

**From:** [DSturge@nalcorenergy.com](mailto:DSturge@nalcorenergy.com)  
**To:** [Brewer, Donna](mailto:Brewer.Donna); [Myrden, Paul](mailto:Myrden.Paul); [Bown, Charles W.](mailto:Bown.Charles.W.); [Morris, Paul J.](mailto:Morris.Paul.J.); [AuburnWarren@nalcorenergy.com](mailto:AuburnWarren@nalcorenergy.com)  
**Subject:** Fw: Cost Overruns - The language for s. 4.10 of the FLG Term Sheet [IWOV-Legal.FID1640195]  
**Date:** Saturday, November 16, 2013 1:56:05 PM  
**Attachments:** [M1.2.gif](#)  
[2013-11-15\\_cost\\_overruns\\_legal\\_language.docx](#)

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See attached received from Canada today.

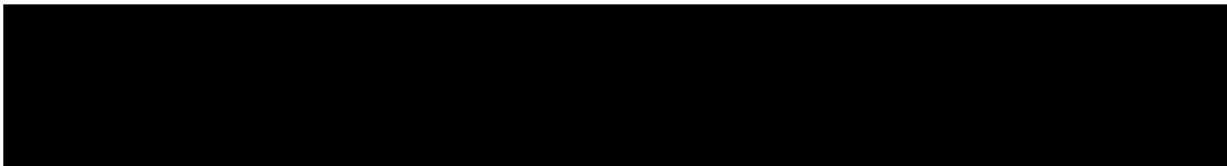
Derrick

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**From:** Xeno Martis  
**Sent:** Saturday, November 16, 2013 1:00 PM  
**To:** 'AuburnWarren@nalcorenergy.com'; 'CraigHippner@nalcorenergy.com'; 'JamesMeaney@nalcorenergy.com'; 'KentLegge@nalcorenergy.com'; 'RobHull@nalcorenergy.com'; 'ScottPelley@nalcorenergy.com'; 'dsturge@nalcorenergy.com'; 'LBertoldi@blg.com'; 'bfowler@blg.com'; 'john.green@mcinnescooper.com'; 'pmorris@gov.nl.ca'; 'toddstanley@gov.nl.ca'  
**Cc:** Angela Ones; Félix Gutierrez ; Alexandre Gagnon; Xeno Martis  
**Subject:** Fw: Cost Overruns - The language for s. 4.10 of the FLG Term Sheet [IWOV-Legal.FID1640195]

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Please see attached.



May I leave it to you to distribute this text to the Project team as you consider appropriate?

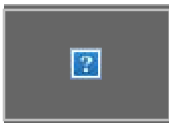
Best,

Xeno

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**From:** Manzer, Alison [<mailto:amanzer@casselsbrock.com>]  
**Sent:** Saturday, November 16, 2013 10:15 AM Eastern Standard Time  
**To:** Xeno Martis  
**Cc:** Kapoor, Anoop <[Anoop.Kapoor@NRCan-RNCan.gc.ca](mailto:Anoop.Kapoor@NRCan-RNCan.gc.ca)>; Krupski, Joseph <[Joseph.Krupski@NRCan-RNCan.gc.ca](mailto:Joseph.Krupski@NRCan-RNCan.gc.ca)>; 'Rhonda.Lazarus@justice.gc.ca' <[Rhonda.Lazarus@justice.gc.ca](mailto:Rhonda.Lazarus@justice.gc.ca)>; [Joseph.Krupski@NRCan-RNCan.gc.ca](mailto:Joseph.Krupski@NRCan-RNCan.gc.ca) <[Joseph.Krupski@NRCan-RNCan.gc.ca](mailto:Joseph.Krupski@NRCan-RNCan.gc.ca)>; Fred Miffilin <[fmiffilin@blairfranklin.com](mailto:fmiffilin@blairfranklin.com)>; Newman, Charles <[CNewman@CasselsBrock.com](mailto:CNewman@CasselsBrock.com)>  
**Subject:** Cost Overruns - The language for s. 4.10 of the FLG Term Sheet [IWOV-Legal.FID1640195]

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.



**Alison Manzer**

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**Proposed Language**

“Cost Overruns” means in respect of the Project, on any date, an amount equal to: (A) the aggregate remaining project costs to achieve completion of the Project including (i) the remaining costs and payment obligations payable pursuant to the contracted items of the Project Budget including the cost of work completed but not yet paid for, *plus* (ii) any amounts set out in the Project Budget for non-contracted items of the Project Budget, *plus* (iii) all other remaining project costs including owners costs (included in the Project Budget but not covered by contract costs) and (iv) any appropriate contingencies and adjustments to such contingencies and escalation amounts and reasonably expected savings payable pursuant to the contracted items and non-contracted items of the Project Budget all as determined by the Independent Engineer, *plus* (iv) finance costs estimated to be payable to the Commissioning Date in excess of the amount specified for that item in the DG3 Project Budget *less* (B) (i) total project costs in the DG3 Project Budget (\$[6.2] billion) less Cumulative Project Costs Incurred to date by the Project *plus* (ii) any cash deposits contained in the Escrow Account.

To be added as covenants to the Project Financing Provisions:

1. On the Closing Date and concurrent with the delivery of each Funding Request or request for a Change Order [during the Construction Period], the Partnership shall cause Devco to deliver to the Collateral Agent a certificate (the “**Cost Overruns Certificate**”):
  - (a) updating the Project Budget including the Costs to Complete [the Project],
  - (b) advising of any changes to the Project Schedule and the expected Commissioning Date,
  - (c) confirming the amount of Cost Overruns, if any, and
  - (d) confirming that any such Cost Overruns have been funded in accordance with the terms hereof. The amounts set forth in the Cost Overruns Certificate shall be confirmed by the Independent Engineer in a certificate delivered to the Collateral Agent concurrently with the Cost Overruns Certificate which shall include comments by the Independent Engineer on the adequacy of the funding of the Cost Overruns. For certainty, the Costs to Complete [the Project] set out in the Cost Overruns Certificate to be delivered on the Closing Date shall equal the amount set out in [the DG3 Capital Cost Estimates].
2. The Partnership hereby covenants and agrees that any Costs Overruns shall be funded as follows:
  - (a) on or prior to the date of the first advance pursuant to the Project Finance Agreements following Financial Close, an amount equal to the aggregate Cost Overruns, calculated as at Financial Close, divided by the number of calendar years remaining to the expected Commissioning Date (the “**Initial Cost Overrun Payment**”) shall have been funded;
  - (b) on or prior to the date of the first advance pursuant to the Project Finance Agreements in each calendar year, an amount equal to the aggregate Cost Overruns, calculated as of the end of the prior year, divided by the number of calendar years remaining to the expected Commissioning Date (the “**Annual Cost Overrun Payment**”) shall have been funded (Example: if aggregate Cost Overruns were \$300 million as at December 2014 the Annual Cost Overrun Payment calculated in January 2015 would be \$300 million divided by 3 years (assuming Commissioning in December 2017) or a \$100 million payment – the Annual Cost Overrun Payment would be calculated again as at Decemehr 31, 2015 and December 31, 2016, assuming no additional cost overruns or savings in 2015 and

2016, additional payments to the escrow account of \$100 million would be required in each of January 2016 and January 2017); and

- (c) the Initial Cost Overrun Payment and Annual Cost Overrun Payments shall be funded by way of an advance of cash by the Partnership into an escrow account. The escrow account will be under the control of the Collateral Agent for the purpose of funding Cost Overruns and subject shall form part of the Security.