

Churchill Falls (Labrador) Corporation files motion with Québec Superior Court

February 23, 2010 – Churchill Falls (Labrador) Corporation Limited (CFLCo) filed a motion in Québec Superior Court today commencing proceedings against Hydro-Québec to address inequities in the 1969 Upper Churchill Power Contract pricing.

“The motion details the basis of our claim to have the pricing terms of the 1969 Upper Churchill Power Contract amended for the remaining term of the Contract to 2041,” said Ed Martin, President and CEO of CFLCo and Nalcor Energy. “We are asking the court to amend the Contract pricing terms to address the inequity which has resulted from unforeseen circumstances.”

It is CFLCo’s position that since the Power Contract was initiated, circumstances have changed in a way that could not have been reasonably foreseen at the time: energy prices have escalated significantly and access to export markets is now a possibility under open access regulations. This change in circumstances and the extraordinary length of the contract, which is 44 years plus an automatic renewal for an additional 25 years, has resulted in a gross inequity in the distribution of contractual benefits.

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

Presently, the purchase price under the Power Contract is one-quarter of one cent per kilowatt hour and the automatic renewal clause fixes the purchase price at one-fifth of one cent for the 25 year period beginning in 2016. This will mean, for the remainder of the Contract, power will be sold to Hydro-Québec for less than five per cent of its recent commercial value.

On November 30, 2009, CFLCo sent a letter to Hydro-Québec requesting they enter into negotiations to amend the pricing terms of the Power Contract to provide a fair and equitable price to CFLCo, consistent with the principle under the Québec Civil Code that parties are to act in good faith in the negotiation and throughout the term of contracts. Hydro-Québec did not respond to the request.

“We believe that considering the changing circumstances, Hydro-Québec’s refusal to renegotiate further constitutes an abuse of rights,” explained Martin, “and more generally, we believe that refusal 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.”

The legal action has been taken in the Québec Superior Court as the Power Contract is governed by the laws of Québec.

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