

## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

**IN THE MATTER OF an Application by  
Charles W. Bown, seeking standing pursuant to s.5 (b)  
of the *Public Inquiries Act, 2006* S.N.L. 2006  
c. P-38.1, and ss. 15-17 of the *Commission's  
Rules of Procedure***

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### APPLICATION FOR STANDING

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The Applicant, Charles W. Bown, states as follows:

**The Applicant:**

1. The Applicant, Charles W. Bown, was Assistant Deputy Minister – Energy Policy, at the Department of Natural Resources, from June 2006 – September 2010, was the Associate Deputy Minister – Energy, at the Department of Natural Resources from September 2010 – September 2012, and Deputy Minister of the Department of Natural Resources from September 2012 – December 2016.
2. While occupying the aforementioned senior roles at the Department of Natural Resources the Applicant participated in the conceptualization and drafting of the province's Energy Plan. The Energy Plan laid out the plan/strategy to develop the Lower Churchill River and the role that Nalcor would play in the development and management of the province's natural resources.

3. The Applicant was also the Departmental lead, in the Department of Natural Resources, with respect to the following:
  - a. New legislation and amendments to create Nalcor Energy and facilitate the Lower Churchill Project;
  - b. Evaluation of project scenarios and alternatives, including internal departmental studies on available options for energy;
  - c. Negotiations with Emera Inc. including participation in the negotiation of agreements regarding the supply of power to Nova Scotia;
  - d. Negotiations with the Government of Canada concerning the Federal Loan Guarantee 1 and 2;
  - e. Providing general and specific project advice to the Minister of Natural Resources and the Premier on project options and sanction, and;
  - f. Reviewing and commenting on the Terms of Reference to the Public Utilities Board;
4. In addition to the foregoing, the Applicant was also the principal liason /contact person between the Government of Newfoundland and Labrador (Government) and Nalcor on project matters and issues. The Applicant's role was all encompassing and included providing advice, input, and information to Nalcor that was requested or necessary for the Muskrat Falls Project, as well as providing information received from Nalcor to the Government.
5. The Applicant was appointed as a member of the Muskrat Falls Oversight Committee and is currently the chairperson of that committee. In his role on the Oversight Committee the Applicant has been directly involved with project oversight and has assisted Ernst & Young with the various reviews they completed in relation to the Muskrat Falls Project.
6. At present, the Applicant is the Chief Executive, Major Projects and Initiatives with the Government of Newfoundland and Labrador.

## **Submissions in Support of Standing:**

7. Section 5 of the *Public Inquiries Act, 2006* reads as follows:

5. (1) A commission shall give those persons who believe they have an interest in the subject of the inquiry an opportunity to apply to participate.
- (2) A commission shall determine whether a person may participate in an inquiry, and how he or she may participate, after considering
  - (a) whether the person's interests 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.

8. On March 14, 2018, Leblanc J. issued a decision addressing the Interpretation of the Terms of Reference for the Muskrat Falls Inquiry. This decision was meant to focus the Inquiry and to inform parties that are applying for standing. It is submitted that in light of this decision it is necessary to examine s.5 of the *Public Inquiries Act, 2006* in the context of the Terms of Reference and the decision addressing its interpretation.

9. With respect to Section 4(a) of the Terms of Reference and project sanction, the Applicant was the departmental lead with respect to evaluation of project scenarios and alternatives, negotiations with Emera Inc., negotiations with the Government of Canada on the Federal Loan Guarantee 1 and 2, and provided both general and specific advice regarding project options and sanction to the Minister of Natural Resources and the Premier. According to the decision of Leblanc J., an examination of section 4(a) “requires that the Commission investigate and consider what Nalcor knew, or was reasonably expected to know, at the time it proposed the Project for sanction, whether the information was accurate and further, what information and, by extension, whether all

necessary information, was provided to Government at the time.” The Applicant has a perspective both pre and post sanction that will help inform the Commission. Furthermore, given the Applicant’s position as the principal liason/contact person between Government and Nalcor, the Applicant can provide a unique perspective with respect to “whether Government was aware of and appropriately considered all relevant matters prior to its sanction of the project” and after sanction was granted. The Applicant is familiar with issues surrounding the Muskrat Falls Project before and after sanction, including the Federal Loan Guarantee, negotiations with Emera Inc., the Terms of Reference to the PUB, and can ensure his position is accurately represented before the Commission. Furthermore, given the Applicant’s day to day role with respect to acting as the principal liason between Nalcor and Government it is anticipated that he will be the subject of lengthy testimony that may impact him professionally and personally, and standing will ensure that the Commission has a complete and accurate picture regarding information provided to and from Government, while at the same time the Applicant can ensure his positions are presented in a clear and accurate fashion.

10. With respect to s. 4(b) of the Terms of Reference, the decision of Leblanc J. indicates that the Inquiry is to consider how “reports and assessments received by Nalcor and whether they were made available to the Board of Nalcor as well as the Government will also be part of the investigation.” As the principal liason/contact person between the Government and Nalcor the Applicant was directly involved with the communications between Nalcor and Government. The Applicant met frequently with Nalcor’s Chief Executive Officer and senior management team. A tremendous amount of information was shared with the Applicant and communicated between Nalcor and the Government and vice versa. The Applicant also attended briefing sessions for Government provided by Nalcor where reports and assessments were provided. As it is likely that both exhibits and testimony surrounding s.4(b) of the Terms of Reference will include significant and numerous references to the Applicant he has a significant interest in being granted standing in this Inquiry to inform the Commission and present his position and protect his interest and professional reputation.

11. With respect to s.4(c) of the Terms of Reference, Leblanc J. indicates that the Commission will examine the Public Utilities Board exemption, including “the impact of the decision of the PUB on March 30, 2012 wherein it requested an extension of time to conduct its review and the response by Government to this. To be determined as well is whether there was any interference on the part of Nalcor or Government with respect to the PUB’s consideration of the Project.” The Applicant is familiar with the Public Utilities Board exemption and assisted in reviewing and commenting on the Terms of Reference to the Public Utilities Board. Therefore, the Applicant’s participation as a party with standing will enhance the examination of this aspect of the Terms of Reference and allow for a more thorough review of this issue.
  
12. With respect to s.4(d) of the Terms of References, Leblanc J., indicated in his decision that the Inquiry will review both “past and present administrations” and will examine “the reporting structures between Nalcor and the various government administrators, the governance model employed and the communications between the two entities as the project progressed. The Commission will examine both what Government knew and what it ought to have known as well as what it did to ensure reasonable and appropriate oversight of the Project and how it progressed. Implicit in such an investigation will be a consideration of the decisions made by Government to continue to proceed with the Project.” The Applicant was the principal liason/contact person between the Government and Nalcor, and is the current Chair of the Muskrat Falls Oversight Committee. Given the Applicant’s extensive involvement in this matter over an extended time period and over the life of multiple administrations, there is a greater likelihood that his interests may be adversely affected by the findings of the Commission than many other individuals. In addition, given the Applicant’s participation in multiple administrations he will further the conduct of the inquiry as he will provide continuity with respect to the governance model employed for the project and the communications between Government and Nalcor as the project progressed. The Applicant’s participation is proper and necessary to contribute to the openness and fairness of the inquiry and standing should be granted to ensure that the Applicant can respond to any issues which

the Commission may raise regarding the Applicant's role in the project and to ensure his position is clearly set out before the Commission.

13. The Applicant has a significant interest in the subject matter of this inquiry given the significant roles and functions he performed throughout the life of the Muskrat Falls Project. As a result of the various duties he performed as the Deputy Minister of Natural Resources and subsequent chair of the Muskrat Falls Oversight Committee the Applicant has a unique perspective with respect to the project, communications with the Premier and Cabinet, communications between Government and Nalcor, and any advice provided with respect to the project and its oversight from conception, to sanction, to post sanction. The Applicant's participation will further the conduct of the inquiry and contribute significantly to the openness and fairness of the inquiry.

14. It is also anticipated that the Applicant will be called to testify during the inquiry in light of the significant role he played and the functions he performed on a daily basis during the life of the Muskrat Falls Project. It is also likely that there will be a significant number of exhibits involving the Applicant which will be entered into evidence. The Applicant has a significant interest in all of the evidence that will arise at the hearing, and in particular any testimony arising out of the exhibits and documents he prepared, authored, or reviewed. Given the interest that the Applicant will have in this evidence his personal interests could be adversely affected and standing is necessary to ensure his rights and professional reputation are protected and that the evidence that the Commission receives is fair, complete and accurate.

15. Finally, the Applicant advises that he will not be seeking funding from the Commission should standing be granted as his legal costs will be paid by the Province.

**Relief Requested:**

16. In light of the foregoing, the Applicant, Charles W. Bown, hereby requests standing before the Commission of Inquiry respecting the Muskrat Falls Project for the entire

hearing. In the event that oral submissions are necessary the Applicant requests to be heard at the sitting of the Commission in St. John's, NL, on April 6, 2018.

**DATED** at St. John's, in the Province of Newfoundland and Labrador this 28<sup>th</sup> day of March, 2018.



**Andrew A. Fitzgerald**  
Lewis, Sinnott, Fitzgerald  
Solicitors for the Applicant

