



Commission of Inquiry Respecting the Muskrat Falls Project

April 24, 2018

Ms. Kendra Wright
Assistant Deputy Minister
Department of Justice and Public Safety
4th Floor, East Block
Confederation Building
St. John's, NL

Dear Ms. Wright:

RE: Commission of Inquiry Respecting the Muskrat Falls Project – Funding Recommendation

On April 6, 2018, I conducted a hearing for persons and groups applying for Standing and Funding to appear before the Commission. Subsequent to that hearing, one further application was filed which I have also dealt with.

I have granted standing at the moment to 19 parties with one deferral on funding. As well I deferred the application for standing and funding for Dennis Browne, QC, who applied as a Consumer Advocate. Nine parties have been granted full standing, nine parties have been granted limited standing with one party, Newfoundland Power Inc., granted a combination of special and full standing on Phase Three of the Inquiry. Of those granted standing, I am recommending that eight parties receive funding for legal representation, reasonable expenses for legal counsel as well as travel where plane travel is necessary to attend the hearings relevant to the standing given to each person or group.

Where parties have similar or common interests, I have advised them that they must work cooperatively so as to avoid duplication of effort, time and cost. It should also be noted that in each of the funding recommendations I am making, **I have made it clear to the parties that I would not be at this time recommending reimbursement for consultants that are hired or for any expert reports that are commissioned.**

It is on this basis that I will now advise of the funding recommendations for each of the following parties:

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1. Innu Nation

The Innu Nation represents some 2,200 people residing in Labrador. Its members have traditionally inhabited the area where much of the Muskrat Falls Project construction is occurring and the Innu Nation has been involved in numerous consultations regarding this project. The Innu Nation has been granted limited standing in the Commission's hearings related to the following matters:

- (i) the consultation that occurred between the Innu Nation and Nalcor and the Government of Newfoundland and Labrador;
- (ii) the risk assessments and reports done as regards to concerns of the Innu Nation;
- (iii) whether these assessments or reports were appropriately considered by Nalcor and the Government of Newfoundland and Labrador; and
- (iv) whether appropriate measures were taken against reasonably potential adverse effects on settled or asserted rights on the Innu Nation both at the time of and post sanctioning of the project.

I have also granted the Innu Nation standing to the extent that it and Innu workers were and are engaged in project construction, which will likely arise during some part of phase 2 of the hearings.

For the Innu Nation, represented by Senwung Luk of Olthuis Kleer Townshend LLP, I am recommending funding for one legal counsel, reasonable expenses related to the work of counsel as well as travel expenses, where travel by plane is required to attend the hearings at relevant times, for one representative of the Innu Nation.

2. Nunatsiavut Government

The Nunatsiavut Government has a comprehensive land claim as regards to certain lands in Labrador and a significant number of the Inuit beneficiaries of that land claim reside in areas impacted by the Muskrat Falls project, including the Towns of Happy Valley-Goose Bay, Northwest River and Mud Lake. The Nunatsiavut Government was consulted on the project by Nalcor and the Government of Newfoundland and Labrador. It has been granted limited standing in the Commission's hearing related to the following:

- (i) consultation that occurred between the Nunatsiavut Government and Nalcor and the Government of Newfoundland and Labrador;
- (ii) the risk assessments and reports done as regards to concerns of the Nunatsiavut Government;
- (iii) whether these assessments and reports were appropriately and reasonably considered by Nalcor and the Government of Newfoundland and Labrador; and

- (iv) whether appropriate measures were taken against reasonably potential adverse effects on settled or asserted rights of the Nunatsiavut Government both at the time of and post-sanctioning of the project.

For the Nunasuiyut Government, I am prepared to recommend funding for one legal counsel, reasonable expenses related to the work of counsel as well as travel expenses, where travel by plane is required to attend hearings at the relevant times, for one representative of the Nunasuitvut Government.

3. Conseil Des Innu de Ekuanitshit

The Conseil Des Innu de Ekuanitshit is an Innu band whose members reside on an Indian Reserve in the Province of Quebec. The membership of this band assert that they have an interest in the area where much of the Muskrat Falls project construction is occurring and they have been involved in consultations regarding the project with Nalcor and the Government of Newfoundland and Labrador. I have granted limited standing to the Conseil Des Innu de Ekuanitshit related to:

- (i) consultation that occurred between the Conseil Des Innu de Ekuanitshit and Nalcor and the Government of Newfoundland and Labrador;
- (ii) the risk assessments and reports done as regards to the concerns of the Conseil Des Innu de Ekuanitshit;
- (iii) whether the assessments and reports were appropriately and reasonably considered by Nalcor and the Government of Newfoundland and Labrador; and
- (iv) whether appropriate measures were taken against reasonably potential adverse effects on settled or asserted rights of the Conseil Des Innu de Ekuanitshit at the time of and post-sanctioning of the project.

For the Conseil Des Innu de Ekuanitshit, represented by David Janzen of Dionne Shulze, I would recommend funding for one legal counsel, reasonable expenses related to the work of counsel as well as travel expenses, where travel by plane is required to attend hearings at relevant times, to one representative of the Conseil Des Innu de Ekuanitshit.

4. Former Government Officials – 2003-2015

This group of individuals were members of the governing party in this Province at the time of the conception, sanction and commencement of the construction of the Muskrat Falls project. They are Danny Williams, QC, Thomas Marshall, QC, Paul Davis, Shawn Skinner, Jerome Kennedy, QC, and Derrick Daley. All were significantly involved in decision making surrounding the project on behalf of the Government of Newfoundland and Labrador. I have granted full standing to these individuals as a group for the Commission's hearings. I would also recommend funding for one legal counsel for this group together with reasonable expenses related to the work of counsel. Legal Counsel for this group of individuals is Thomas E. Williams, QC, of O'Dea Earle.

5. Kathy Dunderdale

Kathy Dunderdale was a member of the Government administration as Premier and as a Minister of Natural Resources at relevant times surrounding the conceptualization, sanction and commencement of construction of the Muskrat Falls Project. I have granted Kathy Dunderdale full standing at the hearings of the Commission. I would also recommend that Kathy Dunderdale, represented by Bruce Grant, QC, of Stewart McKelvey, receive funding for one legal counsel, reasonable expenses related to the work of counsel as well as travel costs where travel by plane is required to attend the hearings, for Ms. Dunderdale.

6. Muskrat Falls Concerned Citizens Coalition

The Muskrat Falls Concerned Citizens Coalition is to be an incorporated entity representing the interest of many of those who have had major concerns regarding the sanction, construction and future operations of the Muskrat Falls project. Three individuals, Ronald G. Penney, David Vardy and Des Sullivan are the representatives for this group who have some 200 individual members. The three representatives have been very vocal, active and public about project concerns for some time. Based upon the individual experience and knowledge of these three representatives, and the group's ability to form a coalition with others in the province as well as a cooperative approach with the Grand Riverkeeper Labrador and Labrador Land Protectors groups, I have granted full standing to this group. I would also recommend funding for the Muskrat Falls Concerned Citizens Coalition for one legal counsel, reasonable expenses related to the work of counsel as well as travel expenses, where travel by plane is required to attend the hearings, for one representative of this group.

7. Grand Riverkeepers Labrador and Labrador Land Protectors

Grand Riverkeepers Labrador and Labrador Land Protectors are both presently unincorporated entities which have jointly applied for standing as a party before this Commission of Inquiry. The representatives for these two groups who appeared before the Commission on April 6, 2018, are Roberta Benefiel Frampton and Marjorie Flowers. Both organizations have members who are residents in Labrador, particularly in areas impacted by the construction of the project. The Labrador Land Protectors are comprised of both indigenous and non-indigenous persons. The Grand Riverkeepers Labrador seeks to preserve and protect the water quality and ecological integrity of the Grand (Churchill) River and its estuaries while the Labrador Land Protectors have acted to bring public attention to what it sees are risks to human life due to the project construction and future operations. The Grand Riverkeepers Labrador have been involved in the environmental assessments that took place with regard to this project while the Labrador Land Protectors have held demonstrations to highlight environmental concerns that they have with the project.

Based upon both groups willingness to work together cooperatively with the Muskrat Falls Concerned Citizens Coalition and with each other and their interest in the environmental matters related to the project, I have granted limited standing jointly to these two groups. As environmental matters will not be the primary focus of the Inquiry and based upon my interpretation of the Terms of Reference for this Commission, both groups jointly will have limited standing when the Commission is dealing with evidence regarding analysis, risk assessments and the like that were done as regards to environmental concerns, where the Commission is investigating whether such assessments were appropriate and reasonable based upon accepted industry standards and the

knowledge of the parties at the time when the analysis and assessments were completed and as well where there is an assessment being made as regards mitigating measures taken to address legitimate environmental concerns. It is to that extent that both groups jointly will have limited standing.

I would recommend that funding be provided for one legal counsel, together with reasonable expenses related to the work of counsel. In this case, legal counsel will also be assisting both groups in working cooperatively with the Muskrat Falls Concerned Citizens Coalition as well as appearing on behalf of these groups before Commission hearings on those matters set out above for which limited standing was granted. I will also recommend funding for travel expenses, where travel by plane is required in order to attend the hearings at relevant times, for one representative of each of the two groups.

8. The NunatuKavut Community Council Inc.

The NunatuKavut Community Council Inc. is the representative governing body for appropriately 6,000 Inuit residing in south and central Labrador where much of the construction for the Muskrat Falls project has occurred. Much of the land flooded by the project is within the NunatuKavut Community Council land claim area. The concerns and interests of this group primarily relate to sustenance of its members and its ability to continue what they have traditionally done as regards to harvesting country foods, fishing, trapping and utilizing land for other cultural purposes. Based on the application filed and the focus of this group on environmental matters, I have granted limited standing to the NunatuKavut Community Council Inc. That limited standing will relate to the following matters when they are being dealt with before the Commission:

- (i) consultation that occurred between the NunatuKavut Community Council Inc. and Nalcor and the Government of Newfoundland and Labrador;
- (ii) the risk assessments and reports done as regards to the concerns of the NunatuKavut Community Council Inc.;
- (iii) whether these assessments and reports were appropriately and reasonably considered by Nalcor and the Government of Newfoundland and Labrador; and
- (iv) whether appropriate measures were taken against reasonably and potential adverse effects on settled or asserted rights of the NunatuKavut Community Council Inc. both at the time of and the post-sanctioning of the project.

I am also making a recommendation that the NunatuKavut Community Council Inc. receive funding for one legal counsel, reasonable expenses related to the work of counsel and for travel expenses for one representative of the NunatuKavut Community Council Inc. where travel by plane is required in order to attend hearings that are relevant to the limited standing granted.

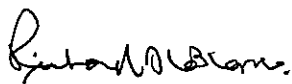
9. Consumer Advocate

As indicated earlier I have deferred a funding request for one party and I have yet to make a standing decision with regards to the possible involvement of a Consumer Advocate. Once a decision has been made with regards to those matters and should funding be recommended I will be in touch with you immediately to advise you of this.

I trust now that you will consider the recommendations that I have made. I have been very careful here in ensuring that funding be recommended only where it is necessary in order to assist the Commission in completing its work. Should you have any questions regarding any of these recommendations, please feel free to let me know.

Thank you.

Yours sincerely,



RICHARD D. LEBLANC
Commissioner

cc. Mr. Senwung Luk, Olthuis Kleer Townsend LLP
Mr. Rodd Laing, Nunatsiavut Government
Mr. David Janzen, Dionne Schultz
Mr. Thomas Williams, QC, O'Dea Earle
Mr. Bruce Grant, Q.C., Stewart McKelvey
Mr. Mark Gruchy, Gittens Law
Ms. Roberta Benefiel Frampton
Ms. Marjorie Flowers
Mr. Jason Cooke, Burchells
Mr. Ronald Penney
Mr. David Vardy
Mr. Des Sullivan