

## MERCY CENTRE FOR ECOLOGY & JUSTICE



February 15, 2018

Commission of Inquiry Respecting the Muskrat Falls Project  
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20 Crosbie Place  
St John's, NL A1B 3Y8

To the Commissioner:

We are submitting our interpretation of the Terms of Reference of the Commission of Inquiry Respecting the Muskrat Falls Project.

We are grateful for the opportunity to participate in this matter which hopefully will have implications for the future of the people of this province.

May your work on the Inquiry bring a blessing to you and to all the people of the province and be a way forward for our country in a new consciousness of care and protection for people and for the land.

Respectfully submitted,



Rita Janes, Chairperson  
Board of Directors  
Mercy Centre for Ecology and Justice

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**SUBMISSION WITH RESPECT TO THE INTERPRETATION  
OF  
THE TERMS OF REFERENCE  
FOR THE COMMISSION OF INQUIRY  
RESPECTING THE MUSKRAT FALLS PROJECT**

*“Let ours be a time remembered for  
the awakening of a new reverence for life,  
the firm resolve to achieve sustainability,  
the quickening of the struggle for justice and peace and  
the joyful celebration of life.” (EARTH CHARTER 2000)*

**Submitted by the Board of Directors  
of the Mercy Centre for Ecology and Justice**

**February 6, 2018**

## **Introduction**

“Let ours be a time remembered for the awakening of a new reverence for life, the firm resolve to achieve sustainability, the quickening of the struggle for justice and peace and the joyful celebration of life.” (EARTH CHARTER 2000) This statement from the Earth Charter is an encouraging and hope-filled call to all people to foster a shared vision which will preserve the values that have long been cherished by our ancestors in an endeavour to provide an ethical foundation for a sustainable future for all. We realize that in the big picture our time on Earth is very short and what we have is, as it were, only on loan to us. We thus have a responsibility to manage and develop as a sacred trust what has been bequeathed to us from our ancestors and this not for ourselves alone but for future generations.

Living our lives with an eye to the future, however, we are also cognisant of the fact that climate change is an indisputable reality and that human activity is altering the physical, chemical, and biological properties of the planet at a frightening rate. The path of unrestrained industrial growth on which we find ourselves is unsustainable, unhealthy, and irresponsible and is creating serious challenges for the formation of a more just society. This demands that every possible precaution be taken when decisions are being made regarding the

development of any project that has the possibility of harming the planet and its inhabitants. In this regard we would do well to follow the thinking of our Aboriginal brothers and sisters who believe in making decisions based on the seventh generation.

The Muskrat Falls Project was originally ambitiously promoted as a hydro-development which would produce clean renewable energy to address the forecasted energy requirements for the province. It was presented with the promise of achieving maximum benefits of secure stable rates and markets with a good financial return for the province and would make a positive contribution to the campaign against global warming. The ideals put forth certainly appeared to have the protection of the environment and the welfare of the people at heart. However, serious and far-reaching problems and difficulties started to emerge which began to call the viability of the Project into question, and soon the Project lost the support of many of the people of Newfoundland and Labrador. This loss of support eventually resulted in the establishment of the Muskrat Falls Inquiry.

The Inquiry established by the provincial government must continue its ideal of being future oriented as it examines the past to determine what has brought us to this day and where it will lead us in the future. It must be conducted with the

wisdom and foresight to bring about a profound change in our perception of reality: a change from an industrial growth-driven economy to a more life-sustaining economy. The Inquiry must be directed in a way that is strictly attentive to promoting harmony and balance between industrial development and the health and well-being of planet Earth and its inhabitants. If this does not happen, the Inquiry will be a waste of precious time and an opportunity lost to help restore the honour and respect needed for the flourishing of all life on Earth. We believe that the terms of reference of the Inquiry can be interpreted within the framework of these values. The terms of reference have the scope to include this more wholistic approach.

### **Expanding the Scope of the Terms of Reference**

The articles of the terms of reference offer the possibility of widening the scope to a more expanded understanding included in (i) the decision in favour of Muskrat Falls, (ii) significant increase in costs (iii) lack of consultation with stakeholders and expert advisors (iv) risks, uncertainties, and problems (v) inclusion of Indigenous people in decision making (vi) findings and recommendations

### **The Decision in Favour of Muskrat Falls**

**Article 4** (a) *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*

A re-examination of the decision as to whether or not Muskrat Falls was the best option to provide clean, renewable energy power and the least-cost option to address the need for more energy poses several questions that need full exploration in the Inquiry. Did the alternative options receive equal in-depth consideration especially in terms of sustainability, cost efficiency, the health, well being and safety of the people of the province and the environment, and choice of the best option for mitigating inherent risks? Was the decision to favour the Muskrat Falls option too strongly influenced by the possibility that it would be the best way to reduce our dependence on Hydro Quebec? Was it seen to offer the opportunity to interconnect us to the North American grid, thereby putting us in a stronger position to repossess the Upper Churchill in 2041? Is Stan Marshall, CEO of Nalcor, correct when he says that the generation and transmission and transmission project was much larger than was necessary to meet the energy requirements of the province? What are the implication of this evaluation?

### **Significant increase in cost**

**Article 4 (a) (iii)** *whether Nalcor's determination that the Muskrat Falls Project was the least-cost option*

In examining the problem of cost and exceeded timelines we wonder whether or not the budget was under-estimated. Was sufficient time and thought devoted to a thorough and absolute scrutiny of all aspects, financial and otherwise, related to the development of the Project? How would accountability for mistakes or errors in decision-making on the part of the contractors or engineers be financially accounted for?

The lack of cooperation on the part of Nalcor in providing all the necessary information to the Public Utilities Board (PUB), thereby inhibiting the oversight of the PUB, coupled with Nalcor's decision in hiring a main contractor from Italy who had no experience of working in cold weather which resulted in the required protective ice boom not being installed before winter are some examples of lack of foresight on the part of Nalcor which no doubt contributed to the increased costs.

These, together with the unforeseen drop-in oil prices, are just a few of the problems which increased the financial burden of the Project to over 12.7 billion dollars, increasing the province's debt by an astronomical fifty percent. The responsibility of paying for this economic catastrophe will be placed on the shoulders of an aging population of just over a half million people. Such a vulnerable population should never be forced to assume this burden when already many elderly people, in attempting to reduce their electrical home heating bills, are



obliged to go to shopping malls in winter in order to keep warm. This appalling situation will be exacerbated if, as presently appears to be the case, heating costs double once Muskrat Falls comes onstream in 2020. Furthermore, payment of the huge debt will be borne not only by the present population but by many generations to come. Obviously, the weight of this debt will impose serious fiscal restraints on government budgets for operating and capital expenses well into the future. As was revealed in recent news bulletins regarding the deplorable state of many of our provincial health care facilities, for example, government is already seriously short of funding required for maintaining the province's infrastructure. It is inconceivable how such a mega project could be put forth for approval by a group of trusted people with the assurance that it was the best cost option when we now find that the cost is more than double the original projected cost.

All of this begs the question as to whether or not the province may have to declare bankruptcy and risk losing control of the development of our precious natural resources of wind and water energy.

### **Lack of consultation with stakeholders and expert advisors**

*Article 4 (c) whether the determination that the Muskrat Falls Project should be exempt from oversight by the Board of Commissioners of Public Utilities was justified and reasonable and what was the effect of this exemption, if any, on the development, cost and operation of the Muskrat Falls Project*

The commissioner must not skip lightly over the fact that giving total control for this mega Project to one company without the needed oversight and input of other experts in this field is an abuse of the democratic system of government. It denies the rights of the people enshrined in the Constitution of Canada. Other documents such as the Earth Charter (Principle 3.a.) also call for the building of “democratic societies that are just, participatory, sustainable and peaceful”. The commissioner must also be mindful that the goal of any resource development is not primarily to serve the promotion of any one political party. Instead our democratic system demands that the ruling party be inclusive and respectful in the engagement of all parties in government, all of which have equal responsibility to the citizens. Perhaps in this regard it would be helpful to remember former Prime Minister Lester B. Pearson’s success in the way in which he elicited the participation and advice of different government parties in a minority government to pass legislation regarding Health Care and Education.

Giving Nalcor full control of this mega project including its oversight and the power to override opposition may have enabled Nalcor’s use of power to dismiss needed consultation with experienced experts and to be unsupportive toward the PUB in carrying out the work for oversight of the Project. Addressing this lack of shared responsibility and failure to engage expertise shows the mistake of “going it

alone”. This may account for the lack of quality control supervision which resulted in the installation of hundreds of kilometers of faulty transmission cable.

## **Risks, Uncertainties and Problems**

**Article 4** (d) *whether the government was fully informed and was made aware of any risks or problems anticipated with the Muskrat Falls Project, so that the government had sufficient and accurate information upon which to appropriately decide to sanction the project and whether the government applied appropriate measures to oversee the project*

The Inquiry must address the fact that human health and safety can never be left to chance, and the Inquiry must work assiduously to leave no stone unturned in insuring that future negligence and mishaps will be avoided. It is the opinion of some that Nalcor possibly placed too much credence in computer-generated models and not enough in field work and in consultation with specialist engineers involved in similar projects. Would not advice from such experts earlier in the Project have prevented some of the geotechnical problems experienced involving quick clay and the slope of the North Spur, especially from those who had designed and built similar dams? Examples of those with such expertise are the engineering companies who constructed the Gardiner Dam in Saskatchewan with a height equal to that of the North Spur and constructed on a similar clay as well as the Swiss experts who built the tunnel through the Alps.

There is now grave concern that the down-hill slope and the quick clay are on the verge of sliding downstream at the slightest disruption. It is vital that accountability be provided to the people who live in the vicinity of the River and that they have assurance that the North Spur is not faulty. Without this guarantee there will be unrest and dissatisfaction on the part of these people who will be living under the threat of flooding. The Earth Charter highlights prevention of harm as the best method of environmental protection and states that when knowledge is limited a precautionary approach should be applied. (Earth Charter, Principal 6) We believe that the haunting question regarding the safety of the North Spur can and should be addressed in the Inquiry with reference to the lack of conscientious analysis and due diligence in this Project.

Further risks needing to be addressed pertain to issues surrounding protection of the environment. Section 35 of the Fisheries Act states, “No person shall carry on any work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery”. The terms of reference make no mention of addressing environmental risks such as destroying fish habitats, contamination of lake trout, salmon and smelts, endangering biodiversity and damage to wetlands. The terms of reference do acknowledge these risks as outlined in the environmental assessment, but it does not seem that sufficient urgency is given to addressing these concerns. Rather

it is mentioned that some attempt will be made to mitigate these risks only if it is possible within the time frame of the development of the Project and at the same time states that the benefits far outweigh the risks. Such an attitude does not portray a desire to provide adequate protection against these risks. Instead it seems to indicate approval of the environment being made subservient to the economy.

### **Inclusion of Indigenous Peoples**

**Article 5** (a) *participation in the inquiry by the established leaderships 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*

Article 5 (a) can be interpreted to include the participation of Indigenous people with regard to issues pertaining to the environment such as the North Spur and contamination caused by methylmercury and ways in which the Project impacts Indigenous culture and spirituality. In such a massive undertaking it would seem crucial to tap the wisdom, knowledge and expertise of all stakeholders. In a project with the potential to profoundly affect the health, livelihood, culture, treaty rights and spirituality of the Indigenous peoples of the area it is unthinkable that they would not be included in the initial consultations and in the decision making. It has become strongly evident that one of the greatest weaknesses of the Project was in not having listened to these people.

It must be acknowledged that had this unhealthy relationship not existed there would very likely have been different outcomes. The delays and extra costs caused by protests and work stoppages would have been averted. As well, the Indigenous people themselves would have been spared needless anxiety, suffering and even imprisonment to which they were subjected in their pleas for government protection of their land, waters, culture, health and wellbeing for themselves and future generations.

It is perplexing to note that other groups and organizations across the country and beyond such as Amnesty International, the Council of Canadians, KAIROS and a group of Harvard University scientists recognized the knowledge and understanding of the Nunatsiavut Government around the issues referred to above before Nalcor finally acknowledged their accountability in not properly managing the risk of methylmercury contamination of Churchill River. The Inquiry must apologetically acknowledge the accurate information about methylmercury and the wrongs that resulted from the fact that Nalcor initially chose to reject this information. Ignoring the wisdom, knowledge and rights of the native people was a failure on the part of Nalcor to uphold the UN Declaration of the Rights of Indigenous People to free, prior and informed consent. This attitude of arrogance and superiority also resulted in a loss of credibility for access to markets. It was no longer accurate to promote Muskrat Falls as a source of clean energy or as a way to

eliminate green house gasses. The findings of the peer-review study conducted by Harvard University Scientists verified the fact that the increased methylmercury concentrations caused by flooding of the reservoir at Muskrat Falls were greater than those expected from climate change.

## **Findings and recommendations**

**Article 6** *The Commission of Inquiry shall make findings and recommendations that it considers necessary and advisable related to section 4.*

It is imperative that in arriving at findings and recommendations the Commission determine a way forward that will insure “a new reverence for life, the firm resolve to achieve sustainability . . .” (Earth Charter) so that a renewed sense of justice and equity will be realized in these times. We, therefore, respectfully submit the following as recommendations to the Inquiry.

1. To let lessons learned from the Muskrat Falls Project finally succeed in teaching the urgency for a new awakening that protection of the environment has to be the main priority in any resource development. If serious and genuine consideration is not afforded to this then such projects will reap no lasting reward and the disastrous risks will in reality outweigh any forecasted benefit. Hence the need for strict adherence to broad, in depth and inclusive environmental assessments followed by firm and secure accountability.

2. Identify the urgent need to find solutions that will mitigate the many problems of the Muskrat Falls Project which threaten to hold our future hostage and inflict an intolerable burden on taxpayers and ratepayers in a dwindling and aging population.
3. To ensure that there will not be a commitment to any future resource project unless it is preceded by a comprehensive and high level of engineering analysis and design with both field work experience and computer-generated models for better accuracy at every level of the project, especially with regard to the safety of people and the environment and cost estimates.
4. That future developers recognize their obligation to engage all stakeholders at every level of the development, acknowledging their expertise, knowledge and insight.



