

1 **Undertaking Request (U-57)**

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3 *Transcript Reference: July 18, 2018, Pg. 100, line 2 to Pg. 100, line 17*

4 Undertake to provide the contract with respect to the Maritime Link that was
5 modified to address the additional supply.

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8 **Undertaking Response**

9 Please refer to U-57, Attachment 1.

NALCOR ENERGY MARKETING CORPORATION

and

NEWFOUNDLAND AND LABRADOR HYDRO

**AMENDED AND RESTATED
POWER PURCHASE AGREEMENT
(PRE-MUSKRAT FALLS)**

June 29, 2018

**AMENDED AND RESTATED
POWER PURCHASE AGREEMENT
PRE-MUSKRAT FALLS**

THIS AMENDED AND RESTATED POWER PURCHASE AGREEMENT is made effective the 29th day of June, 2018 (the "Effective Date")

B E T W E E N :

NALCOR ENERGY MARKETING CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador, and a wholly-owned subsidiary of Nalcor ("**NEM**")

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a body corporate continued pursuant to the *Hydro Corporation Act*, being Chapter H-7 of the *Statutes of Newfoundland and Labrador, 2007* ("**NLH**")

WHEREAS:

- A. NEM has agreed to procure and NLH has agreed to purchase energy and capacity from external markets for the supply of NLH customers and to provide for the displacement of thermal generation at NLH's facilities, all in accordance with the terms of this Agreement;
- B. On January 2, 2018 the Parties entered into the original version of this Agreement (the "**Original Agreement**"); and
- C. The Parties wish to amend and restate the Original Agreement to update certain provisions.

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements hereinafter contained the parties, intending to be legally bound, agree as follows:

- 1. Term - Unless otherwise agreed to in writing by the parties, this Agreement shall become effective on the Effective Date and terminate at commissioning of the Muskrat Falls hydro-generation facility (the "**Term**"). Either party may terminate this Agreement upon providing the other with 90 days written notice of such termination.
- 2. Forecasting, Scheduling and Delivery – The parties agree to consult and coordinate their activities in accordance with the principles set out in Schedule "A" of this Agreement, which amongst other things shall identify the amount of capacity and/or energy to be delivered to NLH from external markets to meet the needs of NLH customers as determined from time to time ("**NLH Energy**").
- 3. Delivery – NEM shall deliver the NLH Energy to Bottom Brook or the Labrador-Quebec border, as applicable (the "**Delivery Point**") and NLH shall take delivery of the NLH Energy at

the Delivery Point. For greater certainty, NEM may deliver the NLH Energy or any portion thereof to either Bottom Brook or the Labrador-Quebec border and there may be deliveries to both points at any given time.

4. Purchase and Sale of Energy - NEM shall sell and deliver to NLH and NLH shall purchase and take delivery from NEM the NLH Energy during the Term. In return for delivering the NLH Energy, NLH shall pay to NEM all actual net costs paid by NEM for the NLH Energy, including all transmission losses to the Delivery Point ("**Purchase Price**"). Actual net costs include, electricity purchase costs, tariff charges and any other transmission provider or system operator fees, costs incurred or revenue received in relation to remedies sought as a result of curtailments, energy replacement costs due to cuts, curtailments or imbalances, and any other costs incurred or revenue received by NEM in conducting external markets activities. For purposes of this short-term Agreement only, NEM shall include no overhead or mark-ups of any kind in the Purchase Price and at all times shall track and report to NLH its actual costs associated with the purchase and delivery of the NLH Energy. NLH shall be responsible for costs or damages associated with buyer or seller failure under this Agreement provided such costs or damages are not a result of NEM's gross negligence.
5. Title – NEM shall represent, warrant and covenant to NLH that NEM has good and valid title, free of all encumbrances, to all of the NLH Energy delivered by it to the Delivery Point. NLH shall take title to the NLH Energy upon delivery to the Delivery Point.
6. Force Majeure – Each party has the right to suspend delivery or acceptance of the NLH Energy in the case of an event, condition or circumstance beyond the reasonable control and without fault or negligence ("**Force Majeure**") of the party asserting Force Majeure.
7. Invoicing – NEM shall prepare and deliver to NLH an invoice for the previous calendar month setting out the payments to be made by NLH for NLH Energy in respect of such month. Invoices shall at all times be subject to market settlements and adjustments in accordance with industry practice.
8. Taxes (General) - Each party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the collection, payment, withholding, reporting and remittance of all taxes in accordance with applicable law. NEM shall pay or cause to be paid all taxes on or with respect to the NLH Energy arising prior to the Delivery Point. NLH shall pay or cause to be paid all taxes on and with respect to the NLH Energy at and from the Delivery Point.
9. HST – All invoices shall include all information prescribed by applicable law to permit the party required to pay taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under applicable law, including:
 - (a) the HST registration number of the supplier;
 - (b) the subtotal of all HST taxable supplies;

- (c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and
- (d) a subtotal of any amounts charged for any "exempt" or "zero-rated" supplies as defined in Part IX of the Excise Tax Act.

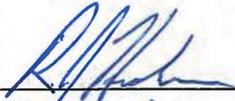
10. This Agreement shall be governed by and construed in accordance with the laws of Newfoundland and Labrador and the Federal laws of Canada applicable therein. Each party irrevocably consents and submits to the exclusive jurisdiction of the courts of Newfoundland and Labrador with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

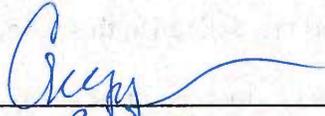
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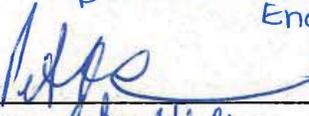
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Executed and delivered by Nalcor Energy Marketing Corporation in the presence of:

NALCOR ENERGY MARKETING CORPORATION


Name: R. J. Henderson

By: 
Name: Greg Jones
Title: ~~Director~~ General Manager Energy Marketing

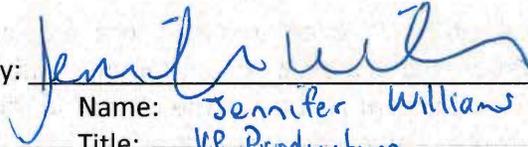
By: 
Name: Peter Hickman
Title: VP, General Counsel & Corporate Secretary

Executed and delivered by Newfoundland and Labrador Hydro in the presence of:

NEWFOUNDLAND AND LABRADOR HYDRO


Name: Michael Ladd

By: 
Name: Sin Hayes
Title: President

By: 
Name: Jennifer Williams
Title: VP, Production

SCHEDULE "A"

DEFINITIONS

Terms not otherwise defined in this Schedule "A" shall have the following meanings:

"Ancillary Services" means the services that are necessary to support the transmission of Energy and Capacity from generation to load while maintaining the reliability of a transmission system, including operating reserves, reactive supply, voltage control, blackstart capability, and regulation and frequency response.

"Capacity" means the capability to provide electrical power, measured and expressed in mega watts.

"Electricity" means Energy and any of its related constituent components or derivative products or services or environmental attributes, and may include Capacity, certain Ancillary Services, and GHG Credits, as the context requires.

"Energy" means electrical energy measured and expressed in mega watt hours.

"GHG Credits" means greenhouse gas credits or allowances, including all attributes associated with renewable energy, associated with the displacement or avoidance of generation from greenhouse gas emitting facilities resulting from the Energy and associated Capacity produced by any renewable energy source used to provide Energy and Capacity pursuant to this Agreement.

"Good Utility Practice" means those project management, design, procurement, construction, operation, maintenance, repair, removal and disposal practices, methods, or acts that are engaged in by a significant portion of the electric utility industry in Canada during the relevant time period, or any other practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be the optimum practice, method, or act to the exclusion of others, but rather to be a spectrum of acceptable practices, methods, or acts generally accepted in such electric utility industry for the project management, design, procurement, construction, operation, maintenance, repair, removal and disposal of electric utility facilities in Canada. Good Utility Practice shall not be determined after the fact in light of the results achieved by the practices, methods or acts undertaken but rather shall be determined based upon the consistency of the practices, methods, or acts when undertaken with the standard set forth in the first two sentences of this definition at such time.

"NL Customers" means the wholesale, industrial and retail customers of Electricity in Newfoundland and Labrador who are directly or indirectly connected to the NL Transmission System.

"NL Native Load" means the cumulative Electricity consumption of NL Customers on the Island interconnected system, plus associated losses of Energy normally incurred in the transmission and distribution of Energy.

“**NL Transmission System**” means Electricity transmission assets in Newfoundland and Labrador with a voltage level greater than or equal to 230 kV, other than the HVdc portion of the Maritime Link transmission line owned by NSP Maritime Link Incorporated.

“**NLSO**” means the functionally independent system operations department of NLH, acting in its capacity as the NL system operator, and includes its successors.

“**NLH Commitments**” means the amounts of Electricity required by NLH from time to time to satisfy NL Native Load.

“**NLH Facilities**” means the generation and related facilities now or hereafter owned by, contracted to, controlled by or operated by NLH.

“**NLH Reservoirs**” means the hydrological reservoirs owned or operated by, or available to NLH.

FORECASTING, SCHEDULING AND DELIVERY PRINCIPLES

1.1 Scheduling Principles

NEM and NLH agree that the operations of the NLH Facilities and imports from external markets shall be coordinated and that those generation facilities shall be dispatched in a manner that ensures:

- (a) in respect of the production of Electricity, that NLH Commitments and any other obligations of NLH are satisfied and paramount;
- (b) in respect of the management of the NLH Reservoirs, that the spillage of water is minimized to the extent reasonably possible; and
- (c) that the thermal generation provided by NLH Facilities is minimized to the extent that it is economically feasible and is in keeping with NLH’s reliability requirements and Good Utility Practice.

1.2 Production Planning

NLH and NEM shall coordinate (1) the management of NLH’s Facilities and imports to meet the NLH Commitments and (2) the communication of information regarding the NLH Facilities and NL Native Load forecasts necessary to develop production plans and schedules.

- (a) Production Planning – NLH and NEM agree that NEM will be responsible for developing written production plans (a “**Production Plan**”) at least on a weekly basis for the scheduling and production of Electricity from NLH’s Facilities and procurement of Electricity from external markets (“**Production Planning**”). The most recent Production Plan will replace and supersede all previously prepared Production Plans.

- (b) Production Schedules – NEM will also prepare hourly production schedules for submission to the NLSO in accordance with the scheduling procedures of the NLSO. Each production schedule will be based upon the most recent Production Plan; however, hourly schedules may differ from those identified in the most recent Production Plan provided that such variations from the Production Plan do not materially impact upon the ability to meet the Production Plan identified for the following and subsequent weeks.
- (c) Performance of Production Planning – NEM shall at all times perform Production Planning in a manner that satisfies NLH’s forecasted Energy, Capacity and system requirements.
- (d) Planning Guidelines - NLH shall provide the technical rules that will govern Production Planning to ensure that the security of supply for purposes of serving NL Native Load is at all times maintained at acceptable levels in accordance with Good Utility Practice (the “**Production Planning Guidelines**”). The Production Planning Guidelines may be revised from time to time by NLH.
- (e) Distribution of Production Plans - NEM shall provide each Production Plan to NLH upon the completion of same. In a timely manner, NLH shall approve or reject such plan based on compliance with the Production Planning Guidelines. If NLH rejects such plan, NLH will specify in detail how the plan violates the Production Planning Guidelines.
- (f) Hydrological Risk - NEM shall perform Production Planning in a manner that manages the hydrological risk to the Energy supply to NL Native Load in accordance with Good Utility Practice. NEM will not be liable for any increased cost of procuring or production of Energy that results from hydrological conditions experienced in NL, provided that NEM has complied with Good Utility Practice and the Production Planning Guidelines in performing Production Planning.

1.3 **NEM Standard of Care**

In performing its obligations under this Agreement, NEM shall provide NLH with the benefit of its commercial judgment based on its experience in the Electricity trading industry, and shall exercise the degree of care, skill, prudence, judgment and diligence, under the circumstances then prevailing, that an experienced and professional provider of wholesale Electricity marketing services would exercise in the performance of services of a like character and with like obligations to those contemplated by this Agreement.