

**Natural Resources**

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**Developing Muskrat Falls is Best Option –  
Reports Released on Waiting Until 2041, Developing Gull Island First  
and Other Legal Options**

Three reports released today address other suggested alternatives and help establish that Muskrat Falls is the best option to meet demand needs and now is the right time to develop this resource. The papers, *Upper Churchill: Can we wait until 2041?*, *Gull Island: Why not develop Gull Island first?*, and *Legal Options: S92A, Good Faith and Regulatory Proceedings in Quebec* were released today by the Department of Natural Resources.

“Reports released today provide clear, concise information which refute the suggestion that the province has not explored all options with respect to Quebec and the Upper Churchill,” said the Honourable Jerome Kennedy, Minister of Natural Resources. “Our research and studies support the position that Muskrat Falls is the best option to address demand requirements for our province.”

The paper, *Upper Churchill: Can we wait until 2041?*, establishes that waiting until 2041 is not a viable alternative.

“It is not feasible to defer Muskrat Falls under the assumption that the province will have cheap or free power in 2041,” said Minister Kennedy. “Waiting for available Upper Churchill power in 2041 is not a practical, economical, or sensible alternative to Muskrat Falls.”

*Gull Island: Why not develop Gull Island first?* highlights that Gull Island has not proceeded to date because of the inability to obtain transmission access across Quebec. The paper states that Gull Island remains an important energy asset should viable sales and market access arrangements be confirmed, and additional markets and customers would be required to support the development of Gull Island.

“For 40 years the province has tried to proceed with the Gull Island development but without transmission access through Quebec the project is not feasible,” said Minister Kennedy. “At 824 MW, Muskrat Falls is being proposed for development first because its smaller generation capacity allows it to economically supply the province with the power it needs over the long term.”

*Legal Options: S92A, Good Faith and Regulatory Proceedings in Quebec* highlights the fact that Newfoundland and Labrador has engaged in numerous legal actions in relation to the inequity of the Upper Churchill contract over the years, none of which has been successful to date. This paper outlines the actions taken including litigation on the Upper Churchill contract, and includes sections on Section 92A, Good Faith and Regulatory Proceedings in Quebec.

“We have examined all alternate options to the development of Muskrat Falls, and all of the results have been the same – Muskrat Falls is the best option and will ensure we have reliable, least-cost power to support residential, commercial and industrial growth in Newfoundland and Labrador,” said Minister Kennedy. “We need to seize this time of unprecedented growth and opportunity in our province. Our resources must be developed for the primary and maximum benefit of the people of Newfoundland and Labrador.”

For further information on the discussion papers, see the backgrounder below. To view the papers in full, please visit: [www.powerinourhands.ca](http://www.powerinourhands.ca).

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## **Key Points of Discussion Papers**

### **Upper Churchill: Can we wait until 2041?**

- In the debate surrounding the development of Muskrat Falls, it has been suggested that Newfoundland and Labrador has the option of refurbishing the Holyrood Thermal Generating Station and/or taking other stop gap measures until 2041 when the Upper Churchill power contract expires and energy from the Upper Churchill become available for domestic and export use. This option is not realistic for a variety of reasons.
- Churchill Falls (Labrador) Corporation (CFLCo) is owned by Newfoundland and Labrador Hydro (NLH) and Hydro-Quebec (HQ) jointly, with NLH owning 65.8 per cent of the common shares and HQ 34.2 per cent of the common shares. In 2041, NLH will not have absolute authority over the corporate actions of CFLCo. It is not appropriate to simply assume that Newfoundland and Labrador will receive cheap or free power when the HQ Power Contract expires in 2041.

- There is considerable risk and uncertainty regarding security of supply and reliability, the cost to ratepayers, and environmental compliance. Deferring the project also means deferring the province's ability to fully capitalize on the value of its tremendous energy resources.
- It is doubtful that life extension efforts at Holyrood could continue to provide reliable power for an additional 30-plus years. At that time the first two units would be 70 years old. As well, maintaining the isolated Island system until that time, followed by the construction of a new transmission link with Labrador, is more expensive than developing Muskrat Falls.
- Deferring Muskrat Falls will mean increased reliance on oil and volatile prices for electricity as rates will be tied to fuel prices as well as preventing the province from capitalizing on opportunities through export sales and/or industrial expansion in Labrador.

### **Gull Island: Why not develop Gull Island first?**

- The Gull Island development has not proceeded to date because of the inability to obtain transmission access across Quebec. The Provincial Government plans to develop Gull Island, but only if Newfoundland and Labrador is the principal beneficiary of development.
- For years the province has tried to proceed with the Gull Island development. Without transmission access through Quebec the project is not yet feasible. Gull Island's 2,250 megawatt (MW) generating capacity is far greater than Newfoundland and Labrador will require in the near future. Therefore, export sales through Quebec are essential for project success.
- The Ontario market is currently the best prospect for Gull Island exports. Ontario needs new sources of electricity and is in the midst of making important decisions about long-term supply. Gull Island power could be part of Ontario's supply if Quebec would allow fair access to its transmission.
- At 824 MW, Muskrat Falls is being proposed for development first because its smaller generation capacity allows it to economically supply the province with the power it needs over the long term.

### **Legal Options: S92A, Good Faith and Regulatory Proceedings in Quebec**

- The province of Newfoundland and Labrador has taken numerous legal actions in relation to the unfairness and inequity of the Upper Churchill contract over the years, none of which has been successful to date.

### **Section 92A**

- Since 1982, various suggestions have been made as to how Newfoundland and Labrador might use the powers provided under Section 92A to gain access to electricity from the Upper Churchill. Section 92A was negotiated as a solution to disputes between Canada and the provinces about the authority of the provinces over their energy industries, and where the provincial authority ended and Canada's began.
- While Section 92A of the Constitution Act could potentially allow for the recall of Upper Churchill power, this could result in a breach of the 1969 Power Contract under Quebec civil law and potentially result in billions of dollars in damages. There is no certainty that any attempt would be successful, or what the cost of such power would be. This litigation would take years to resolve and, even if ultimately successful, would do nothing to satisfy the province's need for power in the near future.

### **Good Faith**

- On February 23, 2012 CFLCo commenced a legal action against Hydro Quebec in the Superior Court of Quebec. Their position is based on the civil law obligation of good faith. The good faith action is based on the overriding Quebec civil law obligation for parties to act in good faith and not abuse their contractual rights.
- The Quebec litigation represents an opportunity for CFLCo to remediate the future pricing disparity of the Power Contract but it does not represent a means to solve the province's future energy demand requirements.
- Its discussion in the context of being an alternative to the Muskrat Falls development is misplaced and the good faith action cannot be the basis of a decision to forego development of Muskrat Falls at this time.

### **Regulatory Proceedings in Quebec**

The availability of open access markets and transparent regulatory frameworks in the United States for the transmission of electricity should provide an opportunity for Nalcor to access export markets. These regulatory frameworks are not enforceable within Canada, and while Hydro-Quebec must adhere to these rules as they apply to its electricity trade in the United States, the same degree of transparency is not required for electricity trade within Canada.

- Nalcor has attempted to gain access through the transmission system for the Lower Churchill Project. These efforts have not proved successful, resulting in regulatory rulings, appeals and ultimately a court challenge.
- Nalcor has taken two applications for review in Quebec before the Regie (the Quebec equivalent of the PUB) for open access to transmit power from the Lower Churchill across Quebec. The Regie has refused these applications.