



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR NEWFOUNDLAND POWER INC. FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 16, 2018

LEBLANC, J.:

INTRODUCTION

[1] Newfoundland Power Inc. (“Newfoundland Power”) has made an application for the granting of full standing for participation at the hearings of the Commission of Inquiry respecting the Muskrat Falls Project. It bases its application generally on the potential that its interests, and those of its customers, may be adversely affected by the Inquiry’s findings and recommendations, that its participation would further the conduct of the Inquiry and its participation would contribute to the openness and fairness of the Inquiry. These reasons correlate with the criteria set out in section 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 2006 c. P-38.1 (the “Act”).

[2] Newfoundland Power distributes electricity to some 265,000 customers on the Island portion of the Province and while it generates some 7% of the electricity that it sells to its customers, it is dependent on the supply of its other electricity demand from Newfoundland Hydro.

[3] This standing application is subject, as indicated above, to section 5 of the *Public Inquiries Act, 2006*. Section 5(1) of that Act requires that:

Persons who believe they have an interest in the subject matter of the Inquiry shall be given an opportunity to apply to participate.

[4] The criteria for determining whether or not a party or a person should be able to participate in the Inquiry is set out under section 5(2) and is as referred to above.

ANALYSIS

[5] In the application filed by Newfoundland Power requesting that full standing be granted, its counsel has indicated that Newfoundland Power's "primary focus and participation", at the hearings will be regarding "the future operation of this Province's electrical system, potential impacts upon Newfoundland Power's operations and its customers, including customer rate impacts and rate mitigation measures, as well as the regulation of processes and procedures".

[6] I have now carefully considered the submissions of counsel for Newfoundland Power and have come to the conclusion that a grant of full standing to them for all of the hearings is not required based upon my consideration of the three criteria set out in section 5(2) of the Act. While Newfoundland Power may be adversely affected by recommendations emanating from the Inquiry, I am not satisfied that its full involvement in all phases of the Inquiry would either further the conduct of the Inquiry or contribute to its openness or fairness to the extent that full standing is necessary.

[7] From all that the Commission has seen to date, Newfoundland Power has had no involvement nor decision-making in this Project to date. Sections 4(a), (b) and (d) of the Commission's Terms of Reference are primarily focused on what has happened as regards the sanction, construction and oversight of the Muskrat Falls Project. Finding facts with regards to how sanction came about and, as well, why the cost of the Project has escalated from the initial estimates at the time of sanction will not require Newfoundland Power's expertise or knowledge for the Commission to do its work.

[8] As well, while Newfoundland Power has experience with this Province's regulatory system, including with the Public Utilities Board, section 4(c) of the Order in Council primarily is requiring a review as to why the Muskrat Falls Project was exempted from PUB scrutiny and how such exemption may have impacted the Project. I am not satisfied here that Newfoundland Power can add anything to that determination on the basis of its present expertise and knowledge.

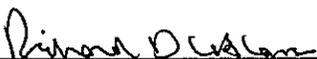
[9] Determining what has occurred in the past up to now for this Project, which is the main focus of the Inquiry, will not, in my view, have any implications for Newfoundland Power except as I will set out below.

[10] Having said this, I do recognize that Newfoundland Power has knowledge of and experience in the electrical utility industry. It is a regulated utility. Because of this, I am prepared to grant Newfoundland Power special standing for both Phases One and Two of the Inquiry hearings. The special standing that I am prepared to grant to Newfoundland Power recognizes its experience and involvement in the electrical industry as well as their interest in the future operations of this Province's electricity system and its regulation. I will define their special standing status as follows:

1. Newfoundland Power shall be entitled to have its counsel sit with other counsel for parties given standing throughout the hearings.
2. Newfoundland Power will receive all documentation provided to other counsel for parties given standing but they shall have no right to cross-examine witnesses called during Phases One and Two of the Inquiry, except upon my granting leave to do so where I am satisfied that it is appropriate.
3. Subject to the Rules of Procedure and any redaction deemed appropriate to co-counsel, counsel for Newfoundland Power will be entitled to review all documents and reports to be entered at Phases One and Two, or are made available to counsel for other parties given standing, and to receive advance notice of witnesses to be examined at Phases One and Two as well as a statement as to their anticipated evidence.

[11] I also recognize that the Commission's recommendations may possibly impact such things as future operations in this Province as regards megaproject sanction and construction, the future operations of this Province's electricity system and the regulatory process, all of which could potentially have implications for Newfoundland Power. I agree with the applicant's oral submission that Phases One and Two will establish the factual matrix for Phase Three of the hearings dealing with the future. As such, I have decided to grant Newfoundland Power full standing with full participatory rights during Phase Three of the Inquiry.

[12] Having been granted special standing for Phases One and Two of the Inquiry and full standing for Phase Three, Newfoundland Power is bound by the Commission's Rules of Procedure. Pursuant to Rule 19, disclosure in the hands of Newfoundland Power or in its control of documents relevant to the Commission's work must be provided to the Commission within 14 days of this decision. Counsel should contact Commission co-counsel as regards this obligation.



JUSTICE RICHARD LEBLANC
COMMISSIONER