



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR CONSEIL DES INNU DE EKUANITSHIT FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 16, 2018

LEBLANC, J.:

INTRODUCTION

[1] The Conseil des Innu de Ekuanitshit (“Conseil”) is an Innu band within the meaning of section 2 of the *Indian Act* and represents its members who reside on the Mingan reserve in Quebec. The Conseil is part of the Innu nation whose people reside both in Quebec and in this Province. As an Indigenous group, the Conseil has participated in consultations involving the Muskrat Falls Project, including making submissions to the Joint Review Panel for the Environmental Assessment conducted as well as other assessments. The Conseil has applied for full standing at the hearings set by the Commission of Inquiry Respecting the Muskrat Falls Project. It also requests that a recommendation be made for funding for its participation in the Inquiry including for legal counsel, travel expenses and translation services.

[2] In my March 14, 2018 interpretation of the Commission’s mandate as set out in the Order in Council establishing the Commission of Inquiry, I concluded that section 5(a) of the Order in Council required a consideration of participation of some type by the established leadership of Indigenous People with settled or asserted rights to areas in Labrador adversely affected by the Muskrat Falls Project.

[3] At paragraph 47 of my decision, I stated that such participation and involvement would be related to the following matters:

1. Consultation that occurred between the established leadership of the Indigenous people and Nalcor as well as the Government of this Province;
2. The risk assessments and reports done as regards the concerns of Indigenous people;
3. Whether these assessments and reports were appropriately and reasonably considered by Nalcor and the Government of this Province; and
4. Whether appropriate measures were taken to mitigate against reasonably potential adverse effects to the subtle or asserted rights of the Indigenous people both at the time of and post sanction of the Muskrat Falls Project.

[4] I went on to state in that decision that while I would be considering these matters, I would not be determining any claims or treaty rights.

[5] Further, I stated in my decision that it is not within the mandate of this Inquiry to assess the correctness of the positions taken by Nalcor and the Government on environmental matters but, rather, only to investigate the analyses and risk assessments completed as regard those issues to determine whether Nalcor and the Government have acted in accordance with accepted standards and, as well, to review measures taken to address any legitimate environmental concerns to see if these were reasonable.

[6] It is with this in mind that I have determined that the Conseil should be permitted to participate in the Inquiry hearings but only to a limited extent. I see no reason or benefit in granting the Conseil full standing as they have requested. I am satisfied that they should be granted limited standing where the four areas referred to in paragraph 3 will be the subject of evidence. The interests and the concerns of the Conseil within the purview of the Inquiry as related to these matters can be fully and fairly addressed by this form of limited standing.

[7] Commission co-counsel will be informing counsel for the Conseil when they expect those matters set out above to be raised at the Inquiry hearings so that counsel for the Conseil can prepare for and participate in these hearings.

[8] I would also encourage consultation and joint preparation with counsel for other Indigenous groups granted standing where there are similar or common interests and positions. This will avoid duplication of effort and time and ensure efficiencies at the hearings.

[9] As for the funding request of the Conseil, I am prepared to recommend funding pursuant to section 5(5) of the *Public Inquiries Act, 2006*, S.N.L. 2006, c. p-38.1, for the limited purposes identified above to allow the Conseil to participate in the Inquiry on a limited basis to the extent that their interests are engaged as referred to in paragraph 3 above. This will include their ability to retain legal counsel and to cover expenses both for counsel and one representative of the Conseil to attend at the hearings when necessary.

[10] Having been granted limited standing, the Conseil is bound by the Commission's Rules of Procedure, including Rule 19 regarding document disclosure to be provided to the Commission within 14 days. Counsel for the Conseil is encouraged to discuss this obligation with Commission co-counsel as soon as possible.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER