

## Summary of the Commercial Agreements

### Note to Reader

This summary of the various formal agreements comprising the Nalcor Transactions is intended to provide the reader with a non-technical overview of those agreements, and is not intended to include each and every aspect of them. The summaries are not intended as a primary or complete source of information concerning any of the agreements, for which the reader is encouraged to review the full text of the agreement.

The Sanction agreement was executed December 17, 2012. Changes to the terms of some of the original 13 agreements as a result of the Sanction agreement are reflected in the relevant summaries.

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## 1. Maritime Link Joint Development Agreement (ML-JDA)

**Parties:** Emera Inc. and Nalcor Energy

**Term:** The Agreement commences on July 31, 2012 and, subject to early termination in certain circumstances, terminates one year after the commercial operation date.

**Synopsis:** Governs the sanction, design, engineering, construction and ownership of the Maritime Link.

**Effect of Sanction Agreement:** The Maritime Link was sanctioned by Emera and Nalcor pursuant to the Sanction Agreement entered into by the parties on December 17, 2012. The Sanction Agreement amends the Formal Agreements and particularly the ML-JDA such that obligations of the parties or events stated to occur at or prior to sanction of the Maritime Link will now occur at or prior to the **Financial Conditions Resolution Date (FCRD)**, as that term is defined in the Sanction Agreement, with certain exceptions. The Sanction Agreement also provides that Sections 5.2(f)-(h), 5.5(b)-(h), 5.7 and 8.6 of the ML-JDA will be deleted.

### **Key Terms:**

#### *Project and Ownership*

- The Maritime Link shall consist of facilities for converting and transmitting energy and capacity from Newfoundland and Labrador to Cape Breton Island, Nova Scotia. It will be designed, engineered and constructed to have a capacity of 500 megawatts and an initial service life of 50 years. [s. 2.1(a), page 26]
- The design criteria and the description of the Maritime Link (Schedule 1 to the ML-JDA) shall form the basis for the development of the Maritime Link, subject to amendments agreed by the parties prior to sanction, and changes approved by the joint development committee for the Maritime Link (referred to as the **JDC-ML**) by way of revisions to the basis of design and applicable project execution plans; provided that no such revisions may be made that would result in the Maritime Link having a capacity of less than the capacity specified in the basis of design as at the time of sanction by both parties (now FCRD) or an initial service life of less than that confirmed or modified by the JDC-ML as of first commercial power. [s. 2.1(a), page 26]
- Emera will own, maintain and be responsible for the capital, operating and maintenance costs of the Maritime Link NL AC facilities. The NL System Operator shall have operational control of the Maritime Link NL AC facilities and Maritime Link NL HVdc facilities. [s. 2.1(b), (d) and (e), pages 26-27]
- Newfoundland and Labrador Hydro will own and maintain the NLH AC upgrades. Emera will be responsible for the capital costs of the NLH AC upgrades and for the incremental operating and maintenance costs, only to the extent that such costs are directly attributable to and required for the interconnection of the Maritime Link with the transmission system on the island portion of NL. [s. 2.1(c), page 26]

- Emera may, at its cost, develop the Maritime Link with additional capacity, subject to approval from the JDC-ML. The transmission rights associated with such additional capacity will be owned by Nalcor. [s. 2.1(h), pages 27-28]

### *Fundamentals of Transaction*

- If both Nalcor and Emera proceed with the construction of the Maritime Link, Emera shall pay the costs of, and own, the Maritime Link, and provide Nalcor with transmission capacity in the Maritime Link and the Nova Scotia transmission rights, in exchange for which Emera shall be entitled to receive the Nova Scotia Block for a term of 35 years from first commercial power. [s. 2.2(a) and 8.2, pages 28 and 58]
- If the estimated capital costs at sanction by both parties vary from 20% of the estimated capital costs of the **Defined Assets** (being the Muskrat Falls Plant, Labrador-Island Link, Labrador Transmission Assets and Maritime Link), the parties will make adjustments as provided for in Section 3(e) of the Sanction Agreement. [s. 2.2(b), page 28, as modified by the Sanction Agreement]

### *Joint Development Committee and Project Management*

- The JDC-ML will be responsible for reviewing and approving recommendations of the project manager and project director with respect to the development activities regarding the Maritime Link. [s. 3.4(a), pages 31-32]
- Nalcor shall appoint the project director and define the duties, responsibilities and accountabilities of that role. [s. 4.2, page 35]
- Emera shall appoint the project manager, who will report to the project director. The project manager will have expenditure approval authority up to a level commensurate with project managers for the Muskrat Falls Plant and Labrador-Island Link projects. [s. 4.3(a) and (b), page 36]
- The project manager, in consultation with the project director and with the approval of the JDC-ML, where required, shall have responsibility and authority for managing development activities to be carried out by Emera and the Maritime Link project team, provide regular reports to the JDC-ML regarding the Maritime Link project and development activities, and be responsible for preparing and filing all reports, records and information required by law in respect of the Maritime Link project. [s. 4.3(c) and 4.5, pages 36-38]
- The JDC-ML shall attempt to reach consensus on all matters coming before it. When the JDC-ML cannot reach consensus on a matter within 15 days, the matter shall be considered for referral, but in no circumstances shall it go beyond 30 days (unless both parties agree to extend that period), before it is referred to the CEOs of the parties to reach consensus. [s. 3.2(a), page 29]
- If the CEOs are unable to reach a consensus decision within 7 days of the matter being referred to them (unless both CEOs agree to extend that period), then the CEO of Nalcor shall make the final decision (referred to as a **Nalcor CEO Decision**). A Nalcor CEO Decision is required to:
  - fulfill only the basis of design and scope of the Maritime Link project at the time of sanction (now Financial Conditions Resolution Date) by both parties;

- reflect prudent front-end loading criteria, construction, installation and operating criteria in accordance with normal practice in the industry in Canada;
- conform with the standard of care normally practice in the industry in Canada; and
- conform with guidelines required by any marine warranty surveyor appointed by insurers. [s. 3.2(b), pages 29-30]
- If a Nalcor CEO Decision is not made in compliance with the above guidelines, Nalcor shall be responsible for any unapproved overrun and any additional costs of operating and maintaining the Maritime Link during the term of the Joint Operations Agreement that will be incurred by Emera and not recovered by Emera from NS ratepayers, to the extent resulting from the failure of a Nalcor CEO Decision to comply with the decision guidelines. [s. 3.2(e), page 30]
- Any claim made by Emera regarding a non-compliant Nalcor CEO Decision shall be resolved pursuant to the dispute resolution procedure. [s. 3.2(f), page 30]
- If the JDC-ML fails to reach consensus on the initial service life of the Maritime Link as at sanction by both parties or as at first commercial power, such matter shall not be referred to the CEOs of the Parties, but shall be determined by expert determination in accordance with the dispute resolution procedure. [s. 3.2(g), page 30]

#### *Pre-Sanction Development Activities*

- Planned development activities after the effective date of the ML-JDA and prior to sanction of the Maritime Link by both Nalcor and Emera (now FCRD) and the estimated capital costs of those activities are described in the pre-sanction work program and budget. The pre-sanction work program and budget also describes the activities of the joint land acquisition team and the activities of the parties with respect to regulatory approvals required to be carried out prior to sanction. [s. 5.1(a) and (c), pages 41-42]
- Prior to the anticipated date for sanction by both parties (now FCRD), the project manager, in consultation with the project director, shall prepare and submit a recommended authority for expenditure for post-sanction development activities for the Maritime Link and the related budget to the JDC-ML for approval. [s. 5.4(a), pages 43-44]

#### *Financial Arrangements Relating to Sanction*

- Prior to sanction of the Maritime Link (now FCRD), each party shall be responsible for its own pre-sanction costs. If both parties sanction, Emera will be responsible for 100% of actual capital costs and financing costs. At Emera sanction (now FCRD), Emera shall reimburse Nalcor for 100% of previously incurred costs and Nalcor's pre-sanction costs in respect of the Maritime Link. [s. 8.1(a) and 8.2(a) and (b), pages 57-58]
- If the Maritime Link is not built in accordance with the provisions of the Sanction Agreement, the parties shall recover and dispose of as much of the project assets as can economically and reasonably be recovered, and the net costs or proceeds will be charged or credited to the parties in proportion to the amount such party contributed to the capital costs then incurred. Each party shall be responsible for 50% of the third party pre-

sanction costs and non-cancellable third party costs committed but unpaid in respect of the Maritime Link. [s. 8.7(b) and (c), page 62]

*Project Contracts*

- Each party has agreed to comply with the NL-NS Benefits Agreements in its development activities. [s. 7.4(b), page 52]
- Project contracts will be open to competitive bidding in accordance with established policies, unless otherwise agreed by the parties, but will always be subject to UARB requirements. [s. 7.6, page 54]
- The project manager will be responsible for implementing an industry standard procurement policy and contracting practices to ensure project interests are protected and best value achieved. [s. 7.7, pages 54-55]

*Extended Force Majeure*

- If Emera has given notice of a force majeure event which prevents Emera from proceeding with all or a material portion of the development activities, there are no commercially reasonable means to rectify the consequences of such force majeure event within 36 months and the period of force majeure extends for more than 36 months, either party may elect on 60 days' notice to terminate the Agreement, without liability. If the consequences of force majeure can be rectified and Emera is proceeding with measures to rectify the consequences, the force majeure period shall be extended by such period as is required for Emera to complete such measures. [s. 11.3, page 77]

## 2. Energy and Capacity Agreement (ECA)

**Parties:** Emera Inc. and Nalcor Energy

**Term:** The initial term of the Agreement commences on first commercial power and, subject to extension or early termination in certain circumstances, terminates 35 years from that date. The Agreement provides a framework for the parties to negotiate the terms and conditions for subsequent terms.

**Synopsis:** Provides for the delivery of the Nova Scotia Block by Nalcor to Emera. Emera shall receive the Nova Scotia Block in exchange for paying for, engineering, constructing, maintaining and owning the Maritime Link.

### **Key Terms:**

#### *Nova Scotia Block*

- Title and ownership relating to the energy sold by Nalcor to Emera will pass from Nalcor to Emera at Woodbine, Nova Scotia. [s. 2.1(a), page 21]
- Emera shall own the greenhouse gas credits related to the Nova Scotia Block; all other credits associated with greenhouse gas emissions will be owned by Nalcor. [s. 2.3(a), page 22]
- If Emera requires long term energy and/or capacity in addition to the Nova Scotia Block to serve NS Native Load Customers and Nalcor makes such energy and/or capacity available to Emera, the parties shall negotiate to reach commercial agreements on terms mutually acceptable to the parties. [s. 2.6, page 23]

#### *Subsequent Terms*

- The parties shall complete a service life study of the Maritime Link not later than 5 years before the end of the initial term and eighteen months before the end of any subsequent term. If Emera wishes to purchase of annual amount of energy up to the Nova Scotia Block for each year of a subsequent term, and Nalcor does not require all of such energy to meet the NL Load Forecast, the parties shall negotiate the terms and conditions upon which Nalcor would continue to sell and deliver energy to Emera during such subsequent term. [s. 2.7(a) and (b), page 23]

#### *Construction of Muskrat Falls Plant and Labrador-Island Link*

- Nalcor is responsible for ensuring that the Muskrat Falls Plant, upgrades to the Island Interconnected System and the Labrador-Island Link are designed, engineered, constructed completed using good utility practice so as to be capable of delivering the Nova Scotia Block. [s. 4.1(a), page 29]

#### *Energy Before First Commercial Power*

- If the Muskrat Falls Plant is producing energy and, if available, capacity, and the Labrador-Island Link and Labrador Transmission Assets are commissioned, Nalcor shall have no obligation to Emera with respect to such energy before the Maritime Link commercial operation date. [s. 4.1(b)(i), page 29]
- After the Maritime Link commercial operation date, Nalcor may deliver preliminary energy to NLH to satisfy the NL Native Load and may produce energy from the Muskrat Falls Plant to produce stored energy, but shall not sell preliminary energy in any manner unless it has first given Emera the option to purchase such energy. [s. 4.1(b)(ii), pages 30-31]

*Failure to Deliver or Accept – Forgivable*

- Nalcor shall deliver at a later date all or any portion of the Nova Scotia Block that is not delivered or accepted by reason of a forgivable event (referred to as **Block A Undelivered Energy**) in accordance with the Nova Scotia Block energy management schedule (Schedule 5 to the ECA). A forgivable event consists of a force majeure event, a planned maintenance period, a safety event or an action required to be taken by a party to comply with good utility practice. [s. 8.3, page 39]

*Failure to Deliver – Curable*

- If Nalcor fails to deliver any portion of the Nova Scotia Block for any reason other than a forgivable event (referred to as **Block B Undelivered Energy**), Nalcor shall compensate Emera as liquidated damages the amount of energy calculated as either 120% of the market price equivalent energy or 120% of the marginal cost energy, as selected by Emera, which in either case shall not be less than the Block B Undelivered Energy (such energy being referred to as **Compensation Energy**). Nalcor shall provide Emera with greenhouse gas credits that would have been provided had the Block B Undelivered Energy been delivered as scheduled. [s. 8.4(a) and (b), page 39]
- If Nalcor has not delivered any Block A Undelivered Energy or Compensation Energy required to be delivered prior to the expiry of the initial term, the initial term shall be extended for so long as is necessary for Nalcor to deliver the remaining Block A Undelivered Energy and Compensation Energy. [s. 8.5(a), page 40]
- If the parties determine that the delivery of Compensation Energy cannot be made within one year from the date it should have been delivered, Emera has the option to convert such Compensation Energy into a monetary amount by:
  - multiplying the estimated average market MWh cost by 120% of the market price equivalent energy; or
  - multiplying the estimated average marginal MWh cost by 120% of the marginal cost energy. [s. 8.4(c), pages 39-40]

*Failure to Deliver – Not Curable*

- If Nalcor does not comply with its obligations to deliver the Nova Scotia Block in accordance with the ECA:
  - for any reason (other than a forgivable event) which is not cured within 24 months, Emera shall have the option to claim damages as outlined above or deem such non-delivery a compensation event;
  - by reason of a government action, Emera shall have the option to deem such default to be a compensation event; and
  - because all or a material portion of the Labrador-Island Link development activities or Muskrat Falls Plant development activities discontinue or cease for a single continuous period of more than 120 days, such discontinuance or cessation shall constitute a compensation event. [s. 8.6(a), pages 40-41]
- If a compensation event occurs, Emera may require Nalcor to pay compensation damages. Damages can be paid in one of the following three alternatives, as selected by Nalcor:
  - Nalcor shall provide Emera with an amount of energy and capacity equal to the amount of the Nova Scotia Block remaining to be delivered at the time of the compensation event, which energy has equivalent characteristics to the Nova Scotia Block (including firmness and greenhouse gas reductions), in accordance with the Nova Scotia Block delivery schedule (set out in Schedule 5);
  - Nalcor shall provide Emera with an amount of energy and capacity equal to the amount of the Nova Scotia Block remaining to be delivered at the time of the compensation event, which energy does not have all of the equivalent characteristics of the Nova Scotia Block, in accordance with the Nova Scotia Block delivery schedule, and Nalcor shall be liable to Emera in damages for a monetary amount equal to the net present value of the unprovided characteristics; or
  - if Nalcor does not elect to provide Emera with the entire amount of the undelivered Nova Scotia Block, Nalcor shall pay Emera an amount equal to the net present value of the costs Emera would have to incur, consistent with the least cost option which is consistent with good utility practice, to either acquire from third parties and then deliver to the NS transmission system or take steps to generate or cause to be generated energy and capacity equal to the undelivered Nova Scotia Block with equivalent characteristics, less the net present value of the Maritime Link operating and maintenance costs that would have been payable by Emera had the Nova Scotia Block been delivered under the ECA. [s. 8.6(b), pages 41-42]

*Curtailment*

- If the Muskrat Falls Plant is unable to generate its full rated capacity in any hour because of a forgivable event, energy deliveries in respect of all non-firm or interruptible sales shall be curtailed first, and, to the extent that those curtailments are insufficient to resolve a shortage in available energy, energy deliveries in respect of all firm or non-interruptible sales from the Muskrat Falls Plant, including those in respect of the servicing of the Nova



Scotia Block and NL Native Load and any other firm or non-interruptible commitments by Nalcor, shall be curtailed next on a pro rata basis. [s. 10.2, page 49]

- If the Nova Scotia Block cannot be delivered because of a forgivable event affecting the Labrador-Island Link, the Island Interconnected System or the Labrador Transmission Assets, the NL System Operator shall curtail energy on the basis that the energy transmitted for the Nova Scotia Block, firm point-to-point transmission service and NL Native Load will be curtailed on a pro rata basis. [s. 10.3(b), page 49]
- If the Nova Scotia Block cannot be delivered because of a forgivable event affecting the Maritime Link or the NS transmission system, the applicable System Operator shall curtail energy transmitted on the Maritime Link on the basis that energy transmitted for the Nova Scotia Block and for firm point-to-point transmission service will be curtailed on a pro rata basis. [s. 10.3(c), page 49]

#### *Extended Force Majeure*

- If a party has given notice of a force majeure event which prevents Nalcor from delivering all of the remaining undelivered Nova Scotia Block, there are no commercially reasonable means to rectify the consequences of such force majeure event within 36 months and the period of force majeure extends for more than 36 months, either party may elect on 60 days' notice to terminate the Agreement, without liability. If the consequences of force majeure can be rectified and a party is proceeding with measures to rectify the consequences, the force majeure period shall be extended by such period as is required for the party to complete such measures. [s. 6.3, page 36]

### 3. Maritime Link (Nalcor) Transmission Service Agreement

**Parties:** Emera Inc. and Nalcor Energy

**Term:** The agreement commences on July 31, 2012 and, subject to early termination in certain circumstances, terminates on the expiry of the initial service life of the Maritime Link (as set out in the Maritime Link – Joint Development Agreement).

**Synopsis:** Provides for the provision of transmission rights by Emera to Nalcor over the Maritime Link to allow for the transmission by Nalcor of energy and capacity other than the Nova Scotia Block.

**Key Terms:**

*Energy and Capacity to Be Transmitted*

- The transmission service to be provided to Nalcor pursuant to the Agreement is in the amount of the bi-directional transmission capacity of the Maritime Link (currently estimated to be 500 MW) less the uni-directional transmission capability of the Maritime Link to be utilized for the transmission of the Nova Scotia Block pursuant to the Maritime Link (Emera) Transmission Service Agreement. [s. 2.4, pages 15-16]
- Available transmission services are categorized as “Firm”, “Conditional Firm” and “Non-Firm”. This categorization is primarily relevant to curtailment. [s. 2.6, 2.7 and 3.3, pages 16–23]
- Maximum Firm transmission capacity is available as follows:
  - Southerly Flow: Firm transmission is calculated as the Maritime Link transmission capacity less (i) the Firm reservation required for the transmission of the Nova Scotia Block and (ii) 50% of the Maritime Link transmission capacity.
  - Northerly Flow: Up to a maximum of 100% of the Maritime Link transmission capacity for this direction. [s. 2.7, pages 16-17]
- Conditional Firm transmission is available for 50% of the Maritime Link transmission capacity. [s. 2.8, page 17]
- Other than nominal consideration, no additional consideration is payable under this Agreement for the provision of the Firm and Condition Firm transmission service. [s. 3.2, page 19]

*Curtailment*

In the event curtailment is required, curtailment is to be made as follows:

- First, to any Non-Firm reservations,
- Second, to any Conditional Firm reservations,
- Third, to Firm reservations (including reservations made in respect of the Nova Scotia Block under the Maritime Link (Emera) Transmission Service Agreement) on a pro rata, non-discriminatory basis. [s. 3.3(f), page 21]

*Other Matters*

The Agreement provides for the provision of ancillary services, procedures for the suspension of the transmission service for reliability reasons, the posting of transmission availability and other terms and conditions generally applicable to the provision of transmission services.

#### **4. Maritime Link (Emera) Transmission Service Agreement**

**Parties:** Emera Inc. and 3264956 Nova Scotia Limited (an affiliate of Emera)

**Term:** The agreement commences on July 31, 2012 and, subject to early termination in certain circumstances, terminates on the expiry of the initial term or any subsequent term of the Energy and Capacity Agreement.

**Synopsis:** Provides for the provision of transmission rights over the Maritime Link in respect of the Nova Scotia Block.

**Key Terms:**

*Energy and Capacity to Be Transmitted*

- The Agreement provides for a Firm point-to-point transmission service necessary for the transmission of the Nova Scotia Block over the Maritime Link. [Article 2, pages 15-16]
- Other than nominal consideration, no additional consideration is payable under this Agreement for the provision of the Firm transmission service. [s. 3.2, page 16]

*Curtailment*

The curtailment provisions of the Agreement mirror those of the Maritime Link (Nalcor) Transmission Service Agreement. Curtailment of the transmission service is to be pro rata with the Firm portion of the transmission service available to Nalcor under the Maritime Link (Nalcor) Transmission Service Agreement. [s. 3.3(f), pages 18-19]

*Other Matters*

The Agreement provides for the provision of ancillary services, procedures for the suspension of the transmission service for reliability reasons, the posting of transmission availability and other terms and conditions generally applicable to the provision of transmission services.

## 5. Nova Scotia Transmission Utilization Agreement (NSTUA)

**Parties:** Emera Inc. and Nalcor Energy

**Term:** The Agreement commences on July 31, 2012 and, subject to the terms of the Sanction Agreement or early termination in specific circumstances, terminates on the earlier of (a) a decision not to proceed with the Maritime Link project after the Financial Conditions Resolution Date (as defined in the Sanction Agreement) or (b) the expiration of (i) the initial term and any subsequent term of the ECA, (ii) the initial term of the ECA and supplemental term of the Agreement, or, (iii) if there is no subsequent term or supplemental term, the initial term of the ECA.

**Synopsis:** Governs the commitments by Emera to schedule and transmit energy for Nalcor from Woodbine, Nova Scotia to the Nova Scotia – New Brunswick border.

### **Key Terms:**

#### *Provision of Transmission Facilitation Service*

- Emera shall schedule and transmit (or cause to be scheduled and transmitted) energy and capacity in the amount of the quantities nominated by Nalcor (referred to as **NS Nominated Transmission Quantity**) from Woodbine, Nova Scotia to the Nova Scotia – New Brunswick border (referred to as the **Transmission Facilitation Service**) [s. 2.1, page 19]
- Subject to an upgrade to the Nova Scotia transmission system, the maximum amount of energy that may be scheduled by Nalcor shall be the lesser of:
  - the Maritime Link design capacity less the transmission capacity on the Maritime Link required by Nalcor to deliver the Nova Scotia Block and any other energy or capacity which Nalcor has agreed to sell to Emera over the Maritime Link; and
  - the expected transmission capacity requirements set forth in Section 2.1(b) of the Agreement, subject to adjustment with sufficient notice. [s. 2.1(a), page 19]
- Emera shall provide the Transmission Facilitation Service solely to enable Nalcor to deliver the NS Nominated Transmission Quantity in one direction from Woodbine, Nova Scotia to the Nova Scotia-New Brunswick border. [s. 2.1(c), page 20]
- Emera shall cause the effect of curtailment on the transmission of the NS Nominated Transmission Quantity to be as follows:
  - any interruptible customers will be interrupted prior to any curtailment of the NS Nominated Transmission Quantity;
  - amounts of energy above 80 MW will be curtailed next, as if such energy was transmitted pursuant to a non-firm point-to-point transmission service reservation under the NSPI Open Access Transmission Tariff (referred to as the **NS OATT**); and
  - up to 80 MW of the NS Nominated Transmission Quantity will be curtailed next, pro rata with, and as if it was transmitted pursuant to a firm point-to-point transmission service under the NS OATT. [s. 2.1(d), pages 20-21]

### *Extension of Agreement*

- If the parties have agreed to enter into a subsequent term pursuant to the ECA, the Agreement shall be extended during the subsequent term, and Emera shall continue to provide Nalcor with the Transmission Facilitation Service in accordance with the terms and conditions of the Agreement. [s. 2.4, page 29]
- If the parties have not agreed to enter a subsequent term following the initial term pursuant to the ECA, Nalcor may exercise the option to renew the Agreement for 15 years on the terms contained in the Agreement (referred to as the **Supplemental Term**). The maximum transmission level that was in effect at the end of the initial term shall apply during the Supplemental Term, subject to any increase resulting from an upgrade. [s. 2.5, page 29]

### *Variation to Forward Supplemental Term Schedule and Upgrades*

- Not later than 20 days prior to any month of the Supplemental Term, Nalcor may provide Emera with an estimate of its transmission capacity requirements that are in addition to those specified in the 24 month forward schedule. If the additional transmission capacity is available without requiring construction of an upgrade to the NS transmission system, Nalcor may schedule such capacity in accordance with the scheduling protocol (Schedule 2 to the Agreement). [s. 2.3(b)(v)(A) and (B)(1), page 24]
- If such capacity would require an upgrade to the NS transmission system, Nalcor has the option to schedule the maximum amount of transmission capacity that can be provided without triggering the need for an upgrade. If Nalcor requires additional capacity, it shall provide Emera with adequate notice (which may be as long as 7 years) to allow Emera to plan and build any necessary upgrade to the NS transmission system necessary to allow it to provide the Transmission Facilitation Service and such additional capacity. [s. 2.3(b)(v)(B)(2), page 25]
- The cost of such upgrades will be paid by Nalcor to Emera in equal monthly instalments over the remainder of the Supplemental Term, commencing on the in-service date of the upgrades, whether or not Nalcor actually schedules any energy subsequent to that date. If the tariff charges payable by Nalcor increase as a result of the upgrade, the total upgrade charge shall be reduced by an amount equal to the incremental increased tariff charge. [s. 2.3(b)(ix), page 27]

### *Payment for Transmission Facilitation Service*

- Nalcor will only pay the applicable tariff charges in respect of the Transmission Facilitation Service, which during the initial term and any subsequent term will be the weekly, monthly, yearly or daily proxy rate, depending on the duration of the forward schedule submitted by Nalcor. The proxy rates will be calculated in accordance with the applicable delivery charge set out in Schedule 7 to the NS OATT in effect at the time. [s. 2.3(a) and (b)(vii), pages 23 and 26]
- Nalcor will pay applicable supplemental term tariff charges during each month of the Supplemental Term, which will be calculated as follows:

- if the forward Supplemental Term schedule then in effect provides for the nomination of amounts that are equal to or greater than amounts associated with the corresponding months in the last year's schedule, Nalcor shall pay the greater of:
  - the yearly proxy rate times the total MWh nominated in respect of the applicable month; or
  - the yearly proxy rate times the total actual MWh transmitted by Emera on behalf of Nalcor during the applicable month; [2.3)(b)(viii)(A), page 26]
- if the forward Supplemental Term schedule then in effect provides for the nomination of amounts of energy in any month that are less than the amounts associated with the corresponding month in the last year's schedule, Nalcor shall pay the greater of:
  - the peak hourly proxy rate times the number of total MWh nominated in respect of the applicable month; or
  - the peak hourly proxy rate times the total actual MWh amount of energy transmitted by Emera on behalf of Nalcor during the applicable month. [s. 2.3(b)(viii)(B), page 26]

### *Redispatch*

- To the extent required in order to provide the Transmission Facilitation Service, Emera shall modify the dispatch patterns of facilities, equipment and other assets owned by it and required to provide the Transmission Facilitation Service (referred to as the **Emera Facilities**), in order to alleviate transmission constraints on the NS Transmission System that would otherwise prevent the NS Nominated Transmission Quantity from being scheduled and delivered (referred to as **Redispatch**). Emera is not obligated to Redispatch to alleviate any constraints caused by forgivable events. A forgivable event consists of a force majeure event, a planned maintenance period, a safety event or an action required to be taken by a party to comply with good utility practice. [s. 2.2(e) and (f), page 22]
- If Emera is in default of its obligation to schedule or Redispatch, Emera shall compensate Nalcor as liquidated damages an amount calculated by multiplying the amount of energy not scheduled by one of the following alternatives, as selected by Nalcor:
  - 120% of the reference day ahead price for the applicable hours at the ISO-New England Salisbury node; or
  - 120% of the price per MWh for energy calculated in accordance with a model based on the combined capital and operating costs for a new combined gas fired generation plant; less
  - the value of unscheduled energy that is either sold to any other party, including Nalcor or Newfoundland and Labrador Hydro, or if converted to stored energy, when it is sold. [s. 8.5(a), pages 44-45]
- The compensation value shall be less all transmission charges that would have been payable by Nalcor. [s. 8.5(b), page 45]

### *Compliance with NS OATT*

- Except in respect of transmission service obtained by Nalcor from an application to the NS System Operator for transmission service from Woodbine, Nova Scotia to the Nova Scotia – New Brunswick border, the execution and implementation of the Agreement will not result in the classification of Nalcor as a “Transmission Customer” under the NS OATT. [s. 2.6(a), page 29]
- Emera shall comply with the NS OATT in providing the Transmission Facilitation Service. If there is any conflict between the provisions of the Agreement and the NS OATT, for the purposes of the interpretation and implementation of the Agreement, the provisions of the Agreement shall prevail. [s. 2.6(b) and (c), pages 29-30]

#### *Back-up Capacity Service*

- If Nalcor requests that Emera provide back-up capacity to support the portion of energy that is treated as if it is being transmitted under the NS OATT using non-firm point-to-point transmission, Emera shall apply to the UARB for approval to establish a back-up capacity rate structure and tariff. The application will include provisions for:
  - recovery of fixed operating costs if the capacity is provided from facilities in NS owned by Emera at the time of the application, or fixed operating and capital costs for new facilities or upgrades, for periods when Nalcor requests the back-up capacity (whether or not it actually calls upon delivery of it); and
  - the actual variable costs to produce the back-up capacity plus the variable capital contribution and margin applicable during periods when Nalcor actually calls upon delivery of the back-up capacity. [s. 2.10, pages 30-31]

#### *Inability to Perform and Extended Force Majeure*

- Emera will not be in breach of, and shall not be liable to Nalcor for any losses under the Agreement as a result of interruption to, or non-provision of, the Transmission Facilitation Service that is caused by a forgivable event affecting the Emera Facilities. [s. 2.7, page 30]
- If Emera has given notice of a force majeure event which prevents Emera from providing all of the Transmission Facilitation Service, there are no commercially reasonable means to rectify the consequences of such force majeure event within 36 months and the period of force majeure extends for more than 36 months, either party may elect on 60 days’ notice to terminate the Agreement, without liability. If the consequences of force majeure can be rectified and Emera is proceeding with measures to rectify the consequences, the force majeure period shall be extended by such period as is required for the party to complete such measures. [s. 6.3, pages 40-41]



## 6. New Brunswick Transmission Utilization Agreement

**Parties:** Nalcor Energy and Emera Inc.

**Term:** The agreement commences on July 31, 2012 and, subject to early termination in certain circumstances, terminates on the 50<sup>th</sup> anniversary of first commercial power on the Maritime Link or, if the Maritime Link does not proceed in accordance with the Sanction Agreement but Emera maintains its investment in the Labrador-Island Link, first commercial power on the Labrador-Island Link.

**Synopsis:** Provides for the provision of a transmission service by Emera to Nalcor through New Brunswick utilizing rights held by Emera's subsidiary, Bayside Power L.P. (referred to as the **Bayside Rights**), or, after March, 2026, equivalent rights to the Bayside Rights. The Bayside Rights consist of transmission rights between 220 and 260 MW available between April and October, inclusive.

### **Key Terms:**

*Rights during the "First Term" (From first commercial power to March 31, 2026)*

- During each Summer Period (April – October), Nalcor may at its option require Emera to (i) assign all or a portion of the Bayside Rights to Nalcor, and/ or (ii) provide Nalcor with the use of the Bayside Rights. [s. 2.1(b); page 16]
- To facilitate its use of the Bayside Rights, Nalcor may direct Emera to do such things as exercise available renewal rights and request the redirection of the point of receipt of the Bayside Rights to the NS-NB border. [s. 2.2; page 17]
- If the Bayside Rights are not renewed following the expiry of their initial term on March 31, 2021, Emera will provide Nalcor with rights on terms equivalent to the Bayside Rights during the last 5 years of the First Term (i.e. to March 31, 2026). [s. 2.1(c); page 16]
- Nalcor will pay Emera for the transmission service used by it based on tariff charges set out in the NB OATT. [s. 5.3; pages 23-24]
- Backstop Rights: If Emera does not provide the Bayside Rights or equivalent rights to Nalcor during the First Term for any reason other than force majeure, Nalcor may, subject to certain conditions, require Emera either (i) to purchase Energy and/or Capacity from Nalcor at the Delivery Point at Woodbine, NS, or (ii) to purchase Energy and/or Capacity from Nalcor at the NS-NB border and resell such Energy and/or Capacity to Nalcor at the NB-Maine border. Pricing is based on Day-Ahead Prices at the ISO-NE Salisbury pricing node less transmission charges. [s. 2.3-2.4; pages 17-19].

*Rights during the "Subsequent Term" (April 1, 2026 – 50<sup>th</sup> anniversary of first commercial power)*

- During the Subsequent Term, Emera shall, at Nalcor's option, either (i) provide to Nalcor equivalent rights to the Bayside Rights or (ii) if Emera has proceeded to construct a 345-

kV transmission line through NB, provide Nalcor with transmission rights in the transmission line.

## 7. MEPCO Transmission Rights Agreement

**Parties:** Nalcor Energy and Emera Inc.

**Term:** The agreement commences on July 31, 2012 and, subject to early termination in certain circumstances, terminates on the 50<sup>th</sup> anniversary of first commercial power on the Maritime Link or, if the Maritime Link does not proceed in accordance with the Sanction Agreement but Emera maintains its investment in the Labrador-Island Link, first commercial power on the Labrador-Island Link.

**Synopsis:** Provides for the provision of transmission rights by Emera to Nalcor under certain grandfathered transmission rights granted by the Maine Electric Power Company (the **MEPCO Transmission Rights**). The MEPCO Transmission Rights provide for transmission priority as set out in the ISO-NE OATT for transmission of up to 300 MW from the NB-Maine border into New England.

### **Key Terms:**

- Nalcor may at its option require Emera to assign all or a portion of the MEPCO Transmission Rights to Nalcor, either absolutely or for a set time period. [s. 2.3(a) and (b); page 13]
- In the case of an absolute assignment, Nalcor will assume the payment obligations associated with the MEPCO Transmission Rights assigned to it. [s.2.4(b); page 14]
- In the case of an assignment for a stated period, Nalcor will pay Emera for the transmission service used by it based on tariff charges set out in the ISO-NE OATT. [s. 2.10; page 16]
- Put Right: Subject to certain conditions, Nalcor may require Emera to purchase Energy and/or Capacity from it at the NB-Maine Border in an amount not to exceed 300 MW less any MEPCO Transmission Rights absolutely assigned to Nalcor or then being used by Nalcor. Pricing is based on a Day-Ahead Prices at the ISO-NE Salisbury pricing node less transmission charges. [s. 2.5-2.6; pages 14--15].

## 8. Interconnection Operators Agreement

**Parties:** Newfoundland and Labrador Hydro and Nova Scotia Power Incorporated

**Term:** The agreement commences on July 31, 2012 and terminates on written agreement of the Parties to terminate.

**Synopsis:** Interconnection Operators Agreements are used by system operators to address the interconnection of transmission systems between jurisdictions. The Agreement provides a framework for addressing the safety, reliability and operability of the DC portion of the Maritime Link (referred to as the Interconnection Facilities) and its interconnection with the NS and NL transmission systems. The Agreement also addresses emergency assistance, inadvertent interchange and interchange scheduling.

**Key Terms:** Key terms include:

- Mutual Benefits (inherent benefits derived by the interconnection of transmission systems): The parties will endeavor to coordinate the operation of the Interconnection Facilities to realize mutual benefits and neither party will charge the other for Mutual Benefits. [s. 3.1 and 3.2, page 14]
- Operational Control: Each party will have operation control, for systems operations, over the Interconnection Facilities on their respective side of Interconnection Facilities (measured from its midpoint). The reliability standards applicable to the NS transmission system, however, will apply to the Interconnection Facilities. [s. 4.1, page 15]
- Reliability Standards: To the extent the operation of the Interconnection Facilities may affect the reliability of either transmission system, the parties will adopt and comply with requirements and standards that safeguard such reliability. [s. 4.2, page 15]
- Reliability Coordination: The parties will work together and interact with other relevant jurisdictions in respect of reliability coordination. [s. 4.5, page 16]
- Reporting and Notices: The parties will develop notification procedures for such matters as opening of the Interconnection Facilities, planned maintenance, changes in the transfer capability of the Interconnection Facilities, and planned outage schedules. [s. 4.4 and 4.5, pages 15-16]
- Control and Monitoring: Each party shall arrange for continuous control and monitoring of the portion of the Interconnection Facility for which they are responsible. [s. 4.6, page 16]
- Reactive Power: The parties will develop instructions and procedures for scheduling reactive power. [s. 4.7, page 16]
- Real Power Transfers: For the purposes of the Agreement, real power will be considered to have transferred at the Delivery Point at Woodbine, NS, in compliance with standards and procedures developed by the Interconnection Operators Committee. [s. 4.8, page 16]
- Inadvertent Interchange: The parties will develop procedures for inadvertent energy management and accounting. [s. 4.9, page 16]
- Reserve Sharing: The parties will share energy and reserves to improve reliability subject to their respective reliability standards and NSPI's obligations under its reserve sharing agreement with New Brunswick. [s. 4.10, pages 16-17]

- Supplemental Agreements: The parties will put in place supplemental agreements with respect to area adequacy reviews, operating reserve, emergency and security energy transactions, and ACE management and inadvertent interchange. [s. 4.11, page 17; Sch. A]
- Emergency Assistance: The parties will exercise due diligence, in accordance with good utility practice and reliability standards, to mitigate emergencies in their respective transmission systems. [s. 5.1; page 17]
- Monitoring / Metering: The parties will ensure that appropriate monitoring systems and revenue metering devices are to be installed. The Interconnection Operators Committee (see below) will establish procedures for meter reading. [Articles 8 and 9; pages 21-22]
- Information exchange: the parties will exchange information consistent with their obligations under the Agreement, subject to confidentiality obligations. [Article 6; pages 17-18]

*Interconnection Operators Committee*

- The parties will establish an Interconnection Operators Committee consisting of a minimum of 2 members from each party. [s. 7.1; page 18]
- The committee will endeavor to meet semi-annually and will meet no less than once each calendar year. [s. 7.4; page 20]
- Decisions of the committee are to be unanimous. [s. 7.4; pages 18-19]
- The committee's mandate includes preparing and amending as needed the technical schedules to the Agreement, developing operating instructions and transmission procedures for the Interconnection Facilities, facilitating and assessing compliance with the Agreement, and addressing disputes. [s. 7.2; pages 18-19]

## 9. Joint Operations Agreement (JOA)

**Parties:** Emera Inc. and Nalcor Energy

**Term:** The Agreement commences on July 31, 2012 and terminates on the earlier of (a) a decision by Nalcor not to sanction the Muskrat Falls Plant, Labrador Transmission Assets or Labrador-Island Link, (b) a decision not to proceed with the Maritime Link project after the Financial Conditions Resolution Date (as defined in the Sanction Agreement), (c) the 35<sup>th</sup> anniversary of first commercial power, (d) written agreement of the parties, (e) all of the transmission assets being owned by Nalcor, or (f) termination of the ECA.

**Synopsis:** Establishes the joint operations committee, which is responsible for coordinating the operation and maintenance of the Labrador-Island Link, Maritime Link and Labrador Transmission Assets.

### **Key Terms:**

#### *Operation and Maintenance*

- From and after completion of commissioning, Nalcor shall be responsible for, with respect to the Labrador-Island Link and the Labrador Transmission Assets (referred to as the **NL Transmission Assets**), developing a long term asset management plan (referred to as an **LTAMP**), performing operating and maintenance activities, manager duties and payment of operating and maintenance costs. [s. 2.1(a), pages 21-22]
- From and after completion of commissioning, Emera shall be responsible for, with respect to the Maritime Link, developing an LTAMP, performing operating and maintenance activities, manager duties and payment of operating and maintenance costs. [s. 2.1(b), page 22]
- Operational control of each transmission asset shall be transferred to the appropriate System Operator in accordance with the applicable transmission operating agreement on the in-service date for the asset. [s. 2.2(b), page 22]
- Each party has the right to access the transmission assets and sites for the purpose of examining the transmission assets or the conduct of the operating and maintenance activities in connection with the performance of obligations under the JOA. [s. 6.2, page 46]

#### *Joint Operations Committee*

- The joint operations committee (referred to as the **JOC**) shall be comprised of four representatives appointed by Nalcor and two representatives appointed by Emera. Nalcor shall designate a representative as the chair; Emera shall designate a representative as the vice-chair. [s. 3.3(a), page 23]
- The JOC shall meet on a regular basis in order to coordinate the operation and maintenance of the transmission assets. [s. 3.5(a), page 27]
- Each manager, with respect to the transmission assets for which it is responsible, shall submit to the JOC annual maintenance plans, an operation and maintenance manual,

inspection and condition reports, and other items to be approved by the JOC. [s. 3.3(b), page 24]

- The JOC may determine the standards to be adopted and followed by the managers in carrying out the operating and maintenance activities for the transmission assets. [s. 3.3(c), page 24]
- The Nalcor and Emera representatives shall cooperate and share all relevant information so as to reach consensus on issues. [s. 3.4(a), page 25]
- If the JOC is unable to reach consensus on a financial matter, each party may make separate representations to the applicable regulator, and the applicable regulator's determination will be final and binding upon the parties. Where the applicable regulator does not have power to determine the matter, declines to hear the matter or make a determination, or makes a determination that is inconsistent with each party's obligations under the JOA, the financial matter shall be resolved by arbitration in accordance with the dispute resolution procedure. [s. 3.4(b) – (d), pages 25-26]
- If consensus is not reached in respect of a JOC matter, other than a financial matter, the matter shall be resolved by a majority vote. [s. 3.4(e), page 26]

### *Financial Arrangements*

- At least 45 days before the earlier of sanction by Nalcor of the first of the Muskrat Falls Plant and the NL Transmission Assets and submission by Emera to the UARB of the NS regulatory application, Nalcor shall prepare and submit to Emera an initial LTAMP for each of the Muskrat Falls Plant and the NL Transmission Assets, together with an initial LTAMP cost estimate. Emera has 15 days to review and provide comments to Nalcor. [s. 5.1(a), pages 32-33]
- At least 45 days before the earlier of sanction by Emera of the Maritime Link [now the Financial Conditions Resolution Date, as that term is defined in the Sanction Agreement] and submission by Emera of the NS regulatory application, Emera shall prepare and submit to Nalcor an initial LTAMP for the Maritime Link, together with a corresponding initial LTAMP cost estimate. Nalcor has 15 days from receipt to review and provide comments to Emera. [s. 5.1(b), pages 32 - 33]
- Between 30 days before and 60 days after first commercial power, regarding the last of the **Defined Assets** (being the Muskrat Falls Plant, NL Transmission Assets and Maritime Link) to achieve first commercial power, Nalcor shall prepare and submit to Emera an in-service LTAMP and in-service LTAMP cost estimate for each of the Muskrat Falls Plant and the NL Transmission Assets. Emera shall give notice of any disagreement within 90 days, and the matter will be submitted by arbitration under the dispute resolution procedure if the parties do not come to a resolution. [s. 5.2(a), page 33]
- Between 30 days before and 60 days after first commercial power, regarding the last of the Defined Assets to achieve first commercial power, Emera shall prepare and submit to Nalcor an in-service LTAMP and in-service LTAMP cost estimate for the Maritime Link. Nalcor shall give notice of any disagreement within 90 days, and the matter will be submitted to arbitration under the dispute resolution procedure if the parties do not come to a resolution. [s. 5.2(b), pages 33-34]
- Within 30 days of finalization of the in-service LTAMP cost estimates, the parties shall calculate the present worth of the Nalcor payment amounts (meaning the amount, for

each operating year, by which the estimated Maritime Link operating and maintenance costs exceed 20% of the total estimated operating and maintenance costs for the Defined Assets) and Emera payment amounts (meaning the amount by which the Maritime Link operating and maintenance costs, for each operating year, is less than 20% of the total estimated Defined Assets operating and maintenance costs). If the present worth of the Nalcor payment amounts exceeds the present worth of the Emera payment amounts, Nalcor shall pay the difference to Emera. If the present worth of the Emera payment amounts exceeds the present worth of the Nalcor payment amounts, Emera shall pay the difference to Nalcor. [s. 5.5(b), pages 35-36]

*Transfer of Maritime Link*

- On the expiration of the term or on earlier termination of the JOA, Emera shall sell and transfer to Nalcor ownership of the Maritime Link for \$1.00. Each party shall use commercially reasonable efforts to obtain and assist the other party in obtaining regulatory approvals in connection with the transfer of the Maritime Link. [s. 7.1, pages 47-49]

## 10. Newfoundland and Labrador Development Agreement (NLDA)

**Parties:** Nalcor Energy, Emera Inc., Labrador-Island Link General Partner Corporation (a wholly-owned subsidiary of Nalcor), Labrador-Island Link Holding Corporation (a wholly-owned subsidiary of Nalcor) (referred to as **Nalcor LP**) and ENL Island Link Incorporated (a wholly owned subsidiary of Emera) (referred to as **Emera NL**).

**Term:** The Agreement commenced on July 31, 2012 and, subject to early termination in specific circumstances, terminates on the earlier of: (a) December 31, 2081, (b) written agreement of the parties, (c) a decision by Nalcor not to sanction the Muskrat Falls Plant, Labrador-Island Link or the Labrador Transmission Assets or (d) dissolution of the Labrador-Island Link Limited Partnership (referred to as the **Partnership**).

**Synopsis:** Governs the activities and undertakings necessary to design, engineer and construct the Muskrat Falls Plant, Labrador-Island Link and Labrador Transmission Assets.

**Relationship with LILLPA:** The NLDA must be read in conjunction with the Labrador-Island Link Limited Partnership Agreement (referred to as the **LILLPA**), which, among other things, governs the operations and responsibilities of the Partnership with respect to the Labrador-Island Link.

### **Key Terms:**

#### *Development*

- Nalcor is responsible for managing and executing the development activities and for funding 100% of the costs associated with the Muskrat Falls Plant and the Labrador Transmission Assets. [s.2.1, page 31]
- Nalcor is also responsible for managing and executing the development activities for the Labrador-Island Link. The Partnership will own 100% of the Labrador-Island Link. [s. 2.2, page 31]

#### *Funding Obligations*

- The capital costs of the Labrador-Island Link will be funded through both financing and capital contributions of the partners to the Partnership. [s. 2.2, page 31]
- The general partner is responsible for determining the cash call amounts required of each limited partner. [Schedule 13, s.1]
- Nalcor LP is responsible to make all capital contributions required before sanction of the Labrador-Island Link. After sanction, both Nalcor LP and Emera NL are responsible to make capital contributions in response to cash calls from the general partner. [s. 5.7(b)(i), page 45]
- The estimated amount of the Emera NL funding obligation is calculated as the difference between the following, determined as of the date of sanction of the Labrador-Island Link:
  - 49% of the estimated capital costs for the Labrador-Island Link, Maritime Link and Labrador Transmission Asset; and
  - the estimated capital costs for the Maritime Link. [s. 5.8(a)(i), page 46]



- Nalcor LP's funding obligation is the balance of the estimated capital costs for the Labrador-Island Link. [s. 5.8(a)(i), page 46]
- The final Emera funding obligation will be recalculated, based on actual costs incurred, after completion of development of all Transmission Assets. [s.5.19, pages 68-71]
- Cost overruns that are expected to be allowed by the Newfoundland and Labrador Public Utilities Board (referred to as the **PUB**) to be included in the capital costs of the Labrador-Island Link shall be allocated through requests for capital contributions made by the general partner to Nalcor LP and Emera NL (as limited partners) and paid in accordance with each party's funding obligations. [s. 2.6(a) and s. 5.7, pages 33 and 45]
- Cost overruns that are not expected to be or are not allowed by the PUB shall be paid for by Nalcor LP through a subscription for Class C Limited Units (non-voting) in the Partnership, and any amount previously paid by a limited partner in respect of the Cost overrun shall be promptly returned by the general partner. [s. 2.6(b) and (c), page 33]

#### *Labrador-Island Link Activities*

- Nalcor shall own indirectly through one or more wholly owned subsidiaries all of the transmission rights in the Labrador-Island Link. [s. 5.1, page 42]
- After initial capital contributions are made and prior to sanction of the Labrador-Island Link, Nalcor shall enter into an asset transfer agreement in favour of the Partnership pursuant to which all of the project assets relating to the Labrador-Island Link will be conveyed to the Partnership. [s. 5.4, page 43]
- Nalcor is required to use commercially reasonable efforts to cause the Partnership to be a public utility regulated by the PUB that is allowed to recover costs associated with the Labrador-Island Link on a cost of service basis. [s. 5.12, page 50]
- At the end of the service life of the Labrador-Island Link, Nalcor has the option to acquire Emera NL's partnership interest in the Partnership for an aggregate purchase price of \$1.00 plus the remaining balance of any capital account owned by Emera NL applicable to sustaining capital. [s.5.15(b), pages 54-56]
- At any time after first commercial power of the Labrador-Island Link, Nalcor also has the continuing option to require that Emera NL retire as a limited partner in the Partnership and to acquire Emera NL's partnership interest in the Partnership at a cost of:
  - an initial payment of \$1.00 plus earnout payments for the remainder of the service life of the Labrador-Island Link;
  - an initial payment of \$1.00 plus a promissory note with a principal amount equal to the balance in the capital account of the Class B Limited Units owned by Emera NL and providing for a rate of interest such that the promissory note shall require Nalcor to make payments to Emera NL for the remainder of the service life of Labrador-Island Link; or
  - an amount as may be agreed between Nalcor LP and Emera NL. [s. 5.15(c), pages 56-57]

#### *Joint Development Committee*

- The joint development committee (referred to as the **NL JDC**), consisting of four representatives from Nalcor and two representatives from Emera, will meet at least monthly to provide a common understanding of project progress and to discuss issues related to development activities of the Muskrat Falls Plant, Labrador Transmission Assets and Labrador-Island Link. [s. 3.1, 3.2 and 3.7, pages 37-38]
- The Chair of the NL JDC shall be a Nalcor representative and the Vice-Chair shall be an Emera representative. [s. 3.2, page 38]
- In the event of a difference of opinion between Nalcor and Emera on an NL JDC matter, Nalcor's position shall prevail. [s. 3.6, page 38]
- The NL JDC will dissolve on the earlier of (a) the termination of the NLDA and (b) the day that is one year after Nalcor first delivers energy, other than for testing and commissioning purposes, from the Muskrat Falls Plant over the Labrador-Island Link. [s. 3.5, page 38]

#### *Extended Force Majeure*

- If Nalcor or the Partnership has given notice of a force majeure event which prevents Nalcor or the Partnership from proceeding with all or a material portion of the development activities in respect of the Muskrat Falls Plant, Labrador Transmission Assets or Labrador-Island Link, there are no commercially reasonable means to rectify the consequences of such force majeure event within 36 months and the period of force majeure extends for more than 36 months, either party may elect on 60 days' notice to terminate the NLDA, without liability. If the consequences of force majeure can be rectified and Nalcor or the Partnership are proceeding with measures to rectify the consequences, the force majeure period shall be extended by such period as is required for the party to complete such measures. [s. 10.3, page 88]

#### *Other Matters*

- The NLDA also contains provisions regarding the reporting procedure for determination of the actual capital costs, total financing costs and return on equity of the Labrador-Island Link, and intellectual property rights of the parties.

## 11. Labrador-Island Link Limited Partnership Agreement (LILLPA)

**Parties:** Labrador-Island Link General Partner Corporation (a wholly-owned subsidiary of Nalcor), Labrador-Island Link Holding Corporation (a wholly-owned subsidiary of Nalcor) (referred to as **Nalcor LP**) and each person admitted to the Labrador-Island Link Limited Partnership (referred to as the **Partnership**) as a limited partner. ENL Island Link Incorporated (a wholly owned subsidiary of Emera) (referred to as **Emera NL**) will be admitted as a limited partner on sanction of the Labrador-Island Link.

**Term:** The Partnership commenced on July 31, 2012 and will be dissolved on December 31, 2081, unless otherwise agreed by the partners.

**Synopsis:** Establishes the structure, operation and responsibilities of the Partnership, which will carry on the business of owning, financing, operating and maintaining the assets constituting the Labrador-Island Link (referred to as the **Business**).

**Relationship with NLDA:** The LILLPA must be read in conjunction with the Newfoundland and Labrador Development Agreement (referred to as the **NLDA**), which, among other things, governs the activities and undertakings necessary to design the Labrador-Island Link.

### **Key Terms:**

#### *Formation of Partnership*

- Labrador-Island Link General Partner Corporation is the general partner of the Partnership and Nalcor LP is the initial limited partner. [LILLPA, s. 2.1, page 25]
- Upon registration of the Partnership, Labrador-Island Link General Partner Corporation was issued 1 general partner unit in the Partnership and Nalcor LP was issued 1 Class C Limited Unit (non-voting). [LILLPA, s. 4.1 and 4.2, page 41]
- Prior to sanction of the Labrador-Island Link and upon Nalcor's transfer of the project assets relating to the Labrador-Island Link to the Partnership, Nalcor LP will be issued 75 Class A Limited Units (voting) in the Partnership. [NLDA, s. 5.5, page 44]
- Upon sanction of the Labrador-Island Link, Emera NL will be issued 25 Class B Limited Units (voting) in the Partnership. [NLDA, s. 5.6, pages 44-45]

#### *Ownership and funding of Labrador-Island Link*

- The Partnership will own 100% of the Labrador-Island Link. [NLDA, s. 2.2, page 32]
- The capital costs of the Labrador-Island Link will be funded through capital contributions by the limited partners. The funding obligations of Emera NL and Nalcor LP as limited partners are set out in the NLDA.

#### *Management of the Partnership*

- The general partner is authorized to carry on and has full power to administer, manage, control and operate the Business. [LILLPA, s. 6.1, page 51]

- The Partnership shall reimburse the general partner for all reasonable direct costs and expenses incurred in the performance of its duties under the LILLPA. [LILLPA, s. 6.13, page 59]
- The general partner is required to submit an annual business plan and budget at least 45 days before the commencement of each fiscal year to the partners, and to deliver audited annual and unaudited quarterly financial statements of the Partnership to the partners. [LILLPA, s. 6.14, and 7.2, pages 59, 60 and 62]

*Other Matters*

- The LILLPA also contains provisions regarding the governance of the Partnership, liability of partners and the allocation of distributions and losses to partners.

## **12. Inter-Provincial Agreement**

**Parties:** Her Majesty in Right of Newfoundland and Labrador, Her Majesty in Right of Nova Scotia, Nalcor Energy and Emera Inc.

**Term:** The Agreement commenced on December 17, 2012 and terminates on the expiry of all of the Energy and Capacity Agreement, Maritime Link (Nalcor) Transmission Service Agreement and Nova Scotia Transmission Agreement.

**Synopsis:** Provides for stability regarding the legislative and regulatory framework applicable to the Maritime Link project and Formal Agreements.

### **Key Terms:**

#### *Treatment of Project*

- Each Government agrees to maintain substantially the legislative and regulatory framework applicable to the Maritime Link project as of December 17, 2012. [para. 3, page 2]
- The Government of Newfoundland and Labrador agrees to indemnify Nalcor for any amounts paid in damages to Emera and to pay Emera damages owing by Nalcor arising under the Energy Capacity Agreement as a result of a government action which deprives Emera of delivery or enjoyment of, or access to, the Nova Scotia Block (excepting non-discriminatory actions designed to project public welfare objectives). [para. 4, pages 2-3]
- The Government of Nova Scotia agrees to indemnify Emera for any amounts paid in damages to Nalcor and to pay Nalcor damages owing by Emera arising under the Maritime Link (Nalcor) Transmission Service Agreement and Nova Scotia Transmission Utilization Agreement as a result of a government action which deprives Nalcor of delivery or enjoyment of, or access to, the transmission service or rights provided for under those agreements (excepting non-discriminatory government actions designed to project public welfare objectives). [para. 5, page 3]

### 13. Supplemental Agreement

**Parties:** Emera Inc. and Nalcor Energy

**Term:** The Agreement commenced on July 31, 2012 and terminates on the earlier of: (a) a decision not to proceed with the Maritime Link after the Financial Conditions Resolution Date (as defined in the Sanction Agreement), (b) the end of the service life of the Maritime Link, (c) notice of termination given by the non-defaulting party if the Energy and Capacity Agreement is terminated for default and (d) written agreement of the parties to terminate.

**Synopsis:** Provides a framework to facilitate the negotiation of future activities and transactions that could be of mutual benefit to Nalcor and Emera.

**Key Terms:**

*Additional Energy*

- If Nalcor has an alternative market into which it desires to sell short-term energy or capacity, and such energy or capacity is available for delivery over the Maritime Link, Nalcor may sell the energy or capacity to Emera on terms mutually agreeable to the parties, at a price reflecting the prevailing market price available to Nalcor. [article 2, page 6]

*Maritime Link Expansion*

- If the parties decide a Maritime Link expansion is necessary, they shall make good faith efforts to identify the optimal manner and ownership structure to construct such an expansion. If one party decides not to invest in the expansion, the other party can proceed on its own. [s. 3.1 and 3.2, page 6]
- Nalcor will have the right to acquire, on mutually acceptable commercial terms, any additional transmission capacity created as a result of a Maritime Link expansion. [s. 3.3, page 6]

*Maritime Link Redevelopment*

- The parties will commence negotiations with respect to a potential Maritime Link redevelopment not later than eight years prior to the end of the latest estimate of the service life of the Maritime Link. If the parties decide a redevelopment is necessary, they shall make good faith efforts to identify the optimal manner and ownership structure to construct a Maritime Link redevelopment. [s. 4.1 and 4.2, pages 6-7]
- Nalcor will have the right to acquire, on mutually acceptable commercial terms, any transmission capacity as a result of a Maritime Link redevelopment. [s. 4.3, page 7]

*Effect of Agreement*

- The obligations regarding redevelopment of the Maritime Link are binding on the parties solely as to the obligation to commence and the right to terminate negotiations. The

provisions regarding sale of additional energy and expansion of the Maritime Link are not binding on the parties and neither party will be legally bound or otherwise incur any obligation with respect to those matters unless and until such time as a definitive agreement with respect to those matters is reached. [s. 1.4, page 3]

## 14. Sanction Agreement

**Parties:** Emera Inc. and Nalcor Energy

**Term:** The Sanction Agreement commenced on December 17, 2012 and terminates upon the satisfaction of all obligations of the parties as set out in the Agreement.

**Synopsis:** Provides for the sanction of the Maritime Link by Emera and Nalcor simultaneously with the sanction of the Labrador-Island Link, Labrador Transmission Assets and Muskrat Falls Plant by Nalcor.

### **Key Terms:**

#### *Sanction of the Maritime Link*

- Nalcor and Emera agree to sanction the Maritime Link simultaneously with the sanction of the Muskrat Falls Plant, the Labrador-Island Link and the Labrador Transmission Assets. [s. 2(a), page 4]
- With some exceptions, the provisions in the Formal Agreements that trigger obligations of the parties or state that an event is to occur, be defined or calculated at or prior to sanction of the Maritime Link are amended such that such obligations or events occur, are defined or calculated at or prior to the **Financial Conditions Resolution Date**, being the date on which the resolution of the allocation of any shortfall caused by a **Financial Condition** occurs. [s. 2(c), pages 4-5]
- The Financial Conditions Resolution Date can be either:
  - 30 days following the final UARB determination, if the NS Regulatory Application is approved with no conditions;
  - 30 days following notice by Emera to Nalcor regarding any shortfall caused by a Financial Condition, if the NS Regulatory Application is approved with Financial Conditions; or
  - such other date as the parties may agree.
- A Financial Condition is defined as a condition or conditions relating solely to the rate of return on equity (**ROE**) imposed by the UARB decision, which results in the UARB decision ROE being less than the rate of ROE requested in the NS Regulatory Application by 75 basis points or less.

#### *Nova Scotia Regulatory Application*

- In the NS Regulatory Application, Emera will apply for depreciation of rate base assets on a straight line basis and a formula based rate of ROE to be effective until 2017. The rate of ROE for 2013 will be requested to be comprised of a 490 basis point risk premium and a 30 year A-rated long-term utility bond yield of 420 basis points. The formula will effect a change in the rate of ROE based upon 75% of the year over year forecasted change in 30 year A-rated long term utility bond yields, and the risk premium of 490 basis points will remain constant. [s. 3(b)(ii), page 6]



- The decision gate three costs for the Maritime Link (referred to as the **DG3 Costs**) are to be established no later than October 1, 2013. [s. 3(d), page 6]
- If the DG3 Costs vary from 20% of the estimated capital costs for the **Defined Assets** (being the Muskrat Falls Plant, Labrador-Island Link, Labrador Transmission Assets and Maritime Link), the relevant party shall be compensated (referred to as the **True Up Adjustment**). The True Up Adjustment shall be a contribution of cash or energy equivalent, as determined by the party obligated to make the contribution, determined within 60 days of the Financial Conditions Resolution Date (or such other date as agreed by the parties) and calculated as follows:
  - if the DG3 Costs are less than 20% of the sum of the DG3 Costs and the estimated capital costs of the Labrador-Island Link, Labrador Transmission Assets and Muskrat Falls Plant (referred to as the **Estimated Overall Project Costs**), Emera shall make a contribution to Nalcor, or
  - if the DG3 Costs are greater than 20% of the Estimated Overall Project Costs, Nalcor shall make a contribution to Emera,
 such that, after the adjustment, Emera's percentage share of the Estimated Overall Project Costs will be equal to its percentage share of the predicted Muskrat Falls Plant production. [s. 3(e), pages 6-7]

#### *Outcome of the Nova Scotia Regulatory Application*

- If the Nova Scotia Regulatory Application is: (i) approved as filed, there are no non-Financial Conditions (referred to as **Other Conditions**), or such conditions have been waived, and the rate of ROE requested has been approved; or (ii) approved on the basis of a settlement agreement approved by the UARB and agreed to by Emera and customer representatives together with any related agreements with Nalcor to facilitate such settlement, Emera shall proceed to construct and commission the Maritime Link in accordance with the UARB decision and the Maritime Link – Joint Development Agreement. [s. 4(a), page 9]
- If the NS Regulatory Application is approved with a Financial Condition and there are no Other Conditions, or such conditions have been waived, Emera shall proceed to construct and commission the Maritime Link in accordance with the UARB decision and the Maritime Link – Joint Development Agreement. Emera may elect to be responsible for 100% of any shortfall caused by a Financial Condition. If Emera does not so elect, and it has satisfied the conditions precedent in the Federal Loan Guarantee Agreement regarding provision of credit ratings for the Maritime Link and execution of the guarantee agreement, Nalcor shall be required to invest so as to be responsible for one-third of the shortfall. [s. 4(b) and 8, pages 9 and 16]

#### *Continuation of Negotiations Regarding Maritime Link Development*

- If the Nova Scotia Regulatory Application is ultimately denied, approved with Other Conditions (which are not waived), any conditions of the Federal Loan Guarantee Agreement have not been satisfied at the later of Financial Close or the Financial Conditions Resolution Date, or the results of the system impact studies regarding operation of the interconnected systems in Nova Scotia and Newfoundland and Labrador

(referred to as the **System Impact Studies**) are not satisfactory to each of Emera and Nalcor, the parties will attempt to resolve such issues with the goal of ensuring that the Maritime Link is built, but each Party is free to make its own decision as to the resolution of such issues in its sole and absolute discretion. [s.5(a), pages 13-14]

- Nalcor or Emera may give 45 days' notice of conclusion of the above noted discussions, at which point if Emera has satisfied the conditions precedent in the Federal Loan Guarantee Agreement, and Nalcor and Emera are both interest holders or owners of the Labrador-Island Link, the parties will work together with the intention of developing transmission facilities to be constructed between the Newfoundland and Labrador transmission system and the Nova Scotia transmission system (referred to as the **New Maritime Link**). [s. 5(b), page 14]
- In this event, Nalcor and Emera shall share equally any costs imposed on Emera pursuant to Emera's guarantee under the Federal Loan Guarantee Agreement. [s. 5(b) and 5(e), pages 14-15]
- If the New Maritime Link is constructed, Emera will provide Nalcor with transmission rights in material accordance with the provisions of the Nova Scotia Transmission Utilization Agreement. [s. 5(c), page 14]
- If Emera has satisfied its conditions precedent in the Federal Loan Guarantee regarding provision of credit ratings and execution of the guarantee agreement, Emera has invested in the Labrador-Island Link and the Maritime Link does not proceed pursuant to the ML-JDA, Nalcor and Emera shall enter into interim agreements regarding New Brunswick and MEPCO Transmission Rights in accordance with Schedule 1 of the Sanction Agreement. [s. 5(d), pages 14-15]

#### *Amendments to Formal Agreements*

- The parties agree to make amendments to the Formal Agreements for the purpose of reflecting the terms of the Sanction Agreement on or before February 15, 2013. [s. 6(a), page 15]

#### *Undertakings*

- Emera shall commence, no later than four weeks after the filing of the NS Regulatory Application, the formal process with credit rating agencies to obtain indicative credit ratings required to satisfy the condition precedent in Section 3.5(A)(ii) of the Federal Loan Guarantee Agreement. The target date for achievement of such ratings will be no later than March 31, 2013. [s. 7(a), page 15]
- Emera shall initiate discussions with Canada by January 15, 2013 regarding the guarantee agreement required to satisfy the condition precedent in Section 3.5(A)(viii) of the Federal Loan Guarantee Agreement. The target date for execution of the guarantee agreement will be May 31, 2013. [s. 7(b), page 16]
- Emera and Nalcor will use commercially reasonable efforts to complete and analyze the System Impact Studies with a target date of April 30, 2013. [s. 7(c), page 16]

## 15. Project Oversight Agreement

**Parties:** Her Majesty in Right of Newfoundland and Labrador (NL), Her Majesty in Right of Nova Scotia (NS), Nalcor Energy and Emera Inc.

**Effective Date:** The Agreement commenced on December 17, 2012.

**Synopsis:** Provides for the respective commitments of the parties relating to sanction of the Maritime Link, Labrador-Island Link, Labrador Transmission Assets and Muskrat Falls Plant.

### **Key Terms:**

#### *Joint Committee and Undertakings*

- The parties agree to establish a committee consisting of the CEO of each of Nalcor and Emera and a senior representative from each of NS and NL, which will meet weekly to oversee the timely completion of the conditions precedent in the Federal Loan Agreement and to keep each other apprised with respect to the status of same. [s. 2 and 5, page 2 and 3]

#### *Deliverables*

- NS agrees to work in good faith:
  - to bring into force any changes to legislation or regulation to allow the parties to effect the transactions contemplated by the Formal Agreements; and
  - prior to March 31, 2013, to satisfy the conditions precedent in the Federal Loan Guarantee Agreement regarding (i) formalization of the regulatory framework in NS; and (ii) execution of an agreement providing for indemnification of Canada by NS for costs that may be incurred by Canada under the Federal Loan Guarantee Agreement as result of a regulatory decision or change (including through legislation or policy). [s. 3, page 2]
- NL agrees to work in good faith:
  - to bring into force any changes to legislation or regulation to allow the parties to effect the transactions contemplated by the Formal Agreements; and
  - prior to March 31, 2013, to satisfy the conditions precedent in the Federal Loan Agreement regarding (i) enactment of legislation to make the commitments made by NL in the Federal Loan Guarantee Agreement legally binding; and (ii) execution of an agreement with Canada to formalize the Federal Loan Guarantee Agreement commitments, provide for indemnification of Canada by NL for costs that may be incurred by Canada under the Federal Loan Guarantee Agreement as a result of regulatory decision or change and guarantee completion of the Muskrat Falls Plant, Labrador Transmission Assets and Labrador-Island Link projects. [s. 4, pages 2-3]