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March 12, 2021

VIA EMAIL

Attention: [REDACTED]

Dear [REDACTED] S. 40(1)

Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act, 2015* (File #: PB/156/2021)

On February 12, 2021 Nalcor Energy received your request for access to the following records/information:

ATIPPA Request on GNL's Financial Obligations arising from Muskrat Falls

This request is pursuant to my earlier request PB-888-2019 and relates to the financing of Muskrat Falls and the recovery of its costs. In response to my request, Nalcor responded that GNL is not responsible for NL Hydro's liabilities under the Power Purchase Agreement in the event of default and is protected under s 3.1 of the Hydro Corporation Act.

1. Is Nalcor's federally guaranteed debt of \$7.9 billion included in the direct debt of the province?
2. Is Nalcor's federally guaranteed debt of \$7.9 billion included in the net direct debt of the province?
3. Is Nalcor's federally guaranteed debt of \$7.9 billion included within the indirect debt of the province?
4. Is Nalcor's federally guaranteed debt a contingent liability of GNL? Is there a difference between indirect and contingent debt?
5. Is GNL free from any financial liability with respect to the federally guaranteed debt?
6. Does s 3.1 of the Energy Corporation Act relieve the GNL of financial liability from debt obligations of Nalcor and of Nalcor's subsidiaries identified as "Borrowers" under s 1.4 of the 2012 Federal Loan Guarantee agreement and amounting to \$7.9 billion?
7. Does it protect GNL from any recourse arising from MLC's borrowing?
8. Does this protection from recourse include sinking fund and Cost Overruns Escrow Account (COREA) payments?
9. Please provide an account of GNL's obligations with respect to each of a) sinking fund payments and b) payments under the COREA and the extent to which these impact on the debt obligations of the province and their effect on each of the direct, indirect and contingent liabilities of the province?

10. Please show how sinking fund and COREA payments are addressed in Nalcor's revenue requirements and cost recovery through rates over the 50 year supply and cost recovery period.

11. Please provide a schedule of sinking fund payments showing annual payments up to the present and for each year during the 50 year supply and cost recovery period.

12. Please provide a similar schedule for COREA payments.

13. What impact will the federal guarantee fee have on the revenue requirements?

14. Does s 3.1 of the Energy Corporation Act relieve GNL from financial obligations arising from Emera's investment of \$865 million in the Labrador Island Link, as reported in PB-519-2019?

15. Please update the \$865 million value of Emera's investment in the LIL and provide the yearly obligation of Nalcor to repay principal and to pay a return on Emera's investment for each year of the 50 year supply and cost recovery period for the Muskrat Falls project.

16. Please confirm that Emera's investment in the LIL is recorded in the financial accounts of Nalcor as a liability, and not as equity.

In your email of August 16, 2019 you state "As to what the source of funds would be for a return of equity during a period with a negative return on equity, ie a period of losses, the answer lies in the fact that dividends are dictated by cash availability and not accounting net income. As such, the non-cash charge for depreciation that is included in accounting net income provides for the repayment of the debt via sinking fund contributions and the return of equity in the form of dividends."

I have the following questions arising from this reply to my email of July 31, 2019:

17. Are principal repayments and return on investment to Emera Energy contingent on "cash availability" or must they be paid regardless?

18. Is the repayment of principal on the federally guaranteed debt included under "interest" or is it included under "depreciation"?

19. Is "depreciation" a proxy for debt repayment, notwithstanding that debt repayment is more discontinuous than depreciation allowances, which are continuous and smooth?

20. Is "the non-cash charge for depreciation" used as a proxy for the return of equity (in contrast with the return on equity)?

21. If the lack of "cash availability" precludes dividend payments and/or return of the province's equity during the 50 year supply and cost recovery period how will the outstanding liability to the province be accounted for and recovered?

Please see Appendix A, attached hereto, for the information that is responsive to your request. Please note that questions 1-9, 14 and 21 of your request appear to be directed to the Government of Newfoundland and Labrador and relate to information that is likely in their control. The ATIPPA contact at the Department of Finance has been notified of your request and copied to this email. Please communicate with the Department of Finance for the remaining questions as Nalcor is not in a position to provide responses to those questions.

In keeping with our standard practice, it is our intention to post this letter on the Nalcor Energy website.

Please be advised that you may ask the Information and Privacy Commissioner to review the processing of your access request, as set out in section 42 of the Access to Information and Protection of Privacy Act (*the Act*). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The appeal may be addressed to the Information and Privacy Commissioner as follows:

Office of the Information and Privacy Commissioner

2 Canada Drive

P. O. Box 13004, Stn. A

St. John's, NL. A1B 3V8

Telephone: (709) 729-6309

Toll-Free: 1-877-729-6309

Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the Act (a copy of this section of the Act has been enclosed for your reference).

If you have any further questions, please feel free to contact the undersigned by telephone at (709) 733-5346 or by e-mail at granthiscock@nalcenergy.com.

Sincerely,



Grant Hiscock

Access and Privacy Officer

Access or correction complaint

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45(2).

Appendix A: Response

10. Please show how sinking fund and COREA payments are addressed in Nalcor's revenue requirements and cost recovery through rates over the 50 year supply and cost recovery period.

There are no specific responsive records; however, the following commentary might be informative.

The costs associated with the Lower Churchill Project (LCP) are recovered from Newfoundland and Labrador Hydro through either the Transmission Funding Agreement in the case of the Labrador-Island Link (LIL), and through the Power Purchase Agreement (PPA) in the case of the Muskrat Falls Generating Station (MF) and the Labrador Transmission Assets (LTA). How Hydro recovers its costs through customer rates, including any power purchase costs from LCP, is set by the Public Utilities Board. With respect to the recovery of costs associated with the LCP, in November 2013 the Government of Newfoundland and Labrador issued the Muskrat Falls Exemption Order and related Orders in Council which outline how the LCP costs are to be dealt with.

To provide some additional context as it relates to certain charges from LCP to Hydro:

(1) The sinking funds are essentially treated as pre-funding payments for the repayment of the capital markets bullet bonds originally issued in 2013 to finance the LCP. How the sinking fund payments are handled in the revenue requirement is different in the case of the LIL as compared to MF/LTA. In the case of the LIL, based on a cost of service approach, the funding of the sinking funds associated with the long-term debt financing is accomplished through the commercial depreciation component of the revenue requirement. With respect to MF/LTA, based on an escalating supply price approach, the funding for the sinking funds is accomplished through the energy sales revenue computed using the escalating supply price outlined in Schedule 1 of the PPA. The revenue requirement for MF/LTA shown in Table 1 of PB-519-2019 has shown this energy sales revenue component under the escalating supply price model in the same format as presented for LIL for ease of understanding, which is as depreciation, interest and return on equity.

(2) With respect to the COREA payments, these represent the prefunding of equity injections that are expected to be required to complete construction and achieve commissioning of the LCP. As such, the COREA payments are not separately recovered in and of themselves (similar to sinking funds), but instead when funds are drawn from the COREA and utilized by the LCP entities they become equity injections. In the case of LIL, based on a cost of service approach, the return of equity is accomplished through the depreciation component of the revenue requirement and the return on equity is treated as a flow through component of the revenue requirement. With respect to MF/LTA, based on an escalating supply price approach, the funding for the targeted 8.4% internal rate of return (return of equity and the return on equity) is accomplished through the energy sales revenue computed using the escalating supply price outlined in Schedule 1 of the PPA.

11. Please provide a schedule of sinking fund payments showing annual payments up to the present and for each year during the 50 year supply and cost recovery period.

Please find attached Table 1 – Schedule of Projected FLG1 Sinking Fund Payments which summarizes the latest projection of annual sinking fund requirements. This table reflects both the impact of the sinking fund deferrals granted by the Project Finance Agreement waivers that were signed in November 2020, as well as the latest forecast for completion of the LCP in October 2021. It should be noted that Table 1 provides a summary by year but actual sinking fund payments are made on a semi-annual basis each June and December.

Sinking fund payments are only associated with the federally guaranteed debt issued in December 2013, commonly referred to as the FLG1 debt. As such they do not extend out for the full 50 year supply or cost recovery period. There have been no sinking fund payments made to date, and with the recent PFA waivers that were signed in November 2020, the commencement of sinking fund payments has been deferred until December 2021 based on the current expected completion date.

12. Please provide a similar schedule for COREA payments.

There are no responsive records to this component of the request.

As discussed in item 10 above, the COREA payments represent prefunding of equity injections that are expected to be required to complete construction and achieve commissioning of the LCP. At this time, based on the latest expected completion date and the provisions of the PFA waivers executed in November 2020, there are no further COREA contributions expected to be made.

13. What impact will the federal guarantee fee have on the revenue requirements?

Please find attached Table 2 – Summary of Guarantee Fees which summarizes the federal guarantee fee payable each year.

As part of the second round of federally guaranteed debt that was issued in May 2017, commonly referred to as FLG2 debt, the Government of Canada required an annual guarantee fee payable (each June) in the amount of 0.5% of the average outstanding balance of FLG2 debt over the previous year. Payments made during the construction phase of the project are included as part of the cost of the asset to be recovered over the supply period or service life, as the case may be. The guarantee fees applicable to the post in-service date directly increase the revenue requirement for both LIL and MF/LTA and have been treated as additional interest in the computation of the revenue requirement.

15. Please update the \$865 million value of Emera's investment in the LIL and provide the yearly obligation of Nalcor to repay principal and to pay a return on Emera's investment for each year of the 50 year supply and cost recovery period for the Muskrat Falls project.

Based on the latest forecast information, the value of Emera's investment in the LIL, including AFUDC, is expected to be \$902.1 million at the time of full in-service which is currently forecast to be October 2021. The obligations regarding the payment of dividends to Emera are outlined in the various legal agreements including the NL Development Agreement and the LIL Limited Partnership Agreement (both available on the Nalcor Energy Muskrat Falls Project website).

16. Please confirm that Emera's investment in the LIL is recorded in the financial accounts of Nalcor as a liability, and not as equity.

Based on International Financial Reporting Standards, Emera's investment in the LIL is treated as a financial liability and not as equity. Please see note 15 of the 2019 Consolidated Annual Financial Statements of the Labrador-Island Link Limited Partnership which are available on Nalcor's website.

<https://nalcorenergy.com/wp-content/uploads/2020/06/Labrador-Island-Link-Limited-Partnership-2019-Final-FS.pdf>

In your email of August 16, 2019 you state "As to what the source of funds would be for a return of equity during a period with a negative return on equity, ie a period of losses, the answer lies in the fact that dividends are dictated by cash availability and not accounting net income. As such, the non-cash charge for depreciation that is included in accounting net income provides for the repayment of the debt via sinking fund contributions and the return of equity in the form of dividends."

I have the following questions arising from this reply to my email of July 31, 2019:

17. Are principal repayments and return on investment to Emera Energy contingent on "cash availability" or must they be paid regardless?

Based on the context of the question it is assumed that "principal repayments" refers to the return of equity to Emera. The return of equity and the return on equity are both accomplished through the payment of dividends to Emera by the limited partnership. The provisions guiding the calculation and payment of dividends are outlined in the NL Development Agreement and the LIL Limited Partnership Agreement (both available on the Nalcor Energy Muskrat Falls Project website). As is the case in most partnership agreements, there are also provisions that govern how additional equity may be called from partners in the case of an unforeseen cash requirement within the partnership. There are also requirements under the Project Finance Agreements with the Government of Canada relating to the payment of dividends that must be met before any distributions can be made by the LCP entities, including those to both Nalcor and Emera associated with their LIL limited partnership interests.

18. Is the repayment of principal on the federally guaranteed debt included under "interest" or is it included under "depreciation"?

In the context of the question it is assumed that it is actually the sinking fund payments that are being discussed and not the repayment of the bond face value at maturity. The sinking fund payments are not included in interest. Please see item 10 above for how the sinking fund payments are recovered. In the case of LIL this is accomplished through the commercial depreciation charge, and in the case of MF/LTA it is accomplished as part of the energy sales revenue based on the escalating supply price, a component of which can be viewed as depreciation.

19. Is "depreciation" a proxy for debt repayment, notwithstanding that debt repayment is more discontinuous than depreciation allowances, which are continuous and smooth?

No, depreciation is not really a "proxy" for debt repayment notwithstanding as discussed in item 10 above. The commercial depreciation charge does provide the means for recovery of the original cost of the asset over the supply period or service life, as the case may be.

As an example, for MF/LTA the debt is fully paid off well before the asset is "fully depreciated" from a commercial perspective. Here the depreciation really covers the total of both the required sinking fund payments as well as the return of equity. In this case, the shorter life of the debt as compared to the supply period over which the cost of the assets are being recovered results in more of the "depreciation" charge going towards debt in the early years with the later years being exclusively related to the return of equity. In the case of LIL, the patterns are more closely aligned due to the fact that at the end of the term of the federal loan guarantees and repayment of the related bonds, there is a residual balance that will be refinanced and repaid over the remaining debt repayment term.

20. Is "the non-cash charge for depreciation" used as a proxy for the return of equity (in contrast with the return on equity)?

Please see item 19 above.

Table 1: Schedule of Projected FLG1 Sinking Fund Payments

Year	MF/LTA	LIL	Total
2021	40,625,001	30,208,334	70,833,335
2022	81,250,002	60,416,668	141,666,670
2023	81,250,002	60,416,668	141,666,670
2024	81,250,002	60,416,668	141,666,670
2025	81,250,002	60,416,668	141,666,670
2026	81,250,002	60,416,668	141,666,670
2027	81,250,002	60,416,668	141,666,670
2028	81,250,002	60,416,668	141,666,670
2029	82,812,501	60,416,668	143,229,169
2030	84,375,000	60,416,668	144,791,668
2031	84,375,000	60,416,668	144,791,668
2032	84,375,000	60,416,668	144,791,668
2033	84,375,000	54,208,334	138,583,334
2034	84,375,000	48,000,000	132,375,000
2035	84,375,000	48,000,000	132,375,000
2036	84,375,000	48,000,000	132,375,000
2037	97,622,283	48,000,000	145,622,283
2038	110,869,566	48,000,000	158,869,566
2039	110,869,566	48,000,000	158,869,566
2040	110,869,566	48,000,000	158,869,566
2041	110,869,566	48,000,000	158,869,566
2042	110,869,566	48,000,000	158,869,566
2043	110,869,566	48,000,000	158,869,566
2044	110,869,566	48,000,000	158,869,566
2045	110,869,566	48,000,000	158,869,566
2046	110,869,566	47,777,778	158,647,344
2047	110,869,566	47,777,778	158,647,344
2048	110,869,566	47,777,778	158,647,344
2049	-	47,777,778	47,777,778
2050	-	47,777,778	47,777,778
2051	-	47,777,778	47,777,778
2052	-	47,777,778	47,777,778
2053	-	47,777,778	47,777,778

Table 2: Schedule of Projected LCP Guarantee Fee Payments

Year	MF/LTA	LIL	Total
2018	9,250,000	5,250,000	14,500,000
2019	9,250,000	5,250,000	14,500,000
2020	9,250,000	5,250,000	14,500,000
2021	9,200,224	5,223,750	14,423,974
2022	9,000,496	5,118,750	14,119,246
2023	8,798,200	5,013,750	13,811,950
2024	8,593,001	4,908,750	13,501,751
2025	8,384,525	4,803,750	13,188,275
2026	8,172,438	4,698,750	12,871,188
2027	7,956,385	4,593,750	12,550,135
2028	7,735,983	4,488,750	12,224,733
2029	7,510,834	4,383,750	11,894,584
2030	7,280,548	4,278,750	11,559,298
2031	7,044,753	4,173,750	11,218,503
2032	6,803,188	4,068,750	10,871,938
2033	6,555,573	3,963,750	10,519,323
2034	6,301,626	3,858,750	10,160,376
2035	6,041,063	3,753,750	9,794,813
2036	5,773,596	3,648,750	9,422,346
2037	5,498,954	3,543,750	9,042,704
2038	5,216,840	3,438,750	8,655,590
2039	4,926,945	3,333,750	8,260,695
2040	4,628,994	3,228,750	7,857,744
2041	4,322,688	3,123,750	7,446,438
2042	4,007,740	3,018,750	7,026,490
2043	3,683,850	2,913,750	6,597,600
2044	3,350,733	2,808,750	6,159,483
2045	3,008,114	2,703,750	5,711,864
2046	2,655,700	2,598,750	5,254,450
2047	2,293,184	2,493,750	4,786,934
2048	1,920,299	2,388,750	4,309,049
2049	1,536,783	2,283,750	3,820,533
2050	1,142,350	2,178,750	3,321,100
2051	736,709	2,073,750	2,810,459
2052	319,530	1,968,750	2,288,280
2053	-	1,863,750	1,863,750
2054	-	1,758,750	1,758,750
2055	-	1,653,750	1,653,750
2056	-	1,548,750	1,548,750
2057	-	1,443,750	1,443,750

*2018 to 2020 are Actuals