



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR THE NUNATSIAVUT GOVERNMENT FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 16, 2018

LEBLANC, J.:

INTRODUCTION

[1] The Nunatsiavut Government is a legal entity established pursuant to the *Labrador Inuit Land Claims Agreement Act*, S.N.L. 2004, c. L-3. That *Act* sets out the terms of a comprehensive land claims agreement that recognizes a right of self-government for the Labrador Inuit with the Nunatsiavut Government being the representative of the Labrador Inuit. A significant number of the Inuit beneficiaries under that Agreement live outside the Labrador Inuit settlement area where Inuit people have specified rights including harvesting rights. These areas include the Upper Lake Melville region, including the towns of Happy Valley-Goose Bay and North West River as well as the community of Mud Lake. The Nunatsiavut Government states that many of these Inuit beneficiaries will, or may be, negatively impacted by the Muskrat Falls Project. As a result, they have made a standing and funding request to participate in the hearings of the Commission Inquiry respecting the Muskrat Falls Project.

[2] In its oral argument before me on April 6, 2018, the applicant stated its awareness of my decision interpreting the Commission's Terms of Reference of March 14, 2018 and particularly paragraph 47 of that decision. There I determined

that the Indigenous people who had settled or asserted aboriginal or treaty rights to areas in Labrador adversely affected by the Project would be able to participate in the 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 the assessments or reports were appropriately and reasonably considered by Nalcor and the Government of the Province; and
4. Whether appropriate measures were taken to mitigate against reasonably potential adverse effects on settled or asserted rights of the Indigenous people at the time of and post-sanction.

This Inquiry will not determine any land claims or treaty rights.

[3] To the extent that the interests or rights of the Nunatsiavut Government as just set out might relate to environmental issues, I have also interpreted the Inquiry's mandate such that I have no authority or mandate to determine if the positions taken by Nalcor and the Government were correct on any specific environmental issue but I am able to investigate the analyses and risk assessments completed in order to determine whether these were done in accordance with accepted standards and to assess whether any measures taken to address legitimate environmental concerns were reasonable.

[4] It is important to indicate that the Nunatsiavut Government has participated in consultations related to the Muskrat Falls Project to date and made some 37 submissions to the Joint Review Environmental Assessment Panel.

[5] Therefore, based upon my interpretation of section 5(a) of the Order in Council establishing the Inquiry and my interpretation given to the Commission's Terms of Reference, I will grant standing to the Nunatsiavut Government limiting its participation to those parts of the Inquiry hearings where the matters set out above in paragraph 2 will be dealt with. This is consistent with my approach on standing applications made by other Indigenous groups.

[6] Commission co-counsel will coordinate with counsel for the Nunatsiavut Government when the matters referred to above will be the subject matter of the hearings so that counsel for the Nunatsiavut Government can participate in these hearings.

[7] I 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 ensure efficiency during the hearings.

[8] As for the funding request of the Nunatsiavut Government, based upon my review of the financial information submitted, I am satisfied that the Nunatsiavut Government has no funds available to allow it to participate in this Inquiry. As the Commission is requested to consider the participation of the established leadership of Indigenous people affected by the Project and I am satisfied that the participation of the Nunatsiavut Government will further the conduct of the Inquiry and contribute to its openness and fairness on the matters referred to above in paragraph 2, I will recommend that funding be provided to the applicant for the retention of one legal counsel as well as reasonable expenses, including travel costs for that counsel and one representative of the Nunatsiavut Government where such involves travel by airplane. I am not at this time recommending funding for experts or consultants.

[9] Finally, I remind the applicant of its obligation to comply with the Commission's Rules of Procedure. I would note that Rule 19 requires the applicant to provide disclosure of relevant documents in its possession or control to the Commission within 14 days of the grant of standing. I would encourage the Nunatsiavut Government to have its legal counsel speak to Commission co-counsel on this as quickly as is possible.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER