

From: Kavanagh, Shawn (St. John's) <SKavanagh@coxandpalmer.com>
Sent: Tuesday, May 26, 2020 8:09 AM
To: Chow, Milly <milly.chow@blakes.com>
Cc: ToddNewhook@nalcoreenergy.com
Subject: FW: Twin Falls

External Email | Courrier électronique externe

Hi Milly

In reply to your inquiries , I have been asked by Twinco to forward to you its reply contained below .

Regards

Shawn

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From: ToddNewhook@nalcoreenergy.com [<mailto:ToddNewhook@nalcoreenergy.com>]
Sent: Monday, May 25, 2020 1:46 PM
To: Kavanagh, Shawn (St. John's); PHickman@nalcoreenergy.com
Subject: Twin Falls

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Hi Shawn

Here are her questions and the answers to them.

Decisions made by the board of directors were based on the information provided to them at the time. There may have been any number of reasons at that time as to why the Board made the decisions they did, some of which may or may not have been apparent through the minutes and papers presented to the board at the time of the vote. It should be noted that it should not be assumed that Twinco's environmental obligations arose due to the action or inaction of CF during the term of the Operating Lease. The Twin Falls plant was both constructed and operated for several years by Twinco and environmental liabilities can arise from the action or inaction of Twinco during the time period covering these activities. CF has never acknowledged in favour of Twinco a general responsibility to pay all costs associated

with environmental liabilities associated with Twinco assets . More recently , a request for an Indemnity from CF covering all past , present and future environmental liabilities was refused .

Environmental Obligations:

1. On our call, there was mention that Twinco paid for the PCB clean-up costs of the plant equipment that was subject to a previous PCB clean-up report. There was also mention on our call that costs associated with the 2012 fire was borne by Twinco. Lastly, we noticed that Twinco's financial statements indicate that Twinco expended monies on other environmental liabilities; for example see the December 31, 2014, 2015, and 2016 (among others) financial statements. Given CF(L) Co's indemnification obligations under the Operating Lease, please explain on what basis did Twinco pay for any of these liabilities.

A: Decisions were made through a vote of the board of directors. The materials that were presented to the board of directors, and the person who presented them, would have provided information that informed the board decisions. For the most part, the liabilities related to equipment that was installed in the plant by Twinco at time of construction.

2. If there were costs borne by Twinco as a result of CFLCo's failure to reimburse for such costs pursuant to CFLCo's indemnity obligations, please provide the basis upon which CFLCo had refused to reimburse said costs.

A: CF was not asked to reimburse (note answer to #1)

3. On our call last Monday, there was a suggestion that the liability for any clean-up costs arising from the "final wrap" report as between Twinco and CF(L)Co was still to be determined. Why is the liability still to be determined given CF(L)Co's indemnification obligations under the Operating Lease?

A: The question implies that CF has accepted complete responsibility for all environmental clean-up. That was not the approach taken and as noted above, liabilities can be associated with the action or inaction of Twinco pre-dating the Operating Lease.

Confirmation of Twinco Assets:

4. Please confirm what assets Twinco still owns:

(a) In particular, does Twinco own any equipment or has all the equipment been sold or transferred?

A: All physical assets of Twin have been sold or transferred (including through reversion to CF under expired Twinco land leases with CF).

(b) If sold/transferred, was the purchaser/transferee, CF(L)Co. and what was the consideration received by Twinco for such assets?

A: The assets that were sold or transferred to CF are a combination of trade and landlord fixtures located at the original Twin Falls site. For the most part, the trade fixtures were transferred to CF at no cost, as Twin was therefore spared the cost of collecting and disposing of such assets. Those costs would have been higher than any value that could have been obtained for these assets. Ownership in transmission assets reverted to CF(L)Co under expired land leases with Twinco. The Wabush Terminal Station and related assets were transferred to CF under arrangements with Wabush .

Some spare parts were transferred to Newfoundland and Labrador Hydro at a price based on cost and approved by the Twinco Board of Directors. Two houses in Wabush that were owned by Twinco were put on the market and sold. Two houses

located in Churchill Falls had been leased by CF(L)Co from Twinco under a long term lease. These houses were transferred to CF(L)Co for a \$1.00, in accordance with the terms of the lease.

(c) If Twinco still owns some equipment, are any of these thought to contain PCBs / the subject to the proposed new PCB investigation that we were advised had recently been approved by the Twinco Board?

A: If we presume that by "equipment" you mean fixed realty on the site, it is a part of the real estate and we are of the view it has reverted to CF under expired land leases . The studies reveal the extent of contamination that originated from the original construction and operation of the facilities related to PCBs, to the extent known. Twinco no longer owns these assets, but may have continued liability related to PCBs.

5. On our call, there was mention that certain equipment is being and has been, used at the Twin Falls Generating Station post-1974 when we understand the Twin Falls Generating Station ceased operations:

(a) Who owns the equipment that was being used post-1974?

A: If we presume that by "equipment" you mean fixed realty on the site, it is a part of the real estate. It was operated by CF(L)Co, under the operating lease on Twinco's behalf for its preservation/mothballing. Post 1974 the plant remained owned by Twinco and was on land owned by CF(L)Co leased to Twinco, and was subject to the operating lease .

(b) What equipment at the Twin Falls Generating Station was used post cessation of Twinco operations?

A: See answer above.

(c) Who was using it and for what purpose?

A: See answer above.

(d) If not being used by Twinco, what compensation has been received or is owing to Twinco for such use?

A: See answer above.

(e) Is any of this equipment thought to contain PCBs / the subject of the proposed new environmental report that we were advised had recently been approved by the Twinco Board?

A: See answer above. The new report is intended to reveal the extent to which the plant still contains PCB, following Twinco efforts to remove PCBs over the past 10 years (approx).

(f) Is equipment containing PCBs located on current or former Twinco property in service or out of service? If out of service, when was it taken out of service? Does any out of service equipment containing PCBs remain stored

at any Twinco property?

A: The plant is out of service. There is no moveable property, only fixtures. Twinco does not own any property.

(g) Who (Twinco/CF(L)Co/etc.) is/was responsible for compliance with the Federal PCB Regulations requirements from the time of its effective date in 2008 to today?

A: Please see the PCB regulations on guidance on PCB removal and responsibility. The determination as to which entity is responsible for compliance may be different depending on the asset in question, who installed it, the source of the PCB's, etc. Twinco paid the majority of costs associated with compliance to PCB Reg' relating to the removal of oil-filled electrical equipment in the generating station containing PCBs, as it was the entity that installed that equipment. CF(L)Co carried out the tracking of PCBs, engineering, reporting, etc. but did not seek recovery of these costs for the most part.

Documents being requested from Twinco:

6. Please provide us with the following documentation. We appreciate that some of these may have been previously provided to Wabush as shareholder but given the CCAA, sale of its businesses and the termination of all remaining employees of the CCAA Parties, access to books and records is restricted. Therefore, it would more efficient if copies of these documents were re-provided by Twin Falls and/or its counsel to us:

(a) Copies of unaudited financial statements issued post December 31, 2018.

A: The 2019 statements have been provided. There are no other finalized statements at this time.

(b) Copies of the legal opinions provided to Twinco shareholders referenced on the call regarding the ownership of the equipment.

A: The legal opinions are protected by solicitor client privilege, and have to be read in the context of the time. We can compile them, but consideration would have to be given as to whether they will be provided, as they are privileged and the date of some may make them irrelevant for this exercise.

(c) Copies of legal opinions provided to Twinco shareholder regarding liabilities of Twinco for certain environmental liabilities as referenced in Notes 9 and 16 of the FY2016 audited financial statement, and Notes 8 and 14 of the FY2017 and 2018 audited financial statements.

A: See answer above re legal opinions.



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