXHIBIT "A"

(date)

To: (full name & address of the issuing bank)

From: (full name & address of the beneficiary)

Subject: This is the form of demand specified in the Irrevocable Standby Letter of Credit - Performance number (number) issued on the (date) by (name of the issuing bank)

Dear Sirs,

We, the undersigned, being the Beneficiary under the above captioned Irrevocable Standby Letter of Credit – Performance (hereinafter referred to as the "Credit") issued by (name and address of the issuing bank) on the instructions of (name of the applicant) the Applicant, hereby request you to pay to us on receipt by you of the present demand the amount of (currency and amount in figures and letters).

We state and declare:

that the Applicant is an Insolvent Party as defined in Contract number (insert), or is a Defaulting Party as defined in Contract number (insert) and has failed to rectify or taken reasonable steps to rectify the default or breach;

and

that the Beneficiary has sent by facsimile at (insert fax number) and by express courier to the Applicant, attention of (insert name) a written notice of default, specifying the nature of default, at least fifteen (15) working days prior to this demand;

that as a result thereof, we have become entitled under the terms of the Contract number (insert) to be paid the amount claimed above;

and

that said amount has not otherwise been paid to us, whether directly or indirectly, by or on behalf of the Applicant.

(name of beneficiary)

(address of beneficiary)

per: _____

per: _____

Name: _____

Name: _____

Title: _____

Title: _____ "

SG
ed

EXHIBIT "B"

This is the form of demand specified in Irrevocable Standby Letter of Credit – Performance number [#] issued on the [date], by [name of the issuing bank]

[date]

To: (ISSUING BANK'S NAME)
(address)

From: (BENEFICIARY'S NAME)
(address)

Subject: This is the demand specified in Irrevocable Standby Letter of Credit – Performance number [#] issued on the [date], by [name of the issuing bank]

Dear Sirs,

We, the undersigned, being the Beneficiary under the above captioned Irrevocable Standby Letter of Credit – Performance issued by [issuing bank's name and address] on the instructions of [applicant's name] (the "Applicant"), hereby request you to pay to us on receipt by you of the present demand the amount of [currency and amount in figures and letters] only.

We state and declare:

that the Beneficiary has been notified by the Bank of its election not to extend the Credit; and

that as of the date of the present demand for payment the Applicant has not provided the Beneficiary with a satisfactory substitute irrevocable standby letter of credit – performance or alternate satisfactory security.

[beneficiary's, name and address]

per: _____
Name: _____
Title: _____

per: _____
Name: _____
Title: _____

cc to the Applicant

SK
AD

**EXHIBIT "C"
TO LETTER OF CREDIT**

FORM FOR FULL TRANSFER OF LETTER OF CREDIT

_____, 20__

Name and Address of Issuing Bank:

Attention:

Re: Your Letter of Credit ("Letter of Credit") No. _____ in favour of Nalcor Energy

To Whom it May Concern:

The undersigned, Nalcor Energy, ("Transferor") has transferred and assigned (and hereby confirms said transfer and assignment) all of its rights in and under the Letter of Credit to [name and address of Transferee] ("Transferee"). Transferor confirms that it no longer has any rights under or interest in the Letter of Credit and that you shall have no further responsibility to make payment under the Letter of Credit to Transferor.

Transferor hereby surrenders the Letter of Credit to you and requests that you note the transfer of the Letter of Credit and deliver the Letter of Credit, amended or endorsed to reflect said transfer, to Transferee.

NALCOR ENERGY

[NAME OF TRANSFEEE]

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

and Per: _____
Name: _____
Title: _____

and Per: _____
Name: _____
Title: _____

SG
110