

Backgrounder – Case Summary

Churchill Falls (Labrador) Corporation (CFLCo) has begun legal action in Quebec seeking a change, on a go forward basis, of the pricing terms of the Power Contract between CFLCo and Hydro-Québec. Under this Contract, originally signed in 1969, energy generated from the Churchill Falls Generating Station in Labrador is sold to Hydro-Québec.

Since the Contract was initiated, circumstances have changed in a way that could not have been reasonably foreseen at the time.

- The commercial value of energy has increased greatly. It was generally expected, with the advent of nuclear energy, the value would decline over time.
- At the time the Contract was negotiated, CFLCo had no access to export markets because the government of Québec had refused permission to transmit energy across Québec territory. The result was that Hydro-Québec was the only possible purchaser.
- Since 1997, the United States open access regulations require that companies such as Hydro-Québec who sell energy in the U.S. must give open access to their own transmission network at established tariff rates.

The Contract was signed for 44 years with an automatic renewal clause for another 25 years.

At the time of signing, the purchase price to be paid to CFLCo was roughly one third of Hydro-Québec's average resale price.

The change in circumstances since the original contract was signed and the extraordinary length of the contract has resulted in a gross inequity in the distribution of contractual benefits.

This unique situation, combined with the obligation under the Québec Civil Code to act in good faith throughout the term of a contract, CFLCo believes obliges Hydro-Québec to renegotiate the terms of the contract to re-establish the equilibrium of benefits.

On November 30, 2009, CFLCo called on Hydro-Québec to renegotiate a fair and equitable purchase price for the remaining term of the Contract to 2041. Hydro-Québec did not respond. As a result, CFLCo is commencing proceedings against Hydro-Québec to address disparities in the 1969 Upper Churchill Power Contract pricing.

The Power Contract is subject to the civil law of Québec and in Québec, as in many other civil law jurisdictions such as France, Belgium and Germany, it is a fundamental principle that contracts must be negotiated and executed in good faith. One aspect of good faith, which has been recognized by the Supreme Court of Canada, is that in certain circumstances, actions by one party, even if in strict accordance with the terms of a contract, may be found to be abusive and unjustified.

The Power Contract was signed over 40 years ago and under its present terms Hydro-Québec will receive virtually the entire benefit of the Contract for decades to come. Hydro-Québec is not willing to renegotiate the Power Contract to provide a fair and equitable purchase price reflecting the original intention of the parties.

CFLCo believes that this, in the context of the exceptional circumstances and changes which have taken place since that time, constitutes an abuse of rights. The failure to renegotiate the Power Contract is also in violation of the notion of “fair play” and the “spirit of justice” both of which have been found by the Supreme Court of Canada to form part of the notion of good faith.

When the Power Contract was signed, the price to be paid by Hydro-Québec represented approximately one-third of the average price Hydro-Québec charged its customers. Going forward, this action seeks a return to such a proportion for the percentage of CFLCo power sold domestically, and fair and equitable terms for the percentage of CFLCo energy sold in export markets, which would be 50 percent of Hydro- Québec’s export market price.