

MUSKRAT FALLS INQUIRY

Submissions regarding the Terms of Reference

made on behalf of the

Innu Nation

The following submissions are made at the invitation of the Muskrat Falls Inquiry, in a public notice requesting submissions regarding the interpretation of the terms of reference for the Inquiry. The submissions are made on behalf of the Innu Nation.

The Innu Nation is an organization that represents the interests of the Innu people of Labrador. Its members live predominantly in the communities of Sheshatshiu and Natuashish.

Aboriginal and Treaty Rights not within scope

We note that s.5(a) of the *Commission of Inquiry Respecting the Muskrat Falls Project Order*¹ mandates that the Inquiry shall consider “participation in the inquiry by the established leadership of Indigenous people, whose settled or asserted Aboriginal or treaty rights to areas in Labrador may have been adversely affected by the Muskrat Falls Project”.

We find it encouraging that the *Order* explicitly encourages the participation of Indigenous people. However, we would urge the Inquiry to be cautious about the interpretations

¹ *Commission of Inquiry Respecting the Muskrat Falls Project Order*, NL Reg 101/17 [the “*Order*”].

of s.5(a) which expand the scope of the terms of reference, which are defined separately in s.4. As defined in s.4, the Terms of Reference restrict the Inquiry to, generally, questions relating to the decision to go forward with the Muskrat Falls Project, and to how the Project has been executed thus far. Section 5(a) is relevant to what parties should be given standing at the Inquiry, but does not colour the interpretation of s.4 so as to expand the scope of the Terms of Reference.

It is therefore Innu Nation's submission that Aboriginal and Treaty Rights, and the extent to which such rights have been affected by the Muskrat Falls Project, are out of scope of the Inquiry. These rights are important issues but insofar as they have been affected by the Project, they are appropriately dealt with in a court of law or in negotiation with Government, and should not form part of the Commission's inquiry. The fact that s.5(a) of the *Order* encourages participation of Indigenous people should not expand the Terms of Reference to encompass effects on Aboriginal and Treaty Rights.

Treatment of Innu workers is within scope

The Terms of Reference, at s.4(b), mandates that the Inquiry look in to whether:

(i) Nalcor's conduct in retaining and subsequently dealing with contractors and suppliers of every kind was in accordance with best practice [...]

(iii) the overall project management structure Nalcor developed and followed was in accordance with best practice [...]²

² NL Reg 101/17, s.4(b)(i) and s.4(b)(iii).

Innu Nation is aware of reports from its members who worked on the Muskrat Falls Project that racism in the workplace was a significant problem. Such incidents can be expected to harm the victims, cause conflict in the workplace, and increase costs. In Innu Nation's submission, it is within the scope of the Inquiry to investigate whether better management and practices could have avoided the discriminatory environment that many Innu Nation members experienced.

Planning for the Electricity System in Labrador

In a number of ways, the Terms of Reference touch on the process of decision-making to go ahead with the Muskrat Falls Project. Section 4(a) touches on the decision-making process employed by Nalcor. Section 4(c) touches on how the Public Utilities Board was excluded from the decision-making process and what difference this exclusion made. Section 4(d) touches on decision-making by Government.

In Innu Nation's submission, these Inquiry must look in to how these decision-making processes affected electricity users all across the Province, and not only on the Island. While the effects of Muskrat Falls on the Island's electricity system are momentous, they are also highly significant for Labrador. For instance, it is part of Nalcor's plan that the Recall Block from Churchill Falls be used to supply the Island, and perhaps be used for export sales as well. It is within the scope of the Terms of Reference to consider whether there was adequate system planning for Labradorians in the decision to use the Recall Block in this way. The Inquiry should consider whether the various decision-making processes by Nalcor and Government adequately considered whether the long term power needs of Labrador residents and businesses was best served by the Muskrat Falls Project. The Inquiry should also consider whether the long term

power needs of Labrador would have been better considered by the Public Utilities Board if the decision on the Muskrat Falls Project had not been exempted from their review.

As the Inquiry considers power planning in Labrador, it should not restrict its investigation to the interconnected communities, but also extend its investigation to the Labrador isolated communities. These communities are still entirely dependent on diesel for electricity. Innu Nation's community of Natuashish is one such community. Improving the electricity infrastructure in these communities, such as by connecting them to the Labrador transmission grid, has obvious benefits for electricity prices and economic development, and also in terms of the reduction of carbon emissions. In the weighing of the costs and benefits of the Muskrat Falls project, the Inquiry should consider whether greater benefit could have been derived from improving power infrastructure in the isolated Labrador communities.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Toronto, Ontario, this 15th day of February, 2018.

OLTHUIS KLEER TOWNSHEND LLP

A handwritten signature in black ink, appearing to read 'Senwung Luk', written in a cursive style.

Senwung Luk