



NDP Caucus Office

House of Assembly

**Submission to the Commission of Inquiry Respecting the Muskrat Falls Project
NDP Caucus Comments on the Terms of Reference
February 15, 2018**

Preface:

This submission is a response to Commissioner Richard LeBlanc's request for public input into the Terms of Reference for the Muskrat Falls Inquiry. The Commissioner has an unenviable task, as this highly complex project has been problematic and contentious since inception. We offer our input and ideas in a spirit of collaboration and cooperation.

Our goal is to help ensure the Inquiry report helps the people of the province to understand more clearly why and how the Project unfolded as it did, with an eye to preventing future negative megaproject developments of this kind. Much of the information we hope and anticipate the Commissioner will uncover through this important Inquiry is information our Party and its MHAs in the House of Assembly have been seeking for years.

This Inquiry has been called largely because of public outcry. At its conclusion, the people of this province should believe their voices have been heard. They will want to know their concerns about transparency and accountability in relation to this project have been addressed. Most important, they will need to believe that flaws in our provincial democratic

██████████ · ██████████ · ██████████ · ██████████ · ██████████
██████████ · ██████████ · ██████████

structures and processes, that we believe have helped create the current Muskrat Falls Project situation, are clearly identified. Hopefully our submission will assist the Commissioner with these objectives.

Ultimately, this Inquiry will look at how elected officials and senior management personnel at Nalcor spent the people's money and borrowed it in the people's name. The Commissioner will have to decide if this was done wisely and prudently. He will have to determine if they acted in the best interests of the people.

Questions Needing Detailed Investigation:

1 – Why are there significant differences between the estimated costs of the Project at the time of sanction, and the costs incurred to date/estimated costs to complete the Project?

We are pleased to see the Commissioner has already retained Grant Thornton to conduct an investigative and forensic audit of the Project. The information gathered will be critical to informing the public why the budget for this project has ballooned.

This audit, however, may not be able to address all issues and questions related to the topic of 'costs,' such as: *were best practices followed in relation to analysis of fiscal implications of the Project, and if yes, which ones? Was there sufficient or adequate risk transfer to contractors? Were appropriate project management structures, procurement guidelines, and quality control mechanisms in place and, if so, were they followed? How were decisions regarding the so-called "embedded contractors" made, and who made them?*

██████████ ▪ ██████████ ▪ ██████████ ▪ ██████████ ▪ ██████████
 ██████████ ▪ ██████████ ▪ ██████████

In addition to the forensic audit process, we hope the Commissioner will use expert testimony, documents articulating industry best-practices regarding fiscal matters, and other inputs, to get answers to these and other related fiscal questions.

2 – How did Government and Nalcor determine the two least cost options that became the basis of what they asked the Public Utilities Board to study? To what degree did they work together on developing these options and was this collaboration appropriate? As we asked in the House of Assembly in 2012, what analysis was done, and by whom, to reach the conclusion about the least cost options? Was there any rigorous analysis at all? If there was an analysis report, why was it not given to the PUB?

Government did not have to seek any opinion from the PUB. The Project was exempt from PUB oversight because in 1999 then Premier Brian Tobin's Liberal Government passed an exemption that removed any Lower Churchill Project from PUB oversight. At that time, the reasoning was that the anticipated power was only meant for export and not for consumption by people of the province.

The exemption was passed at a time when the Tobin government was apparently close to a Lower Churchill development deal with the Quebec government. Although the deal failed, the legislation remained on the books. It was not revoked when Muskrat Falls was announced as a project to provide power for the people of the province. ***What were the broad impacts of using this exemption to circumvent the PUB? How was the Project – and province – ultimately impacted by this exemption?***

██████████ · ██████████ · ██████████ · ██████████ · ██████████
██████████ · ██████████ · ██████████

It appears Government attempted to get the PUB to approve the option that they and Nalcor preferred, by asking it to approve either the interconnected island option, or the isolated island option. The whole exercise appeared to be designed to force the PUB to validate Nalcor's preferred interconnected island option, as the isolated island option was known to be problematic, and of course the PUB was not allowed to investigate any other options for providing power to the people of the province.

We ask the Commissioner to look at the level of communication between Nalcor and Government at the time that these two options were created. *At what point in time did they come up with these options? Were other options discussed and analyzed? If yes, why were the results not shared with the PUB? If not discussed and analyzed, why not?*

We also ask the Commissioner to examine why the PUB stated in its eventual report that a lack of critical information, as well as delays in receiving this information from Nalcor, significantly impacted its ability to answer the reference questions as presented to the PUB. *Were there delays? If yes, what caused them? Were they justified? Was all relevant and critical information actually provided? Most important, why did Government make the decision to proceed with the Project without a full report from the PUB?*

We further hope the Commissioner will examine questions asked in the House of Assembly by the opposition parties regarding Muskrat Falls, and assess whether the responses given by Government at that time align with what the Commissioner discovers Government knew at that time. *Specifically, was information known to the government at that time withheld? Was any factually incorrect information provided?*

██████████ · ██████████ · ██████████ · ██████████ · ██████████
██████████ · ██████████ · ██████████

Questions Regarding Risks and Problems:

*Based on sections 2.3 and 2.4 of the Terms of Reference of the Inquiry, we ask that the Commissioner attend to the following areas which we believe are **risks and problems** of the Project that should have been anticipated before sanctioning or during implementation:*

- *Did Nalcor review, acknowledge, or accept a report written in 2013 by SNC Lavelin outlining the company's serious concerns regarding potential cost overruns and project schedule delays? If yes, did Nalcor inform the government? If not, why not? If the government was informed, did it proceed with corrective measures and if not, why not? If the government knew about the SNC Lavelin report, why did it not inform the public?*
- *Was due diligence done by Government and/or Nalcor on SNC Lavelin regarding known questionable business practices the company had conducted in the recent past, which included senior executives being charged with fraud, misappropriation of funds, and bribery in Canada? If not, why not? If yes, why was SNC Lavelin selected for the task?*
- *What detailed peer-reviewed evidence exists that the North Spur dam is secure and poses no danger to those living downstream? If such evidence exists, did Nalcor also actively seek and thoroughly consider evidence to the contrary? If not, why not?*
- *What effect does the water management agreement with Hydro Quebec – or the lack of one – have on the overall viability of the Project? Why was the decision made to proceed with the Project given that no agreement was in place, and that serious concerns about the likelihood of reaching an acceptable agreement with Quebec had been raised publicly by knowledgeable legal professionals?*

██████████ · ██████████ · ██████████ · ██████████ · ██████████
 ██████████ · ██████████ · ██████████

- Part of the process for obtaining a federal loan guarantee for the Project was securing the sanction of the Maritime Link. That required a review by the Nova Scotia Utility and Review Board (UARB). The UARB rejected the original Maritime Link agreement and asked for a better deal for Muskrat Falls power before it would sanction the Maritime Link construction. Nalcor, needing approval of a federal loan guarantee (FLG) to construct the Project, found itself in a weak bargaining position, and had no choice but to accept the deal to secure the FLG. *What circumstances led to Nalcor being in this weak bargaining position? What options were considered other than the final agreement?*
- *Why were concerns about problems associated with methylmercury not addressed earlier? Were these concerns taken seriously by Nalcor and the government? What evidence was relied upon by them to determine that these concerns were not critical?*
- *What has been the ongoing role of the Nalcor Board of Directors throughout this project? What was the scope and scale of their participation in key project decisions? Were members of the Board adequately informed prior to making decisions? Were they proactive in terms of getting the information they thought important? Were they successful in obtaining all the information they requested? Were concerns about the Project raised at the Board level?*
- *Were there any internal concerns within the Nalcor corporate organization about the Project's costs, processes, risks, and problems?*
- *What evidence existed for both Nalcor and the current government, to have claimed in 2015, that the Project could not be stopped because it was too far along? Did Nalcor and/or Government do, or have done, any proper economic analysis to inform their*

██████████ ▪ ██████████ ▪ ██████████ ▪ ██████████ ▪ ██████████
 ██████████ ▪ ██████████ ▪ ██████████

Conclusion:

The New Democratic Party of Newfoundland and Labrador wishes the Commissioner well as he takes on the difficult and enormous task that is the Muskrat Falls Inquiry. As we have outlined in this submission, we hope the Commissioner will interpret his terms in the broadest possible sense, such that he can bring to the people of the province much needed openness, transparency, and accountability related to the controversial Muskrat Falls Project as it continues into the future.

[REDACTED]