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Via Email: admin@musktratfallsinquiry.ca

April 27, 2018

Commission of Inquiry Respecting
The Muskrat Falls Project
5th Floor, Suite 502,
Beothuck Building
20 Crosbie Place
St. John's, NL A1B 3Y8

Attention: Justice Richard LeBlanc

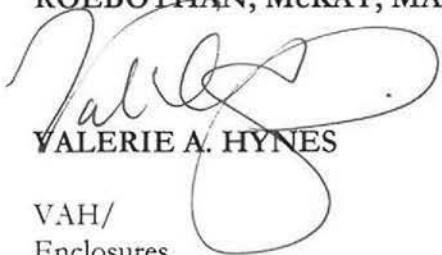
Dear Sir:

**Re: Application of The Newfoundland Labrador Building and Construction
Trades Council and the Resource Development Trades Council of
Newfoundland and Labrador for Limited Standing**

Please find enclosed our Application for Standing, which we ask to be heard on Friday, April 6, 2018 in St. John's, NL.

Yours very truly,

ROEBOTHAN, McKAY, MARSHALL


VALERIE A. HYNES

VAH/
Enclosures

In the matter of the Commission of Inquiry Respecting the Muskrat Falls Project established in accordance with Part I of the Public Inquiries Act, 2006.

-and-

In the matter of an application for Standing of The Newfoundland Labrador Building and Construction Trades Council and the Resource Development Trades Council of Newfoundland and Labrador pursuant to Section 8 of the *Rules of Procedure - Commission of Inquiry Respecting the Muskrat Falls*

APPLICATION FOR LIMITED STANDING

To the Honourable Justice Richard LeBlanc:

Background

1. On November 20, 2017, The Honourable Dwight Ball, Premier of Newfoundland and Labrador, announced the appointment of the Honourable Justice Richard D. LeBlanc as the sole Commissioner, to a Commission of Inquiry Respecting the Muskrat Falls Project in accordance with Part I of the Public Inquiries Act, 2006.
2. Under the authority of section 3 of the Public Inquiries Act, 2006, the Lieutenant Governor in Council made Regulation 101/17 outlining the terms of reference of the Inquiry which states in part:
 4. The commission of inquiry shall inquire into:
 - (b) why there are significant differences between the estimated costs of the Muskrat Falls Project at the time of sanction and the costs by Nalcor during project execution, to the time of this inquiry together with reliable estimates of the costs to the conclusion of the project including whether
 - (i) Nalcor's conduct in retaining and subsequently dealing with contractors and suppliers of every kind was in accordance with best practice, and, if not, whether Nalcor's supervisory oversight and conduct contributed to project cost increases and project delays,

- (ii) the terms of the contractual arrangements between Nalcor and the various contractors retained in relation to the Muskrat Falls Project contributed to delays and cost overruns, and whether or not these terms provided sufficient risk transfer from Nalcor to the contractors,
 - (iii) the overall project management structure Nalcor developed and followed was in accordance with best practice, and whether it contributed to cost increases and project delays,
 - (iv) the overall procurement strategy developed by Nalcor for the project to subdivide the Muskrat Falls Project into multiple construction packages followed industry best practices, and whether or not there was fair and competent consideration of risk transfer and retention in this strategy relative to other procurement models, ..., and
 - (vi) the commercial arrangements Nalcor negotiated were reasonable and competently negotiated;
 - ...
6. The commission of inquiry shall findings and recommendations that it considers necessary and advisable related to section 4.
3. The Rules of Procedure as issued by the Commission of Inquiry section 10 states:
10. Pursuant to section 5(2) of the Public Inquiries Act, 2006, a person may be granted standing by the Commissioner, after considering:
- a) whether the person's interest may be adversely affected by the findings of the Commission;
 - b) whether the person's participation would further the conduct of the Inquiry; and
 - c) whether the person's participation would contribute to the openness and fairness of the Inquiry.

Submission

4. This application is brought on behalf of both the Newfoundland and Labrador Building and Construction Trades Council and the Resource Development Trades Council of Newfoundland and Labrador. These associations represent sixteen (16) trade unions, and over Fifteen Thousand (15,000) members, in the construction sector in Newfoundland and Labrador.
5. The Newfoundland and Labrador Building and Construction Trades Council is the provincial council representing the Canadian Building Trades Union in Newfoundland and Labrador. Its role is to give construction workers a collective voice in the workplace and industry, to help ensure that workers are well-trained to meet industry needs, and to promote healthy and safe work conditions with fair wages, pensions and benefits.

6. The Newfoundland and Labrador Building and Construction Trades Council provides essential coordination and support to the work of its affiliated unions in order that, through inter-trade solidarity, organized construction workers achieve a powerful voice in government, in bargaining, and in their communities.
7. The sixteen (16) member unions organized the Resource Development Trades Council of Newfoundland and Labrador in order to act as a council of unions for the purposes of the Labour Relations Act, R.S.N.L. 1990 c. L-1, as am, in the negotiation and administration of Collective Agreements and to act as the exclusive bargaining agent of the Unions and of each Union, to secure Agreements with any Company or Associations of Companies that may undertake resource development projects in the Province of Newfoundland and Labrador.
8. On June 17, 2013 the Lieutenant-Governor in Council declared that the undertaking with respect to the construction of the hydroelectric generating installations and related facilities at Muskrat Falls as a special project, cited as the *Lower Churchill Hydroelectric Generation Project Special Project Order* NLR 67/13 pursuant to s.70 of the Labour Relations Act, aforesaid.
9. The Resource Development Trades Council Newfoundland and Labrador was designated the council of trade unions acting for and on behalf of all affiliated unions which represent employees employed on the Project at the Muskrat Falls Site. As stated, the Newfoundland and Labrador Building and Construction Trades Council represents the same unions but with a broader mandate in the construction industry within the Province of Newfoundland and Labrador. The investigations, findings and recommendations of the Commission of Inquiry Respecting the Muskrat Falls Project will have an impact on both organizations and all of the unions they represent and for this reason we are applying for standing on behalf of both organizations and will refer to them both as the "Trades Council".
10. The sixteen (16) trade unions the Trades Council represents are as follows:
 - (i) **Hotel and Restaurant**
Hotel Employees and Restaurant Employees International Union and Local 779
 - (ii) **Ironworkers**
International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers and Local Union 764
 - (iii) **Linesperson**
International Brotherhood of Electrical Workers and Local Union 1620
 - (iv) **Labourers'**
Labourers' International Union of North America and the Construction and General Labourers' Union, Rock and Tunnel Workers Local 1208
 - (v) **Operating Engineers**

- International Union of Operating Engineers and Local Union 904
- (vi) **Teamsters**
The International Brotherhood of Teamsters and Local Union 855
- (vii) **Bricklayers**
International Union of Bricklayers and Allied Craftworkers and Local Union 1
- (viii) **Boilermakers**
International Brotherhood of Boilermakers Iron Ship Builders Blacksmiths, Forgers and Helpers, Local 203 (including Non-Destructive Testing)
- (ix) **Electrical**
International Brotherhood of Electrical Workers and Local Union 2330
- (x) **Millwrights**
United Brotherhood of Carpenters and Joiners of America and Millwrights Local Union 1009
- (xi) **Plumbers and Pipefitters**
United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, and Local Union 740 (including Non-Destructive Testing)
- (xii) **Carpenters**
United Brotherhood of Carpenters and Joiners of America and Carpenters Local Union 579
- (xiii) **Painters**
International Union of Painters and Allied Trades and Local Union 1984
- (xiv) **Insulators**
International Association of Heat and Frost Insulators and Allied Workers, Local Union 137
- (xv) **Sheet Metal**
Sheet Metal Workers' International Association and Local Union 512
- (xvi) **Elevators**
International Union of Elevator Constructors and Local Union 125 A.

11. The Trades Council also represented these skilled trade unions recently in the construction or fabrication activities of the Gravity Base Structure, Topsides and Platform Hook-Up for the Hebron Development Project at Bull Arm, in Trinity Bay, in the Province of Newfoundland and Labrador as well as the construction of a Nickel Processing Plant for Vale Newfoundland & Labrador Limited, at Long Harbour, in the Province aforesaid and other special projects previously.
12. The Trades Council is therefore a Party to the Collective Agreement with the Muskrat Falls Employers Association Inc. for the Muskrat Falls generating facility. With respect to the construction of the generating facility, the Resource Development Trades Council of

Newfoundland and Labrador was the sole and exclusive bargaining agent for union employees of the contractors engaged in construction work at the Muskrat Falls site (the "Project").

13. The Trades Council seeks limited standing before the inquiry on the following bases:

Whether the Trades Council's interest may be adversely affected by the finding of the commission:

14. At paragraph 48 of Justice LeBlanc's Interpretation of the Terms of Reference for the Muskrat Fall Inquiry ("LeBlanc J. Interpretation") discusses the role of the Commission to make recommendations moving forward. Recommendations arising from this inquiry will have a direct impact on future special projects which will directly impact the Trades Council and their membership including future special project orders, collective bargaining and work conditions.
15. The Project to this date is a construction project and the Trades Council represents the men and women whose efforts have built the project to its current stage of development and will see it through to its completion. It is anticipated that the performance, productivity and conduct of the employees will be investigated and brought into question during the Inquiry. The Trades Council has a direct and substantial interest in that investigation and requires participation and standing to represent their interests during relevant portions of the Inquiry.
16. It is possible that some of the members of Trades Council will be called as witnesses at the Inquiry and participation in the Inquiry by the Trades Council will assist in representing their interests fully and fairly.
17. As Trades Council represents the skilled workers who completed the construction work on the Project, it is submitted that there is a potential that the interests and reputation of these employees could be adversely affected by the findings of the commission.

Whether the Trades Council's participation would further the conduct of the inquiry:

18. The Trades Council is a coalition of unions that represents not fewer than eighteen (18) skilled trades, including non-destructive testing employees; as such they have a unique perspective on the impact of policy, procedure and operational considerations on the over 15,000 workers that it represents, but also speaks as one voice which avoids duplication and encourages cooperation.

19. The Trades Council has a significant congruence of interests and this will further the conduct of the Inquiry efficiently.
20. The Trades Council submits that the skilled workers who have built this Project deserve a voice. They have intimate knowledge of the construction aspect of the Project, day to day progress and delays; they have valuable insight to contribute.
21. In the LeBlanc J. Interpretation, Justice LeBlanc stated that he sought public input regarding the interpretation of the Order in Council and the Terms of Reference, and he received thirty-two (32) submissions. At paragraph 10 LeBlanc J wrote, "*Many of the submissions filed express significant concern related to the approval or sanction process of the Project as well as the construction of the Project to date.*" The Trades Council is the voice for the employees who completed the construction of the Project.
22. The participation of the Trades Council is essential to furthering the conduct of the inquiry in a fair and inclusive manner by providing a perspective from the point of view of the employees it represents.

Whether the Trades Council's participation would contribute to the openness and fairness of the inquiry:

23. The Trades Council is one organization, their participation is as efficient as possible in keeping with the Rules of Procedure and will not cause delay or distract from the Commissions mandate.
24. It is anticipated that the Muskrat Falls Employers' Association Inc. or other interested parties such as Astaldi and Nalcor will receive standing and will be represented throughout the inquiry, it is imperative for the employees to be represented as well, to ensure a broad range of perspectives would be presented and so that the Inquiry is inclusive and thorough.
25. The findings of the investigation as it pertains to section 4 (b) of the Term of Reference and the final recommendations applicable will directly impact the employees represented by the Trades Council in future special projects and other construction projects in the Province of Newfoundland and Labrador.
26. The Trades Council is seeking limited standing as it pertains to section 4(b) project execution, cost escalation and the Commissioners investigation and findings arising. The Trades Council having limited participation in this aspect of the Inquiry would assist with furthering the openness and fairness of the inquiry.

Conclusion

27. The Trades Council seeks limited standing as it pertains to section 4(b) project execution and cost escalation. Specifically, the Trades Council seeks standing with matters concerning costs, the collective agreement, labour costs for skilled trades, costs attributed to skilled trades, planning of work, productivity, scheduling of tasks, and anything relevant to the Muskrat Falls Employers' Association Inc. including Astaldi or any Employers presenting on skilled trades work, conduct and responsibilities at the Muskrat Falls site.
28. In requesting limited standing the Trades Council is seeking the ability to have its lawyer present at the hearings and participate in the proceedings in accordance with the Rules of Procedure for the Commission of Inquiry Respecting the Muskrat Fall Project, as it relates to its interests as set out in paragraph 27.
29. Trades Council further seeks to reserve its rights to seek full standing on its own behalf in the event any specific members the Trades Council are called as witnesses and/or the Commission's investigation reveals that the Trades Council and/or any of its members have a direct and substantial interest in other areas of the Inquiry.
30. All of which is respectfully submitted.

Dated at the City of St. John's, Province of Newfoundland and Labrador this 27th day of March, 2018.



ROEBOTHAN MCKAY MARSHALL

Solicitors for the Applicant

Whose address for service is:



Attention: Valerie A. Hynes

In the matter of the Commission of Inquiry Respecting the Muskrat Falls Project established in accordance with Part I of the Public Inquiries Act, 2006.

-and-

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APPLICATION FOR LIMITED STANDING


Affidavit of John Leonard

I, John Leonard, [REDACTED] in the Province of Newfoundland and Labrador, make oath and say as follows:

1. That I am the Business Manager of the International Union of Bricklayers and Allied Craftworkers and Local Union 1.
2. That I am President of the Newfoundland Labrador Building and Construction Trades Council and the Resource Development Trades Council of Newfoundland and Labrador.
3. That I have read my Application for Limited Standing and swear this Affidavit for the purposes of supporting the Application.
4. I have personal knowledge of the facts in my Application and they are true to the best of my knowledge, information and belief.

SWORN TO at the City of St. John's,
in the Province of Newfoundland and
Labrador, this *27* day of *March* ,
2018, before me:



Valerie A. Hynes, Barrister, NL

John Leonard