

From: JamesMeaney@nalcorenergy.com
To: [Myrden, Paul](#)
Subject: Fw: Cost Overruns - The language for s. 4.10 of the FLG Term Sheet [IWOV-Legal.FID1640195]
Date: Monday, November 18, 2013 2:12:07 PM
Attachments: [ATT1435994.jpg](#)
[ATT1435995.jpg](#)
[ATT1435996.gif](#)

Just realized you weren't on this email



James Meaney, CFA

General Manager Finance

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You owe it to yourself, and your family, to make it home safely every day. What have you done today so that nobody gets hurt?

----- Forwarded by James Meaney/NLHydro on 11/18/2013 02:11 PM -----

From: James Meaney/NLHydro
To: Xeno Martis <xmartis@fasken.com>
Cc: Alexandre Gagnon <agagnon@fasken.com>, Angela Onesi <aonesi@fasken.com>, "AuburnWarren@nalcorenergy.com" <AuburnWarren@nalcorenergy.com>, "bfowler@blg.com" <bfowler@blg.com>, "CraigHippert@nalcorenergy.com" <CraigHippert@nalcorenergy.com>, "dsturge@nalcorenergy.com" <dsturge@nalcorenergy.com>, Félix Gutierrez <fgutierrez@fasken.com>, "john.green@mcinnescooper.com" <john.green@mcinnescooper.com>, "KentLegge@nalcorenergy.com" <KentLegge@nalcorenergy.com>, "LBertoldi@blg.com" <LBertoldi@blg.com>, "pmorris@gov.nl.ca" <pmorris@gov.nl.ca>, "RobHull@nalcorenergy.com" <RobHull@nalcorenergy.com>, "ScottPelley@nalcorenergy.com" <ScottPelley@nalcorenergy.com>, "toddstanley@gov.nl.ca" <toddstanley@gov.nl.ca>
Date: 11/16/2013 03:33 PM
Subject: Re: Fw: Cost Overruns - The language for s. 4.10 of the FLG Term Sheet [IWOV-Legal.FID1640195]

Some thoughts in terms of challenging this:

- Cost Escalations are defined in 4.8(a) as the difference between DG3 estimate and final estimates provided at Financial Close. Cost Escalations are NOT part of the calculation in 4.10.
- Cost Overruns are defined in 4.8(a) as cost increases after Financial Close. It does specify whether this is relative to the DG3 estimate or the estimate at Financial Close (even though Anoop seems to imply this)?
- While 4.8(a) seems to define these 2 concepts in the context of capital costs, 4.10 talks about adjustments to the pre-funding requirements contemplated in this section relative to Expected Costs to Complete which also includes IDC and related financing costs (where we expect savings relative to what we thought at DG3). There's a mixing of concepts here.

I think where this gets you is back to what we thought of this section 4.10 last fall....it doesn't make a lot of sense, so if the business parties are to partake in any discussions on the concept of Cost Overruns, it needs to be grounded in a more commercial and logical framework.



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From: Xeno Martis <xmartis@fasken.com>
 To: "AuburnWarren@nalcorenergy.com" <AuburnWarren@nalcorenergy.com>, "CraigHippner@nalcorenergy.com" <CraigHippner@nalcorenergy.com>, "JamesMeaney@nalcorenergy.com" <JamesMeaney@nalcorenergy.com>, "KentLegge@nalcorenergy.com" <KentLegge@nalcorenergy.com>, "RobHull@nalcorenergy.com" <RobHull@nalcorenergy.com>, "ScottPelley@nalcorenergy.com" <ScottPelley@nalcorenergy.com>, "dsturge@nalcorenergy.com" <dsturge@nalcorenergy.com>, "LBertoldi@blg.com" <LBertoldi@blg.com>, "bfowler@blg.com" <bfowler@blg.com>, "john.green@mcinnescooper.com" <john.green@mcinnescooper.com>, "pmorris@gov.nl.ca" <pmorris@gov.nl.ca>, "toddstanley@gov.nl.ca" <toddstanley@gov.nl.ca>, Angela Onesi <aonesi@fasken.com>, Félix Gutierrez <fgutierrez@fasken.com>, Alexandre Gagnon <agagnon@fasken.com>
 Date: 11/16/2013 01:36 PM
 Subject: Fw: Cost Overruns - The language for s. 4.10 of the FLG Term Sheet [IWOV-Legal.FID1640195]

From: Kapoor, Anoop [<mailto:Anoop.Kapoor@NRCan-RNCan.gc.ca>]
Sent: Saturday, November 16, 2013 12:04 PM Eastern Standard Time
To: 'amanzer@casselsbrock.com' <amanzer@casselsbrock.com>; Xeno Martis
Cc: Krupski, Joseph <Joseph.Krupski@NRCan-RNCan.gc.ca>; 'Rhonda.Lazarus@justice.gc.ca' <Rhonda.Lazarus@justice.gc.ca>; 'fmifflin@blairfranklin.com' <fmifflin@blairfranklin.com>; 'CNewman@CasselsBrock.com' <CNewman@CasselsBrock.com>
Subject: Re: Cost Overruns - The language for s. 4.10 of the FLG Term Sheet [IWOV-Legal.FID1640195]

Term sheet section 4.8 a (additional debt) defines Cost Escalations as increases from DG3 capital costs estimates to financial close and increases post financial close are defined as Cost Overruns.

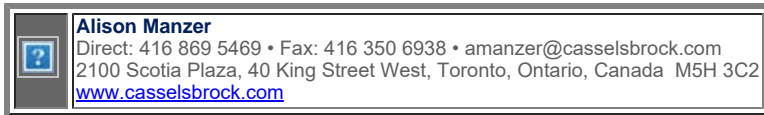
Section 4.10 on Cost Overruns says that "the DG3 Capital Cost estimates shall form the basis for the IE review of and confirmation of any proposed changes to such estimates on an ongoing basis as construction proceeds. Expected cost to complete shall include contingencies and escalation"

That suggests DG3 as the starting point, even though we have Cost Escalations and Cost Overrun concepts.

Sent from my BlackBerry Wireless Handheld

From: Manzer, Alison [<mailto:amanzer@casselsbrock.com>]
Sent: Saturday, November 16, 2013 11:46 AM Eastern Standard Time
To: Xeno Martis <xmartis@fasken.com>
Cc: Kapoor, Anoop; Krupski, Joseph; Rhonda.Lazarus@justice.gc.ca <Rhonda.Lazarus@justice.gc.ca>; Fred Mifflin <fmifflin@blairfranklin.com>; Newman, Charles <CNewman@CasselsBrock.com>
Subject: RE: Cost Overruns - The language for s. 4.10 of the FLG Term Sheet [IWOV-Legal.FID1640195]

Fred and Canada – Xeno has requested a response to his enquiries – can you accommodate that?



From: Xeno Martis [<mailto:xmartis@fasken.com>]
Sent: Saturday, November 16, 2013 11:21 AM
To: Manzer, Alison
Cc: Kapoor, Anoop; Krupski, Joseph; Rhonda.Lazarus@justice.gc.ca; Fred Mifflin; Newman, Charles
Subject: Re: Cost Overruns - The language for s. 4.10 of the FLG Term Sheet [IWOV-Legal.FID1640195]

Thank you Alison.

As you are aware this is an issue that neither Nalcor nor the Province has accepted. As I participate in the consideration of this issue with Nalcor and the Province am I correct in my initial and preliminary read of your text that the "Cost Overruns" are calculated off the DG3 Budget and not the updated Budget for each project which will be attached to the Project Finance Agreement of such project? If that is the case, the approach here would appear to be more onerous than that described in your previous memo to us on the section 4.10 issue as in your previous memo the "Cost Overruns" we're measured off the updated budget presented at closing.

Three other preliminary observations. As the projects have been funded exclusively by equity, what is the consideration one gives to such equity at closing and on what business basis would one require further amounts to be escrowed before debt begins to disburse in view of the substantial amount of equity already invested? Secondly, what would one do with the funds deposited in the "Escrow Account" when one calculates the DER for disbursement and other purposes and what would one do if at Commissioning there was a balance left in such "Escrow Account". Thirdly, presumably, if after debt is exhausted and the project costs are being funded exclusively from equity, one would access the "Escrow Account" to fund such costs and only after it is exhausted would one be required to invest new equity?

I will need instructions as to whether I propose textual comments on your draft or whether our clients will wish firstly to have a business discussion with your clients on this matter.

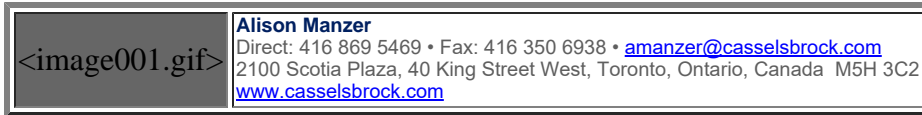
Best,

Xeno

Sent from my iPad

On 2013-11-16, at 10:15, "Manzer, Alison" <amanzer@casselsbrock.com> wrote:

I attach the wording required by Canada to be added to the credit agreement to reflect the requirements of section 4.10 of the Term Sheet.



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