



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR NUNATUKAVUT COMMUNITY COUNCIL INC. FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 15, 2018

LEBLANC, J.:

INTRODUCTION

[1] The NunatuKavut Community Council Inc. (“Community Council”) has applied for full standing in order to participate in the hearings of the Commission of Inquiry Respecting the Muskrat Falls Project. Pursuant to a public notice issued by the Commission on March 15, 2018, applicants for standing were required to have their applications filed with the Commission on or before March 28, 2018. A hearing took place on April 6, 2018 for all the applicants seeking standing. It was only subsequent to those hearings that legal counsel for the Community Council contacted Commission co-counsel to advise of its wish to apply for standing. Its formal application was received by the Commission on April 13, 2018.

THE APPLICATION

[2] In its application the Community Council states that it is the representative governing body for approximately 6,000 Inuit residing in south and central Labrador and that much of the construction for the Muskrat Falls Project has occurred upon what it claims as the traditional lands of the people it represents. Much of the land flooded by the Project is within the Community Council’s land claim area. The concerns and interests of the Community Council primarily relate to the sustenance

of its members' ability to continue what they have traditionally done as regards the harvesting of country foods, fishing, trapping and utilizing the land for other cultural purposes. The Community Council claims that it is well placed to speak to "the lived reality and consequences" of the Project construction and future operations on the environment and its members. As a result, it submits that its interests would be adversely affected by the findings of the Commission. It also states that its knowledge of the role it has played in the Project to date, including its dealings with Nalcor and the Government of Newfoundland and Labrador, will further the conduct of the Inquiry and that its participation will contribute to its openness and fairness.

[3] As stated above, the Community Council seeks to have full standing at the Inquiry. It acknowledges the terms of the Order in Council establishing this Commission of Inquiry as well as the March 14, 2018 decision I rendered interpreting the Commission's mandate.

[4] Specifically, the Community Council claims that it can speak to section 4(a)(ii) of the Order in Council as regards providing details on alternative energy options that could have served the needs of Labrador and other options currently being considered. It also states that it can address section 4(b)(v) as regards risk assessments and analyses respecting environmental matters as well as mitigation measures taken.

[5] The Community Council has referred in its application to the "very limited consultation that occurred" between itself and Nalcor, as well as the Government, notwithstanding the fact that it is the Indigenous group "most impacted" by the Project. The Community Council refers to its involvement in environmental assessments for the Project to date as well as for other developments in Labrador. Also referred to are discussions that occurred in October 2016 regarding methylmercury mitigation and the formation of the Independent Expert Advisory Committee. Issues involving the stability of the North Spur have also been of concern. The Community Council submits that its level of involvement in the Project to date will provide an important perspective for the Commission in its investigation and in making its findings and recommendations.

DELAY IN FILING

[6] I will first deal with the Community Council not filing its application within the time set by the Commission. Based upon the limited time provided to the Commission to complete its work and the obvious need to organize, an extension of time to file standing applications is obviously not desirable. However, I have decided that for this application an extension of time will be permitted.

[7] I have considered that the Community Council did contact the Commission immediately subsequent to the April 6, 2018 standing hearings to advise of its intention to file an application. As well, I am mindful of section 5(a) of the Order in Council which specifically directs the Commission to consider participation of Indigenous people whose settled or asserted rights to areas in Labrador may have been adversely affected by the Project. I am satisfied that the Community Council is such a group based upon their application. All of this convinces me to consider this application for standing notwithstanding it was not filed on time. The late filing occurred due to inadvertence and there is no prejudice in my now determining standing for the Community Council.

STANDING

[8] It seems clear from the application filed that the interests of the Community Council relate almost exclusively to environmental matters. This is similar to the concerns of other Indigenous groups who have applied for standing, including the Nunatsiavut Government, the Conseil des Innu de Ekuanitshit and, to some extent, the Innu Nation. It also seems that there may be some overlap in who the Community Council and the Nunatsiavut Government represent as regards to its claimed members as well as overlap with respect to land claim areas described by the Community Council and the Innu Nation. Overlap is also evident as regards the Grand Riverkeeper Labrador and Labrador Land Protectors groups who claim that some of their members are Indigenous.

[9] That being said, it seems clear that the Community Council has been recognized by Nalcor and the Government of Newfoundland and Labrador as being the established leadership of an Indigenous group who have asserted rights over the land involved in the Muskrat Falls Project. I base this on their past involvement in assessments and the negotiations regarding the Project.

[10] As such, as stated with regards to the other Indigenous people who have applied for standing, paragraphs 45 to 47 of my March 14, 2018 decision interpreting the Commission's mandate requires participation by the established leadership of Indigenous groups in this Inquiry as regards the following matters:

1. What consultation occurred between the established leadership of the Indigenous people, in this case the Community Council, and Nalcor as well as the Government of Newfoundland and Labrador prior to sanction;
2. What risk assessments and reports were done as regards the concerns of the Indigenous people;
3. Whether these assessments were appropriately considered by Nalcor and the Government; and,
4. Whether appropriate measures were taken to mitigate against reasonably potential adverse effects to the settled or asserted rights of the Community Council both at the time of and post-sanction of the Project.

[11] As the concerns expressed by the Community Council focus primarily on environmental matters, I will repeat here what I stated in my March 14, 2018 decision so that the expectations of the Community Council can be informed. Paragraph 54 states:

54. I will also investigate what analyses, risk assessments, etc., were done as regards environmental concerns and whether these were appropriate and reasonable in the circumstances based upon accepted industry standards and the knowledge that the parties had at the various times when the analyses or risk assessments were completed. Included in this will be a review of the measures taken, if any, to address any legitimate environmental concerns. I will not, however, assess the correctness of the positions taken by the various parties. As well, I am satisfied that the Terms of Reference do not

permit me to conduct any further environmental assessment and nor does the time I have to conclude this Inquiry permit this.

[12] While the Community Council has requested full standing in the Inquiry hearings, I have decided that in accordance with the mandate to be met and the criteria set out in section 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 2006, c. P-38.1 to grant limited standing to the Community Council. The Community Council's involvement will be limited to participation on those matters referred to in paragraph 10 and 11 above. I am satisfied that the grant of full standing is not required in order to permit the Community Council to appropriately address its concerns and interests as they relate to the mandate of this Commission.

[13] Commission co-counsel shall advise legal counsel for the Community Council when evidence relevant to its standing will be presented so that the Community Council can participate when necessary. The Commission will welcome any suggestions as regards the investigation being conducted by it as well as the names of witnesses who might be called.

[14] I would also note here that as there are other parties with standing who have similar or common interests and concerns, it is expected that the Community Council and its legal counsel will work cooperatively with those other groups where possible so as to avoid any duplication with regards to preparation and questioning at the hearings.

FUNDING

[15] The Community Council has submitted extensive information regarding its financial means and I am satisfied that it would be unable to participate in this Inquiry, even with the limited standing granted, without a recommendation to Government for funding. Much of the revenue received by the Community Council is committed to or earmarked for specific purposes and is not available to the Community Council to fund its participation in the Inquiry.

[16] I acknowledge the Community Council's submission that it will fund \$5,000 of the costs incurred for it to participate in the Inquiry and that it will also commit time of its staff to participate in the hearings. With this understanding and proviso, I will recommend to the Government of Newfoundland and Labrador that funding be provided to the NunatuKavut Community Council for its participation in the Inquiry, specifically to cover costs for one legal counsel, both for legal fees and reasonable expenses, together with the costs of travel for one representative of the Community Council to attend the hearings where they are held in St. John's and where required by the limited standing granted. At this time, I am making no recommendation for funding for consultants or expert reports.

CONCLUSION

[17] As limited standing has been granted, I would remind the Community Council and its legal counsel of the requirement to comply with the Commission's Rules of Procedure. Rule 19 places an obligation on those provided with standing to provide to Commission co-counsel disclosure of all documents and other things in their possession or control related to the Inquiry's mandate within a period of 14 days from the grant of standing.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER