

Date : 11/22/2011 10:46:40 AM

From : "Scott, Paul G."

To : "McGrath, Rob" , "Ivimey, Philip"

Subject : FW: Upper Churchill Redress Agreement - Settlement Payments

Attachment : Support document re redress settlement payments by province nov 22 11.pdf;ATT1631532.jpg;

From: MBradbury@nalcenergy.com [mailto:MBradbury@nalcenergy.com]

Sent: Tuesday, November 22, 2011 10:21 AM

To: Scott, Paul G.

Cc: GBennett@nalcenergy.com; PHarrington@nalcenergy.com; KentLegge@nalcenergy.com; LanceClarke@nalcenergy.com; DaveParry@nalcenergy.com; PHickman@nalcenergy.com; CarolAnneLutz@nalcenergy.com; ElizabethGray@nalcenergy.com; MaryHatherly@nalcenergy.com; DSturge@nalcenergy.com

Subject: Upper Churchill Redress Agreement - Settlement Payments

Hi Paul

You had requested an overview supporting our request that the Province reimburse Nalcor for future Settlement Payments made under the Redress Agreement. Here is what we have put together. We have structured this in a format that should facilitate your preparation of the related Cabinet paper. Please advise if there is any other information you need. As noted previously, it is critical for us to get this resolved prior to year end and hence we are hoping this can be on the agenda of the upcoming meeting of Cabinet. Please let me know if you still want me to meet with Finance officials.



Mark Bradbury

General Manager Finance

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CONFIDENTIAL**SUPPORT DOCUMENT FOR MEMORANDUM TO EXECUTIVE COUNCIL****Title: RE: Churchill Falls Hydroelectric Development Redress Agreement
Settlement Payments****ISSUE:**

Whether to assume the obligations for Settlement Payments as defined in the Upper Churchill Redress Agreement between the Province, Nalcor, Innu Nation, Mushuau Innu First Nation and Sheshatshiu Innu First Nation (Redress Agreement) executed on November 18, 2011.

RECOMMENDATIONS:

It is recommended that:

1. the Government of Newfoundland Labrador agree to reimburse Nalcor for all Settlement Payments made pursuant to Clause 2.1 of the Redress Agreement, and;
2. funding be added to the Department of Natural Resources' Fiscal Forecast that would allow for payment of this grant on an annual basis for the life of the Redress Agreement, and;
3. if necessary, Natural Resources enter into a formal agreement with Nalcor whereby the Settlement Payment obligation of the Province is formally documented.

BACKGROUND:

The Redress Agreement was one of the agreements that resulted from the Tshash Petapen (New Dawn) Agreement with Innu Nation dated September 26, 2008. The New Dawn Agreement was intended to resolve key issues relating to matters between the Province and

Innu Nation surrounding the Innu Rights Agreement, the Lower Churchill Impacts and Benefits Agreement (IBA) and Innu redress for the Upper Churchill hydroelectric development.

New Dawn laid out quantum and location for various selections of Innu lands, and established economic areas assuring Innu participation in resource projects in the region. The agreement also provided compensation to the Labrador Innu for impacts associated with the Churchill Falls development and was meant to settle the outstanding grievance of Innu Nation with respect to damages suffered to Innu lands and properties as a result of the flooding caused by the Upper Churchill River development in the 1960s. The Redress Agreement was meant to address this latter matter.

Settlement Payments Clause

Clause 2 (a) of the New Dawn Agreement (of which MC2008-0475, MC2008-0492, and MC2009-0493 refers) stated that:

“The Province shall pay to Innu Nation, or if established, the Innu Government (collectively hereafter “Innu Nation”) an annual payment of two million dollars Canadian (\$2,000,000) commencing upon ratification and execution of the IBA and terminating on August 31, 2041. The payments will be indexed annually using a rate of two and one half percent (2.5%) commencing on the date of IBA ratification and execution.”

While the New Dawn Agreement assigned responsibility for the Settlement Payments to the Province, the Redress Agreement specifies Nalcor as having responsibility for those payments. It is unclear why responsibility was transferred to Nalcor, but it is clear that this was contrary to the intent of New Dawn.

Financial Impact on Nalcor

Nalcor has been informed by its external auditors that if executed in its current form, the present value of future obligations for Settlement Payments will have to be recognized in the

financial statements of the Company immediately upon execution of the IBA. Execution of the IBA is currently scheduled to take place coincident with the signing of the Redress Agreement. Based on certain assumptions, this obligation is currently estimated at thirty nine million dollars (\$39,000,000).

It is the position of Nalcor's Finance Department that if the Province agrees to reimburse Nalcor for all future Settlement Payments, then a corresponding receivable from the Province will be created on the books of Nalcor, thus offsetting Nalcor's obligation to the Innu. As a result, there would be no net addition to the Lower Churchill Project capital cost. This position is yet to be confirmed with the external auditors.

If the Province does not agree to reimburse Nalcor for all future Settlement Payments, then the \$39 million will be recorded as an unbudgeted capital addition to the Lower Churchill Project. Such a charge to the Lower Churchill Project will put unanticipated pressure on the Project economics and contribute to a revised project estimate that might exceed previously publicized figures.

ALTERNATIVES:

Alternative 1 : Adopt the Recommendations as stated above.

Advantages:

1. Adopting these recommendations will provide Nalcor Energy substantive support for an argument to their auditors that the Province's commitment to reimburse constitutes a receivable that should be recorded and reported as such. This accounting treatment would effectively offset the negative impact associated with Nalcor's obligations under the Redress Agreement.
2. Since the Province is a 100% owner of Nalcor Energy, there is minimal economic impact on the Province. This is because the Province's return on its 100% investment

in Nalcor is reduced by any Settlement Payment that Nalcor makes. Hence, ignoring any delay in flow through of earnings via dividends, the Province is not impacted in an economic sense by the acceptance of this recommendation. For all intents and purposes, the Province will be making this payment, either directly, or indirectly. The recommendations contained in this paper are that the payments be made directly.

Disadvantages: The Province will be obliged to arrange funding on an annual basis in support of reimbursement to Nalcor and may be required to record a liability on its balance sheet either on an annual basis or upfront. **[NTD: Anticipated accounting treatment on the books of the Province to be confirmed by Department of Finance].**

Alternative 1 is the recommended alternative.

Alternative 2 : Let Nalcor make all Settlement Payments without reimbursement.

Advantages: The Province will not be obliged to arrange funding on an annual basis in support of reimbursement to Nalcor.

Disadvantages:

1. There will be significant consequences for Nalcor's financial results. Estimated costs for the Lower Churchill Project will increase by \$39 million dollars. Note that the Gate 2 Capital Cost Estimate of \$6.2B did not include the costs associated with Settlement Payments under the Redress Agreement.
2. While the Province will be no better or worse off economically, it will have missed an opportunity to alleviate an adverse impact to Nalcor's financial results at virtually no economic cost to the Province.

Alternative 2 is not recommended.

LEGAL/LEGISLATIVE CONSIDERATIONS:

None noted.

FINANCIAL CONSIDERATIONS:

The present value of accepting the Settlement Payment obligations under the Redress Agreement under certain assumptions is thirty nine million dollars (\$39,000,000). ***(NTD: Provincial Dept. of Finance to determine if the entire obligation would be booked as a liability of the Province under Public Sector accounting rules).***

INTERDEPARTMENTAL CONSIDERATIONS:

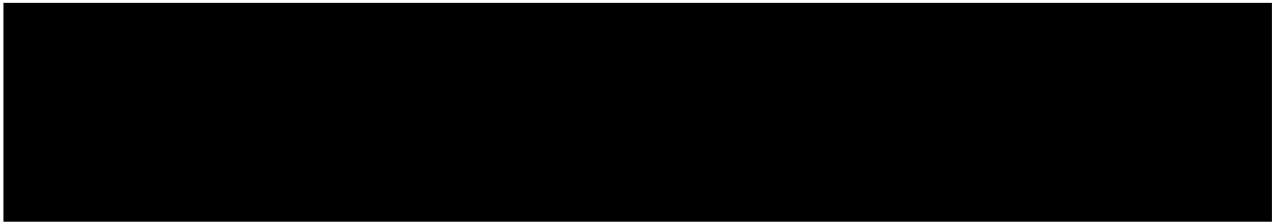
The Departments of ?? ***(NTD: To be determined by NR)*** were consulted in the preparation of this submission.

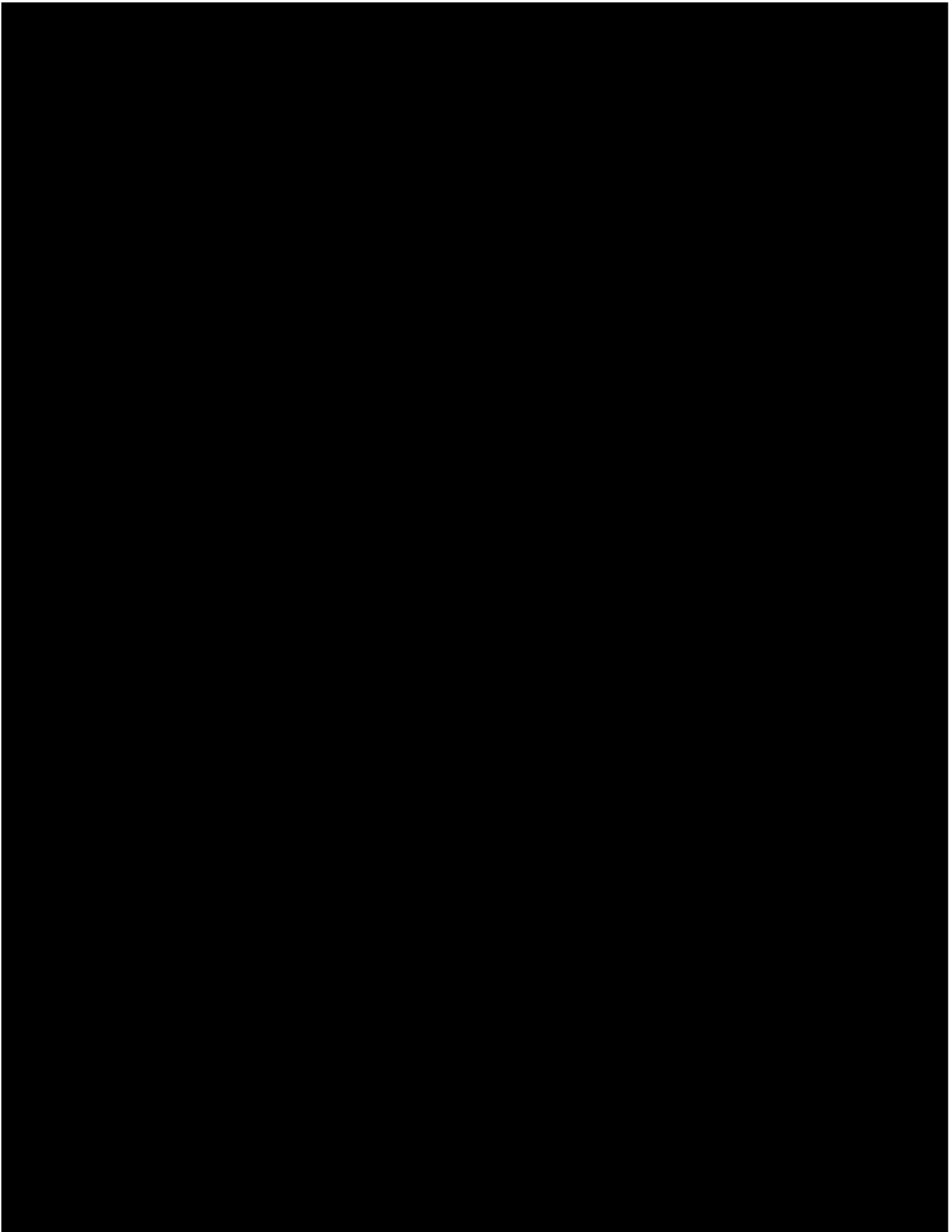
ABORIGINAL CONSIDERATIONS:

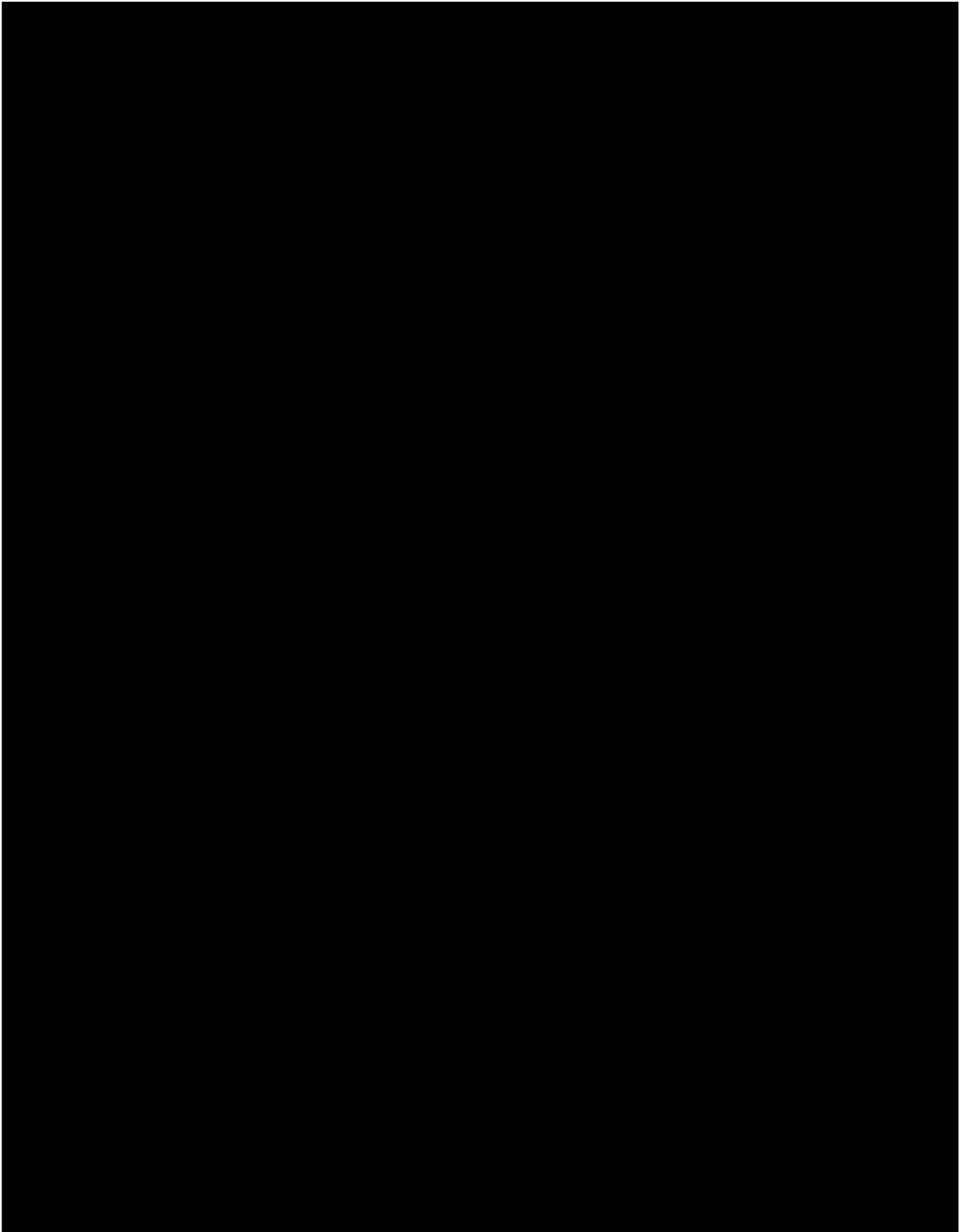
There will be no impact on the other parties to the Redress Agreement as a result of this change, since the Redress Agreement itself will remain unchanged. This will be a separate arrangement between the Province and Nalcor.

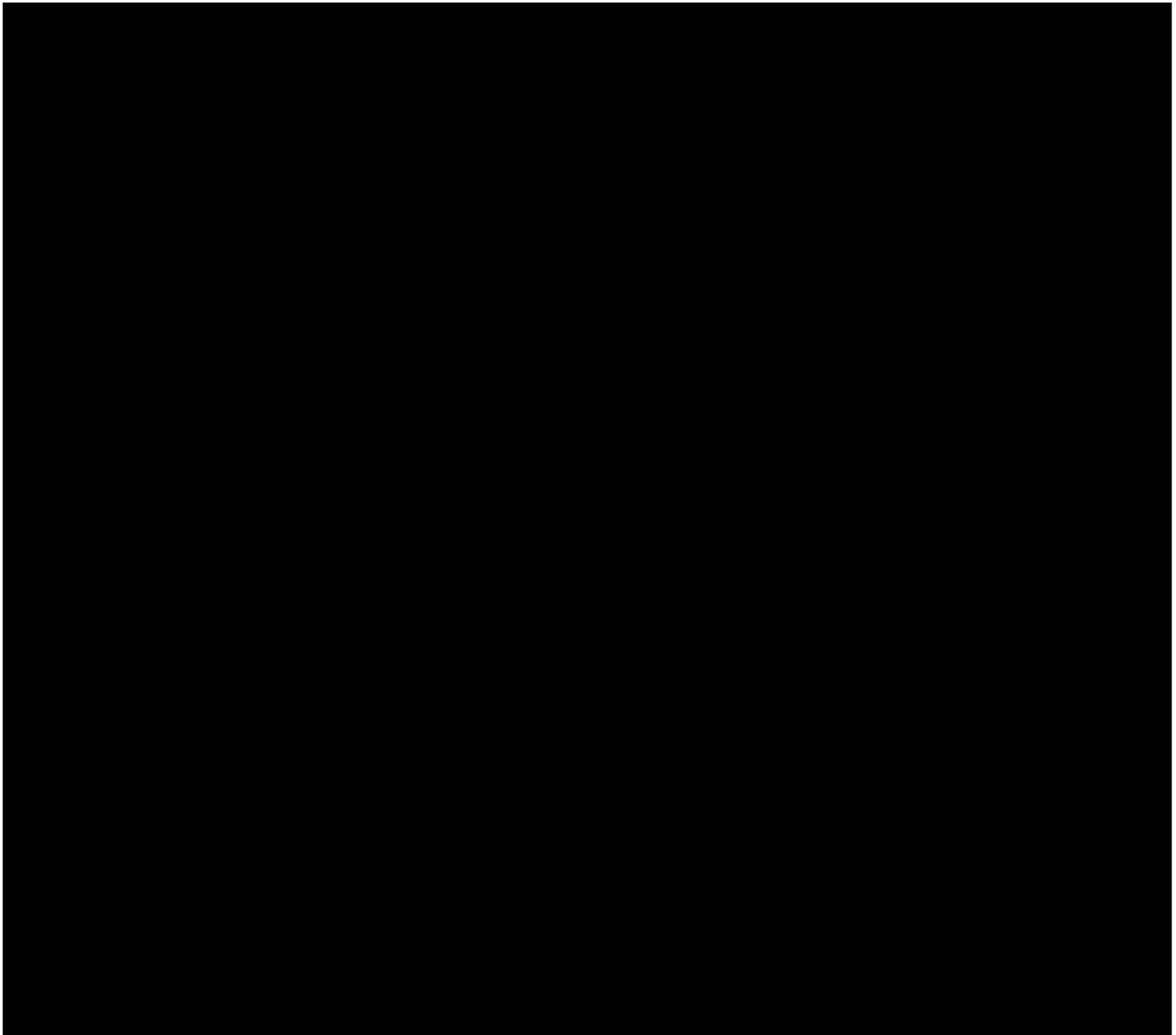
INTERGOVERNMENTAL CONSIDERATIONS:

(NTD: To be addressed by Natural Resources)

OTHER JURISDICTIONS:







CONSULTATIONS:

Nalcor has been consulted and support the recommendations.

ENVIRONMENTAL CONSIDERATIONS:

N/A

COMMUNICATIONS AND CONSULTATION SYNOPSIS:

This is an internal matter that has no underlying economic impact on the Province and hence does not require a communications strategy. *(NTD: To be confirmed by NR and Nalcor Communications team).*

Date: November 22, 2011