



Canadian Environmental
Assessment Agency

Agence canadienne
d'évaluation environnementale

1801 Hollis Street, Suite 200
Halifax, Nova Scotia
B3J 3N4

1801, rue Hollis, bureau 200
Halifax (Nouvelle-Écosse)
B3J 3N4

January 31, 2011

David Schulze
Dionne Schulze
507 Place d'Armes #1100
Montréal, Quebec
H2Y 2W8

Dear Mr. Schulze:

Thank for your letter of December 6, 2010, concerning the Lower Churchill Hydroelectric Generation Project (the generation project) and the Labrador-Island Transmission Link Project (the transmission project).

In your letter you ask, in light of announcements made by the Government of Newfoundland and Labrador, the Government of Nova Scotia, Nalcor Energy and Emera Inc. on November 18, 2010, that the Canadian Environmental Assessment Agency (the Agency) combine the two projects for the purposes of one environmental assessment under the *Canadian Environmental Assessment Act* (the Act).

The decision on the scope of the project for the purpose of the assessment of the generation project by the Canada-Newfoundland and Labrador Joint Review Panel was made by the Minister of the Environment on January 8, 2009 through the signature of the *Agreement Concerning the Establishment of a Joint Review Panel for the Environmental Assessment of the Lower Churchill Hydroelectric Generation Project*. The scope of the project is described in Schedule 1, Part 1 of the Agreement.

With respect to the environmental assessment of the transmission project, the decision was made on April 14, 2010, in consideration of the January 21, 2010 Supreme Court of Canada decision in *MiningWatch Canada v. Canada (Minister of Fisheries and Oceans et al.)*, to continue the assessment as a comprehensive study with a scope of project that maintained the generation project and the transmission project as two separate projects, each subject to their own rigorous environmental assessment.

.../2



The Agency sought clarification from Nalcor on their recent announcement. Nalcor is proposing an alternative in the sequencing for the construction of power facilities, with facilities at Muskrat Falls being constructed ahead of those at Gull Island. Consideration of such alternative means of carrying out the project is a requirement under the Act and within the scope of the current assessment for the generation project. A copy of the correspondence received from Nalcor on this matter, dated November 15, 2010, is attached.

The Agency has concluded that Nalcor's recent announcement does not constitute a new development that would warrant reconsidering the scoping decisions that were made in January 2009 and April 2010.

Furthermore, the Agency remains satisfied that both scoping decisions are consistent with the ruling of the Supreme Court of Canada in the *MiningWatch* case, as well as with the Agency's Operational Policy Statement on *Establishing the Project Scope and Assessment Type under the Canadian Environmental Assessment Act* that was published in February 2010 to provide guidance following the release of the Supreme Court of Canada decision. A copy of the Operational Policy Statement is attached (see in particular the "Approach" section of the Operational Policy Statement).

While the Agency and the Newfoundland and Labrador Department of Environment and Conservation have agreed that the generation project and the transmission project will undergo separate environmental assessment processes, I want to assure you that it will not result in any relevant environmental considerations remaining unaddressed. In particular,

- the factors that are assessed under both a review panel and comprehensive study process are the same under the *Canadian Environmental Assessment Act*. Both processes deliver high-quality environmental assessments that will consider all of the impacts from both projects.
- the joint review panel for the generation project and the comprehensive study process both involve Aboriginal and public participation along with funding for the Aboriginal groups and the public to participate in the processes.

The Canadian Environmental Assessment Agency will ensure that the comprehensive study for the transmission project and the joint review panel for the generation project continue to be conducted in a manner that provides clarity

.../3

of process for Aboriginal groups, integrates consultation with Aboriginal groups on potential impacts from the project on their rights, and that is coordinated with Newfoundland and Labrador to minimize any duplication and potential confusion.

Should you have any further questions, do not hesitate to contact me.

Yours sincerely,

<original signature removed>

William (Bill) A. Coulter, P. Eng.
Project Manager
Canadian Environmental Assessment Agency

Attachments: Letter dated November 15, 2010 from Nalcor.
Operational Policy Statement on *Establishing the Project Scope and Assessment Type under the Canadian Environmental Assessment Act*.

c.c. (via e-mail): Simon Laverdière, Canadian Environmental Assessment Agency
Pat Marrie, Newfoundland and Labrador Department of Environment and Conservation
Ruby Carter, Newfoundland and Labrador Department of Aboriginal Affairs
Mike Atkinson, Canadian Environmental Assessment Agency
Randy Decker, Transport Canada
Marvin Barnes, Fisheries and Oceans Canada
Jason Kelly, Fisheries and Oceans Canada
Glenn Troke, Environment Canada
Livain Michaud, Panel Co-Manager, Joint Review Panel Secretariat



Hydro Place, 500 Columbus Drive,
P.O. Box 12800, St. John's, NL
Canada A1B 0C9
t. 709.737.1833 or 1.888.576.5454
f. 709.737.1985

Rec. No. 10-11/5036

November 15, 2010

Bill Coulter
Canadian Environmental Assessment Agency
Atlantic Regional Office
1801 Hollis Street, Suite 200
Halifax, NS B3J 3N4

Pat Marrie
Environmental Assessment Division
Department of Environment and Conservation
Government of Newfoundland and Labrador
West Block Confederation Building, P.O. Box 8700
St. John's, NL A1B 4J6

Subject: Labrador - Island Transmission Link Environmental Assessment: Electrodes and Additional Labrador Corridor Option Being Considered by Nalcor Energy

Dear Mr. Coulter and Mr. Marrie:

I am writing further and as follow-up to our previous discussions regarding the on-going environmental assessment (EA) of the proposed *Labrador-Island Transmission Link* (the Project), and particularly, to keep you up-to-date on our on-going Project design and planning.

As you know, the proposed Project under EA review is comprised of a High Voltage Direct Current (HVdc) transmission system extending from Central Labrador to the Island of Newfoundland's Avalon Peninsula, as described in the Project's *Environmental Assessment Registration / Project Description* (EAR / PD) (January 2009, revised September 2009). The Project, as described in that document, included the following key elements:

- 1) An ac-dc converter station at Gull Island on the north side of the lower Churchill River in Central Labrador;
- 2) An overhead HVdc transmission line from Gull Island to the Strait of Belle Isle (407 km);

Pat Marrie - Environmental Assessment Division
Department of Environment and Conservation

November 15, 2010

- 3) Submarine cable crossing of the Strait of Belle Isle, including multiple cables extending out to and under the seabed between Labrador and Newfoundland, with associated infrastructure;
- 4) An overhead HVdc transmission line from the Strait of Belle Isle to Soldiers Pond on the Island of Newfoundland's Avalon Peninsula (688 km);
- 5) A dc-ac converter station at Soldiers Pond; and
- 6) Sea electrodes (high capacity grounding systems), with one to be installed in Lake Melville (Labrador) and another at Holyrood Bay (Newfoundland), with connecting wood-pole lines.

The EAR / PD provides an overview description of these Project components and associated construction and operations activities, as well as indicating that other alternatives were continuing to be evaluated. This is, of course, in keeping with the role and principles of EA itself, as a planning tool initiated early so as to be able to inform and influence Project design and decision-making.

I am writing to keep you apprised of new information resulting from our on-going Project planning activities, including further engineering work, environmental analyses and our associated consultation activities. As a result of that work, Nalcor Energy has identified refinements to our development concept and additional Project design options that we plan to bring forward into the EA process, including in the eventual development and submission of the Environmental Impact Statement and Comprehensive Study (EIS / CS). These are outlined briefly below:

1) Electrodes

As indicated in our EAR / PD, electrodes are required for the operation of the HVdc system. Nalcor Energy originally contemplated the use of sea electrodes installed at the north or south side of Lake Melville in Labrador as well as in Holyrood Bay, Newfoundland. As reflected in the EAR / PD, however - and in the *Notice of Commencement* for the EA (July 19, 2010) - Nalcor Energy has also continued to explore other potential electrode types and locations.

As a result, Nalcor Energy is no longer proposing to place sea electrodes in Lake Melville or Holyrood Bay, nor to develop the associated wood-pole line connections to these sites. Rather, our current Project concept would see the use of "shore electrodes" at locations in the Strait of Belle Isle area (Labrador side) and Conception Bay South (CBS), in which the electrode elements will be placed within an in- or near-water (wharf / breakwater – like) structure installed in a small natural or excavated cove or adjacent to the shoreline.

Pat Marrie - Environmental Assessment Division
Department of Environment and Conservation

November 15, 2010

The wood-pole transmission line connecting the Labrador converter station to the Strait of Belle Isle electrode will follow along the same route / right-of-way as the HVdc transmission line itself from the lower Churchill River to the submarine cable landing site at the Strait. From there it will follow the existing Labrador Straits highway and/or power lines northeast to the electrode site, which will be located at some point between the cable landing site and the Pinware area. Similarly, the wood-pole line from the Soldiers Pond converter station to the CBS shore electrode will generally follow along existing transmission lines and/or roadways in that region.

The specific location and detailed design for the shore electrodes will be determined following our on-going engineering and geophysical investigations and presented in the EIS / CS.

2) Labrador Converter Station and Transmission Corridor

The EAR / PD indicates that the Labrador converter station will be located at Gull Island, on the north side of the Churchill River, with the HVdc transmission corridor extending from there and across Southeastern Labrador to the Strait of Belle Isle (for a distance of approximately 407 km, please see the attached Figure – Option 1). A 2 km wide transmission corridor (study area) is identified, from within which a specific route for the transmission line will eventually be selected (for an average 60 m wide cleared right-of-way).

The Gull Island facility location and above described corridor are still under active consideration, and will be brought forward in the EIS / CS and associated studies. As a result of recent decisions and announcements regarding the temporal sequencing of the various components of the Lower Churchill Hydroelectric Generation Project - namely, that the Muskrat Falls facility will be developed first, followed by Gull Island later - Nalcor Energy is also exploring the potential option of locating the Project's Labrador converter station at or near the Muskrat Falls site.

If that were to be the case, the Labrador transmission corridor would potentially extend from Muskrat Falls to the Trans Labrador Highway (Phase 3, TLH3), and then follow generally along the south side of TLH3 to its southernmost point, before picking up the previously identified corridor from that location to the Strait of Belle Isle (please see the attached Figure – Option 2). Again, while no final decision has been made on these options, we would plan to bring both into the EIS / CS and associated studies for detailed assessment, evaluation and potential EA approval.

Further information on the specific design characteristics of these and other components of the Project will become available as Project EA and engineering work continue. The eventual EIS / CS will, of course, provide a detailed description and assessment of the Project being proposed - and, particularly, will be clear as to what the Project is that we are seeking EA approval for. As indicated in the EAR / PD, and as required by the provincial and federal EA legislation, we will also be assessing these and other alternative means of carrying out the Project that are technically and economically feasible (e.g., other potential on-land and marine corridor segments, potential submarine cable landing sites, etc.).

Pat Marrie - Environmental Assessment Division
Department of Environment and Conservation

November 15, 2010

Nalcor Energy feels that it is important to keep you apprised of this on-going evolution and definition of these elements of the Project, as you will likely wish to consider and factor it into your planning - including, for example, the development and review of the EIS / CS Guidelines, as well as in your EA consultation processes and activities.

Nalcor Energy trusts that you will recognize and agree that this on-going process of Project planning and evolution based on technical, economic and environmental considerations is typical of any major development, and indeed, is illustrative of the important role and value of EA as a planning tool. Given this, the legislative requirement to evaluate alternatives under the EA process, and the fact that the analysis of such options was referenced in the EAR / PD itself, we trust that the information provided herein will not in any way result in procedural delays or changes to the on-going EA process for this Project.

I hope that this information is helpful. If you have any questions or wish to discuss further, please feel free to contact the undersigned at any time.

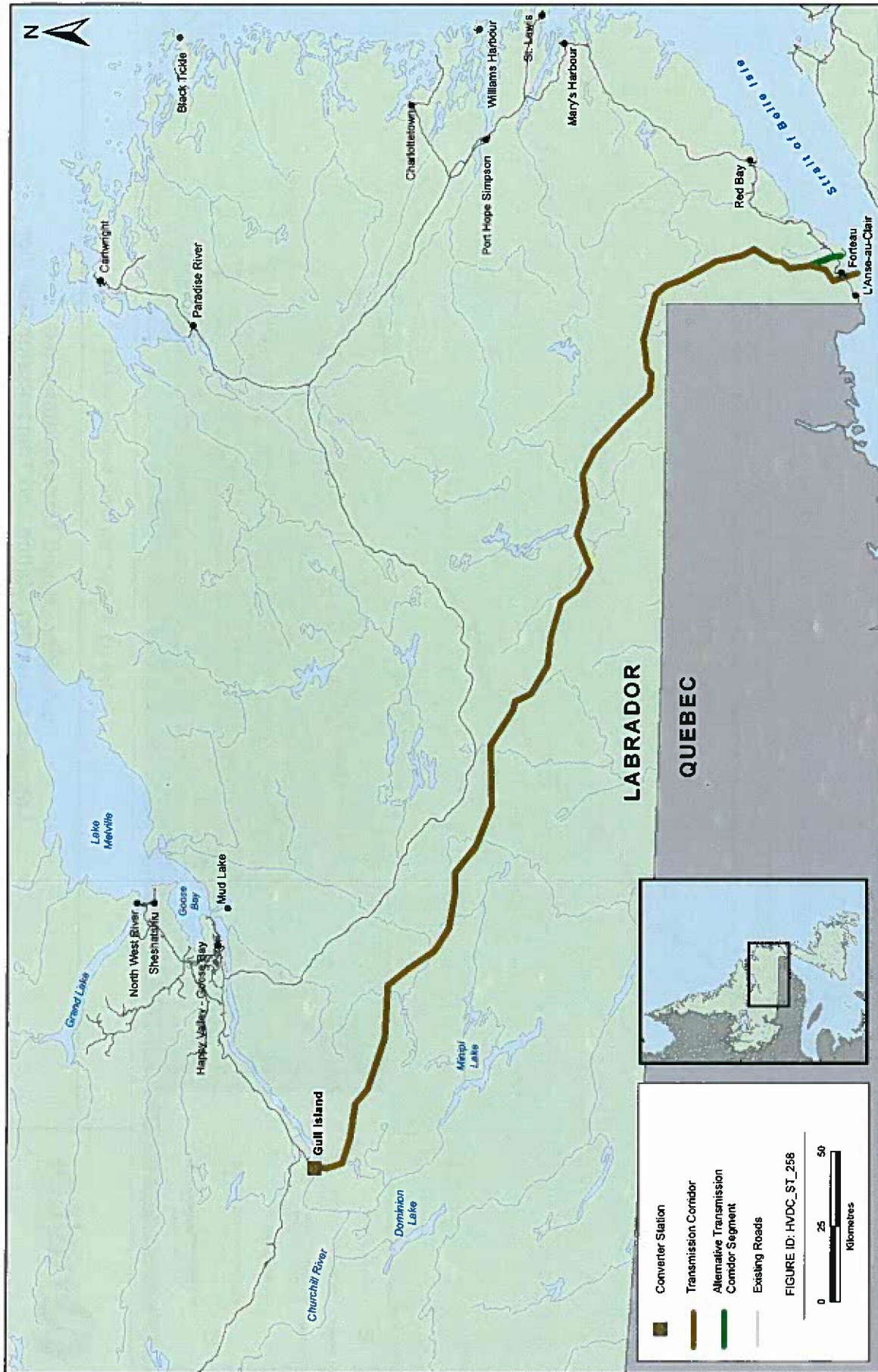
Sincerely yours,

<original signed by>

Todd Burlingame
Manager, Environment and Aboriginal Affairs

cc. **Gilbert Bennett, Nalcor Energy**
Paul Harrington, Nalcor Energy
Steve Bonnell, Nalcor Energy
Bas Cleary, NL DEC
Mike Atkinson, CEAA
Regent Dickey, MPMO – NRCan

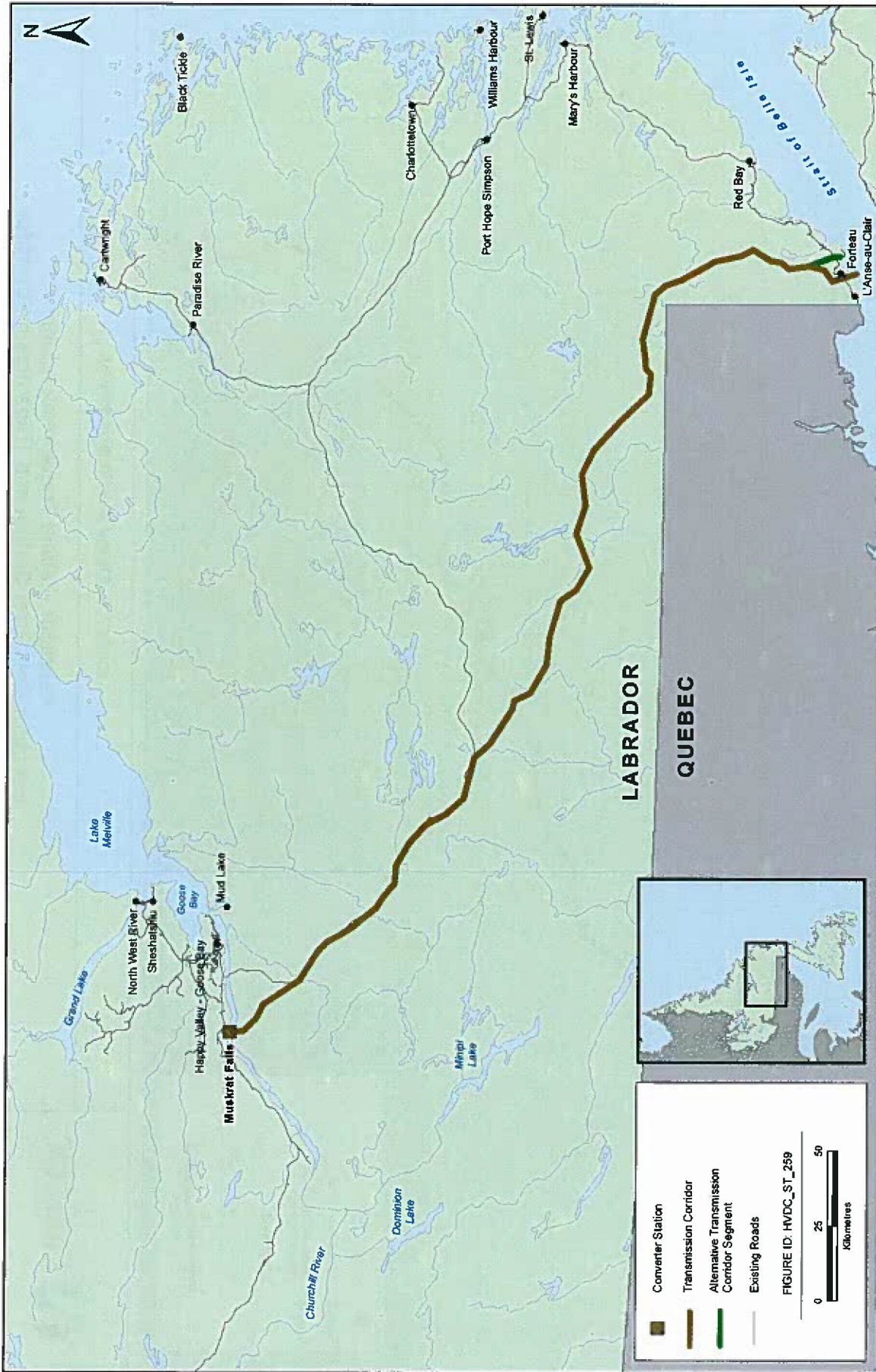
Attachments (2 Figures)



Option 1: Gull Island to the Strait of Belle Isle

**Labrador - Island Transmission Link:
Labrador Converter Station and Transmission Corridor**





Option 2: Muskrat Falls to the Strait of Belle Isle

**Labrador - Island Transmission Link:
Labrador Converter Station and Transmission Corridor**





Operational Policy Statement

Establishing the Project Scope and Assessment Type under the *Canadian Environmental Assessment Act*

Purpose

The purpose of this Operational Policy Statement is to provide best practice guidance in the consistent application of section 15 of the Act for the establishment of the scope of project in relation to which an environmental assessment is to be conducted.

The Operational Policy Statement also clarifies when the requirements of the Act with respect to comprehensive studies are to be followed.

The Operational Policy Statement will be supplemented shortly by guidance on how the environmental assessment of a project scoped in accordance with the direction of the Supreme Court of Canada is to be conducted, and on how course of action decisions under section 20 or 37 of the Act with respect to such a project should be made.

Background

On January 21, 2010 the Supreme Court of Canada released its decision in *MiningWatch Canada v. Canada*. The issue addressed in the decision was whether the environmental assessment track (screening or comprehensive study) is determined by the project as proposed by the proponent or by the discretionary scoping decision of the responsible authority.

The decision also addressed the issue of how this discretionary authority to establish the scope of the project is to be exercised.

The Court concluded that the project as proposed by the proponent determines the assessment type, and that the scope of project is at a minimum, the project as proposed by the proponent.

The Court also underscored the value of the cooperative assessment provisions set out in the *Canadian Environmental Assessment Act* (the Act), as the appropriate means to minimize duplication with provincial processes.

The Supreme Court of Canada decision provides clarity and will contribute to a more timely overall environmental assessment and regulatory process.

This Operational Policy Statement is structured to guide the reader through the process related to establishing scope of project for the purposes of environmental assessment, and sets out key roles and responsibilities. This statement sets a foundation for the conduct of both screenings and comprehensive studies, and will be supplemented by additional guidance on an as needed basis.



Application

This Operational Policy Statement replaces and supersedes all previous guidance documents released by the Canadian Environmental Assessment Agency on:

- how to establish the scope of the project to be assessed; and
- how to determine if the project is subject to the comprehensive study requirements of the Act.

The Operational Policy Statement applies to determining the scope of project for any project that may require an environmental assessment under the Act, and its regulations.

The Operational Policy Statement is primarily intended for responsible authorities¹. It also provides useful guidance for all other federal authorities, proponents, provinces and other interested parties involved in the environmental assessment process.

Principles

Decisions on the scope of project advance the purposes of the Act, i.e. the careful and precautionary identification of potential adverse environmental effects and means of mitigating them prior to final decision making, by a responsible authority that would enable a project to proceed in whole or in part. (See Annex 1)

¹ For the purpose of this Operational Policy Statement, the reference to responsible authorities is meant to also include any other authorities referred to in sections 8 to 10.1 of the Act, as well as the Minister of the Environment in the context of an assessment by a review panel.

Project scoping decisions are made in a manner that allows for the consideration of the adverse environmental effects that may be associated with a development proposal as described by the proponent.

Given the concurrent federal and provincial constitutional responsibilities towards the environment, including with respect to environmental assessment, inter-jurisdictional cooperation is essential to ensure that high-quality environmental assessments are conducted in a non-duplicative manner. In this regard, wherever possible, federal-provincial cooperative mechanisms must be used to conduct the required environmental assessment (see: *Operational Policy Statement – Use of Federal-Provincial Cooperation Mechanisms in Environmental Assessments pursuant to the Canadian Environmental Assessment Act*).

Approach

a) How to establish the scope of the project to be assessed

At the earliest opportunity after a proposal comes to the attention of a federal authority, the authority must determine based on the proponent's proposal and any other available information whether an environmental assessment is required. (See: *Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements*)

Federal authorities, individually or collectively, are encouraged to develop project description guidance to assist proponents in identifying the information they should submit in order to allow for a timely determination as to whether the Act applies. Where such guidance has already been developed (for example through the

major projects regulatory improvements initiative — *Guide to Preparing a Project Description for a Major Resource Project: Dec 2008*), federal authorities and proponents should rely on it.

To take maximum advantage of the opportunities provided in the legislation for inter-jurisdictional cooperation, all federal authorities with a strong possibility of a trigger are expected to adopt an “automatically in” approach with respect to their environmental assessment obligations, rather than delaying engagement until they have certainty that an environmental assessment will be required. [“In until out” or “automatically in” approach]

The scope of project to be assessed, to be established pursuant to section 15 of the Act, must include at a minimum, and will generally coincide with, the project as proposed by the proponent. However, in some cases, the responsible authority might have to, in accordance with subsections 15(2) and 15(3) of the Act, enlarge the scope based on the particular facts and circumstances of the project.

Subsection 15(2) grants discretion to the responsible authority to combine related proposed projects into a single project for the purposes of assessment. Subsection 15(3) provides that an environmental assessment of a physical work shall be conducted in respect to every “construction, operation, modification, decommissioning, abandonment or other undertaking” in relation to the project.

Subsections 15(2) and 15(3) constitute an exception to the proposition that the project to be assessed will generally be the project as proposed by the proponent.

The Act assumes that the project will be represented in its entirety. However, and as noted by the Supreme Court of Canada, were a proponent to engage in “project splitting” by representing part of the project as the whole, or proposing several parts of a project as independent projects, the responsible authority might have to include all parts of the project in the scope of the project to be assessed.

In determining whether a project scope should be expanded beyond the project as proposed by the proponent, responsible authorities should consider how the additional components are linked to the project as proposed by the proponent. Where these components are connected actions, for instance:

- where one is automatically triggered by another;
- where one cannot proceed without the other; or
- where both are part of a larger whole and have, if considered separately, no independent utility.

The project scope should generally be expanded to include any such additional component(s). In making a final determination in that regard, it will be important to work in cooperation with any other jurisdiction involved in the assessment (e.g., a province) to ensure that all the components that may have to be included in the scope of the project have been identified and considered.

Project phasing is a common phenomenon in sectors such as infrastructure. In phased projects, details and timing of future phases may not be available and some phases may never be built as originally conceived. In the assessment of these types of projects, future phases, unless these are connected actions,

should be scoped as separate projects, but considered as much as possible as part of the cumulative effects assessment, taking into account the information that is available with respect to the final project as a whole (i.e., all the phases).

Based on the approach recommended in the preceding paragraphs, responsible authorities are expected to agree upon a single scope of project to provide the basis for a single scope of assessment and a single federal assessment process. (See: *Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements*)

b) How to determine if the project is subject to the comprehensive study requirements of the Act

A project will be subject to the comprehensive study requirements of the Act in either of the two following circumstances:

- I. the project, as proposed by the proponent (or any part of it), is described in the comprehensive study list; or
- II. the project as proposed by the proponent is NOT described in the comprehensive study list but the project as scoped (or any part of it), taking into account additional elements added to the scope of the project pursuant to subsections 15(2) and 15(3), is described in the list.

(See: *Comprehensive Study List Regulations*)

c) Environmental Assessment Phase

Following the scope of project determination, subsequent decisions are

required on the factors to be considered and the scope of those factors (the scope of the assessment). The scope of assessment is established in accordance with requirements set out in section 16 of the Act. (See: *Operational Policy Statement – Establishing the Scope of the Environmental Assessment [currently under development]*)

d) Roles and Responsibilities

The following list focuses on certain roles and responsibilities and is not intended to be exhaustive.

Responsible Authority

- Apply the principle of “automatically in”
- Apply this Operational Policy Statement in determining the environmental assessment type under sections 18 and 21 of the Act
- Exercise responsibilities of Federal Environmental Assessment Coordinator as determined by the Act

Expert Federal Authority

- Provide advice, on request, to the responsible authority and provincial jurisdiction in conducting the assessment.

Canadian Environmental Assessment Agency

- Act as Federal Environmental Assessment Coordinator as determined by the Act
- Support the development of effective cooperative processes with other jurisdictions that advance the concept of one project-one environmental assessment
- Manage the environmental assessment process on behalf of the

responsible authorities for projects under the major projects regulatory improvements initiative.

The role of the Federal Environmental Assessment Coordinator is to coordinate the participation of responsible and federal authorities in the environmental assessment process, and to facilitate cooperation among them, and with provinces and other participants.

Annex

Role of Scoping

Reaching a scoping decision pursuant to section 15 of the Act has historically been difficult and time consuming, particularly with respect to certain regulatory triggers. Scoping is a critical phase in the environmental assessment process. It serves to directly focus the environmental assessment and supports the subsequent analysis of environmental effects and the preparation of the environmental assessment report. Establishing the scope of the project is the first step in the scoping exercise.

Effective scoping early in the project planning stage significantly enhances the ability of the federal government to cooperate with provinces and minimize duplication. It can improve the efficiency, predictability and timeliness of the assessment and promote sound decision making by:

- ensuring the assessment focuses on the relevant issues and concerns;
- helping identify federal authorities and other jurisdictions that may need to be involved in the environmental assessment;
- enabling and supporting federal-provincial cooperation in the delivery

of the environmental assessment, in order to achieve the objective of “one project-one assessment”;

- helping to identify whether there are likely to be public concerns that need to be addressed in the environmental assessment;
- establishing, for all participants in the process, clear boundaries for the environmental assessment; and
- helping determine the appropriate level of effort for the environmental assessment.

Related Guidance

- *Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements* (<http://laws.justice.gc.ca/en/c-15.2/sor-97-181/index.html>)
- *Federal Coordination: An Overview* (http://www.ceaa-acee.gc.ca/Content/D/A/C/DACB19EE-468E-422F-8EF6-29A6D84695FC/Federal-Coord-Overview_e.pdf)
- *Federal Coordination: Identifying Who's Involved* (http://www.ceaa-acee.gc.ca/Content/D/A/C/DACB19EE-468E-422F-8EF6-29A6D84695FC/Federal-Coord-Identifying_e.pdf)

Additional Information

For more information on this OPS or on the requirements of the Act, please contact the Agency office in your region.

Head Office:

<http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=16C9C18C-1>

Regional Offices:

<http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=12D96EC7-1>

Additional Agency policies and guidance can be found on the Agency's Web site at:

<http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=D75FB358-1>

Disclaimer

This guide is for information purposes only. It is not a substitute for the Act or any of its regulations. In the event of any inconsistency between this guide and the Act or regulations, the Act or regulations, as the case may be, would prevail.

To ensure that you have the most up-to-date versions of the Act and regulations, please consult the Department of Justice Web site at <http://laws.justice.gc.ca>.

Updates

This document may be reviewed and updated periodically by the Canadian Environmental Assessment Agency (the Agency). To ensure that you have the most up-to-date version, please consult the Guidance Materials page of the Agency's Web site at <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=DACB19EE-1>.

Copyright

© Her Majesty the Queen in Right of Canada, 2010.

This publication may be reproduced for personal or internal use without permission, provided the source is fully acknowledged. However, multiple copy reproduction of this publication in whole or in part for purposes

of distribution requires the prior written permission from the Minister of Public Works and Government Services Canada, Ottawa, Ontario K1A 0S5 or copyright.droitdauteur@pwgsc.gc.ca.

Catalogue No.: 978-1-100-14991-2
ISBN: En106-88/2010E-PDF

This document has been issued in French under the title: *Énoncé de politique opérationnelle Établissement de la portée du projet et du type d'évaluation en vertu de la Loi canadienne sur l'évaluation environnementale*

Alternative formats may be requested by contacting: publications@ceaa-acee.gc.ca.

Comments and Feedback

The Agency would appreciate receiving comments on the content of this guide and feedback regarding whether the guidance effectively meets your needs. Comments received will be considered for future updates.

Please submit your comments to training_formation@ceaa-acee.gc.ca.