

Written Submission

to the

Commission of Inquiry

respecting

the commission's request for

Public Input

into the

Muskrat Falls Project Order

Terms of Reference

(O.C. 2017 – 339)

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2018.02.12

Preamble

It is not in the public interest to issue a terms of reference for a commission of inquiry based in part on circular reasoning or other fallacy:

“Richard Whately defines a fallacy broadly as, ‘any argument, or apparent argument, which professes to be decisive of the matter at hand, while in reality it is not’.

Sometimes a ... writer uses a fallacy ... may use fallacious reasoning to try to persuade the ... reader, by means other than offering relevant evidence, that the conclusion is true.

Examples of this include the ... writer...Assume(ing) the conclusion of an argument, a kind of circular reasoning,”^A

*“Circular reasoning (Latin: **circulus in probando**, ‘circle in proving’;^[1] also known as **circular logic**) is a logical fallacy in which the reasoner begins with what they are trying to end with.^[2] The components of a circular argument are often logically valid because if the premises are true, the conclusion must be true. Circular reasoning is not a formal logical fallacy but a pragmatic defect in an argument whereby the premises are just as much in need of proof or evidence as the conclusion, and as a consequence the argument fails to persuade. Other ways to express this are that there is no reason to accept the premises unless one already believes the conclusion, or that the premises provide no independent ground or evidence for the conclusion.^[3] Begging the question is closely related to circular reasoning, and in modern usage the two generally refer to the same thing.”^[4] ^B*

Circular reasoning is often of the form: ‘A is true because B is true; B is true because A is true.’ Circularity can be difficult to detect if it involves a longer chain of propositions”.

^A <https://en.wikipedia.org/wiki/Fallacy>

^B https://en.wikipedia.org/wiki/Circular_reasoning

Rationale

Terms of Reference

Section 4 (a) of the terms of reference for the Muskrat Falls commission of inquiry directs the commission to inquire into “*the consideration by Nalcor of options to address the electricity needs of Newfoundland and Labrador’s Island interconnected system customers that informed Nalcor’s decision to recommend that the government sanction the Muskrat Falls Project, including whether...*” [section 4 (a) also includes three subsections, all of which ‘circle’ back, relate to, or otherwise are subject to --- options as referenced and that are presumed to have ‘informed’ Nalcor’s decision to recommend sanction].

Although the phrase “including whether” appears to be enumerative and not exhaustive, any additional subsections that the commission might consider adding would also seem to be subject to the limiting section 4 (a) parameters that precede subsection 4 (a) (i), and they too would have to ‘circle’ back, relate to, or otherwise be subject to --- options as referenced and that are presumed to have ‘informed’ Nalcor’s decision to recommend sanction.

As written, the Commission of Inquiry Respecting the Muskrat Falls Project Order is designed to be interpreted in a way that would ignore both governments’ (federal and provincial) enabling roles in the sanctioning of the Muskrat Falls Project.

Directing the commission to inquire into an issue that is founded on fallacious reasoning, an unsubstantiated, false premise, that is --- that it was Nalcor's consideration of options to address electricity needs that informed its decision to recommend sanction --- is an affront to justice, an affront to the people of the province and an affront to reason itself.

A false and unsubstantiated premise cannot rationally/reasonably be interpreted as an acceptable basis for, and cannot rationally/reasonably be interpreted as a sound foundation for what comprises a core element of an inquiry into the Muskrat Falls Project.

The premise of section 4 (a) of the terms of reference relies on an assumption the truth/validity of which has not been demonstrated.

It not only asserts, without evidence, that it was Nalcor's "consideration of options" that informed Nalcor's decision to recommend sanction, but also that the options that were considered were options that "address(ed) the electricity needs of Newfoundland and Labrador's Island interconnected system customers" (emphasis added).

However, the drafter of the section 4 (a) premise presumably was not Nalcor itself, and not the government that was in power when Nalcor's option considerations were ongoing.

How then can the drafter of section 4 (a) assert what in actuality "informed Nalcor's decision to recommend...sanction" (emphasis added)?

If the premise, which seems more akin to hearsay, is not grounded in fact, on what basis is this key aspect of the inquiry terms of reference based? What is the intended purpose of basing an inquiry on a false premise? What is it intended to achieve?

What section 4 (a) does achieve is to lead the commission away from considering other reasons for Nalcor's recommendation to sanction.

What section 4 (a) does achieve, perhaps more importantly, is to lead the commission away from government's own role in Nalcor's recommendation.

Accordingly, the terms of reference, as written, seems designed to be interpreted in a way that would lead the commission down a rabbit hole, through a maze that has only one exit --- a fabricated scheme of options' analyses that had little, if anything, to do with the actual electricity needs of the province and little to do with Nalcor's recommendation to sanction, but would facilitate a bypass of government's role in directing/influencing Nalcor and in creating legislation and other necessary conditions that would ensure project sanction.

A valid interpretation of section 4 (a) would recognize the fundamental flaw in its premise and would ensure that the commission conduct a deeper, more thorough and more comprehensive inquiry into the timing of, the germination of the project decision process and the purpose and underlying assumptions of the Muskrat Falls Project, (and

not merely, superficially, whether or not the "...assumptions or forecasts on which the analysis of options was based were reasonable" (emphasis added).

A superficial interpretation, based on a poorly grounded premise, facilitates the continuation of a multi-year, fabricated, pre-sanction process that was designed to project an air of professionalism, credibility and legitimacy and which now threatens the integrity of a quasi-judicial commission of inquiry.

Accordingly, a proper interpretation of the terms of reference would seek a greater understanding of both Nalcor's and governments' roles not only of the recommendation to sanction, but of the rationale behind governments' early and continuing blind push to proceed with and finish the Muskrat Falls Project --- no matter what.

Section 5 (supplemental comment)

Section 5 of the Muskrat Falls Order states in part that *"The commission of inquiry, in carrying out the terms of reference referred to in section 4 shall consider..."*

(paraphrased) -- participation by the established leadership of certain aboriginal groups, electricity cost and reliability issues, Crown Corporation powers, duties and responsibilities, a balancing of commercial and public accountability and transparency issues, and a balancing of ratepayer and taxpayer interests (emphasis added) .

Notwithstanding the political, practical, economic, social and policy importance of section 5 issues, the authority of the Lieutenant-Governor in Council to order how an inquiry is to be conducted appears only to apply to inquiries established under the Public Inquiries Act, PART II, not to commissions of inquiry established pursuant to PART I of the Act.

It would be my interpretation that section 5, by enumerating and directing the Commission of Inquiry "in carrying out the terms of reference" to consider specific matters that are within the legislated authority (the Public Inquiries Act, PART I, sections 4 through 15) of the commission itself, may therefore be exerting an improper influence on what is within the proper purview of the commission alone.

Conclusion

A well-reasoned interpretation of the terms of reference would be one that recognizes that the terms of reference as written is fundamentally flawed and not designed to expose what went wrong with Muskrat Falls.

Accordingly, while the travesty that is the Muskrat Falls Project dictates that the terms of reference be interpreted in the broadest possible, well-reasoned and rationally grounded terms, it is submitted that given that a key element of the terms is based on a fallacy/circular reasoning and not designed to adequately expose what went wrong with Muskrat Falls, it is in the public interest that an amended terms of reference, with an opportunity for public input, be written.