

## **Submission to the Public Utilities Commission Hearings**

by Greg Malone

There are three main areas of concern I, as a rate payer, have about the operations of Newfoundland Power.

First is the involvement of its parent company Fortis Inc., and therefore Nfld Power's involvement, directly and indirectly, in the immoral, illegal and controversial Chalillo project to build a hydroelectric dam in a sensitive and biologically valuable reserve in the Belize rainforest.

The second is the use by Fortis Inc. of Nfld Power's preferential credit rating to drag up Fortis' credit rating thereby enabling Fortis to borrow money at a cheaper rate to finance its speculative business ventures at home and abroad.

The third is the constant disadvantage posed to the rate payers, by having the Province's Utility for electricity distribution held as a private monopoly, where there is no advantage to be gained for the consumer through competition or conservation, and where our rates are under constant pressure and threat of increase to provide ever greater dividends to shareholders, and where varying forecasting calculations have resulted in this Private Monopoly collecting millions of dollars more from the rate payer than was intended or allowed.

### **Fortis In Belize**

Firstly, let us consider the activities of Fortis and Nfld Power in Belize. Nfld Power is a cash cow for Fortis. It is a monopoly with a captive market, the Newfoundland rate payer, and generates the majority of Fortis' profits. This money from our rates has enabled Fortis to go into Belize and purchase Belize Electricity Limited, BEL, and BECOL, Belize Electric Co. Ltd., and thus establish themselves in Belize as a Private Monopoly, controlling both distribution through BEL and generation through BECOL. So we have Nfld Power a Private Monopoly in Newfoundland generating the funds to set up another Private Monopoly in Belize.

Unfortunately for the Belizean ratepayer, their Government appointed PUC has never held public hearings, so there is no real protection for the ratepayer as we enjoy here in Newfoundland and Labrador. Consequently Fortis Becol charges Belizeans the highest electricity rates in all of Central or North America, making 3 to 4 times the profit on the same amount of electricity sold in Belize as on the same amount sold here in Newfoundland. Yet Stan Marshall, CEO of Fortis, has stated that rates will go up to pay for the planned Chalillo Dam. While this may

seem like just another cash cow, providing easy profits to Fortis shareholders, the situation is unstable and generating increasing public protest domestically and worldwide.

This practice of Foreign Direct Investment by Trans National corporations to set up monopolies in vulnerable third world countries represents one of the worst abuses of Free Trade, and is the main subject of complaint and many submissions to the World Trade Organization by third world countries, who have demanded a Code of Conduct from 'Home' countries, like Canada to make their Trans Nationals behave in a socially responsible manner in their host countries, like Belize. The Fortis contract in Belize to build the Chaillo Dam is a classic example of a Trans National company demanding total rights and interests from the host country, Belize, without any obligations or responsibilities in return.

This unfolding situation in Belize bears far more on the security of our own Utility here in Newfoundland than we may at first realize so I will briefly outline that situation. Fortis owns two properties in Belize: the only utility, BEL, and a hydro producer, BECOL. Fortis/BECOL now has plans to build the Chalillo hydroelectric dam upstream from its existing plant on the Macal River, and sell the power to Fortis/BEL. Fortis BEL currently purchases some of its power from Mexico but intends to replace some of this electricity with the proposed dam. The area that would be flooded by the dam includes a forest reserve and part of a national park. It is an area largely, untouched, undisturbed for millennia, and one the last of, if not the last, undisturbed wildlife refuges in Central America, and a vital link in the Central American wildlife corridor. The river valley that would be flooded is home, rookery, nursery and feeding ground for numerous rare and endangered species found only here, and which would be destroyed by the project. It also contains some of the only unlooted ancient Maya heritage sites in the region. On the other hand, the dam would generate only 2.9 – 4 megawatts of fixed capacity, or enough to light up about three hotels.

Major environmental agencies and scientists worldwide, from the Natural History Museum of London to the David Suzuki Foundation in Canada and the Natural Resources Defense Council in the United States have responded to the outcry from environmental groups in Belize and have condemned the project as causing totally unacceptable levels of destruction for the size of the projected gains. There are no two opinions on this matter in the scientific community.

Fortis rejected the conclusions of its own wildlife experts from the Natural History Museum of London when they presented their negative findings. Next the geological studies commissioned by Fortis were proved inadequate and insufficient as a basis for construction. Fortis claimed the ground at the site for the Dam was solid granite, but was forced by independent geological evidence to admit the ground consisted of sandstone and shale. Faced with this inescapable evidence Fortis then claimed that it did not matter that the dam would be built on

sandstone or shale even though geologists have warned of the possibility of dam failure.

This is a very serious threat, and Newfoundland Power customers must consider what would happen if the dam failed because of faulty geological studies. People downstream could be killed, and Fortis will be carrying a great risk. It has signed a contract with the government of Belize releasing it from liability, but it is unlikely that the contract will stand up, and protect Fortis in the courts.

Beyond this Fortis refused to release details of the contract for Chalillo which would enable a proper review of the economics of the Project, and refused to hold a Public Hearing on the project to allow citizens and scientists to make independent submissions or voice their concerns. This was a violation of Belizean law and the subject of lawsuits filed in Belize by BACONGO, the Belize Alliance of Conservation NGO's. Chief Justice of Belize, M. Abdulai Conteh agreed, and ordered the Government to hold proper public hearings on Fortis' project. This case was recently brought on appeal. Though the judges did not overturn the approval for Fortis' project, they stated that the lawsuits raised significant concerns in the public interest and allowed for final appeals to the Privy Council in London. The groups in Belize are asking for no more than a fair public hearing, with all the information about the geology, Maya heritage sites and wildlife that is needed to know if the dam is safe and worth the costs.

A second lawsuit charged that Fortis Becol were operating without a proper license as required by Belizean legislation and that the PUC's approval of contracts for power purchase from the Chalillo Dam project was illegal because Fortis Becol did not have a proper license to generate or a Consent to build the project.

Fortis then countered that they did not have a Consent, but that they hadn't actually started construction. The judge then ruled the lawsuit premature. The appeals to the Privy Council could take over a year. If Fortis decides in the meantime to proceed without a license, they would be acting illegally, presenting huge risks to shareholders and Newfoundland Power. Nevertheless they have yet to apply for a license to generate as required under Belizean law.

Fortis has been urged to engage, along with the PUC in Belize, an independent advisor to establish what a proper license should look like, how Regulation should work and how to solicit bids to secure a fair and proper environment for competition. A Norwegian agency and the United Nations Development Program both provide funds and expertise for just such a process.

However such a process would provide careful scrutiny of Fortis Becol's rate structure, its bidding practices and an examination of the terms of the Chalillo Dam contract itself, and has therefore been shunned by Fortis Becol who prefers to operate in the cracks between the law, flying by the seat of their pants as it

were. In fact Fortis has gone to great lengths, including operating outside of Belizean laws to avoid just such public scrutiny of the terms of its Chalillo contract, and with good reason. The details of this contract finally came out in Court. These are some of the more outrageously unfair provisions it contains.

1. If the Project is destroyed or damaged by a natural catastrophe, even if that catastrophe could have been prevented with better planning, Fortis can walk away from the project after collecting the insurance proceeds.  
(Power Purchase Agreement. Sec11.2 p13)
2. The price per kilowatt-hour will increase by 1.5% on April 1 each year beginning April 1, 2001 through to March 31, 2036.  
(Amended and Restated Power Purchase Agreement. Sec 3.1(c) p6)
3. Fortis Becol pays no taxes or import /export duties to Belize except payroll taxes under a special law written just for them.  
(Franchise Agreement 12.1 p29)
4. If the Chalillo Dam does not perform as expected because there is not enough water or for any other reason and the estimates of power production are less, then Fortis BEL and Fortis Becol can re-negotiate the contracts to charge the consumer more.  
(Power Purchase Agreement. Sec3.2 p8)
5. "The Government covenants and agrees to waive or cause to be waived and indemnify the Producer against any private action under or with respect to any and all environmental laws rules or regulations now existing or created hereafter to which the Project may be subject"  
(Franchise Agreement. Sec 7 p27)
6. The Government of Belize promises to give control of the river and all tributaries to Fortis Becol.  
(Franchise Agreement. Sec 3.3 p25)
7. The contract also provides for BEL to buy from BECOL \$15 million US of transmission assets that were already owned by BEL. The consumers are now paying this extra \$15 million.

As I said, these are just some of the blatantly biased terms in the contract between Fortis and the Belize Government that is widely referred to as a 'sweetheart deal'. If Fortis should decide to proceed with the Dam project, this contract will most certainly be challenged in Court. All of these murky, unresolved issues represent a legal house of cards ready to collapse around Fortis in Belize. It is exactly this troubling situation that RBC Dominion Bond Rating Agency was looking at when they issued a recent report putting Fortis on a negative watch due to possible turmoil in Belize. This unholy, chaotic situation is what Nfld Power's credit rating is now tied to.

Not only that but Nfld Power also has personnel in Belize on a regular basis, working with BEL and BECOL preparing for this project. Indeed the CEO of BECOL, Lynn Young, now sits on the Board of Directors of Nfld Power. Nfld

Power acts as an insurance broker for BEL and BECOL paying for their insurance coverage and being repaid in installments with interest. Fortis' unfair, fractious and tenuous dealings in Belize are nothing Newfoundland Power should be entangled with. But it is, which brings me to the matter of credit ratings.

### **Credit Rating**

Standard and Poor's Bond Rating Agency has recently changed the way in which it calculates Nfld Power's credit rating. Nfld Power was rated on a stand alone basis but now its rating will be calculated in with that of Fortis Inc.

This new arrangement will have the effect of raising Fortis' credit rating making it cheaper for them to borrow money to finance other business ventures such as their recent purchase of the Delta Hotel in St. John's and Granite Power in Ontario. However the same credit arrangement will have the inverse effect on Nfld Power, making it more expensive for Nfld Power to borrow money, an extra expense passed on to the Newfoundland ratepayer. In the event that Fortis Inc. increases its debt and becomes overextended, Nfld Power will be further weakened. Nfld Power's credit rating is now fundamentally put at risk from the vagaries of Fortis' business ventures whatever and wherever they may be - ventures like their doubtful and unpopular dealings in Belize.

This situation presents a totally unnecessary risk for the Newfoundland ratepayer without their being any possibility of gain for those risks taken by the ratepayers. Nfld Power takes the risks. Fortis takes the gains. This one-sided arrangement is clearly unfair to the ratepayer, and should be terminated. Whatever steps must be taken, should be taken to again separate Nfld Power's credit rating from the weaker and more uncertain credit rating of Fortis Inc.

The bond rating agencies said that one of their reasons for looking into the credit ratings of certain Canadian utilities is that too much store had been laid in proper utilities regulation, and that regulators may not be doing their job in protecting these companies from bad risks. Fortis' venture in Belize presents just such a bad risk, and it is in our interest for the PUB to make sure that Fortis gets its house in order.

I recommend two immediate steps with regard to Fortis' dealings in Belize:

1. The PUB should look into the regulation of Fortis' operations in Belize, and press Fortis to work with the PUC to bring in independent, outside, advisors to set up a system to license Fortis' companies properly. The advisors should also help ensure full public participation in regulation of Fortis' companies in Belize. That will help avoid misunderstandings with the public leading to millions in legal costs later.

2. The PUB should insist that Fortis put its geological studies and engineering plans for the Belize dam on the table now, so that competent outside experts can evaluate them. There is a real risk that the dam would fail, and that customers of Newfoundland Power could be left holding the bag.

We have recently learned that Fortis is contracting with C.W.H.E.C, a Chinese company, to build the dam. This is the same company that is building the controversial Three Gorges Dam in China and, has been involved in charges of gaining contracts through corruption in Bangladesh, on a project that ended up costing millions more because the engineering was not done right for the geological conditions of the dam site. If this is the company that Fortis has gone to to build this dam, we should be even more wary, and make sure we get the engineering plans, the geological studies, and the contract Fortis has signed with C.W.H.E.C.

### **Private Monopoly Disadvantages to Ratepayers**

Finally Fortis' attempt to take advantage of Nfld Power's credit rating and thereby the Newfoundland rate payer, Nfld Power's constant ongoing requests for unjustified rate increases and its demonstrated willingness to gouge the rate payer by recently collecting \$15 million more in rates through inflated cost projections, \$15 million more than allowed by the PUB , all these abuses lead me to conclude that the monopoly should not remain in private hands. It is an unhealthy situation for the Newfoundland ratepayer who would be served far better if Nfld Power were to become a publicly owned utility. In my view our publicly owned power generator, Newfoundland and Labrador Hydro, should take over this private monopoly, thereby putting both generation and distribution in public hands. The profits from Nfld Power would then accrue to the Newfoundland ratepayer where they belong, and savings through conservation could be encouraged.

Fortis is a big company now. It's time for them to give up the security blanket of Nfld Power. Time to cut the apron strings and get out in the real world of competition. I urge the PUC to recommend to the Government that this is the best course of action to take for the sake of the Newfoundland ratepayer and the Newfoundland people. Indeed any Newfoundland and Labrador Government, of whatever political party, should make this objective an integral part of any energy policy which seeks to serve the interests of the people of the Province, and ensure a reliable supply of power at reasonable rates for the future.

Thank you very much for the opportunity to present these concerns.

Greg Malone  
St. John's  
April 3, 2003