

IN THE MATTER OF the *Electrical Power Control Act, 1994*, SNL 1994, Chapter E-5.1, as amended (the "*EPCA*"); and

IN THE MATTER OF an application by Nalcor Energy to establish the terms of a water management agreement between Nalcor Energy and Churchill Falls (Labrador) Corporation Limited for the Churchill River, Labrador.

**WRITTEN SUBMISSION ON BEHALF OF
CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED ("CF(L)Co")**

(Filed pursuant to Section 6 of the *Water Management Regulations*)

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TO: **The Board of Commissioners of Public Utilities**
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St. John's, NL A1A 5B2
Attn: Cheryl Blundon – Board Secretary

AND TO: **Nalcor Energy**
Hydro Place, 500 Columbus Drive
P.O. Box 12800
St. John's, NL A1B 0C9
Attn: Ian F. Kelly, Q.C. and
Geoffrey P. Young

NOTICE

TO: The Board of Commissioners of Public Utilities (the "Board")

The within Written Submission is filed in accordance with Section 6 of the *Water Management Regulations* made pursuant to the *EPCA* (O.C. 2009-016) (the "*Regulations*"). It is intended to provide the Board with a preliminary response to the Application of Nalcor Energy dated November 10th, 2009 for an order establishing the terms of a water management agreement pursuant to section 5.5 of the *EPCA*.

At this stage the parties are required to file with the Board a written submission setting out the names of suppliers on the Churchill River and all affected transmission providers, a summary of the facts and issues in dispute, a proposed water management agreement, copies of existing power contracts to which affected suppliers are a party and any other matter considered relevant.

CF(L)Co requests an opportunity to be heard on the process and procedure to be engaged by the Board on Nalcor's Application, including any consideration of a public hearing.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 10th day of December, 2009.



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Tab 1

A. Names of Suppliers and Affected Transmission Providers

The following are the names of all suppliers on the Churchill River and all affected transmission providers:

Suppliers

1. **CF(L)Co** is a supplier as it owns rights to produce power from its hydro-electric facilities located on the Churchill River, pursuant to the Churchill Falls (Labrador) Corporation Limited, Lease Act, 1961, filed as Exhibit 1 in Volume II of Nalcor's Application.
2. **Nalcor Energy** is a supplier as it owns rights to produce power from facilities to be built on the Churchill River, pursuant to Nalcor Energy Lease, March 17, 2009 as amended, filed as Exhibits 8.1 and 8.2 in Volume II of Nalcor's Application.

Affected Transmission Providers

3. **CF(L)Co** owns and operates three 735 kV transmission lines that transmit power and energy between Churchill Falls and Montagnais in northern Quebec.
4. **Twin Falls Power Corporation ("TwincO")** owns and operates two 230kV transmission lines that transmit power and energy from Churchill Falls to Labrador City and Wabush in western Labrador.
5. **Newfoundland and Labrador Hydro** owns and operates one 138 kV transmission line that transmits power and energy from Churchill Falls to Happy Valley - Goosebay in eastern Labrador.

Tab 2

B. Summary of Facts and Issues in Dispute

(i) Reply to Application of Nalcor Energy dated November 10th, 2009

1. As to paragraphs 1 through 9 of Nalcor's Application, CF(L)Co acknowledges same.
2. As to paragraphs 10 and 11 of Nalcor's Application, CF(L)Co has no direct knowledge of same but understands that Nalcor has made public statements to similar effect.
3. As to paragraphs 12 through 15 of Nalcor's Application, containing references to the negotiation process, CF(L)Co says that it made all reasonable efforts to comply with section 5.4 of the *EPCA* but, as contemplated in section 5.5 of the *EPCA*, the parties failed to enter into a water management agreement.
4. Further, CF(L)Co says that on October 27, 2009 it notified Nalcor that the required CF(L)Co Board approval to enter into a water management agreement with Nalcor was not achieved.
5. As to paragraph 16 of Nalcor's Application, CF(L)Co acknowledges same.
6. As to paragraph 17 of Nalcor's Application, CF(L)Co refers the Board to the proposed water management agreement filed herein by CF(L)Co and the Summary of Facts and Issues in Dispute forming part of this Written Submission.
7. CF(L)Co requests an opportunity to be heard on the process and procedure to be engaged by the Board on Nalcor's Application, including any consideration of a public hearing.

Tab 3

Summary of Facts and Issues in Dispute (cont'd)

(ii) Response to Pre-filed Evidence of Nalcor Energy

I. Introduction

The parties have failed to enter into a water management agreement pursuant to Section 5.4 of the *EPCA*. Nalcor has thus applied, pursuant to Section 5.5 of the *EPCA*, to have the Board establish the terms of an agreement between them. On such application each of the parties is required to file a “proposed water management agreement”. This they have done.

It will be observed that, despite the failure of the parties to enter into an agreement, they have filed identical “proposed water management agreements”.¹ As such, it can be expected that there should be few facts or issues in dispute. In this regard, CF(L)Co proposes to respond to and comment on select portions of Nalcor’s Pre-filed Evidence with a view to addressing those matters requiring clarification or interpretation. It is recognized that, as a guiding principle, any proposed WMA must meet the requirements set out in Section 3.2 of the *Water Management Regulations*.

As this response is in summary form, it should not be taken that CF(L)Co otherwise admits to or accepts statements made by Nalcor in its Pre-Filed Evidence and not specifically addressed herein.

II. Response to Nalcor Pre-filed Evidence

1. Section 2.2.3 Hydro recall power contract – Nalcor Pre-filed Evidence, page 7:

¹ For purposes of this submission both Nalcor’s and CF(L)Co’s “proposed water management agreements” are referred to variously as “the WMA” and “the proposed WMA”. The only variance identified by CF(L)Co, as between the two agreements, is “hectometers” vs. “hectometres” in Annex “A”.

"The recall power contract (Exhibit 6) of March 9, 1998⁷ obligates CF(L)Co to provide Hydro with 2.36 TWh of energy at the Labrador Québec border. The contract expires on August 31, 2041."

CF(L)Co Response: Pursuant to Section 3.01 of the Hydro recall power contract, the Amount of Power on Order is 300,00 kilowatts, the Load Factor is 90% per month and the aggregate amount is not to exceed 2.36TWh in a year (capitalized terms are defined in the Hydro recall power contract).

2. Section 2.2.4 Churchill Falls Guaranteed Winter Availability Contract (GWAC) - Nalcor Pre-filed Evidence, page 7:

"The GWAC (Exhibit 7) is a contract between HQ and CF(L)Co which provides for additional availability, using reasonable efforts, of the Churchill Falls plant after deducting HQ Power Contract firm capacity, station services and townsite loads, recall and Twinco power. It expires on August 31, 2041. Nalcor notes that the GWAC is not, strictly speaking, a contract for the supply of power. Since a generating unit is not dispatched under the GWAC, no power is supplied through this contract. Nalcor does note, however, that if CF(L)Co maintains its unit availability under the GWAC, then its units will be available for delivery under the HQ Power Contract, and has therefore agreed to include the GWAC as a relevant contract in the water management agreement. In a different context, Nalcor may not consider the GWAC as a contract for the supply of power."

CF(L)Co Response: It is CF(L)Co's position that the GWAC is a contract for the supply of power within the meaning of Sections 5.7 of the *EPCA* and 3.1 of the *Regulations*. As such, no provision of the GWAC can be adversely affected by a provision of the WMA. At Article 3 of the proposed WMA, Nalcor, as a Supplier, recognizes the statutory protection afforded by Section 5.7 and specifically acknowledges that the GWAC is a contract for "the supply of Power and Energy" for purposes of the *EPCA*. At section 2.2.4 of its Pre-filed Evidence, however, Nalcor states that the GWAC "is not, strictly speaking, a contract for the supply of power" but that it has "agreed to include the GWAC as a relevant contract in the water management agreement". Further Nalcor states that "in a different context, Nalcor may not consider the GWAC as a contract for the supply of power".

To the extent that Nalcor accepts that the GWAC is a contract for the supply of power within the meaning of Sections 5.7 of the *EPCA* and 3.1 of the *Regulations* and for all purposes of the *EPCA*, then no issue arises. In CF(L)Co's view it would be preferable if Nalcor made such clear and unequivocal statement. If any issue remains CF(L)Co will seek clarification from Nalcor and/or a determination by the Board.

3. **Section 3.1 Efficient Power Production through the WMA** - Nalcor Pre-filed Evidence, page 17:

*"A water management agreement addresses these issues by enabling Nalcor to produce energy for CF(L)Co during those periods when CF(L)Co has increased deliveries and during the spring runoff. Water held back and stored for Nalcor can then be utilized for Nalcor at a later period when CF(L)Co deliveries are reduced. This minimizes spillage and enables Nalcor to optimize its long-term energy producing capability, in accordance with the provisions of the *EPCA*. It fulfills the objectives of the *Regulations* to coordinate the power generation and energy production in the aggregate for all production facilities on the Churchill River to satisfy the delivery requirements of both CF(L)Co and Nalcor, in a manner that provides for the maximization of the long-term energy generating potential of the Churchill River."*

CF(L)Co Response: Neither the *EPCA* nor the *Regulations* create a right *per se*, on the part of Nalcor, to store water in CF(L)Co's reservoirs. Any interpretation to the contrary would be inconsistent with and in violation of CF(L)Co's water rights under *The Churchill Falls (Labrador) Corporation Limited (Lease) Act*, 1961, S.N.L. 1961, c. 51 as amended, (the "*Lease Act*"). Pursuant to Subsection 3(2)(j) of the *Regulations*, the WMA must include mechanisms related to "energy storage amounts" for energy produced by one party for the other as a result of the production schedule. When energy is produced by Nalcor for CF(L)Co, it results in Nalcor Banked Energy (as defined in the WMA) being affected and similarly, when energy is produced by CF(L)Co for Nalcor, it results in CF(L)Co Banked Energy (as defined in the WMA) being affected. To account for such Banked Energy in

each party's reservoirs, Annex A specifically provides mechanisms to calculate "associated" water.

4. Section 5. THE PROPOSED WATER MANAGEMENT AGREEMENT - Nalcor Pre-filed Evidence, page 20:

"The proposed Water Management Agreement (WMA) referred to above consists of two parts, the main body of the agreement and Annex A. The body of the agreement sets out the key provisions related to the establishment and operation of the water management process. The Annex contains the mechanisms for determining and allocating energy production between the parties as a result of a coordinated approach to operations."

CF(L)Co Response: Annex A contains mechanisms for determining and allocating energy production as well as mechanisms for assessing energy losses between the parties. It further provides for the determination of Energy Benefits (as defined in the WMA).

5. Section 5.1. Effect of the WMA on the Parties - Nalcor Pre-filed Evidence, pages 20 and 21:

"Section 5.7 of the EPCA requires that existing power contracts not be adversely affected by the provisions of a water management agreement. The WMA recognizes the existing contractual obligations of CF(L)Co, and provides that the operation of the hydroelectric facilities on the Churchill River under the terms of the WMA will have no effect on CF(L)Co's ability to meet its delivery requirements.

The WMA will, having regard to both parties' power generation capacity and delivery requirements, result in production schedules for the delivery of power in the aggregate to meet the contractual obligations of each of Nalcor and CF(L)Co. The requirements of both Nalcor's and CF(L)Co's customers will be met from the combined generation of both facilities. The outcome is simply the coordination of production to optimize the use of the water to produce energy.

Further, the WMA will not impose any obligation upon CF(L)Co to produce energy for Nalcor which exceeds the amount of energy Nalcor previously

banked, nor to produce at a rate for Nalcor in excess of Nalcor's facilities' capabilities.

The proposed WMA accomplishes the above objectives. Some of the specific provisions are discussed below. "

CF(L)Co Response: Section 5.7 of the *EPCA* requires that a provision of a contract for the supply of power (defined as Prior Power Contract under the WMA) shall not be adversely affected by a provision of a water management agreement. The WMA not only recognizes existing contractual obligations, but ensures that any application and interpretation of the WMA will not result in an adverse effect on a provision of a Prior Power Contract (as defined in the WMA).

Accordingly, CF(L)Co's ability to meet its delivery requirements must be unaffected by any water management agreement, as with CF(L)Co's obligations under Prior Power Contracts, including availability requirements. Similarly CF(L)Co's right to store water in its reservoirs, together with its storage capacity, generating capability and transmission capability, must remain unaffected by any water management agreement.

6. Section 5.3. The Independent Coordinator (Article 6) - Nalcor Pre-filed Evidence, pages 21 and 22:

"The Independent Coordinator would establish short- and long-term production schedules for all production facilities on the Churchill River. Notwithstanding that the Independent Coordinator may be an employee of either party, the Independent Coordinator would conduct its duties in an impartial manner in accordance with the WMA. Each party to the WMA would have the right to request the removal of the Independent Coordinator under certain conditions. The proposed WMA also provides for a mechanism to resolve any disputes or disagreements which relate to the appointment, removal or replacement of the Independent Coordinator.

The proposed agreement contemplates that the Independent Coordinator could be either entirely independent or could be one or more persons from the parties' organizations. The obvious benefit in selecting the Independent Coordinator from one or both of the parties' organizations is to draw upon the

existing high level of specialized knowledge and expertise. Any concerns which may arise with respect to the impartiality of the Independent Coordinator can be addressed through the development of a Code of Conduct for the Independent Coordinator."

CF(L)Co Response: The above Section 5.3 states that "the proposed agreement contemplates that the Independent Coordinator could be either entirely independent or could be one or more persons from the parties' organizations". While the proposed WMA might not preclude the Independent Coordinator being an employee of one of the parties, it is not accurate to say that it contemplates such arrangement. That said, to the extent that the parties can agree on an Independent Coordinator, then presumably they have waived any issue of "independence" arising solely from an individual's place of work. It is CF(L)Co's position that, ultimately, the *EPCA* requires that such position be independent and impartial.

7. **Section 5.4.2. Proposed Operations - Nalcor Pre-filed Evidence, page 23:**

"To properly manage the river system, the Independent Coordinator must consider the storage levels in each reservoir, the desired storage level, efficient plant operation, and uncontrolled inflows into the reservoirs. The Coordinator would be expected to:

- allocate the total energy delivery requirement between the upper and lower Churchill facilities;*
- calculate the water volume added to or removed from the banked quantity; and*
- calculate spills."*

CF(L)Co Response: As a point of clarification, it is noted that one of the primary duties of the Independent Coordinator is to account for and record Nalcor Banked Energy and CF(L)Co Banked Energy (as defined in the WMA). Annex A provides the means to track such Banked Energy and includes measures to calculate the equivalent water volume added to or removed from Banked Energy.

8. **Keeping Track of Water Consumption (Annex A) - Nalcor Pre-filed Evidence, page 26:**

"Because of the variances within the conversion factor which may occur, and given the different conversion rates for each facility⁹, the proposed accounting function reflects changes in the conversion rate on an hourly basis. These steps have been proposed in order to avoid any adverse effect on CF(L)Co's prior power contracts.

⁹ *More water will be required in Nalcor's facility to produce the same energy that will be produced in CF(L)Co's facilities because of the lower head at the Nalcor plant."*

CF(L)Co Response: The use of a different conversion rate for each facility is a requirement of Subsection 3(2)(k) of the *Regulations*. This is necessary to ensure that CF(L)Co is held harmless from electrical losses, and it is equally applicable following expiration of the Prior Power Contracts (as defined in the WMA).

9. **Section 5.5 Banking (Article 7 and Annex A) - Nalcor Pre-filed Evidence, page 27:**

"Since the timing of volumes consumed by each producer under shared dispatch is different from that which they would have been under independent operations, it is essential that these amounts be tracked. As one party produces for the other, a mechanism is required to track the energy produced and therefore the water stored – or banked – by each party for the other. The WMA will require the Independent Coordinator to identify the appropriate quantity of electrical energy and its water volume equivalent that should be added to or deducted from a facility's banked allotment.

Energy produced by Nalcor in its facilities to meet CF(L)Co's delivery requirements is proposed to be credited to Nalcor in the CF(L)Co reservoir system. When the production schedule calls for CF(L)Co to produce power to meet Nalcor's delivery requirements, the accumulated volume banked by Nalcor in CF(L)Co's reservoirs will be reduced. The converse is also true at lower Churchill.

The amount of water added to or withdrawn from a banked amount will be calculated by first simulating the volume of water that the facility at which the banking is taking place would consume if it were operating independently,

and to then determine the volume of water that will be consumed under shared dispatch. Additions and reductions to storage will always be compared to the volume of water that would have been consumed at the banking facility without coordinated production. Through this mechanism, CF(L)Co will have the same amount of water to produce energy as it otherwise would have had.

Conceptually, at the facility whose production is reduced, the water that would otherwise have been used is saved and banked by the other party. The calculation for the banked water will recognize the head and electrical output of the generating facility that would have been needed to serve the load under those conditions. This will ensure that the appropriate energy conversion rate is used to identify the related water volume. A second conversion rate will be used to calculate the estimated amount of water usage under shared dispatch. The difference in water usage is credited to or deducted from the banked water balance. In this way, the appropriate net head and unit loading required to obtain the conversion factors necessary to determine water consumption are identified and applied. The facilities' customers will not be adversely affected by the shared dispatch and banking."

CF(L)Co Response: While the mechanisms in Annex A refer to "water volume" this is simply a means of tracking Nalcor Banked Energy and CF(L)Co Banked Energy (as defined in the WMA). The *Regulations* are directed to the storage of energy not water. Sub-sections 3(2)(j), (k) and (l) of the *Regulations* refer to "energy storage amounts", "lost energy", "amount of energy in storage" and "energy losses", albeit the calculation of same is based on a "water to energy conversion rate".

Furthermore, CF(L)Co is strongly opposed to any application or interpretation of the *EPCA*, the *Regulations* or any water management agreement which would be inconsistent with CF(L)Co's water rights under the *Lease Act*.

10. **Section 5.6 Spills (Article 7 and Annex A) - Nalcor Pre-filed Evidence, page 28:**

"Despite optimum water management of the Churchill River, water spillage may occur at either Nalcor's reservoirs or CF(L)Co's reservoirs. The proposed agreement provides that in the event of a spill not caused by the fault of either party, the banked water will always be the first water spilled. The corresponding energy loss will be borne by the party whose water was

banked. As a result, there will be no reduction in the storage capacity available to CF(L)Co by virtue of Nalcor's storage in the CF(L)Co reservoir under the proposed WMA.

Where a spill occurs as a result of operational error or failure of equipment or failure to follow good utility practice, the lost energy will be borne by that facility unless the cause is attributed to the other party or its customers.

In either case, spills are directly netted from any banked quantity."

CF(L)Co Response: Pursuant to Article 7 of the WMA, it is recognized that spills will affect Nalcor Banked Energy or CF(L)Co Banked Energy. Annex A provides the mechanisms to calculate changes to the relevant Banked Energy as the case may be. Again, CF(L)Co is strongly opposed to any application or interpretation of the *EPCA*, the *Regulations* or any water management agreement which would be inconsistent with CF(L)Co's water rights under the *Lease Act*.

In the event of a spill which is not the fault of either party, the spill would be netted from the relevant Banked Energy, if any. However, and contrary to Nalcor's statement above, in the event of a spill resulting from operational error, failure of equipment or failure to follow good utility practice, such spill would be netted from the responsible supplier's own reservoir.

11. Section 5.8 Deficiencies (Article 10) - Nalcor Pre-filed Evidence, page 29:

"A deficiency is defined as the failure to satisfy a production schedule. When a deficiency occurs or is projected to occur in the course of implementation of the WMA, adjustments would be made to the production schedule for all facilities on the Churchill River to remedy the deficiency or anticipated deficiency. If a deficiency occurs despite the adjustments, and one party incurs damages under a prior power contract, the agreement provides that the party causing the deficiency would be responsible for the damages arising. Where the losses are caused by both or neither party, the deficiency would be allocated between the parties proportionately to their respective shortages."

CF(L)Co Response: Under the WMA, in the event of a loss caused by both parties or one which can not be attributed to either party, the Deficiency (as defined in the WMA) would be allocated to Nalcor or CF(L)Co in proportion to their respective shortage in generation capability as required to fulfill their respective Delivery Requirements (as defined in the WMA).

12. Section 5.9 Costs and Expenses (Article 11) - Nalcor Pre-filed Evidence, page 29:

"In complying with legislative requirements, it is contemplated that the majority of the benefits derived from the coordinated management of the waters of the Churchill River would accrue to Nalcor. The WMA provides that the costs associated with the implementation and operation of the agreement would be borne proportionately by the parties according to the benefits derived. Consequently, Nalcor is expected to bear proportionately larger costs associated with the agreement than will CF(L)Co."

CF(L)Co Response: For the same reason that most, if not all, of the benefits derived from the WMA would accrue to Nalcor, the costs and expenses of CF(L)Co associated with additional equipment or the upgrade of existing equipment, and any transmission losses, resulting from the WMA, must be borne by Nalcor solely.

13. Section 5.10. Date and Term (Article 12) - Nalcor Pre-filed Evidence, page 29:

"The WMA will come into effect on the date that the Agreement is approved by the Board except for certain sections, which will come into effect once the Nalcor production facility is operational. The WMA will remain in effect until there is a permanent cessation of the operations at either of the parties' production facilities or at an earlier date upon approval by the Board of a new water management agreement."

CF(L)Co Response: It is noted that certain provisions of the WMA are to come into effect on the Operational Date (defined in the WMA to be the later of the date of renewal of the

HQ Power Contract pursuant to Schedule III of the HQ Power contract and the commercial in-service date of the first Nalcor generating unit on the lower Churchill River). This Operational Date is intended to ensure that the WMA does not result in an adverse effect on provisions of the Power Contract related to the price structure for energy and power to be paid by HQ under the Power Contract. The same concern does not arise under the renewal of the HQ Power Contract.

14. Section 5.13. Conclusion - Nalcor Pre-filed Evidence, page 30:

"The Water Management Agreement fulfills the objectives of the legislation to maximize the long-term energy potential of the Churchill River while meeting the needs of the parties. Through the mechanisms for water storage and accounting for energy contained in the WMA, both parties' hydroelectric facilities will enjoy the maximum benefits of the Churchill River while at the same time ensuring that the prior power contracts will not be affected."

CF(L)Co Response: A water management agreement is required by law. The objective of such agreement, as stated in the *EPCA* and *Regulations*, is

"the coordination of the power generation and energy production in the aggregate for all production facilities on a body of water to satisfy the delivery schedules for all suppliers on the body of water, in a manner that provides for the maximization of the long term energy-generating potential of a body of water, while ensuring that the provisions of a contract for the supply of power governed by section 5.7 of the Act are not adversely affected".

It is not clear that this is the equivalent of saying that, "*both parties' hydroelectric facilities will enjoy the maximum benefits of the Churchill River*". The objective of a water management agreement would appear to have more to do with "*the maximization of the long term energy-generating potential of a body of water*" than the maximum benefit to a particular hydroelectric facility.

As previously noted, most, if not all of the benefits derived from the WMA accrue to Nalcor. The significance of this benefit is highlighted by Nalcor in its Pre-Filed Evidence (see pages 12 to 17 in particular).

Tab 4

Summary of Facts and Issues in Dispute (cont'd)

(iii) Legislative Requirements – Table of Concordance

The following provides a Table of Concordance as between the *Water Management Regulations* and the related Articles in the proposed WMA identified by Nalcor and CF(L)Co.

● Legislative Requirements – Table of Concordance

SECTION OF WATER MANAGEMENT REGULATIONS	RELATED ARTICLES IDENTIFIED BY NALCOR IN PROPOSED WMA	RELATED ARTICLES IDENTIFIED BY CF(L)CO IN PROPOSED WMA
3.(1) The objective of a water management agreement shall be the coordination of the power generation and energy production in the aggregate for all production facilities on a body of water to satisfy the delivery schedules for all suppliers on the body of water, in a manner that provides for the maximization of the long-term energy-generating potential of a body of water, while ensuring that the provisions of a contract for the supply of power governed by Section 5.7 of the Act are not adversely affected.	2 and 3	2, 3 and 4.7(d)
3.(2)		
(2)To obtain the objectives in subsection (1) a water management agreement shall:		
(a) require that suppliers jointly and sufficiently fund the administration of the independent coordinator in proportion to the energy benefits obtained by each supplier from the administration of the water management agreement or according to that other methodology as may be agreed upon by suppliers and approved by the Board, or in the absence of supplier agreement, imposed by the Board, as the case may be;	4.3(a)	1.1 (Energy Benefits), 4.3(a), 11 and Annex A

SECTION OF WATER MANAGEMENT REGULATIONS	RELATED ARTICLES IDENTIFIED BY NALCOR IN PROPOSED WMA	RELATED ARTICLES IDENTIFIED BY CF(L)CO IN PROPOSED WMA
<p>(b) require that suppliers provide the independent coordinator with:</p> <ul style="list-style-type: none"> (i) demand requirements of contracts for the supply of power, (ii) the power and energy generation capacity of each of the supplier's production facilities, (iii) equipment maintenance requirements, (iv) short- and long-term supplier forecast requirements, (v) copies of a licence, lease or other instrument granting water rights, (vi) plans and requirements respecting suppliers' construction or commissioning activities, (vii) transmission availabilities, and (viii) the forecast of inflows, <p>and regularly update any changes to them, all prepared in a manner consistent with good utility practices</p>	4.3(c)(i) – (ix)	4.3(c)(i)-(viii)
<p>(c) require the independent coordinator, based on the information received in paragraph (b) and in the exercise of reasonable judgment, to establish short- and long-term production schedules for all production facilities on a body of water, through the coordination of production scheduling of the suppliers on the body of water based upon the use of the aggregate generating capacity, storage and transmission facilities of any supplier on the respective body of water, in accordance with the objectives of these regulations and with the water management agreement;</p>	6.2(a)	6.2(a), (b), (c), (d) and 6.3
<p>(d) require that suppliers adhere to the production schedules set by the independent coordinator in paragraph (c);</p>	4.2	4.2
<p>(e) provide that in no event shall:</p> <ul style="list-style-type: none"> (i) the power requests made to the Independent Coordinator by a supplier exceed the maximum power generating capability of the production facilities of that supplier for the period requested, and (ii) the generating capacity, storage capacity, or transmission capability available to a supplier from all facilities on the body of water be less than the amounts of then available generating capacity, storage capacity, 	<p>4.7(a)</p> <p>7.1(b)</p>	<p>4.7(a)</p> <p>7.1(a) and (b)</p>

SECTION OF WATER MANAGEMENT REGULATIONS	RELATED ARTICLES IDENTIFIED BY NALCOR IN PROPOSED WMA	RELATED ARTICLES IDENTIFIED BY CF(L)CO IN PROPOSED WMA
or transmission capability of the production facilities owned by that supplier on the body of water;		
(f) require that information and data be shared between suppliers and by suppliers with the independent coordinator as is necessary for the independent coordinator to perform its functions under the agreement, including records, data, models, as well as physical and computer access to those facilities as are required to obtain and verify that information;	4.4	4.4 and 4.5
(g) require suppliers and the independent coordinator to maintain, for a period of not less than 7 years, records required of them to undertake their responsibilities under the agreement and these regulations which shall be available, upon request, to the board or minister	4.6 6.2(a)(iv)	4.6 and 6.2(a)(iv)
(h) require an Independent Coordinator to: (i) provide suppliers with reports on its activities at regular intervals to be established in consultation with the suppliers, (ii) provide to the minister, and, on request, the board, with an annual report summarizing its activities in a form acceptable to the minister;	6.2(a)(v) 6.2(a)(vi)	6.2(a)(v) 6.2(a)(vi)
(i) require that when a deficiency occurs, or is projected to occur: (i) appropriate adjustments shall be made to the power and energy production levels and schedules of all production facilities on that body of water to the extent practicable to remedy the deficiency or anticipated deficiency, and (ii) where a deficiency occurs despite subparagraph (i), and as a result of that deficiency, a supplier incurs damages under a provision of a contract for the supply of power entered into by a person bound by the water management agreement and a third party where that	10.1(a) 10.1(b)	1.1 (Deficiency) and 10.1(a) 1.1 (Damages) and 10.1(b)

SECTION OF WATER MANAGEMENT REGULATIONS	RELATED ARTICLES IDENTIFIED BY NALCOR IN PROPOSED WMA	RELATED ARTICLES IDENTIFIED BY CF(L)CO IN PROPOSED WMA
contract was entered into before the water management agreement, those costs shall be paid by the supplier who caused the deficiency		
(j) include mechanisms to appropriately assign energy storage amounts to each supplier for water stored in the body of water's reservoirs and, if water spillage occurs, to assign the lost energy fairly to each supplier	7.1(f) Annex "A"	7.1(c), (d), (f) and Annex "A"
(k) require that the amount of energy in storage shall be determined based upon average water to energy conversion rates for the respective production facilities calculated based upon the best data source available as tested in accordance with good utility practice;	7.1(e) Annex "A"	7.1(e) and Annex "A"
(l) include an appropriate method that ensures that, at regular intervals not less frequently than annually, adjustments are made to a supplier's available energy for subsequent intervals for energy losses incurred in the previous period by each supplier as a result of changes to its energy capability caused by the application of the water management agreement;	7.1(g) Annex "A"	7.1(g) and Annex "A"
(m) be governed by the laws of the province; and	1.5	1.5
(n) include those other provisions that the Board determines are necessary or useful in achieving the objectives of the Act.		5, 8, 9, 12, 13, and 14

Tab 5

C. Proposed Water Management Agreement

Attached is the proposed water management agreement filed by CF(L)Co in accordance with Section 6(c) of the *Water Management Regulations*.

WATER MANAGEMENT AGREEMENT made as of the _____ day of _____, 2009,

BETWEEN: **CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED**, a corporation incorporated under the laws of Canada ("CF(L)Co"),

- and -

NALCOR ENERGY, a corporation incorporated under the laws of the Province of Newfoundland and Labrador ("Nalcor"),

WHEREAS CF(L)Co holds water rights to the upper Churchill River, and has constructed and operates water storage, generation and transmission facilities on and in respect of the upper Churchill River;

WHEREAS Nalcor holds water rights to the lower Churchill River, and intends to construct and to operate water storage, generation and transmission facilities on and in respect of the lower Churchill River;

WHEREAS pursuant to the Act:

- (i) it is declared to be the policy of the Province that, amongst other things, all sources and facilities for the production, transmission and distribution of Power and Energy in the Province should be managed and operated in a manner that would result in the most efficient production, transmission and distribution of Power and Energy and, where necessary, all Power, Energy, sources and facilities of the Province are to be assessed and allocated and re-allocated in the manner that is necessary to give effect to such policy; and
- (ii) two or more persons who have been granted rights by the Province to the same body of water as a source for the production of Power and Energy and who utilize, or propose to utilize, or to develop and utilize the body of water as a source for the production of Power and Energy shall enter into an agreement for the purpose of achieving, with respect to the body of water, such policy;

WHEREAS, in compliance with their obligations pursuant to the Act and the Regulations, the parties hereto enter into this Water Management Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that for and in consideration of the respective covenants, undertakings, promises and agreements of the parties set forth in this Agreement, the parties hereto hereby covenant and agree as follows:

Article 1 DEFINITIONS AND INTERPRETATION

1.1 Defined Terms

For the purpose of this Agreement, the following terms shall have the respective meanings set forth in this Section 1.1 and grammatical variations of such terms shall have corresponding meanings:

"Act" means the *Electrical Power Control Act, 1994* (Newfoundland and Labrador);

"Affected Party" has the meaning set forth in this Section 1.1 in the definition of **"Force Majeure Event"**;

"Affiliate" has the meaning set forth in the *Corporations Act* (Newfoundland and Labrador);

"Agreement", **"hereto"**, **"hereof"**, **"herein"**, **"hereby"**, **"hereunder"** and similar expressions mean or refer to this Agreement, including its Annex "A", as the same may be amended or supplemented from time to time in writing between the parties hereto;

"Article", **"Section"** and **"Subsection"** mean or refer to the specified article, section or subsection of this Agreement;

"Board" means the Board of Commissioners of Public Utilities referred to in the Act;

"Business Day" means during regular business hours any day, other than a Saturday or a Sunday or a statutory or civic holiday in the City of St. John's, in the Province;

"Capability" means the maximum load carrying ability of generating equipment or other electrical apparatus under specified conditions for a given time interval;

"CF(L)Co Banked Energy" means the net Energy in storage, owed at any given time by Nalcor to CF(L)Co, calculated as the cumulative difference between the amount of Energy that Nalcor would have generated to fulfil its own Delivery Requirements, and the amount of Energy that Nalcor generated in accordance with the Production Schedule, as measured in MWh, as determined in accordance with this Agreement;

"Churchill River" means the Churchill River located in Labrador, in the Province;

"Damages" means any cost, damage (including incidental and consequential damage), loss, claim, expense, interest, fine, penalty, liability, obligation or other responsibility, including costs, fees and expenses of legal counsel (including costs on a solicitor-client basis) and other advisors and experts, whether or not involving a third party;

"Deficiency" means a failure to satisfy a Production Schedule;

"Delivery Requirements" means the quantity of Power required each hour by a Supplier at specified delivery points;

"Dispute" has the meaning set forth in Section 13.1;

"Energy" means electrical energy measured in kilowatt-hours or multiples thereof;

"Energy Benefits" means the Energy accruing to a Supplier for a period as a result of this Agreement in excess of the Energy that would have accrued to such Supplier for such period in the absence of this Agreement, as determined in accordance with Annex "A";

"Energy Conversion Rate" means the relationship between the Energy production of a hydraulic generating facility and the volume of water consumed to produce that Energy, expressed in units of gigawatt – hours per hectometres cubed (million cubic metres) of water, as determined in accordance with Annex "A";

"Force Majeure Event" means an event, condition or circumstance or combination of events, conditions or circumstances beyond the reasonable control and arising without the fault or negligence of the party making a claim pursuant to section 14.4 of this Agreement (the **"Affected Party"**) including, without limitation:

- (i) fire, explosion, lightning, earthquake, storm, hurricane, flood, ice, landslide or other natural calamity or act of God,
- (ii) terrorism, war (whether or not declared), civil commotion, riot, act of the public enemy,
- (iii) strike, lockout or other labour disturbance,
- (iv) action of any government, legislature, court or other governmental authority, compliance with applicable law, regulation or order of a governmental authority,
- (v) blockade, embargo, closing of borders, and
- (vi) failure or breakdown of equipment or facilities, except as a result of a failure by a Supplier to follow Good Utility Practice;

and which, despite all reasonable efforts of the Affected Party to prevent it or mitigate its effects, adversely affects the performance by such Party of its obligations under this Agreement;

"Good Utility Practice" means those practices, methods or acts, including but not limited to the practices, methods or acts engaged in or approved by a significant portion of the electric utility industry in Canada, that at a particular time, in the exercise of reasonable judgment, and in light of the facts known at the time a decision is made, would be expected to accomplish the desired result in a manner which is consistent with laws and regulations and with due consideration for safety, reliability, environmental protection, and economic and efficient operations;

"HQ Power Contract" has the meaning set forth in Subsection 3.2(a);

"Independent Coordinator" means a person or persons appointed under this Agreement to impartially determine the Suppliers' Power and Energy production levels;

"Independent Coordinator Code of Conduct" means the code of conduct to be adopted by the Water Management Committee, consisting of rules and principles to ensure the impartiality and proficiency of the Independent Coordinator;

"Minister" means the minister appointed under the *Executive Council Act* to administer the Act;

"Nalcor Banked Energy" means the net Energy in storage, owed at any given time by CF(L)Co to Nalcor, calculated as the cumulative difference between the amount of Energy that CF(L)Co would have generated to fulfil its own Delivery Requirements, and the amount of Energy that CF(L)Co generated in accordance with the Production Schedule, as measured in MWh, as determined in accordance with this Agreement;

"Operational Date" means the later of the date of renewal of the HQ Power Contract pursuant to Schedule III of the HQ Power Contract and the commercial in-service date of the first Nalcor generating unit on the lower Churchill River;

"Power" means the rate at which Energy is transferred at any point measured in kilowatts or multiples thereof;

"Prior Power Contracts" has the meaning set forth in Section 3.1;

"Production Facilities" means all components of a hydro-electric generating facility including any transmission facilities associated with them;

"Production Schedule" means the quantity of Power and Energy production, as determined by the Independent Coordinator, required from each Supplier pursuant to and in accordance with this Agreement, the Act and the Regulations;

"Province" means the Province of Newfoundland and Labrador;

"Regulations" mean the *Water Management Regulations* made pursuant to the Act;

"Subsidiary" has the meaning set forth in the *Corporations Act* (Newfoundland and Labrador);

"Supplier" means CF(L)Co or Nalcor, as owners of rights to produce Power and Energy from hydro-electric facilities on the Churchill River and **"Suppliers"** means both of them;

"Transmission Provider" means any entity that owns, operates or controls facilities used for the transmission of Power and Energy between or amongst Production Facilities on the Churchill River;

"Water Management Committee" means the committee established pursuant to Subsection 5.1(a).

1.2 Sections and Headings

The division of this Agreement into articles, sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

1.3 Number, Gender and Persons

In this Agreement, words importing the singular number only shall include the plural and vice versa, words importing gender shall include all genders and words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities of any kind whatsoever.

1.4 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral or otherwise, relating to the subject matter hereof except as provided herein.

1.5 Applicable Law

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province and the federal laws of Canada applicable therein, and each party hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Province and all courts competent to hear appeals therefrom.

1.6 Successors and Assigns

This Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties hereto and their respective successors and permitted assigns.

1.7 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision hereof is hereby declared to be separate, severable and distinct.

1.8 Amendment and Waivers

No amendment or waiver of any provision of this Agreement shall be binding on any party hereto unless agreed to in writing by such party, subject to, in the case of an amendment, any required approval from the Board. No waiver of any provision of this

Agreement shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise provided.

Article 2 OBJECTIVE OF THE AGREEMENT

2.1 Objective of the Agreement

The objective of this Agreement shall be the coordination of the Power generation and Energy production in the aggregate for all Production Facilities on the Churchill River to satisfy the Delivery Requirements for all Suppliers, in a manner that provides for the maximization of the long term Energy-generating potential of the Churchill River, while ensuring that the provisions of any Prior Power Contracts are not adversely affected.

Article 3 PRIOR POWER CONTRACTS

3.1 No Adverse Effect

The parties acknowledge that pursuant to Section 5.7 of the Act, nothing in this Agreement shall adversely affect a provision of a contract for the supply of Power and Energy entered into by a Supplier and a third party prior to this Agreement, or a renewal of that contract (collectively "Prior Power Contracts"), and that all provisions of this Agreement and ancillary documents and agreements shall be interpreted accordingly.

3.2 Acknowledgement of Prior Power Contracts

The Suppliers acknowledge that the following are the sole contracts for the supply of Power and Energy entered into by a Supplier and a third party prior to this Agreement:

- (a) the power contract entered into between Hydro-Quebec and CF(L)Co dated May 12, 1969 as well as Schedule III of such power contract which relates to its renewal (the "HQ Power Contract");
- (b) the Churchill Falls Guaranteed Winter Availability Contract between Hydro-Quebec and CF(L)Co dated November 1, 1998, as amended on March 29, 2000;
- (c) the sublease entered into between Twin Falls Power Corporation Limited and CF(L)Co dated November 15, 1961, as amended on April 15, 1963, November 30, 1967 and July 1, 1974 and renewed pursuant to an agreement dated June 9, 1989, and the operating lease between the same parties dated November 30, 1967, as amended on July 1, 1974 and November 10, 1981; and
- (d) the power contract entered into between Newfoundland and Labrador Hydro-Electric Corporation and CF(L)Co dated March 9, 1998, as amended on April 1, 2009.

Article 4 SUPPLIERS' OBLIGATIONS

4.1 Appointment of the Water Management Committee

The Suppliers shall constitute and appoint the Water Management Committee in accordance with Article 5 .

4.2 Compliance with Production Schedules

CF(L)Co and Nalcor shall adhere to the Production Schedules set by the Independent Coordinator, provided that in no event shall the Suppliers be required to operate in a manner which is inconsistent with Good Utility Practice, including, without limitation, in any manner which (i) may endanger human life or safety, (ii) may damage or cause excessive wear and tear to their equipment or facilities, (iii) may endanger or compromise the security and integrity of their reservoir structures, or (iv) would require that water levels of any reservoir of a Supplier be carried higher than those established by engineering criteria for freeboard or lower than those recommended for operations.

Each Supplier shall be responsible for the integrity of its Production Facilities.

4.3 Administration of the Independent Coordinator

- (a) The Suppliers shall jointly and sufficiently fund the administration of the Independent Coordinator in proportion to the Energy Benefits obtained by each Supplier from the administration of this Agreement.
- (b) The costs of administration of the Independent Coordinator shall include, without limitation, remuneration, physical office space, human resources, computing and communication material, software and facilities and liability insurance pursuant to Section 6.4.
- (c) Each Supplier shall provide the Independent Coordinator with:
 - (i) Delivery Requirements of its contracts for the supply of Power and Energy;
 - (ii) the Power and Energy generation Capability of such Supplier's Production Facilities;
 - (iii) equipment maintenance requirements of such Supplier;
 - (iv) a forecast of short and long term delivery requirements of such Supplier;
 - (v) copies of a licence, lease or other instrument granting water rights of such Supplier;
 - (vi) plans and requirements respecting such Supplier's construction or commissioning activities;

- (vii) transmission availabilities of such Supplier;
- (viii) the forecast of inflows of such Supplier; and
- (ix) historical data for modelling, detailed model data, discharge curves, water transport times and pre-spill protocols; and
- (x) such additional information as the Water Management Committee may determine;

and shall regularly update any changes to them, all prepared in a manner consistent with Good Utility Practice.

4.4 Information Sharing

Information and data shall be shared between the Suppliers and by the Suppliers with the Independent Coordinator as necessary for the Independent Coordinator to perform its functions under this Agreement, including records, data and models, and the Independent Coordinator shall have physical and computer access to those facilities as required to obtain and verify such information and data.

4.5 Access to Records

The Water Management Committee shall have access at all reasonable times to the pertinent and relevant records of the Suppliers required to substantiate any fact or matter pertaining to this Agreement.

4.6 Record Keeping

Each Supplier shall maintain, for a period of not less than seven years, records required of it to undertake its responsibilities under this Agreement and the Regulations, which records shall be available, upon request, to the Board or the Minister.

4.7 Scheduling

- (a) In no event shall the Power requests made to the Independent Coordinator by a Supplier for a period exceed the maximum generating Capability of the Production Facilities of that Supplier for the period requested.
- (b) At such times as the Water Management Committee shall determine, each Supplier shall provide the Independent Coordinator with:
 - (i) its Delivery Requirements for the week following, and
 - (ii) an estimate of its Delivery Requirements for the three weeks thereafter.
- (c) The Delivery Requirements provided pursuant to Subsection 4.7(b)(i) shall constitute each Supplier's request for Power for that week to the extent and at the times indicated by the Delivery Requirements, but each Supplier shall have the right to make further changes to its Delivery Requirements.

- (d) It is expressly acknowledged that CF(L)Co shall have the right to modify its Delivery Requirements to fulfill its obligations under any Prior Power Contract.

Article 5 WATER MANAGEMENT COMMITTEE

5.1 Appointment and Replacements

- (a) The Suppliers shall establish, after the date of the approval of this Agreement by the Board pursuant to Subsection 5.4(3)(a) of the Act, and maintain the Water Management Committee consisting of four members, two appointed by CF(L)Co and two appointed by Nalcor.
- (b) Each Supplier shall designate in writing at least one alternate member to the Water Management Committee for the members of the Water Management Committee appointed by such Supplier.
- (c) Should a member be unable to attend a meeting of the Water Management Committee, such member shall be represented at the meeting by an alternate member or, in the absence of the latter, by a person designated in writing by the member or by the person to whom such member reports administratively.
- (d) Prompt notice in writing shall be given by a Supplier to the other Supplier of appointments, removals and replacements of members of the Water Management Committee appointed by the Supplier giving notice.

5.2 Powers and Duties

- (a) Subject to this Agreement, the Water Management Committee shall be authorized to deal with all substantive matters, other than those expressly assigned to the Independent Coordinator, as necessary to administer this Agreement and any ancillary documents and agreements, including the validation of the tools and information sources to be used for the implementation and operation of this Agreement.
- (b) The Water Management Committee shall appoint the Independent Coordinator and may, from time to time, establish operating procedures or guidelines for the Independent Coordinator, may give directions to the Independent Coordinator and may amend, modify or supplement Annex "A" to this Agreement, in accordance with and subject to Subsection 7.1(h).
- (c) The Water Management Committee may provide for mechanisms and procedures to facilitate the administration of this Agreement and any ancillary documents and agreements during times of emergency, including, without limitation, to preserve system stability and the integrity of Production Facilities.

5.3 Meetings

The Water Management Committee shall meet as often as required to fulfill its duties, but no less than every six (6) months, at such times and places as it shall determine from

time to time. Such meetings may be held in person or by telephone or such other means of communication as the Water Management Committee may decide. A quorum for the Water Management Committee shall be four (4) members.

5.4 Decisions

All decisions of the Water Management Committee shall be unanimous. Any impasse shall be resolved in accordance with the Dispute resolution mechanism provided under Article 13 .

5.5 Limitation on Powers

The Water Management Committee shall not act in a manner inconsistent with any provision of this Agreement, the Act or the Regulations.

Article 6 INDEPENDENT COORDINATOR

6.1 Appointment

- (a) The Independent Coordinator shall consist of one or more persons. All appointments, removals or replacements of a person as Independent Coordinator shall be effected by the Water Management Committee.
- (b) Any Supplier may call for the replacement of any person or persons appointed as Independent Coordinator if such person or persons breach in any manner the Independent Coordinator Code of Conduct. The replacement procedure shall be undertaken in accordance with the regular appointment procedures provided in Subsection 6.1(a). For greater certainty, no person appointed as Independent Coordinator shall be removed pursuant to this Subsection 6.1(b) before that person's replacement is appointed.
- (c) Disputes and disagreements relating to the appointment, removal or replacement of the Independent Coordinator shall be subject to the Dispute resolution mechanisms provided under Article 13 .

6.2 Duties

- (a) The Independent Coordinator shall, based on the information provided by the Suppliers, and in the exercise of reasonable judgment, establish short and long term Production Schedules for all Production Facilities on the Churchill River, through the coordination of production scheduling of the Suppliers based upon the use of the aggregate generating Capability, storage and transmission facilities of any Supplier on the Churchill River, in accordance with the objectives set out at Section 3(1) of the Regulations and with this Agreement. The duties of the Independent Coordinator in this regard shall include, without limitation, the following:

- (i) ensuring that forecasts for Delivery Requirements, inflows, potential spills, generating Capability and storage volumes of each Supplier are received;
 - (ii) accounting for and recording all Nalcor Banked Energy and CF(L)Co Banked Energy, in accordance with the mechanisms provided in Annex "A" hereto;
 - (iii) co-operating with any Transmission Provider;
 - (iv) maintaining, for a period of not less than seven years, records required of the Independent Coordinator to undertake its responsibilities under this Agreement and the Regulations and such records shall be available, upon request, to the Board or the Minister;
 - (v) providing the Suppliers and the Water Management Committee with reports on its activities at regular intervals to be established in consultation with the Suppliers and the Water Management Committee;
 - (vi) providing to the Minister and, on request, the Board, an annual report summarizing its activities in a form acceptable to the Minister; and
 - (vii) performing such other duties or functions in furtherance of the objective of this Agreement as the Water Management Committee may from time to time assign.
- (b) The Independent Coordinator shall determine the total Power to be produced at any time from the Suppliers' Production Facilities as the aggregate of the Delivery Requirements submitted by each of the Suppliers, as modified in accordance with Subsections 4.7(c) and 4.7(d).
 - (c) The Independent Coordinator shall determine and prepare the Production Schedules which shall specify the amount of Power to be produced by each Supplier's Production Facilities in accordance with the provisions of this Agreement.
 - (d) The Independent Coordinator shall not act in a manner inconsistent with any provision of this Agreement, the Act, the Regulations, or any procedures, directions or guidelines established by the Water Management Committee.

6.3 Limitation on Powers

- (a) The parties acknowledge and agree that the following shall exceed the powers and duties of the Independent Coordinator:
 - (i) Scheduling CF(L)Co production for Nalcor, to the extent that such production conflicts with CF(L)Co's obligations under Prior Power Contracts; and

- (ii) Scheduling CF(L)Co production for Nalcor in excess of the then current Nalcor Banked Energy, except in circumstances and to the extent necessary to avoid or limit water spillage from CF(L)Co reservoirs, in which case the Energy produced by CF(L)Co for Nalcor shall be calculated and accounted for in accordance with Subsection 7.1(c)(ii).
- (b) Notwithstanding any other provision of this Agreement, the Independent Coordinator shall not schedule production by CF(L)Co for Nalcor that would result in Nalcor Banked Energy being a negative value.

6.4 Liability Insurance

Liability insurance or other similar and adequate insurance coverage shall be secured for the Independent Coordinator's fault, negligence, error, omission, breach of duty, acting in excess of powers, or other default, in the course of execution of its functions, including, without limitation, a breach of the Independent Coordinator Code of Conduct. The cost of such insurance shall be shared by the Suppliers in accordance with Section 11.1.

Article 7

ENERGY STORAGE AND ENERGY LOSSES ASSIGNMENT

7.1 Energy Storage and Energy Losses Assignment

- (a) Each Supplier shall continue to have the same rights to store water in its reservoirs as it did prior to this Agreement, while at the same time recognizing the requirement to allow Energy banking by the other Supplier pursuant to the terms of this Agreement.
- (b) In no event shall the generating Capability, storage capacity, or transmission Capability available to a Supplier from all Production Facilities on the Churchill River be less than the amounts of then available generating Capability, storage capacity, or transmission Capability of the Production Facilities owned by that Supplier on the Churchill River.
- (c) The Independent Coordinator shall appropriately assign Nalcor Banked Energy and CF(L)Co Banked Energy to each Supplier in accordance with the following provisions and Annex "A":
 - (i) In the event that the Production Schedule established by the Independent Coordinator results in a production increase at the Nalcor Production Facilities and a production decrease at the CF(L)Co Production Facilities relative to the production required for each Supplier to meet its own Delivery Requirements:
 - If the production increase at the Nalcor Production Facilities is less than the CF(L)Co Banked Energy, then the CF(L)Co Banked Energy shall be decreased by the amount of the production increase at the

Nalcor Production Facilities to the extent of any CF(L)Co Banked Energy, in accordance with Annex "A"; or

- If the production increase at the Nalcor Production Facilities is greater than the CF(L)Co Banked Energy, then the Nalcor Banked Energy shall be increased by the amount of the production decrease at the CF(L)Co Production Facilities, in accordance with Annex "A".
- (ii) Subject to Section 6.3, in the event that the Production Schedule established by the Independent Coordinator results in a production increase at the CF(L)Co Production Facilities and a production decrease at the Nalcor Production Facilities relative to the production required for each Supplier to meet its own Delivery Requirements:
- If the production increase at the CF(L)Co Production Facilities is less than the Nalcor Banked Energy, then the Nalcor Banked Energy shall be decreased by the amount of the production increase at the CF(L)Co Production Facilities to the extent of any Nalcor Banked Energy, in accordance with Annex "A"; or
 - If the production increase at the CF(L)Co Production Facilities is greater than the Nalcor Banked Energy, then the CF(L)Co Banked Energy shall be increased by the amount of the production decrease at the Nalcor Production Facilities, in accordance with Annex "A".
- (iii) In the event that the Production Schedule established by the Independent Coordinator matches the Suppliers' Delivery Requirements, no adjustments to CF(L)Co Banked Energy or to Nalcor Banked Energy are required.
- (d) For greater certainty, the Independent Coordinator shall make only one of the calculations provided in Subsections 7.1(c)(i) to 7.1(c)(iii), as applicable, in any given hour or other interval contemplated in Annex "A".
- (e) The amount of Nalcor Banked Energy and CF(L)Co Banked Energy shall be determined based upon Energy Conversion Rates for the respective Production Facilities calculated in accordance with Annex "A" based upon the best data source available as tested in accordance with Good Utility Practice.
- (f) The Independent Coordinator shall assign lost Energy fairly to each Supplier in the event of water spillage by deducting any applicable spillage amount from Nalcor Banked Energy or CF(L)Co Banked Energy in accordance with the following provisions and Annex "A":
- (i) In the event of a spill from the CF(L)Co reservoirs and forebays that results from excess water in storage or flood control pre-spills, the water associated with Nalcor Banked Energy shall be the first water spilled, and the associated Energy loss shall be borne solely by Nalcor and shall be

assigned and recorded as a reduction in Nalcor Banked Energy, to the extent of any Nalcor Banked Energy;

- (ii) Water spilled from CF(L)Co reservoirs and forebays that results from operational error, the failure of equipment, the effects of a customer's change in demand, the failure to follow Good Utility Practice or the failure of any containment or control structures shall not be assigned and recorded as a reduction to Nalcor Banked Energy, except to the extent that the cause of the spillage is attributable to Nalcor or its customers, to the extent of any Nalcor Banked Energy;
 - (iii) In the event of a spill from the Nalcor reservoirs and forebays that results from excess water in storage or flood control pre-spills, the water associated with CF(L)Co Banked Energy shall be the first water spilled, and the associated Energy loss shall be borne solely by CF(L)Co and shall be assigned and recorded as a reduction in CF(L)Co Banked Energy, to the extent of any CF(L)Co Banked Energy; and
 - (iv) Water spilled from the Nalcor reservoirs and forebays that results from operational error, the failure of equipment, the effects of a customer's change in demand, the failure to follow Good Utility Practice or the failure of any containment or control structures shall not be assigned and recorded as a reduction to CF(L)Co Banked Energy, except to the extent that the cause of the spillage is attributable to CF(L)Co or its customers, to the extent of any CF(L)Co Banked Energy.
- (g) At regular intervals to be established by the Water Management Committee, but not less frequently than annually, adjustments shall be made to each Supplier's available Energy for subsequent intervals for Energy losses incurred in the previous period by each Supplier as a result of changes to its Energy Capability caused by the application of this Agreement, in accordance with Annex "A".
 - (h) Annex "A" may be amended, modified, or supplemented from time to time by the Water Management Committee, provided that no such amendment, modification or supplement shall:
 - (i) adversely affect any provision of a Prior Power Contract; or
 - (ii) conflict with any provision of this Agreement, the Act or the Regulations.

Article 8 METERING AND MEASUREMENT

8.1 Metering and Measurement

- (a) The Suppliers shall establish and maintain adequate and reliable metering and measuring facilities necessary to monitor the Suppliers' compliance with their Power and Energy storage, generation and transmission obligations pursuant to this Agreement. Such metering and measuring facilities, including, without

limitation, the choice of technical devices and their final set-up and installation, shall be acceptable to all Suppliers.

- (b) The parties agree that CF(L)Co shall bear no responsibility for any additional metering and measuring facilities or upgrades or modifications to existing metering and measuring facilities that the parties determine are required pursuant to or resulting from this Agreement, including the cost of establishing, maintaining, repairing or replacing same, provided that any metering and measuring facilities located on CF(L)Co's facility shall become the property of CF(L)Co on and from the date of installation, and shall thereafter be maintained, repaired and replaced by CF(L)Co, subject to cost recovery therefor by CF(L)Co from Nalcor.
- (c) Each of CF(L)Co and Nalcor shall provide to the other all measurements, data and information from the metering and measuring facilities under its control as required for the implementation or operation of this Agreement.
- (d) All metering and measuring facilities required for the implementation or operation of this Agreement shall be tested and calibrated at regular intervals established by the Water Management Committee as may be required in accordance with agreed standards. Each Supplier shall give sufficient prior notice to the other of any test which it intends to conduct and the other Supplier may have representatives present for such testing.
- (e) Any metering or measuring facility required for the implementation or operation of this Agreement which breaks down, fails to meet the standards as agreed to or set out by the Water Management Committee or otherwise malfunctions, shall be promptly adjusted, repaired or replaced by a similar facility meeting the agreed standards and having the required accuracy, the cost of which shall be the responsibility of Nalcor pursuant to Section 11.2.
- (f) Should any metering or measuring facility required for the implementation or operation of this Agreement break down or fail to have the required accuracy, the Suppliers shall determine, through the Water Management Committee, the amount of Power and Energy supplied during the period of failure or inaccuracy, the associated Nalcor Banked Energy and CF(L)Co Banked Energy, and the duration of such period of failure or inaccuracy. In making such determinations, the parties shall rely on the data and information which the Suppliers consider most conducive to achieving as accurate a determination as circumstances permit.

Article 9 MAINTENANCE

9.1 Maintenance Scheduling

Subject to the requirements of Prior Power Contracts and the provisions of this Agreement, CF(L)Co and Nalcor shall cooperate with each other and the Independent

Coordinator in scheduling equipment outages and derating for the maintenance of Production Facilities.

Article 10 DEFICIENCIES

10.1 Allocation of Deficiencies

When a Deficiency occurs, or is projected to occur:

- (a) subject to the limitations contained in Section 4.2, Subsection 4.7(a) and Section 6.3, appropriate adjustments shall be made to the Power and Energy production levels and Production Schedules of all Production Facilities on the Churchill River to the extent practicable to remedy the Deficiency or anticipated Deficiency; and
- (b) where a Deficiency occurs despite Subsection 10.1(a), and as a result of that Deficiency, a Supplier incurs Damages under a provision of a Prior Power Contract, such Damages shall be paid by the Supplier that caused the Deficiency, notwithstanding Section 14.4. If the cause of the Deficiency is common to both parties, or cannot be attributed to either, the Deficiency shall be allocated to Nalcor and CF(L)Co in proportion to their respective shortages in generation Capability to fulfill their respective Delivery Requirements.

Article 11 COSTS AND EXPENSES

11.1 Joint Costs and Expenses

The Suppliers shall jointly pay in proportion to the Energy Benefits obtained by each Supplier from the administration of this Agreement, all costs and expenses of or associated with each of the following:

- (a) the establishment, organization and operation of the Water Management Committee, pursuant to Article 5 ;
- (b) the appointment, organization and administration of the Independent Coordinator, pursuant to Subsections 4.3(a) and 4.3(b) and Article 6 ;
- (c) incremental administrative costs, including, without limitation, costs related to information gathering, record keeping, reporting, efficiency modeling and establishment of new conversion curves; and
- (d) subject to Sections 11.2 and 11.3, any other costs or expenses incurred in connection with the implementation, operation and administration of this Agreement.

11.2 Costs and Expenses for the Account of Nalcor

Nalcor shall pay all costs and expenses of or associated with the purchase, installation, maintenance, repair and replacement of any additional equipment and facilities, and upgrades or modifications to any existing equipment and facilities, required for the implementation and operation of, or resulting from, this Agreement and which, but for this Agreement, would not have been required by CF(L)Co, provided that any equipment and facilities located on CF(L)Co's Production Facilities shall become the property of CF(L)Co on and from the date of installation, and shall thereafter be maintained, repaired and replaced by CF(L)Co, subject to cost recovery therefor by CF(L)Co from Nalcor. In addition, any CF(L)Co equipment or facilities damaged during work associated with the foregoing shall be repaired or replaced at the expense of Nalcor, unless such damage was caused by CF(L)Co or a contractor of CF(L)Co.

11.3 Interconnection Costs

- (a) CF(L)Co shall not be responsible for the costs and expenses of or associated with the purchase, installation, upgrading, maintenance, repair and replacement of transmission facilities, connections and ancillary equipment required to connect CF(L)Co's Production Facilities to Nalcor's Production Facilities.
- (b) Notwithstanding Subsection 11.3(a), all transmission facilities, connections and ancillary equipment directly connected to CF(L)Co's Production Facilities shall be subject to CF(L)Co's approval, which approval shall not be unreasonably withheld, and any such facilities, connections and equipment located on CF(L)Co's Production Facilities shall become the property of CF(L)Co on and from the date of installation.

11.4 Transmission Losses

Nalcor shall bear all increases in and benefit from all decreases to transmission losses resulting from or relating to, directly or indirectly, transmissions undertaken pursuant to or in accordance with the terms of this Agreement and Annex "A".

11.5 Reimbursement Assurances

Should CF(L)Co have to incur costs or expenses which are the responsibility of Nalcor pursuant to this Agreement, CF(L)Co shall have the option, if it is not fully satisfied, acting reasonably, that Nalcor has the capacity to reimburse such costs promptly to CF(L)Co, to require payment of such costs in advance by Nalcor, or such other form of security as CF(L)Co deems reasonably acceptable. In all cases where Nalcor is required, pursuant to this Agreement, to reimburse CF(L)Co for expenditures it has made and for which payment in advance was not made by Nalcor to CF(L)Co, payments associated with such reimbursement shall be due and payable by Nalcor to CF(L)Co within thirty (30) days following receipt of an invoice supported by documentation which is reasonably required to verify the amounts billed therein. Any amount remaining unpaid after the expiration of the thirty (30) day period shall bear interest at a rate per annum of two percent (2%) above the prime rate accorded for loans to commercial borrowers by the Bank of Nova Scotia. The prime rate to be used in the determination of the interest rate shall be the prime rate on the date such amounts first become overdue. Amounts

disputed by Nalcor shall be communicated to CF(L)Co in writing prior to the due date. Disputed amounts may be withheld by Nalcor until such time as the dispute is resolved and shall not bear interest unless the disputed amount or a portion thereof is subsequently resolved in favour of CF(L)Co, in which case interest shall apply from the date the amounts became overdue. All undisputed amounts of an invoice, and that portion of a disputed amount which is not in dispute, shall be due and payable by Nalcor to CF(L)Co within thirty (30) days following receipt of the invoice in accordance with the terms of this section 11.5.

Article 12 EFFECTIVE DATE AND TERM

12.1 Effective Date

This Agreement shall come into effect on the date of the approval of this Agreement by the Board pursuant to Subsection 5.4(3)(a) of the Act, save that Sections 4.2, 4.7 and 6.2 to 6.4, and Articles 7, 9 and 10 shall become operational on the Operational Date. Nalcor shall give CF(L)Co at least 90 days written notice of the Operational Date.

12.2 Term of Agreement

This Agreement shall continue in force until the earliest of (i) the permanent cessation of all operations at either of the CF(L)Co Production Facilities or the Nalcor Production Facilities, and (ii) any earlier date agreed to by the Suppliers, subject to the execution of a new water management agreement agreed to by the Suppliers and approved by the Board pursuant to Subsection 5.4(3)(a) of the Act.

Article 13 DISPUTE RESOLUTION

13.1 Water Management Committee

In the event that a dispute or difference ("Dispute") arises between the parties out of or in connection with this Agreement, the parties shall first refer the Dispute to the Water Management Committee for resolution.

13.2 Mediation

Should the Water Management Committee fail to resolve the Dispute within 14 days of referral pursuant to Section 13.1, the parties may submit the Dispute to a mediator appointed by agreement of the parties and possessing the necessary technical knowledge to assist the parties in resolving the Dispute. Either party may give written notice to the other describing the nature of the Dispute, requiring the Dispute to be submitted to a mediator and proposing the name of a suitable person to be appointed.

13.3 Application to Board

Notwithstanding Sections 13.1 and 13.2, the Dispute may be submitted to the Board by either party for resolution pursuant to Section 8 of the Regulations.

Article 14
MISCELLANEOUS PROVISIONS

14.1 Equitable Relief

In the event of a violation, contravention, breach or threatened breach of this Agreement by either party, the other party shall be entitled to both temporary and permanent injunctive relief and specific performance. The right of a party to injunctive relief and specific performance shall be in addition to any and all other remedies available to it and shall not be construed to prevent it from pursuing, either consecutively or concurrently, any and all other legal or equitable remedies available to it.

14.2 Relationship of Parties

Nothing in this Agreement is intended to create a partnership, joint venture or other joint legal entity making any party liable for the acts or omissions of any other party. Nothing in this Agreement is intended to create a principal / agency relationship between the parties and, except as expressly provided herein, no party shall have any authority, in any way, to bind any other party. Notwithstanding the terms hereof, each party is acting in its separate independent capacity and has the full right to enforce its rights against the other under this Agreement.

14.3 Assignment and Transfer

No voluntary transfer of this Agreement or of the rights of a Supplier shall be made except:

- (a) to an unrelated third party of such Supplier which acquires all, or substantially all, of the assets devoted to production, transmission, distribution and sale of Power and Energy of such Supplier, with the prior written consent of the other Supplier, which consent shall not be unreasonably withheld; or
- (b) to a Subsidiary or Affiliate of such Supplier in the event of a transfer to said Subsidiary or Affiliate of all, or substantially all, of the assets devoted to production, transmission, distribution and sale of Power and Energy on the Churchill River of such Supplier, upon prior written notice by the assignor to the other Supplier.

Any successor to or assignee of the rights of any party hereto, whether by voluntary transfer, judicial sale or otherwise, shall be subject to all the terms and conditions of this Agreement to the same extent as though such successor or assignee were the original party hereunder.

14.4 Force Majeure

An Affected Party shall be excused from the performance of its obligations hereunder or liability for Damages to the other party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Agreement, except the obligation to pay any amount when due, by reason of a Force Majeure Event, provided that an Affected Party claiming a Force Majeure Event shall notify the other

party of such Force Majeure Event, and shall use reasonable efforts, at its own cost, to mitigate the effects of the relevant Force Majeure Event and to remove the condition that prevents the Affected Party's performance, and shall perform its obligations as soon as possible and to as full an extent as possible.

14.5 Confidentiality of Information

Each party covenants and agrees that, except as otherwise expressly authorized in writing by the other party or as required by law, neither party nor its representatives, agents or employees will disclose to third parties, directly or indirectly, any confidential information or confidential data relating to the other party or its business.

14.6 Notices

- (a) Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by facsimile or similar means of recorded electronic communication or sent by registered mail, charges prepaid, addressed as follows:
 - (i) if to CF(L)Co: Churchill Falls (Labrador) Corporation
500 Columbus Drive
P.O. Box 12500
St. John's, NL A1B 3T5

Attention: Vice President and General Manager
Facsimile: (709) 737-1782
 - (ii) if to Nalcor: Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John's, NL A1B 0C9

Attention: Vice President, Lower Churchill Project
Facsimile: (709) 737-1782
- (b) Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day, on the next following Business Day) or, if mailed, on the fifth Business Day following the date of mailing; provided, however, that if at the time of mailing or within five Business Days thereafter there is or occurs a labour dispute or other event that might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid.
- (c) Any party may at any time change its address for service from time to time by giving notice to the other party in accordance with this Section 14.6.

14.7 Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the day and year first before written.

**CHURCHILL FALLS (LABRADOR)
CORPORATION LIMITED**

Witness:		Per:	
	Name:		Name:
	Title:		Title:
Witness:		Per:	
	Name:		Name:
	Title:		Title:

NALCOR ENERGY

Witness:		Per:	
	Name:		Name:
	Title:		Title:
Witness:		Per:	
	Name:		Name:
	Title:		Title:

Annex "A"**1. Introduction**

Subject to the restrictions and limitations contained in the Agreement, this Annex "A" provides the necessary calculations to appropriately assign Energy storage amounts and Energy losses to each Supplier for the application of Article 7 of the Agreement.

2. Definitions

- 2.1 "CF(L)Co Cumulative Water Volume" means the net volume of water in the Nalcor reservoirs associated with CF(L)Co Banked Energy after additions to and subtractions of CF(L)Co Hourly Water Volume and any adjustments for spillage, denominated in millions of cubic metres (hectometres cubed);
- 2.2 "CF(L)Co Hourly Water Volume" means the amount of water calculated in accordance with Section 6.4 of this Annex "A", denominated in millions of cubic metres (hectometres cubed);
- 2.3 "Nalcor Cumulative Water Volume" means the net volume of water in the CF(L)Co reservoirs associated with Nalcor Banked Energy after additions to and subtractions of Nalcor Hourly Water Volume and adjustments for spillage, denominated in millions of cubic metres (hectometres cubed); and
- 2.4 "Nalcor Hourly Water Volume" means the amount of water calculated in accordance with Section 6.3 of this Annex "A", denominated in millions of cubic metres (hectometres cubed).

3. Production Scheduling

- 3.1 Production by Nalcor for CF(L)Co shall be the amount of Energy produced at the Nalcor generator bus required to provide the requested Energy at the required CF(L)Co delivery point(s);
- 3.2 Production by CF(L)Co for Nalcor shall be the amount of Energy produced at the CF(L)Co generator bus required to provide the requested Energy at the required Nalcor delivery point(s).

4. Energy Conversion Rates

Energy Conversion Rates for each Production Facility shall be determined at plant load set points for each combination of unit dispatch up to the Production Facility's Capability for the full range of net heads possible during operation.

5. Water Spillage

- 5.1 The volume of water spilled from a reservoir shall be calculated based on the gate openings, the discharge rating tables for the gate, and the duration of the

period when the gate was open, and the Nalcor Cumulative Water Volume or the CF(L)Co Cumulative Water Volume shall be reduced accordingly.

- 5.2 The lost Energy associated with the volume of water spilled from a reservoir for the purpose of assignment to the Suppliers and adjustments to the Nalcor Banked Energy and to the CF(L)Co Banked Energy shall be the volume of water spilled at a Supplier's Production Facility multiplied by the appropriate Energy Conversion Rate applicable to such Production Facility.

6. Calculation of Energy Banking and Adjustment of Energy Losses

- 6.1 The calculation of the change in the Nalcor Banked Energy, the Nalcor Hourly Water Volume, the Nalcor Cumulative Water Volume, the CF(L)Co Banked Energy, the CF(L)Co Hourly Water Volume, the CF(L)Co Cumulative Water Volume and any necessary adjustments for spillage shall be made hourly by the Independent Coordinator.

At the end of each hour, the Independent Coordinator shall account for any changes in the Energy Conversion Rates or transmission losses that occurred in that hour and adjust Nalcor Banked Energy and CF(L)Co Banked Energy accordingly.

- 6.2 The calculation of Nalcor Banked Energy, the Nalcor Hourly Water Volume, the CF(L)Co Banked Energy and the CF(L)Co Hourly Water Volume shall recognize the net head and unit loading that would have existed to fulfill each Supplier's Delivery Requirements and those which actually existed to fulfill the Production Schedule when choosing the appropriate Energy Conversion Rates. These calculations shall also recognize the increases and decreases in electrical losses resulting from each Supplier fulfilling the Production Schedule instead of its own Delivery Requirements.

- 6.3 The Nalcor Hourly Water Volume shall be calculated as follows:

- (a) Nalcor Hourly Water Volume = $Vol_{d(CF)} - Vol_{p(CF)}$, where :
- (i) $Vol_{d(CF)}$ = volume that would have been used at the CF(L)Co Production Facilities if CF(L)Co had fulfilled its own Delivery Requirements, denominated in millions of cubic metres (hectometres cubed);
 - (ii) $Vol_{p(CF)}$ = volume used at the CF(L)Co Production Facilities to satisfy the Independent Coordinator's Production Schedule, denominated in millions of cubic metres (hectometres cubed);
- (b) where, using an hourly interval, $Vol_{d(CF)}$, and $Vol_{p(CF)}$ are calculated to be :
- (i) $Vol_{d(CF)} = (MW_{d(CF)} \times 1 \text{ hour}) \times (1 / ECR_{d(CF)}) \times (1 \text{ GWh} / 1,000 \text{ MWh})$
 - (ii) $Vol_{p(CF)} = (MW_{p(CF)} \times 1 \text{ hour}) \times (1 / ECR_{p(CF)}) \times (1 \text{ GWh} / 1,000 \text{ MWh})$

(c) and where :

- (i) $MW_{d(CF)}$ = production setting at the CF(L)Co Production Facilities as measured at the same point used for determining the Energy Conversion Rate in Section 4 of this Annex "A", required to satisfy CF(L)Co's Delivery Requirements after accounting for electrical losses between the CF(L)Co generator bus and the specified delivery point, denominated in MW;
- (ii) $MW_{p(CF)}$ = production setting at the CF(L)Co Production Facilities as measured at the same point used for determining the Energy Conversion Rate in Section 4 of this Annex "A", required to satisfy the Production Schedule set by the Independent Coordinator for CF(L)Co, denominated in MW;

(d) therefore,

- (i) $ECR_{d(CF)}$ = the Energy Conversion Rate determined pursuant to Section 4 of this Annex "A" that would have existed at CF(L)Co Production Facilities if CF(L)Co had fulfilled its own Delivery Requirements, taking into account the electrical output, net head, unit loading, and other relevant factors that would have existed if CF(L)Co had fulfilled its own Delivery Requirements, denominated in GWh per million cubic metres (hectometres cubed) of water.
- (ii) $ECR_{p(CF)}$ = the Energy Conversion Rate determined pursuant to Section 4 of this Annex "A" that actually existed at the CF(L)Co Production Facilities where Energy banking is taking place for the Production Schedule, taking into account the electrical output, net head, unit loading and other relevant factors during the time interval of the banking calculation, denominated in GWh per million cubic metres (hectometres cubed) of water.

6.4 The CF(L)Co Hourly Water Volume shall be calculated as follows:

(a) CF(L)Co Hourly Water Volume = $Vol_{d(LC)} - Vol_{p(LC)}$, where :

- (i) $Vol_{d(LC)}$ = volume that would have been used at the Nalcor Production Facilities if Nalcor had fulfilled its own Delivery Requirements, denominated in millions of cubic metres (hectometres cubed);
- (ii) $Vol_{p(LC)}$ = volume used at the Nalcor Production Facilities to satisfy the Independent Coordinator's Production Schedule, denominated in millions of cubic metres (hectometres cubed);

(b) where, using an hourly interval, $Vol_{d(LC)}$ and $Vol_{p(LC)}$ are calculated to be :

- (i) $Vol_{d(LC)} = (MW_{d(LC)} \times 1 \text{ hour}) \times (1 / ECR_{d(LC)}) \times (1 \text{ GWh} / 1,000 \text{ MWh})$

$$(ii) \quad Vol_{p(LC)} = (MW_{p(LC)} \times 1 \text{ hour}) \times (1 / ECR_{p(LC)}) \times (1 \text{ GWh} / 1,000 \text{ MWh})$$

(c) and where :

- (i) $MW_{d(LC)}$ = production setting at the Nalcor Production Facilities as measured at the same point used for determining the Energy Conversion Rate in Section 4 of this Annex "A", required to satisfy Nalcor's Delivery Requirements after accounting for electrical losses between the Nalcor generator bus and the specified delivery point, denominated in MW;
- (ii) $MW_{p(LC)}$ = production setting at the Nalcor Production Facilities as measured at the same point used for determining the Energy Conversion Rate in Section 4 of this Annex "A", required to satisfy the Production Schedule set by the Independent Coordinator for Nalcor, denominated in MW;

(d) therefore,

- (i) $ECR_{d(LC)}$ = the Energy Conversion Rate determined pursuant to Section 4 of this Annex "A" that would have existed at the Nalcor Production Facilities if Nalcor had fulfilled its own Delivery Requirements, taking into account the electrical output, net head, unit loading, and other relevant factors that would have existed if Nalcor had fulfilled its own Delivery Requirements, denominated in GWh per million cubic metres (hectometres cubed) of water.
- (ii) $ECR_{p(LC)}$ = the Energy Conversion Rate determined pursuant to Section 4 of this Annex "A" that actually existed at the Nalcor Production Facilities where Energy banking is taking place for the Production Schedule, taking into account the electrical output, net head, unit loading, and other relevant factors during the time interval of the banking calculation, denominated in GWh per million cubic metres (hectometres cubed) of water.

7. Energy Benefits

- 7.1 Energy Benefits for each Supplier shall be determined by the Water Management Committee, in accordance with the Agreement, for each period established by the Water Management Committee, which period shall not exceed one year.
- 7.2 CF(L)Co may, at its option, either fund the administration of the Independent Coordinator in an amount proportional to its Energy Benefits, or it may deliver to Nalcor an amount of Energy equal to CF(L)Co's Energy Benefit for the period in question.

Tab 6

D. Copies of Existing Power Contracts

The following is a list of existing power contracts to which affected suppliers are a party. Copies of each of the listed contracts are filed with the Board as Volume II to Nalcor's Application.

1. Hydro Québec and CF(L)Co Power Contract, May 12, 1969, filed as Exhibit 3 in Volume II of Nalcor's Application;
2. Hamilton Falls Power Corporation Limited and Twin Falls Power Corporation Limited Sublease, November 15, 1961, filed as Exhibit 4.1 in Volume II of Nalcor's Application;
3. Hamilton Falls Power Corporation Limited and Twin Falls Power Corporation Limited Amendment to Sublease, April 15, 1963, filed as Exhibit 4.2 in Volume II of Nalcor's Application;
4. CF(L)Co and Twin Falls Power Corporation Limited Second Amendment to Sublease, November 30, 1967, filed as Exhibit 4.3 in Volume II of Nalcor's Application;
5. CF(L)Co and Twin Falls Power Corporation Limited Third Amendment to Sublease, July 1, 1974, filed as Exhibit 4.4 in Volume II of Nalcor's Application;
6. CF(L)Co and Twin Falls Power Corporation Limited Renewal of Lease Agreement, June 9, 1989, filed as Exhibit 4.5 in Volume II of Nalcor's Application;
7. CF(L)Co and Twin Falls Power Corporation Limited Operating Lease, November 30, 1967, filed as Exhibit 5.1 in Volume II of Nalcor's Application;
8. CF(L)Co and Twin Falls Power Corporation Limited Operating Lease Amendment, July 1, 1974, filed as Exhibit 5.2 in Volume II of Nalcor's Application;
9. CF(L)Co and Twin Falls Power Corporation Limited Operating Lease 2nd Amendment, November 10, 1981, filed as Exhibit 5.3 in Volume II of Nalcor's Application;
10. CF(L)Co and Newfoundland and Labrador Hydro (NLH) Power Contract, March 9, 1998, filed as Exhibit 6.1 in Volume II of Nalcor's Application;
11. CF(L)Co and NLH Amendment to Power Contract, April 1, 2009, filed as Exhibit 6.4 Volume II of Nalcor's Application;
12. Churchill Falls Guaranteed Winter Availability Contract (GWAC), November 1, 1998, filed as Exhibit 7 in Volume II of Nalcor's Application;

Tab 7

E. Other Relevant Matters

1. Consolidated copy of *The Churchill Falls (Labrador) Corporation Limited (Lease) Act, 1961*, S.N.L. 1961, c. 51 as amended.

Note: A copy of the original Lease, together with amendments, can be made available if the Board so desires.

SNL1961 CHAPTER 51

THE CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED (LEASE) ACT, 1961

Amended:

1963 No2; 1964 No43; 1966-67 No84; 1968 No101; 1969 No77;
1970 No62

CHAPTER 51

**AN ACT TO AUTHORIZE THE LIEUTENANT-GOVERNMENT IN COUNCIL TO EXECUTE AND
DELIVER AN INDENTURE LEASING CERTAIN WATER POWERS IN LABRADOR TO CHURCHILL
FALLS (LABRADOR) CORPORATION LIMITED AND TO MAKE PROVISION RESPECTING OTHER
MATTERS CONNECTED THEREWITH**

1961 No51 LT; 1966-67 No84 s2

(March 13, 1961)

Analysis

1. Short title
2. Authority to execute and deliver Lease and other documents
3. Lease to have effect of law
4. Sec. 3 to have full effect
5. Part VI of Judicature Act to apply to arbitration
6. Exemption from social security assessment
7. The Public Utilities Act, 1964, not to apply in certain cases
8. Principal Agreement not to apply
9. Application of Registration of Deeds Act
10. Sec. 3 not restricted by Secs. 4 to 9

Schedule

Appendix A

Appendix B

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as *The Churchill Falls (Labrador) Corporation Limited (Lease) Act, 1961* .

1961 No51 s1; 1966-67 No84 s2

Authority to execute and deliver Lease and other documents

2. The Lieutenant-Governor in Council is authorized to execute and deliver

- (a) a Lease to Hamilton Falls Power Corporation Limited the terms of which shall be substantially similar to the terms of the draft Lease set forth in the Schedule; and
- (b) any sublease, licence or permit, as an intervenor, or any amendment to a sublease, licence or permit pursuant to and in accordance with Clause 7 of Part IV of a Lease executed and delivered in accordance with paragraph (a) of this section.

1961 No51 s2

Lease to have effect of law

3. The Lease authorized to be executed and delivered under Section 2 shall, upon its execution and delivery, be valid and binding upon the parties thereto, and all and singular the provisions thereof shall have the force and effect of law for all purposes as if expressly enacted in this Act, and the Lessor and Lessee named in the Lease, as well as all others claiming directly or indirectly under the Lessor or the Lessee including without limiting the generality of the foregoing Twin Falls Power Corporation Limited if it is a sublessee, licensee or permittee of the Lessee and the trustee for the holders of any bonds issued by Twin Falls Power Corporation Limited or the assignees of such trustee and any of them have, each of them according to his right, title or interest, full power and authority from time to time to do or perform or omit to do or perform all and singular the several acts, matters and things in and by the Lease provided to be done or not to be done, as the case may be, in the manner and with the effect and under the conditions stipulated and provided in the Lease.

1961 No51 s3

Sec. 3 to have full effect

4. Section 3 of this Act shall have full effect notwithstanding anything to the contrary contained in *The Crown Lands Act* , chapter 174 of The Revised Statutes of Newfoundland, 1952, or in any other statute or law.

1961 No51 s4

Part VI of Judicature Act to apply to arbitration

5. Notwithstanding anything to the contrary contained in Section 212 of *The Judicature Act* , chapter 114 of The Revised Statutes of Newfoundland, 1952, Part VI of that Act, except Section 212, shall apply to any arbitration held under a Lease or any amended sublease, licence or permit executed and delivered in accordance with Section 2 of this Act subject to the provisions of such Lease, or amended sublease, licence or permit.

1961 No51 s5

Exemption from social security assessment

6. (1) Notwithstanding *The Social Security Assessment Act* , chapter 41 of The Revised Statutes of Newfoundland, 1952, as amended from time to time, or any Act standing in place of the said *The Social Security Assessment Act* or any other statute or law, Hamilton Falls Power Corporation Limited, its licensees, sublessees, permittees, transferees or assigns as well as the contractors and subcontractors (whether on a lump sum, fixed price, unit price contract basis or otherwise) of any of them shall on the execution and delivery of a Lease in accordance with Section 2 of this Act have the exemptions provided by that Lease.

Exemption from gasoline tax

(2) Notwithstanding *The Gasoline Tax Act, 1962* , the Act No. 55 of 1962, as amended from time to time, or any Act standing in place of the said Act or any other statute or law, Churchill Falls (Labrador) Corporation Limited, its licensees, sublessees, permittees, transferees or assigns as well as the contractors or subcontractors (whether on a lump sum, fixed price, unit price contract basis or otherwise) of any of them shall, on the execution and delivery of an agreement in accordance with Section 7 of this Act, have and be deemed to have had on and after the first day of January, 1967, the exemptions prescribed in the provisions inserted by Clause 1 of that agreement in the Lease referred to in that clause.

No refund of taxes

(3) Subsection (2) shall not apply in respect of any taxes imposed by or under *The Gasoline Tax Act, 1962*, as amended, and paid by the companies and persons referred to in that subsection at the date of the execution and delivery of the agreement referred to in that subsection and that subsection and the relevant provisions of the Lease referred to in that subsection shall be construed to the end that any such taxes that have been so paid, except those refundable by or under the said *The Gasoline Tax Act, 1962*, shall not be refunded.

1961 No51 s6; 1966-67 No84 s3

The Public Utilities Act, 1964, not to apply in certain cases

7. *The Public Utilities Act, 1964*, the Act No. 39 of 1964, as now or hereafter amended shall not apply to

- (a) the supply of hydro-electric power from the full output of all units installed at any time and from time to time at the hydro-electric plant site of the Twin Falls Project (which Project is defined in paragraph (d) of Clause 2 of Part I of the form of Lease set forth in the Schedule) to Churchill Falls (Labrador) Corporation Limited or to any person or company engaged in mining, beneficiating, concentrating, agglomerating or otherwise treating or processing iron ore in Labrador which is derived from any mineral deposit in Labrador, under any written agreement with any such person or company, or to the issuance of any securities in connection with or to the financing or construction of facilities for the installation and transmission of hydro-electric power from the said hydro-electric plant site;
- (b) the supply of hydro-electric power developed under the Lease made pursuant to the Act No. 51 of 1961, as now or hereafter amended, at the Churchill Falls Power Plant in Labrador to
 - (i) Quebec Hydro-Electric Commission,
 - (ii) the Newfoundland and Labrador Power Commission, or
 - (iii) any company which, at the date of the enactment of this Act, is being supplied with hydro-electric power by Twin Falls Power Corporation Limited and which is then engaged in mining, beneficiating, concentrating, agglomerating or otherwise treating or processing iron ore in Labrador which is derived from any mineral deposit in Labrador,

under any written agreement with any of such Commissions or companies, or to the issuance of any securities in connection with or to the financing or construction of facilities for the installation and transmission of hydro-electric power from the said Churchill Falls Power Project; or
- (c) the supply of hydro-electric power by Churchill Falls (Labrador) Corporation Limited to Twin Falls Power Corporation Limited and the distribution by Twin Falls Power Corporation Limited of any such power so supplied to it to any company referred to in subparagraph (iii) of paragraph (b), subject to the condition that in every case referred to in this paragraph, the hydro-electric power referred to herein shall be the hydro-electric power supplied by Churchill Falls (Labrador) Corporation Limited to Twin Falls Power Corporation Limited in replacement of power formerly generated at the plant site referred to in paragraph (a) which is not then being generated,

but the said *The Public Utilities Act, 1964*, applies to the production, storage, transmission and supply of all other hydro-electric power developed under or in pursuance of the Lease executed and delivered pursuant to this Act.

1966-67 No84 s4

Principal Agreement not to apply

8. Notwithstanding anything to the contrary contained in the Principal Agreement as defined in the Lease executed and delivered pursuant to this Act, none of the provisions of the said Principal Agreement as now or hereafter amended shall apply to the said Lease.

1964 No43 s3

Application of Registration of Deeds Act

9. *The Registration of Deeds Act*, chapter 141 of The Revised Statutes of Newfoundland, 1952, applies to

- (a) a Lease executed and delivered in accordance with Section 2 of this Act;
- (b) an assignment, sublease, licence or permit issued with respect to all or any of the rights and liberties derived by or under that Lease; and
- (c) a mortgage of or charge upon all or any of the rights and liberties derived by or under such Lease, assignment, sublease, licence or permit,

as if that Lease, assignment, sublease, licence, permit, mortgage or charge was specifically mentioned in Section 6 of *The Registration of Deeds Act*.

1961 No51 s9

Sec. 3 not restricted by Secs. 4 to 9

10. Nothing in Sections 4 to 9 shall be deemed to restrict the generality of Section 3.

1961 No51 s10

Schedule

This Lease made at St. John's in the Province of Newfoundland this _____ day of _____ One thousand nine hundred and sixty-one BETWEEN His Honour the Honourable Campbell Macpherson, Officer of the Most Excellent Order of the British Empire, Lieutenant-Governor of the Province of Newfoundland in Council (hereinafter called the "Government", which expression shall, unless the context otherwise requires, mean the Government for the time being of the said Province) of the one part AND Churchill Falls (Labrador) Corporation Limited a company duly incorporated under the laws of Canada and having its Head Office in the city of St. John's in the Province of Newfoundland (hereinafter called the "Lessee", which expression shall, unless the context otherwise requires and subject to the provisions of this Lease, include the successors and assigns of the Lessee) of the other part;

WHEREAS under and by virtue of the powers conferred by the Act No. 63 of 1953 of the Province of Newfoundland there was executed on the twenty-first day of May, A.D. 1953, an Agreement in the terms set forth in the Schedule to the said Act between the Government and British Newfoundland Corporation Limited et al.;

AND WHEREAS under and by virtue of the powers conferred by the Act No. 18 of 1954 of the Province of Newfoundland there was executed on the third day of July, A.D. 1954, a Supplemental Agreement in terms set forth in the Schedule to the said Act between the Government and British Newfoundland Corporation Limited et al. amending the said Agreement;

AND WHEREAS under and by virtue of the powers conferred by the Act No. 48 of 1955 of the Province of Newfoundland there was executed on the twenty-sixth day of September, A.D. 1955, a further Supplemental Agreement in the terms set forth in the Schedule to the said Act between the Government and British Newfoundland Corporation Limited et al. further amending the said Agreement (the said Agreement as so amended being hereinafter called the "Principal Agreement");

AND WHEREAS under the Principal Agreement and in accordance with the provisions thereof, British Newfoundland Corporation Limited acquired an option exercisable at any time and from time to time during the period of twenty years from the twenty-first day of May, A.D. 1953, to take an exclusive right and concession (so far as the same should not be inconsistent with any grants or leases of water power rights theretofore granted or agreed to be granted by the Government and subsisting at the date of the Principal Agreement) to harness and make use of waters in Newfoundland and Labrador, including the Hamilton River and to be vested with all hydro-electric and hydraulic power rights in to and in respect of the same;

AND WHEREAS British Newfoundland Corporation Limited in pursuance of Clause 13 of the Principal Agreement did by an Assignment Agreement dated as of the thirtieth day of June, A.D., 1958, assign unto the Lessee, among other things, the option and water power rights which were granted to it by the Principal Agreement in respect of and limited to the portion of the Hamilton River known as the upper Hamilton River as defined in the Assignment Agreement as subsequently amended to bring the said definition into conformity with Clause 1 of this Lease;

AND WHEREAS by notice given by the Lessee to the Government pursuant to the provisions of sub-clause (2) of Clause 9 of the Principal Agreement, the Lessee on the twenty-sixth day of May, A.D. 1960, exercised the option so assigned to it and obliged itself to commence and proceed with due diligence with the development of the supply of electricity from the said upper Hamilton River, commencing with the Twin Falls hydro-electric development on the Unknown River, Labrador (hereinafter defined and referred to as the "Twin Falls Project");

AND WHEREAS the Lessee has applied to the Government for the grant, pursuant to sub-clause (2) of Clause 9 of the Principal Agreement, of such exclusive right and concession for a term of ninety-nine years renewable at the option of the Lessee for a further period of ninety-nine years, in respect of the area or areas covered by said Assignment Agreement upon which the said option was exercised;

AND WHEREAS the Twin Falls Project is being undertaken by Twin Falls Power Corporation Limited, a company organized under the laws of Canada and having its Head Office at St. John's in the said Province, which is to become a sublessee of Churchill Falls (Labrador) Corporation Limited;

AND WHEREAS the Government has deemed it desirable to enter into, execute and deliver this Lease, subject to the terms, conditions, reservations, qualifications and provisions hereinafter set forth;

1961 No51 Sch Preamble; 1966-67 No84 s2

NOW THEREFORE THIS LEASE WITNESSETH that

PART I RIGHTS AND LIBERTIES LEASED AND RESERVATIONS MADE

1. In pursuance of the Principal Agreement and for and in consideration of the undertakings of the Lessee herein set forth and subject to the terms, conditions, reservations, exceptions and provisions herein contained, the Government hereby leases and demises unto the Lessee full right and liberty to use exclusively all usable waters upstream of the point of intersection of the Hamilton River with the meridian of 63 ° 40' west of Greenwich and within

(a) the catchment area of the Hamilton River upstream of that point; and

(b) any other catchment areas that, by diversion, can be made tributary to the above-mentioned catchment area of the Hamilton River ,

and the total area of catchment of the waters leased and demised by this Lease (hereinafter called the "Upper Hamilton Watershed") is described in Appendix A to this Lease and delineated on the map shown in that Appendix (And Appendix A is hereby declared to be part and parcel of this Lease, subject to alteration and correction of description and delineation by a supplementary lease when a final survey of the said area is available, but such alteration and correction of description and delineation shall be made without infringing any of the rights reserved to Labrador Mining and Exploration Company Limited under paragraph (d) of this clause, and the waters in respect of which rights and liberties are leased and demised by this Lease are hereinafter called the "Upper Hamilton");

TO HOLD the same unto the Lessee for the full term of ninety-nine years from the _____ day of _____, A.D., 1961 YIELDING AND PAYING therefor the tax to be calculated and paid in the manner prescribed by this Lease TOGETHER WITH the rights described in Clause 2 of this Part and the full right and liberty to flood during the term created by this Lease and any renewal hereof all those areas of the Upper Hamilton Watershed described in Appendix B to this Lease and delineated on the map shown in that Appendix to the levels indicated on the said map (and the said Appendix B is hereby declared to be part and parcel of this Lease, subject to alteration and correction of such description and delineation by a supplementary lease when a final survey of the said areas is available, and those areas of the Upper Hamilton Watershed described and delineated in the said Appendix B are hereinafter called the "main development area") EXCEPTED AND RESERVED to the Government, its licensees, lessees, assignees, transferees or any other persons whomsoever authorized by the Government in that behalf

(c) (i) all minerals both metallic and non-metallic, coal, oil, salt, natural gas and related hydro-carbons, all quarry materials, surface rights, and all other rights not leased and demised by this Lease, and

(ii) all timber

on in and under the Upper Hamilton Watershed;

(d) all of the usable waters upstream of a point that is one and one-half miles downstream from the northeastern face of the main dam at the outlet of Menihik Lakes and the leave, licence, permission, authority and all other rights licensed by the Crown to Labrador Mining and Exploration Company Limited by a Licence dated the first day of December, A.D. 1950, as amended by *The Labrador Mining and Exploration Company, Limited Water Power Licence (Clarification and Revision) Act, 1961* ;

(e) the full right and liberty for the Government, its licensees, lessees, grantees, assignees, transferees and any other persons whomsoever authorized by the Government in that behalf

(i) to explore, prospect, search for, work, get, carry away and dispose of all minerals, both metallic and non-metallic, coal, oil, salt, natural gas and related hydro-carbons and other rights in the Upper Hamilton Watershed not leased and demised by this Lease;

(ii) to fell, cut down, dispose of and carry away all timber in the Upper Hamilton Watershed; and

(iii) to occupy and use all of the Upper Hamilton Watershed the occupation and use of which is in the opinion of the Government necessary for any of the purposes referred to in this paragraph (e);

AND EXCEPTED AND RESERVED ALSO for all of the purposes referred to in paragraph (e) of this clause

(f) the right of ingress, egress and regress over the Upper Hamilton Watershed and to make, sink, erect and use all mines, pits, plants, shafts, wells, machinery, buildings, erections, dams, roads and other necessary works and conveniences;

AND EXCEPTED AND RESERVED ALSO

(g) the right for the public to use freely all lakes, ponds and rivers included in the Upper Hamilton for floating logs or other timber of any kind whatsoever;

(h) to the Government, its grantees, lessees, licensees and permittees all fishing rights whatsoever on the Upper Hamilton TOGETHER WITH the right of ingress, egress and regress for the purpose of exercising any of such fishing rights; and

(i) for the public the right subject to applicable laws and regulations now or hereafter existing, to fish, shoot, hunt, trap and travel on and over the Upper Hamilton Watershed and the Upper Hamilton and any and all streams, rivers and lakes included therein and to maintain on the Upper Hamilton for any such purpose any kind of vessel, boat or aircraft.

PROVIDED that subject to the other provisions of this Lease the rights reserved shall be exercised in such a manner as not to cause unnecessary interference with the use and enjoyment of the rights of the Lessee under this Lease.

1961 No51 Sch Part I s1

2. Subject to the provisions, terms, conditions, exceptions and reservations of this Lease, the lease and demise of the Upper Hamilton created hereby includes the grant to the Lessee during the term created by this Lease of

- (a) the exclusive right to harness and make use of the Upper Hamilton ;
- (b) all hydro-electric and hydraulic power rights in, to and in respect of the Upper Hamilton ;
- (c) the exclusive right to utilize all of the Upper Hamilton in all dams, tunnels, canals, diversions, power houses and any and all other works, wheresoever located, necessary for the development of hydro-electric and hydraulic power;
- (d) the exclusive right to store so much of the Upper Hamilton as may be economic and/or beneficial for the purposes of the development by the Lessee of the Upper Hamilton and to regulate the flow of the Upper Hamilton subject to the condition that in so doing the Lessee shall not interfere, to the detriment of downstream proprietors of water power rights without the consent of all such proprietors, with the minimum daily mean unregulated flow of such waters occurring prior to the establishment of a hydro-electric plant at a site on the Unknown River having an initial generating capacity of approximately 120,000 horsepower together with appropriate related facilities including high voltage transmission lines to and a step down station near Wabush Lake (the said plant and facilities being herein called the "Twin Falls Project");
- (e) the right to transmit throughout the Province any electric power generated as the result of the harnessing of the whole or any part of the Upper Hamilton and to export from the Province such power: Provided that upon the request of the Government consumers of electricity in the Province shall be given priority where it is feasible and economic to do so; and
- (f) the right, subject to Clause 3 of Part III, to flood or otherwise impair the land comprised in any grant, lease, licence or other assurance of unoccupied Crown lands located in the main development area or of any rights therein or thereunder made after the date of execution and delivery of this Lease without paying any compensation, fine or other indemnity in respect of the loss or damage suffered by the grantee, lessee, licensee or other holder of rights in the land.

1961 No51 Sch Part I s2

PART II LESSEE'S COVENANTS

The Lessee hereby covenants with the Government as follows:

Royalty

1. (1) The Lessee shall during the term created by this Lease pay to the Minister of Mines, Agriculture and Resources for the said Province a royalty to be determined and paid in the manner and at the times prescribed by this clause.

(2) The Government shall determine the rate of royalty, applicable to each development or stage thereof, for the supply of electricity from the Upper Hamilton: Provided that the rate so determined shall not exceed the maximum rate of 50 cents (Canadian) per horsepower year generated and sent out of the station and for the purpose of this clause 6535 kilowatt hours shall constitute one horsepower year.

(3) During the term created by this Lease, the Lessee shall on or before every twenty-eighth day of February occurring after the delivery of electricity from any installation utilizing the whole or any part of the Upper Hamilton is commenced submit to the Government all data required by it for determining the amount of the royalty for the calendar year (January 1 to December 31) or part thereof immediately preceding that twenty-eighth day of February, and all such data shall be certified by a responsible officer of the Lessee and shall be treated by the Government as confidential information.

(4) The royalty calculated from the data submitted to the Government as aforesaid shall be paid by the Lessee on or before the thirty-first day of March immediately following the end of each calendar year (January 1 to December 31).

1961 No51 Sch Part II s1

Government inspection

2. The Government by its servants and agents may at all reasonable times during the term of this Lease enter upon the Upper Hamilton and examine the condition thereof.

1961 No51 Sch Part II s2

Due diligence

3. The Lessee will commence and proceed with due diligence with the development of the supply of electricity from the Upper Hamilton, beginning with the development by Twin Falls Power Corporation Limited of a supply of electricity from the Twin Falls Project.

1961 No51 Sch Part II s3

Newfoundland labour and materials

4. The Lessee shall in the procuring of materials, equipment and labour for any work undertaken by it or for its account under the terms of this Lease give preference, where it is feasible and economic to do so, to material and equipment originating, manufactured or distributed and serviced in the Province of Newfoundland and prior opportunity to workmen whose usual place of residence is in the said Province and shall use its best endeavours to give effect to this provision.

1961 No51 Sch Part II s4

Flow gauging information

5. When as and if the Lessee undertakes recording information concerning the characteristics of the Upper Hamilton, or any part thereof, it will supply and furnish to the Government upon request copies of such flow gauging information and data at least once each year.

1961 No51 Sch Part II s5

Operating practices

6. The Lessee shall keep and maintain in good working order all structures, works and plant erected from time to time for the development and utilization of the Upper Churchill on the premises demised by this Lease or by any of the leases or licenses referred to in Clause 7 of Part III of this Lease which have been or in the future shall be granted to the Lessee and which structures, works and plant in accordance with sound utility practice are required in connection with or incidental to said development and utilization, and the Lessee shall attend to all necessary repairs in order to secure the normal and satisfactory working of all such structures, works and plant. The Lessee shall, however, be entitled at any time and from time to time to alter any structures, works and plant erected from time to time for the development and utilization of the Upper Churchill on such demised premises and to remove any thereof when desirable in the conduct of its business in accordance with sound utility practice, to change the position of any thereof, to replace or renew any thereof and to dismantle and remove any thereof no longer useful in the conduct of its business in accordance with sound utility practice.

1969 No77 Sch s1

6A. The Government acknowledges that, so long as this Lease or any of the leases or licenses referred to in Clause 7 of Part III of this Lease shall be in force, all right, title and interest in and to all fixtures, structures and other improvements located on the premises demised by this Lease or such other leases or licenses (but not any personal property located thereon), and all proceeds and avails of such fixtures, structures and improvements shall be part of the Lessee's leasehold estate and may, subject to the restrictions on alienation of the leasehold estate and to the other covenants of the Lessee contained in this Lease and said other leases and licenses, be assigned together with the Lessee's other rights hereunder as security or otherwise disposed of by the Lessee without restriction; provided, however, that (under reserve of the Lessee's right to remove upon, or within a reasonable period following, termination of the demise, all trade fixtures and all other fixtures not being landlord's fixtures) all fixtures, structures and other improvements remaining on the premises demised by this Lease or by said other leases or licenses shall, upon termination thereof, become the property of the Government.

1969 No77 Sch s1

7. During the term created by this Lease, the Lessee will once at least in every calendar year procure the preparation of a Consolidated Statement of Profit and Loss of the Lessee and its subsidiary companies for the preceding calendar year. In addition, the Lessee undertakes to procure to be made out a Consolidated Balance Sheet of the Lessee and its subsidiary companies as at the dates to which the said Consolidated Statements of Profit and Loss are made up. The said Consolidated Statement of Profit and Loss and Consolidated Balance Sheet are hereinafter referred to as the "Consolidated Accounts". For the purposes of this Lease a subsidiary company means a company in which the Lessee holds directly, or through a nominee, shares comprising more than fifty per centum (50%) of the issued share capital of that other company, or shares entitling the Lessee to more than fifty per centum (50%) of the voting power of that other company or a company of which the Lessee has power directly or indirectly to appoint the majority of the directors, and a subsidiary company shall include a subsidiary company of a subsidiary company: Provided, however, that the Lessee shall not be required to procure the preparation of Consolidated Accounts for any year prior to the calendar year 1964, except on the written request of the Government.

1964 No43 Sch s1

8. (1) The Lessee shall pay a rental in each year during the term created by this Lease equal to eight per centum (8%) of the net profits of the Lessee as hereinafter defined.

(2) For the purpose of this Lease, the expression "net profits" means the net profits less losses of the Lessee and its subsidiary companies in so far as they are attributable to the Lessee's holding therein computed in accordance with generally accepted Canadian accounting principles and as shown in the Consolidated Accounts approved by the auditors of the Lessee in any financial year of the Lessee excluding any profit or loss arising on the disposal of fixed assets of the Lessee or of any subsidiary company of the Lessee otherwise than in connection with the assignment, sublease, licence or alienation of any of the rights and liberties granted to or hereby to be granted to the Lessee and after charging all usual and proper expenses, other than the rental payable

pursuant to this clause but including the royalty payable under sub-clause (2) of Clause 1 of this Part II, interest payable in respect of borrowed moneys, provisions for depreciation, depletion and amortization based on but not exceeding amounts expended and all other provisions as charged in the Consolidated Accounts in respect of such financial year but before making any charge or provision for Federal and Provincial Income Tax or any other taxes on income whether of a Federal or Provincial nature and before charging any dividends paid or payable on any class of shares of the Lessee and before making any appropriations for reserves of a capital or revenue nature not allowable for the purposes of Canadian Federal taxation: Provided, always, that if the Lessee or any of its subsidiary companies shall carry on any activities other than operations the subject of the rights and liberties granted or to be granted under this Lease the net profits or losses attributable to such activities shall be excluded.

(3) The rental payable by the Lessee to the Government under this clause shall be paid on the completion and adoption of the audited accounts of the Lessee in every year and shall be certified by the auditors for the time being of the Lessee.

(4) Provided, always, that if the computation of net profits pursuant to this clause shall in any year result in net losses the amount of such net losses shall be set off against the first subsequent net profits.

(5) The rental payable under this clause shall be calculated and paid only on the profits of the Lessee as herein defined and shall not devolve upon or be payable by any assignee of the Lessee.

1964 No43 Sch s1

PART III GOVERNMENT'S COVENANTS

The Government hereby covenants with the Lessee as follows:

Quiet enjoyment

1. The Lessee paying the royalty provided for in this Lease and observing, performing and fulfilling the several provisions, covenants, terms and conditions herein contained and on the part of the Lessee to be paid, observed, performed and fulfilled shall peaceably hold and enjoy the rights and liberties hereby leased and demised during the said term without any interruption or interference by the Government or any other person whomsoever rightfully claiming under or in trust for it.

1961 No51 Sch Part III s1

Renewal

2. Subject to all of the provisions of this Lease, the Government will on the written request of the Lessee made before the expiration of the term hereby created, if there shall not at the time of such request be any existing breach of the covenants, terms and conditions of this Lease on the part of the Lessee, grant to it a further lease of the rights and liberties leased and demised by this Lease for the further term of ninety-nine years from the expiration of the term created by this Lease subject to payment of the same royalty and containing the like covenants and conditions as are herein contained, except the covenant for renewal.

1961 No51 Sch Part III s2

Provisions of subsequent grants

3. (1) Whenever after the date of the execution and delivery of this Lease and subject to sub-clause (2) of this clause, a grant, lease, licence or other assurance is made of unoccupied Crown lands located in the main development area or of any rights therein or thereunder, a provision shall be inserted in such grant, lease, licence or other assurance reserving in favour of the Lessee the right to flood or otherwise impair the land comprised in the grant, lease, licence or other assurance and to the extent permitted by this Lease to construct and operate storage reservoirs thereon, therein or thereunder without paying any compensation, fine or other indemnity in respect of the loss or damage suffered by the grantee, lessee, licensee or other holder of rights in the land.

(2) Sub-clause (1) of this clause and paragraph (f) of Clause 2 of Part I shall not apply in respect of

- (a) any option or concession granted by or under any Act or agreement before the execution and delivery of this Lease to any person, company, partnership or association conferring on such person, company, partnership or association the right to acquire and occupy Crown lands or any rights thereon, therein or thereunder by way of grant, lease, licence, permit or other assurance of title; or
- (b) any grant, lease, licence, permit or other assurance of title made at any time before the execution and delivery of this Lease, or made at any time thereafter in pursuance of an option or concession referred to in paragraph (a) of this sub-clause.

1961 No51 Sch Part III s3

Reservation of minerals

4. The Government has reserved and will subject to this Lease keep reserved from the operation of *The Crown Lands (Mines and Quarries) Act, 1961*, as amended from time to time, for the full term created by this Lease all minerals on, in and under the main development area.

1961 No51 Sch Part III s4

Grant of minerals in main development area

5. Notwithstanding the provisions of Clause 4 and subject to the provisions of Clause 3 of this Part, the Government reserves the right to grant, lease or otherwise dispose of all or any part of the minerals referred to in Clause 4 of this Part or any rights in such minerals to any person, company, partnership or association.

1961 No51 Sch Part III s5

Notice

6. (1) Before making any grant or lease of minerals or of land anywhere in the Upper Hamilton Watershed, the Government will subject to this clause inform the Lessee in writing of its intention to do so and allow the Lessee at least sixty (60) days from the date of service of that notice to enable the Lessee to make any objection to such proposal that it wishes to make.

(2) Subject to Clause 3 of this Part, the Government reserves the right to make any grant or lease referred to in sub-clause (1) of this clause on the expiration of the period of notice prescribed by that sub-clause, whether or not the Lessee shall have objected thereto.

(3) The provisions of this clause shall not apply to any grant, lease, licence, permit or other assurance of title referred to in paragraph (b) of sub-clause (2) of Clause 3 of this Part.

1961 No51 Sch Part III s6

Acquisition of Crown lands

7. (1) Subject to sub-clause (2) of this clause, the Government will grant to the Lessee upon reasonable terms and conditions by lease or licence from time to time such Crown lands not then irrevocably granted, leased or otherwise alienated to any third party as may be reasonably necessary in connection with or incidental to any aspect of the development and transmission of hydro-electric power from any part of the Upper Hamilton.

(2) All of the Crown lands referred to above that are required for transmission and communication lines, access roads, dam sites, power sites, transformer stations and canals will be leased or licensed to the Lessee for a term coextensive with the term of this Lease and any renewal thereof and at a rent not exceeding one dollar a year, if demanded.

1961 No51 Sch Part III s7

Acquisition of private lands

8. If the Lessee is desirous at any time of acquiring private lands or any rights therein or thereover, reasonably necessary for or in connection with or incidental to any aspect of the development and transmission of hydro-electric power from any part of the Upper Hamilton, the Government will acquire such lands or rights by purchase, expropriation under *The Expropriation Act, 1957*, as now or hereafter amended, or otherwise (and the mode of acquisition shall be determined by mutual agreement) and the Government will transfer title and possession of such lands or rights to the Lessee at cost.

1961 No51 Sch Part III s8

Legislation to protect Lessee's improvements

9. The Government will use its best endeavours to secure legislation including regulations reasonably necessary to protect the improvements made in the Upper Hamilton Watershed by the Lessee or any sublessee, licensee or permittee of the Lessee from damage by any person exercising any of the rights reserved under paragraphs (g), (h) and (i) of Clause 1 of Part I, but all such legislation shall be consistent with the lawful exercise of such reserved rights.

1961 No51 Sch Part III s9

PART IV MUTUAL COVENANTS

It is mutually agreed by and between the parties to this Lease as follows:

No assignment, etc., without consent

1. (1) Subject to this clause, the rights and liberties hereby demised or any of them may not be assigned, leased, licensed, mortgaged or otherwise howsoever alienated by Churchill Falls (Labrador) Corporation Limited, without the prior consent of the Government in writing, which consent shall not be unreasonably withheld.
- (2) Subject to this clause the Lessee may not license or permit any company or body whether associated with it or not to utilize any of the rights and privileges granted hereunder or sublet or otherwise dispose of any of the said rights and privileges to any such company or body, without the prior consent of the Government, in writing, which consent shall not be unreasonably withheld.
- (3) This clause shall not be deemed to apply to a permit for a period not exceeding one year issued by the Lessee nor shall this clause nor any corresponding restriction of any lease or license granted pursuant to Clause 7 of Part III hereof, be deemed to apply to any permits, licenses or other rights of utilization under the Power Contract (referred to in Clause 2A of Part IV hereof) or otherwise in respect of the construction of, or for the purpose of assuring the completion, bringing into operation and continued operation of, and delivery of energy from, the Churchill Falls power project in Labrador; provided, however, the giving of any such right by the Lessee shall not affect the Lessee's obligations hereunder.
- (4) Forthwith, upon the execution of any assignment, sublease, licence or permit or of any assignment of any such assignment, sub-lease, licence or permit, the Lessee shall furnish to the Government a certified copy thereof together with the name and address of the assignee, sublessee, licensee or permittee.
- (5) The Lessee shall not be liable to pay any fee or charge in respect of any consent given under this clause.

1961 No51 Sch Part IV s1; 1966-67 No84 s2; 1969 No77 Sch s2

Tax exemptions

2. (1) The Lessee and any of its sublessees, licensees, permittees, and agents, as well as the contractors and subcontractors (whether on a lump sum, fixed price or unit price contract basis or otherwise) of any of them shall be exempt
 - (a) from all taxes heretofore or hereafter imposed by or under *The Social Security Assessment Act*, chapter 41 of The Revised Statutes of Newfoundland, 1952, as amended to the date of the coming into force of *The Social Security Assessment Act, 1963*, the Act No. 83 of 1963, and from all taxes imposed by the said *The Social Security Assessment Act, 1963*, as amended from time to time or any Act standing in the place thereof and from any similar tax or assessment levied, authorized or imposed by the Province in respect of all machinery, equipment, goods, materials, articles, things, and all other tangible personal property heretofore or hereafter installed, consumed or used in the establishment, construction, equipping or expansion in Labrador of any works, buildings, structures and plant ("facilities") for or incidental to any aspect of the development, generation and transmission within the Province of hydro-electric power from the whole or any part of the Upper Churchill: Provided that such exemption shall not apply in respect of
 - (i) any machinery, equipment, materials, articles and things and other than tangible personal property consumed or used in the operation of the facilities or in the establishment of any capital replacements made otherwise than in connection with the expansion of any of the facilities, or
 - (ii) renewals, replacements or repairs;
 - (b) on and after the 1st day of January, 1967, from all taxes imposed by or under *The Gasoline Tax Act, 1962*, the Act No. 55 of 1962, as amended from time to time, or any Act standing in the place thereof and from any similar tax or assessment levied, authorized or imposed by the Province in respect of gasoline consumed or used in the establishment, construction, equipping or expansion of any facilities established in Labrador for or incidental to any aspect of the development, generation and transmission within the Province of hydro-electric power from the whole or any part of the Upper Churchill: Provided that such exemption shall not apply in respect of
 - (i) gasoline consumed or used in the operation of any such facilities or in the establishment of any capital replacements made otherwise than in connection with the expansion of any such facilities, or
 - (ii) renewals, replacements or repairs,
- but nothing in this sub-clause (1) shall be deemed to confer any exemption in respect to the operation by Twin Falls Power Corporation Limited of its facilities, or from the tax imposed by or under *The Fuel Oil Tax Act, 1962*, or any Act substituted therefor.
- (1A) For greater certainty it is hereby declared that
 - (a) the completion of any facility or any part thereof shall not prevent the application of any of the exemptions referred to in paragraphs (a) and (b) of sub-clause (1) of this Clause 2 in respect of any uncompleted facility or part thereof; and
 - (b) the total consumption of any tangible personal property in respect of which the exemption referred to in paragraph (a) of sub-clause (1) of this Clause 2 applies or the partial consumption or use of it to the point where it can no longer be consumed or used shall not prevent the application of that exemption in respect of the consumption or use of additional tangible personal property consumed or used in replacement

of that already totally consumed or so partially consumed or used, if such additional tangible personal property is consumed or used for any of the purposes prescribed in the said paragraph (a) in respect of which an exemption is provided.

(2) Should the Lessee or any of its sublessees, licensees or permittees be subject to taxation by any municipality or other local taxing authority in Newfoundland Labrador, the amount of taxes levied by such municipality or other taxing authority against the Lessee or any of its sublessees, licensees or permittees for the year, together with the amount of taxes levied by such municipality or other taxing authority against all other industrial establishments and activities including hydro-electric developments for such year, shall not exceed in the aggregate forty per centum (40%) of the total amount of the taxes levied by such municipality or other taxing authority for such year.

(3) The Lessee and Twin Falls Power Corporation Limited shall not be liable for any taxes other than taxes of general application.

1961 No51 Sch Part IV s2; 1966-67 No84 Sch s1; 1970 No62 Sch s1

Tax exemptions and rebates

2A. (1) In this Clause 2A,

- (a) "Lessee" means Churchill Falls (Labrador) Corporation Limited, its successors and assigns and the subsidiaries of Churchill Falls (Labrador) Corporation Limited, except Twin Falls Power Corporation Limited and the successors, assigns and subsidiaries of Twin Falls Power Corporation Limited; and
- (b) "Power Contract" means the first contract executed by and between the Lessee and Quebec Hydro-Electric Commission relating to the supply and sale by the Lessee to Quebec Hydro-Electric Commission of hydro-electric power developed under this Lease at Churchill Falls in Labrador, but does not include any renewal of such contract or the renewal of the term prescribed therein during which the Power Contract is to remain in force, and the said term is expected to be about forty years.

(2) This Clause 2A applies as of and from July 14, 1966, in respect of the development, transmission and supply of hydro-electric power by the Lessee under this Lease during the term of the Power Contract, but this Clause 2A applies only in respect of such development, transmission and supply of hydro-electric power.

(3) Notwithstanding anything to the contrary contained in sub-clause (3) of Clause 2 of this Part IV, this Clause 2A shall have effect to the extent provided in sub-clause (2) of this Clause 2A, and only to that extent, but subject to this Clause 2A, sub-clause (3) of the said Clause 2 shall continue to have full force and effect.

(4) The Lessee shall be exempt from

- (a) any increase in existing taxes,
- (b) any liability with respect to any new or additional taxes that may hereafter be imposed, levied or authorized, and
- (c) any liability with respect to any new or additional charges, dues, fees, rents, levies, royalties or other assessments of whatsoever nature or kind,

that are within the power of the Province or any municipality or subdivision thereof to impose, levy or authorize upon the Lessee, its assets (tangible or intangible), or revenues, including without limitation, its earnings, products, properties, rights, franchises, leases, licences, permits, investments, capital (share or loan), transactions, payrolls, purchases, sales or transfers, or upon any other thing, matter or act whatsoever that is within the corporate power of the Lessee as it is now or may hereafter be constituted: Provided, however, that the above exemptions shall not enlarge the exemptions enjoyed by the Lessee pursuant to sub-clauses (1) and (2) of Clause 2 of this Part IV from the taxes specifically referred to in the said sub-clauses (1) and (2); and provided further that if Canada reduces the rates of taxes on or measured by income at present imposed by it on any class of corporations, in which the Lessee is included, the Government reserves for the Province the right in such event to increase the present rates of taxes on or measured by income imposed by it on the Lessee up to, but not exceeding the reduction in the rates of taxes so made by Canada, provided, however, that the Lessee shall not be obligated to pay an amount greater than that which would have been payable by the Lessee had Canada not reduced such rates of taxes.

(5) Subject to sub-clauses (6), (7), (8) and (9) of this Clause 2A, the Government shall pay or cause to be paid to the Lessee for its own use and benefit forty-seven and nine-tenths per centum (47.9%) of all moneys

- (a) collected by Canada by way of existing taxes on or measured by income of the Lessee; and
- (b) paid by or for Canada to or upon the order of the Province.

(6) If the amount of the rental payable by the Lessee under Clause 8 of Part II hereof is not allowed as a deduction in determining the Lessee's taxable income, then the Government shall pay the Lessee an amount equal to all of the tax on such rental which is

- (a) by reason of such disallowance, collected by Canada by way of existing taxes on or measured by income of the Lessee; and
- (b) paid by or for Canada to or upon the order of the Province,

but the Government shall not make any payments under sub-clause (5) of this Clause 2A in respect of such tax.

(7) If the rates of the taxes on or measured by income at present imposed by Canada on the Lessee shall be increased, then, an amount equal to all additional tax

- (a) collected, as a result of the increase of such rates, by Canada by way of taxes on or measured by income of the Lessee, whether or not the rental referred to in sub-clause (6) of this Clause 2A is allowed as a deduction in determining the Lessee's taxable income; and
- (b) paid by or for Canada to or upon the order of the Province,

shall be payable by the Government to the Lessee, but the Government shall not make any payments under sub-clause (5) or (6) of this Clause 2A in respect of such additional tax; and if the rates of the taxes on or measured by income at present imposed by Canada on the Lessee shall be decreased, then, no payments shall be made to the Lessee under any provision of this Clause 2A in respect of the amount of the reduction of taxes resulting from the decrease of such rates. In either case of an increase or decrease in such rates of taxes, the Government shall be entitled to receive and to retain in each year an amount up to but not exceeding twenty-two and one-half per centum (22.5%) of the Lessee's taxable income

- (c) collected by Canada, from time to time, by way of taxes on or measured by income of the Lessee; and
- (d) paid by or for Canada to or upon the order of the Province.

(8) If the amount retained by Canada from taxes on or measured by income imposed by Canada on the Lessee shall be increased above the amount retained at present, namely, an amount equal to four and eight-tenths per centum (4.8%) of taxable income of the Lessee, then, no payments shall be made to the Lessee under any provision of this Clause 2A in respect of the amount of the increase; and if the amount retained by Canada from taxes on or measured by income of the Lessee shall be reduced below the amount retained at present namely, an amount equal to four and eight-tenths per centum (4.8%) of taxable income of the Lessee, then, payments shall be made, in accordance with sub-clauses (5), (6) and (7) of this Clause 2A, in respect of that part of the amount of such reduction which is paid by or for Canada to or upon the order of the Province.

(9) If the tax on or measured by income imposed by the Province shall cease to be collected in whole or in part by Canada, such tax shall nevertheless be treated as if it were so collected for the purpose of determining the sum or sums to be paid to the Lessee under sub-clause (5), (6) or (7) of this Clause 2A.

(10) The parties acknowledge that the Lessee is entering into the Power Contract on the basis that during the term of the Power Contract the methods now applicable for computing the income of the Lessee subject to taxes on or measured by income will not be materially changed, and agree that if the amount of such taxes should be materially increased or decreased by reason of any change in such method of computation, the parties will make adjustments to the sum or sums payable to the Lessee pursuant to this Clause 2A, and/or such amendments to this Lease as may be appropriate to compensate for such increase or decrease: Provided that notwithstanding anything to the contrary contained in Clause 9 of this Part IV, the said Clause 9 shall not apply to or in respect of any dispute arising under this sub-clause (10), and any such dispute shall not be subject to arbitration in the manner prescribed in the said Clause 9 or in any other manner whatsoever.

(11) Notwithstanding any legislation to the contrary, the payments to the Lessee by the Government under this Clause 2A shall not be deemed to be income of the Lessee for the purposes of any tax on or measured by income imposed by the Province, and the Government undertakes that when so requested it will duly certify that payments so made have been paid or otherwise credited to the Lessee.

(12) Notwithstanding any provision of *The Revenue and Audit Act* or any other statute or law of the Province, the Government undertakes to appoint a bank or trust company acceptable to the Lessee and to be paid by the Lessee to act as agent or trustee of the Government for the purpose of receiving from Canada that part of the taxes on or measured by the income of the Lessee which relate to the development, transmission and supply of hydro-electric power by the Lessee during the term of the Power Contract, which shall have been imposed by Canada and which are payable by Canada to the Province pursuant to the *Public Utilities Income Tax Transfer Act*, 14-15 Elizabeth II C. 43 (Statutes of Canada) or amendments thereto or enactments in substitution thereof; and the Government undertakes, in the manner it deems expedient, duly to notify Canada of such appointment and to request it to make such payments to such agent or trustee. Such appointment, which shall be irrevocable, except with the written consent of the Lessee, shall be made by an instrument to which the Government, the Lessee and the bank or trust company thereby appointed shall be parties, and which shall set forth, *inter alia*, the powers, duties and obligations of the agent or trustee (including without limitation of the powers to receive the moneys payable by Canada to the Province as aforesaid, to hold or invest such moneys pending their disbursement and to disburse such moneys in the hands of the agent or trustee and any income earned thereon in such a manner as to give effect to this Clause 2A, taking into account, by appropriate set off or adjustment, payments in respect of taxes on or measured by the income of the Lessee which relate to the development, transmission and supply of hydro-electric power by the Lessee during the term of the Power Contract and which shall have been received directly by the Government from Canada or the Lessee) and shall provide for the appointment of a successor or successors to the agent or trustee in the event such office shall be vacated, all as to be provided in the instrument.

(13) Notwithstanding any provision of this Clause 2A, should the Lessee, because of the operation of the collection arrangements between the Government and Canada, make payments on account of taxes imposed by the Province on or measured by the income of the Lessee which relate to the development, transmission and supply of hydro-electric power by the Lessee during the term of the Power Contract, at a rate in excess of that applicable hereunder, then the Government shall forthwith upon receipt by the Government from the Lessee of satisfactory evidence of any such payment having been made to Canada, refund or cause to be refunded such excess to the Lessee.

Approval of developments

3. (1) Before commencing any development utilizing the Upper Hamilton or any part thereof, or any major modifications or improvements of any such development then existing, the Lessee shall obtain the written consent of the Minister of Mines, Agriculture and Resources for the said Province and in every such case such consent shall be a condition precedent to such development or modification or improvement but the consent of the said Minister shall not be unreasonably withheld.

(2) When the Lessee seeks the consent of the Minister of Mines, Agriculture and Resources in accordance with sub-clause (1) of this clause, it shall submit to the Minister in support of its application all information and data necessary to inform the Minister of the proposed development or major modifications or improvements, including without limiting the generality of the foregoing,

- (a) profiles and other preliminary drawings showing and describing the projected dams, tunnels, canals, diversions and any and all other works, together with all relevant general plans;
- (b) general plans of the lands required for the purpose of flooding the same, whether for the purpose of storage reservoirs or for regulating the flow of any stream within the Upper Hamilton or otherwise;
- (c) particulars with regard to the capacity of the machinery and its actual or possible production; and
- (d) all other information and data that the Minister may request.

(3) In respect of the Twin Falls Project, the Government hereby acknowledges to have received all necessary information and data referred to in sub-clause (2) of this clause and to have approved such development in all its aspects in accordance with sub-clause (1) of this clause.

(4) The Lessee shall not be liable to pay any fee or charge in respect of any consent given under this Clause 3.

1961 No51 Sch Part IV s3

Default provisions

4. (1) If the Lessee, in the opinion of the Government, has failed to observe or perform any term or condition which under this Lease it is required to observe or perform and such failure continues for a period of sixty (60) days from the date that notice thereof in writing has been given by the Government to the Lessee, the Government may, notwithstanding any provisions herein with respect to arbitration, upon giving the Lessee not less than sixty (60) days notice, refer the matter of such non-observance or non-performance to the Supreme Court of Newfoundland or a judge thereof and if the Court or judge finds that the Lessee has failed to observe or perform any term or condition which it is required to perform or observe under the provisions hereof as notified to it by the Government, the Court or judge may

- (a) order performance by the Lessee of the terms of this Lease; or
- (b) order the payment of a sum by way of liquidated damages for the failure of the Lessee to perform said terms; or
- (c) make both of the orders referred to in paragraphs (a) and (b) of this sub-clause.

(2) If any order is made under sub-clause (1) of this clause, and thereafter the non-observance or non-performance on the part of the Lessee shall be continued, or the Lessee shall refuse or fail to comply satisfactorily with such order and the Court or judge shall deem that the remedies referred to in sub-clause (1) of this clause are inapplicable in respect of such non-compliance, the Court or judge may

- (a) authorize any person immediately and without further proceedings to take possession of all works, lands and properties whether real or personal, owned or held by the Lessee within the power system of the Upper Hamilton Watershed and used or useful in respect to the undertaking, including books, statements, accounts, papers and records appertaining to such undertaking and to operate, manage and control the said undertaking, and to do all other things required to be done in the conducting or carrying on of the said undertaking, until
 - (i) a sufficient sum shall have been accumulated, exclusive of all operating expenses and all costs of taking possession, to liquidate the sums payable by the Lessee and interest thereon and the cost of any proceeding connected therewith, or
 - (ii) such other conditions are carried out as may, in the opinion of the Court or judge, have been required to satisfy the terms of this Lease; or
- (b) order that upon a certain date not earlier than twelve months after the date of the order referred to in sub-clause (1) of this clause the lands, works and properties, whether real or personal, owned or held by the Lessee, and used or useful in respect of the power development shall be offered at execution sale.

(3) If an execution sale is ordered under paragraph (b) of sub-clause (2) of this clause, the Government shall fix an upset price below which the properties may not be sold and the Government shall also prepare a stipulation relative to the rights to be acquired and obligations to be assumed by the successful bidder, and no one shall be permitted to bid at such sale who has not previously agreed in writing to sign and abide by the terms of such stipulation and who has not been accepted by the Government as a bidder.

(4) If there is not a satisfactory buyer at the first execution sale, a second sale shall be held after a lapse of four months, under the same conditions as the first sale, except that the upset price of the sale shall not exceed the sum which represents the obligations of the Lessee to the Government as fixed by the Supreme Court of Newfoundland or a judge thereof and if no bids are received equal to or in excess of this sum from accepted bidders, this Lease shall be cancelled and determined and the Lessee shall forfeit all rights, and the works and undertaking shall become the property of the Government without any compensation to the Lessee.

(5) A completed execution sale made in pursuance of sub-clause (3) or (4) of this clause shall *ipso facto* bring about the cancellation and determination of this Lease.

(6) Any surplus arising out of a sale under sub-clause (3) or (4) of this clause, above the sum which in the opinion of the Court will satisfy the obligations of the Lessee, shall be repaid to the Lessee.

(7) If at any date after an execution sale has been ordered under paragraph (b) of sub-clause (2) of this clause, and if for any reason, the procedure provided in sub-clauses (3) and (4) of this clause has not been completed, the Supreme Court of Newfoundland or a judge thereof may make any order with respect to taking over and operating the works and undertaking of the Lessee for the time being as it may deem equitable under the circumstances.

1961 No51 Sch Part IV s4

Exercise of reserved rights, compensation

5. Whenever any of the rights reserved under paragraphs (c) and (f) of Clause 1 of Part I is duly exercised and thereby the Lessee or any sublessee, licensee or permittee of the Lessee suffers loss by reason of the removal or obstruction of or damage to any of the improvements lawfully made by the Lessee or any sublessee, licensee or permittee of the Lessee on the Upper Hamilton Watershed, the Government shall pay or arrange for the payment to the party suffering such loss of reasonable compensation for the loss so suffered in respect of such improvements, and the compensation in respect of improvements shall, in default of agreement, be determined by arbitration in the manner prescribed by this Lease.

1961 No51 Sch Part IV s5

Definitions

6. The expressions "mine", "minerals" and "quarry materials" shall respectively have the meanings assigned to them by *The Crown Lands (Mines and Quarries) Act, 1961*.

1961 No51 Sch Part IV s6

Rights under certain documents of title on determination of Lease

7. (1) For the purposes of this clause

- (a) "document of title" means a sublease, licence or permit whereby the Lessee has granted any or all of the rights and liberties leased and demised to the Lessee by this Lease;
- (b) "Twinco" includes
 - (i) Twin Falls Power Corporation Limited,
 - (ii) the trustee for the holders of any Bonds issued by Twin Falls Power Corporation Limited, if that trustee has a mortgage, charge, lien or hypothecation of any of the rights and liberties derived by Twin Falls Power Corporation Limited under a document of title, or
 - (iii) any assignee or nominee of a trustee referred to in subparagraph (ii) of this paragraph (b).

(2) If at any time after the execution and delivery of this Lease, the Lessee proposes to grant a document of title to Twin Falls Power Corporation Limited that is reasonably necessary for the development of the maximum economic capacity at the hydro-electric plant site of the Twin Falls Project the Government will, at the request of the Lessee and subject to sub-clause (3) of this clause, enter into, execute and deliver that document of title as an intervenor to the extent only of approving the terms of the document of title for the purposes of sub-clauses (4) and (5) of this clause and in order to give to Twinco a covenant enforceable at law which would enable Twinco to obtain an amended document of title under the circumstances and with the effect prescribed in sub-clauses (4) and (5) of this clause.

(3) Upon entering into, executing and delivering a document of title pursuant to sub-clause (2) of this clause, the Government shall not be required to make any warranty as to the title of Twinco or to establish any privity of contract with the Lessee or Twinco or to undertake any other obligations to any or all of them, except the approval and the covenant referred to in sub-clause (2) of this clause, nor shall the Government by entering into, executing and delivering such document of title pursuant to that sub-clause be deemed to have made any such warranty, to have established any such privity of contract, or to have undertaken any such obligations, other than such approval and covenant.

(4) If after the granting by the Lessee of any document of title to Twin Falls Power Corporation Limited which the Government has entered into, executed and delivered as an intervenor pursuant to and in accordance with sub-clause (2) of this clause, this Lease is cancelled and determined at any time

by reason of the default of the Lessee, then notwithstanding such cancellation and determination, the rights of Twinco under that document of title shall in no way be impaired or affected thereby but shall subject to sub-clause (5) of this clause continue in full force and with the same effect as though such cancellation and determination had not taken place.

(5) If this Lease is cancelled and determined at any time by reason of the default of the Lessee then every document of title which the Government has entered into, executed and delivered pursuant to and in accordance with sub-clause (2) of this clause shall be amended, without impairing or affecting the rights of Twinco thereunder, so as to provide that

(a) the Government shall be substituted for the Lessee; and

(b) all of the benefits of the Lessee theretofore accruing under that document of title shall thereafter accrue to the Government instead of to the Lessee,

and such document of title shall be altered accordingly both in substance and in form.

1961 No51 Sch Part IV s7; 1963 No2 s3

Investigations and surveys

8. The Lessee may enter upon, investigate and survey any unoccupied Crown lands for any purpose incidental to the development of a supply of electricity from the Upper Hamilton, but the Lessee shall be liable for all damages occasioned in the exercise of its rights pursuant to this clause by itself, its employees, agents and invitees.

1961 No51 Sch Part IV s8

Arbitration

9. (1) If any dispute arises under this Lease, the matter shall in default of agreement between the parties, be settled by arbitration at the request of either of such parties.

(2) For any arbitration under this Lease, the Lessee and the Government or other party to any dispute shall each appoint one arbitrator, and if either party fails to appoint an arbitrator after seven (7) clear days' notice in writing has been given to it by the other requiring it so to do, then the party who has given such notice may apply to the Supreme Court of Newfoundland or a judge thereof, and such Court or judge, after due notice to the party in default shall appoint such arbitrator and the two arbitrators so appointed shall appoint a third arbitrator or umpire, and if they shall fail to appoint such third arbitrator or umpire after seven (7) clear days' notice in writing from either party so to do, the Supreme Court of Newfoundland or a judge thereof, shall on the application either of the Lessee or the Government or other party to the dispute, appoint such third arbitrator or umpire, and the three so appointed shall proceed to hear the parties on the matter in dispute and make their decision and award.

(3) The award in any arbitration held under this Lease shall be made in writing and delivered promptly to the parties, and the decision and award of the arbitrators or any two of them shall be final and binding on the parties, except that either party may appeal therefrom to the Supreme Court of Newfoundland on questions of law only, by giving due notice of such appeal to the other party within one month following the receipt of the award.

(4) Costs of the arbitration including reasonable compensation for the arbitrators shall be borne and paid equally by the parties or as the arbitrators may otherwise direct.

(5) Notwithstanding anything to the contrary contained in Section 212 of *The Judicature Act*, chapter 114 of The Revised Statutes of Newfoundland, 1952, Part VI of that Act, except Section 212, shall subject to this Lease apply to any arbitration held under this clause to which the Government is a party.

1961 No51 Sch Part IV s9

Exchange of information

10. The Government will make available to the Lessee all information and particulars in its possession relating to the whereabouts of and previous investigations of the hydro power of Labrador (exclusive of information obtained by the Government from third parties on the terms that such information should be treated as confidential) and in particular the Government will make available all appropriate maps and surveys, and the Lessee will make available to the Government all surveys, data and information obtained and collected by it in relation to water power in Labrador which surveys, data and information shall be treated by the Government as confidential.

1961 No51 Sch Part IV s10

Certain delays not construed as non-performance

11. If the performance of any of the obligations of the Lessee set forth herein shall to any extent be prevented, restricted, delayed or interfered with by reason of

- (a) war, revolution, civil commotion, riot, acts of public enemies, blockade or embargo;
- (b) any law, order, proclamation, regulation, ordinance, demand or requirement of any government or any subdivision, authority, agency or representative of any government; or
- (c) any other cause whatsoever, whether similar or dissimilar to those above enumerated, beyond the reasonable control of the Lessee,

the Lessee shall, on prompt notice to the Government, be excused from the performance of such obligations to the extent of such prevention, restriction, delay or interference.

1961 No51 Sch Part IV s11

Governing law

12. This Lease shall be construed and interpreted in accordance with the laws of Newfoundland .

1961 No51 Sch Part IV s12

Notices

13. (1) Any notice requirement to be given under this Lease shall be sufficiently served on the Government if the notice is addressed to the Minister of Mines, Agriculture and Resources, Department of Mines, Agriculture and Resources, St. John's, Newfoundland, and delivered to that Minister personally or sent to him by registered mail, and on the Lessee if the notice is addressed to Churchill Falls (Labrador) Corporation Limited at its Head Office in the City of St. John's, in the Province of Newfoundland and delivered personally at or sent by registered post to such office and on Twin Falls Power Corporation Limited if the notice is addressed to it at its Head Office in the City of St. John's, in the Province of Newfoundland and delivered personally at or sent by registered post to such office.

(2) Either of the parties to this Lease or Twin Falls Power Corporation Limited may at any time change its address for service, by notice in writing given to the others.

1961 No51 Sch Part IV s13; 1966-67 No84 s2

IN WITNESS WHEREOF His Honour the Lieutenant-Governor in Council has caused the Great Seal of the Province of Newfoundland to be affixed hereto and has signed this Lease and Churchill Falls (Labrador) Corporation Limited has caused this Lease to be duly executed on the _____ day of _____ 1961.

BY HIS HONOUR'S COMMAND

Minister of Provincial Affairs

CHURCHILL FALLS (LABRADOR)
CORPORATION LIMITED

By _____
President

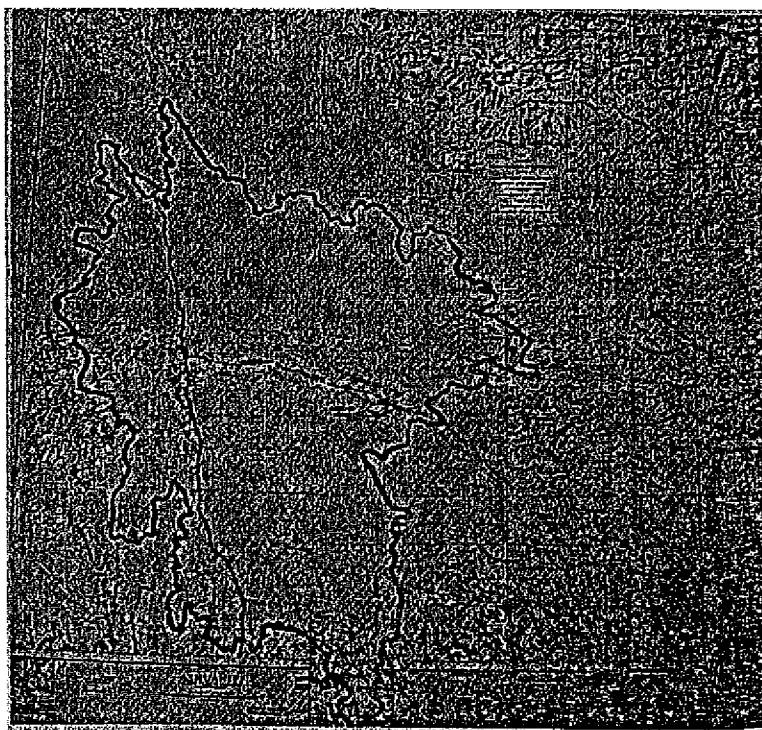
And _____
Secretary

1961 No51 Sch Ending; 1966-67 No84 s2

Appendix A

Description

All that part of Newfoundland Labrador bounded and described as follows: Beginning at a point situate upon the height of land between Highland Lake in the Province of Quebec and Alta Lake in the Province of Newfoundland and being located south of Mile Post 150 of the Quebec North Shore and Labrador Railway, the said point being described as station seven, nine zero, six plus zero, nine point two of the chainage of the said Railway measured from tide water at Seven Islands in the Province of Quebec; thence running along the height of land between the Province of Quebec and the Province of Newfoundland in general westerly and northerly directions to a point on the said height of land near Lake Emerillon; thence continuing along the said height of land in general southerly, westerly and northerly directions to a point near the headwaters of Howells River; thence continuing along the said height of land in general southeasterly and northerly directions to a point near Northern Lake; thence continuing along the said height of land in a general southeasterly direction to a point on the said height of land near the headwaters of a river emptying into Juliett Lake in the Province of Quebec and the headwaters of a river emptying into Frazer Lake in the Province of Newfoundland; thence running along the crest of the watershed between the drainage of Frazer Lake and the river flowing out of Wilbrow Lake in a general southeasterly direction to a point near the outlet of the said Frazer Lake; thence running in a southerly direction along the crest of the watershed between the drainage of Kasheshibaw Lake, Vollant Lake and the drainage of Canairiktok River and the Naskaupi River to a point on the south shore of Orma Lake; thence running in a southeasterly direction along the crest of the watershed between Lake Fremont, Windbound Lake, Pike Lake and the waters flowing into Marie Lake and Mary Lake; thence continuing in a southwesterly direction along the crest of the watershed between rivers flowing into the southeast angle of Michikamau Lake and rivers flowing into Metchin River to a point on Hamilton River where the meridian $63^{\circ} 40'$ west of Greenwich intersects the said Hamilton River, which point is approximately fourteen point eight (14.8) miles upstream from the confluence of Metchin River and Hamilton River; thence running in general westerly, southerly and southeasterly directions along the crest of the watershed between rivers flowing into Winokapau Lake and rivers flowing into Hamilton River, Unknown River, Ossokmanuan Lake, Atikonak River and Atikonak Lake to a point on the height of land between the Province of Quebec and the Province of Newfoundland north of Lac Long; thence continuing in a general southerly direction along the height of land between the Province of Quebec and the Province of Newfoundland to a point near Lac Bellanca; thence continuing in a general northwesterly direction along the said height of land to the point of beginning, the said area being delineated on the map shown in this Appendix; excepting from the above described area all the area below the 425 foot contour line or all the area that lies below elevation 425 in the Valleys of the Churchill River and its tributaries upstream of the intersection of the Churchill River with the Meridian of Longitude of $63^{\circ} 40'$ West.



Appendix B

Description of Main Development Area

Those parts of the watershed of the Upper Churchill River contained within the area reserved under the provisions of *The Labrador Lands (Reservation) Act*, chapter 176 of The Revised Statutes of Newfoundland, 1952, as amended, that lie east of the Quebec North Shore and Labrador Railway, which are described as follows:

AREA 1

All the area below the 1580 foot contour line or all the area that lies below elevation 1580 along Gabbro Lake, Ossokmanuan Lake, and all other lakes, rivers and tributaries connected therewith.

AREA 2

All the area below the 1560 foot contour line or all the area that lies below elevation 1560 along Lake Michikamau, Lake Michikamats, Adelaide Lake, Lake Agnes, Lake Windbound, Lake MacKenzie, Lake Fremont, Lake Orna, Lake Vollant, Lake Kasheshibaw, Sail Lake, Sandgrit Lake, Lobstick Lake, Overflow Lake, Timmins Lake, Shaw Lake, Birch Lake, Mackenzie River, Ashuanipi River, and all other lakes, rivers and tributaries connected therewith.

AREA 3

All the area below the 1490 foot contour line or all the area that lies below elevation 1490 along Lake Jacopie, Lake Flour and all other lakes, rivers and tributaries connected therewith and all the area below the 1480 foot contour line or all the area that lies below elevation 1480 along Lake Lookout, Lake Humbug, Lake Sona, Lake White Fish, and all other lakes, rivers and tributaries connected therewith, and all the area below the 1460 foot contour or all the area that lies below elevation 1460 along Portage River, commonly known as North River, downstream from a point which is approximately five miles measured northerly along the said Portage River from the intersection of the said river with the Churchill River, to a point which is approximately two miles upstream from the said intersection.

AREA 4

All the area below the 1505 foot contour line or all the area that lies below elevation 1505 along the Unknown River and all other rivers, tributaries and lakes connected therewith upstream of Scott Falls, and all the area along the Unknown River below elevation varying approximately uniformly along the hydraulic gradient of the said river from 1505 at the southernmost limit of the Unknown River to 1570 at the outlet of Ossokmanuan Lake.

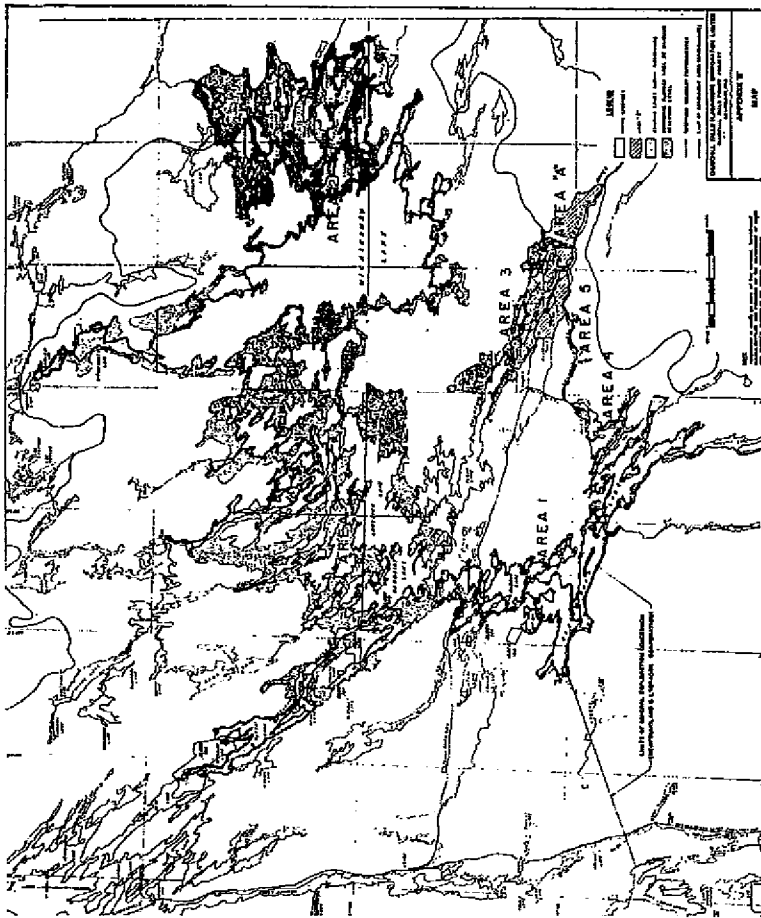
AREA 5

All the area below the 1205 foot contour line or all the area that lies below elevation 1205 along the Unknown River and all other rivers, tributaries and lakes connected therewith upstream of the confluence of the Unknown River with the Churchill River.

AREA "A"

All that area bounded on the south by the Churchill River, and on the north by the southern boundary of Area 3, above mentioned and its extension easterly to the nearest point on the crest of the watershed described in Appendix "A" and on the east by the crest of the said watershed and on the west by Churchill River and Jacopie Lake, excepting therefrom all that area lying below the 425 foot contour line and being on the north side of the Churchill River.

All elevations in respect to Areas 1 and 2 are referred to a benchmark 63-C-14 established by the Department of Mines and Technical Surveys of the Federal Government in 1963 adjacent to the Churchill Falls Road near Atikonak River, which benchmark is 1613.497 feet above mean sea level; all elevations for Areas 3, 4 and 5 are referred to a benchmark 63-C-23 established by the Department of Mines and Technical Surveys of the Federal Government in 1963 on the foundations of a cableway adjacent to the bridge over the Churchill River at Churchill Falls, which benchmark is 1344.647 feet above sea level, the said Areas and Area "A" being delineated on the map shown in this Appendix. The said elevations are "best considered mean sea level values - December 1966" as reconciled by the Department of Energy, Mines and Resources of the Federal Government and reflect correction of the order of 15 feet, applied by the Department of Energy, Mines and Resources of the Federal Government to benchmarks established in 1947 by barometric observations by the Department of Mines and Resources of the Federal Government and to benchmarks established by the Shawinigan Engineering Company Limited in 1954-1955.



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1969 No77 Sch s4