



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR THE INNU NATION FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 16, 2018

LEBLANC, J.:

INTRODUCTION

[1] The Innu Nation has applied for full standing to participate in the hearings of the Commission of Inquiry Respecting the Muskrat Falls Project.

[2] The Innu Nation is an incorporated entity with some 2200 members. Its members have traditionally inhabited the area where the Muskrat Falls Project is being constructed and, along with ongoing land claims negotiations, Nalcor has entered into an Impact and Benefits Agreement with the Innu Nation as a part of this Project.

[3] The applicant is aware of my March 14, 2018 decision interpreting the Order in Council establishing the Commission. I have determined that the Indigenous people will participate in the Inquiry hearings regarding the following matters:

1. the consultation that occurred between the established leadership of the Indigenous people and Nalcor and the Government of the Province;
2. the risk assessments and reports done as regards the concerns of the Indigenous people;

3. whether these assessments or 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 on settled or asserted rights of the Indigenous people both at the time of and post-sanction.

The Commission of Inquiry will not be determining any land claims or treaty rights.

[4] To the extent that the Innu Nation's interests as regard to these matters might relate to environmental issues, I have interpreted the Inquiry's mandate such that I have no authority to determine if the positions taken by Nalcor or the Government were correct on any specific environmental issue. However, I am able to investigate what analyses and risk assessments were completed regarding environmental concerns in order to consider whether these were conducted in accordance with accepted standards and to assess whether any measures taken to address legitimate environmental concerns were reasonable.

[5] It is with this in mind, and based upon the interests of the Innu Nation, I have decided to grant standing to the Innu Nation, such standing first and foremost being limited to those parts of the Inquiry hearings where the matters as set out above in paragraph 3 will be dealt with. This is consistent with the approach I will be taking regarding standing applications for other Indigenous people.

[6] The Innu Nation also requests standing for participation in other parts of the Inquiry on matters not specifically related to those discussed above. One area raised concerns the operations of the Independent Expert Advisory Committee ("IEAC") on issues potentially impacting human health. I see this as being an area falling squarely within the assessment I will be conducting as described above and it will be considered along with other mitigating measures taken by Nalcor and the Government pre and post sanction. No further extension of the limited standing I have granted is required on this issue.

[7] The applicant also seeks standing on the issue of sanction of the Project on the basis that its members are consumers of electricity and there are concerns related to the supply of reliable power in Labrador. The position of the Innu Nation is that in considering available options prior to sanction for power generation, power needs not only for the island but also for Labrador should have been considered at the time of sanction. Having considered this aspect of the application, again I am not satisfied that there is a need to expand the limited standing I have granted.

[8] Similarly, I see no need or basis to grant standing to the Innu Nation on the issue of the exemption of the Muskrat Falls Project from scrutiny by the Public Utilities Board as set out in section 4(c) of the Commission's Terms of Reference. The same applies regarding matters involving the Government's actions in sanctioning and overseeing the Project's execution pursuant to section 4(d) of the Terms of Reference other than as described in paragraphs 3 and 4 above.

[9] However, I do accept that the Innu Nation and the people it represents have had involvement in the construction of the Project. To the extent that the Innu Nation and Innu workers are engaged in the Project construction and this is an area that arises at the hearings, I am prepared to grant the Innu Nation standing where their interests are engaged. This will likely arise in parts of Phase Two of the Inquiry.

[10] As a result of my reasons above, the Innu Nation shall have limited standing at the Inquiry hearings on those matters set out in paragraph 3 above as well, where the interest of the Innu Nation and Innu workers are engaged in Project construction.

[11] Commission co-counsel will coordinate with counsel for the Innu Nation when the matters referred to above will be the subject matter dealt with at the hearings so that the Innu Nation, as represented by its counsel, can participate in those hearings.

[12] On the matters involving the consultations with Indigenous people as well as review of assessments and reports done and mitigating efforts undertaken, I expect counsel for the Innu Nation to work with counsel for the other Indigenous groups

and other parties granted standing where they have a common or similar interest. Such will avoid duplication in preparation for the hearings and in examination of witnesses.

[13] The Innu Nation raises the issue of confidentiality with regards to its Impact and Benefits Agreement. To deal with any confidentiality questions, the provision of standing to the Innu Nation is not necessary. Concerns related to the issue of confidentiality and/or privilege will be dealt with under the Commission's Rules of Procedure and through Commission co-counsel.

[14] The Innu Nation has also requested a recommendation for funding so that it can retain counsel and pay expenses for travel to attend the hearings. I have reviewed the financial information provided by the Innu Nation and accept that while it has some revenue, much of those revenues are earmarked for important purposes related to its activities on behalf of the people it represents.

[15] I am prepared to recommend funding for the retention of one counsel on the basis of the limited standing I have granted. As well, I am prepared to recommend that the reasonable expenses, including those for travel for one counsel and one representative of the Innu Nation be funded where travel by plane is required. At this time, I am not prepared to recommend funding for experts or consultants.

[16] Finally, I would remind counsel for the Innu Nation of its obligation to comply with the Commission's Rules of Procedure. In that regard, I point out Rule 19 as regards disclosure of any documentation that would be relevant to the conduct of the Commission within a period of 14 days from the grant of standing. I would encourage counsel for the Innu Nation to speak as soon as is possible with Commission co-counsel in order to discuss how this disclosure can occur.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER