



Commission of Inquiry Respecting the Muskrat Falls Project

May 16, 2018

Ms. Caitlin Urquhart
Smyth Woodland Del Rizzo Barrett
Old Queen's College
16 Forest Road, Suite 100
St. John's, NL A1C 2B9

Dear Ms. Urquhart:

Thank you for your written confirmation that you represent the Grand Riverkeeper, Labrador Inc. and the Labrador Land Protectors in the Commission of Inquiry Respecting the Muskrat Falls Project. In your correspondence of May 9, 2018, you also request that I revisit my decision on standing for these two groups. I have now reviewed the information that you have provided in your letter and wish to advise that I cannot see any basis for changing the scope of the standing granted to your clients on April 16, 2018.

In my earlier decision on standing for your clients, I carefully considered the material filed in support of their joint application dated March 28, 2018 as well as the oral submissions made on April 6, 2018. At paragraph six of my decision granting them limited joint standing, I found that the primary focus and interest of both groups was regarding environmental and social impact concerns related to the Muskrat Falls Project's sanction, construction and eventual operation. I went on to consider the grounds upon which standing can be ordered in a public inquiry as set out in section 5 of the *Public Inquiries Act, 2006*, S.N.L. 2006, c. P-38.1 and I also referred to the mandate given to this Commission of Inquiry as interpreted by me in my decision dated March 14, 2018.

Based upon my full assessment of the material provided and submissions before me at that time, I granted limited joint standing to both groups to those parts of the hearings where the evidence will deal with environmental analyses, risk assessments and mitigation measures. The risk assessments and mitigation measures referred to were confined to environmental matters for the Muskrat Falls Project as the Commission will be assessing whether the analyses, risk assessments and mitigation measures taken by Nalcor and the Government of Newfoundland and Labrador were reasonable and appropriate based upon accepted industry standards for similar projects. As I pointed out, I will not be assessing the correctness of the positions taken by the various parties on these environmental issues as this does not fall within the Commission's mandate.

I have determined that the Grand Riverkeeper, Labrador Inc. and the Labrador Land Protectors can most valuably assist the Commission in investigating what analyses and risk assessments were done as regards the environmental concerns related to the Project and

5th Floor, Beothuck Building, 20 Crosbie Place, St. John's, NL A1B 3Y8

Tel: 709-729-6076
Toll Free: 1-833-235-7702
Fax: 709-729-6070

Email: admin@muskratfallsinquiry.ca
Website: www.muskratfallsinquiry.ca

whether these were reasonable and appropriate in the circumstances based upon accepted industry standards and the knowledge of the parties at the various times when the risk assessments were completed. The standing I have granted to your clients will permit them to participate in the hearings in a meaningful and robust way. The limited nature of their standing does not reflect a lower value of importance – it simply reflects the issues where your clients' involvement will further the conduct of the Inquiry and where it will contribute to the openness and fairness of the Inquiry.

As well, in my decision granting limited standing to both groups, recognizing their agreement to work cooperatively with the Muskrat Falls Concerned Citizens Coalition, I recommended that the Government of Newfoundland and Labrador not only provide your clients with funding for legal counsel as regards the limited standing granted but also recommended that funding be provided for that counsel to assist both groups in working co-operatively with the Muskrat Falls Concerned Citizens Coalition. That group has significant similar interests to those of both the Grand Riverkeeper, Labrador Inc. and the Labrador Land Protectors. Indeed, both signatories to the initial written application for standing by both groups are also members of the Coalition.

In assessing whether or not to expand standing, I have had to consider whether or not I have the authority at this stage to change the standing of any party. I am satisfied that this can be done. However, this would have to be based upon new information being provided which would support a change in standing. Here, I have reviewed all of the contents of your letter as well as the attachments and find that no additional information is provided that would support a change in the standing granted to your clients.

In reviewing your letter and the basis you put forward to expand their standing, you set out what appears to be significant involvement of both groups, but more so the Grand Riverkeeper Labrador Inc., in the Project as it has been developed and as it has progressed. While such involvement may well give both groups "intimate knowledge and understanding of the Project" as you state, this does not mean that a grant of full standing is required pursuant to section 5(2) of the *Public Inquiries Act, 2006*. I remain fully satisfied that the interests of your clients in the subject matter of this Commission of Inquiry can well be met by the standing I have granted to them as well as with their involvement in and cooperation with the Muskrat Falls Concerned Citizens Coalition which has been given full standing. The ability of your clients to have funding for you to work with counsel for the Muskrat Falls Concerned Citizens Coalition buttresses my view in this regard.

The fact that both of your clients participated in the consultative process for this Project and were opposed to it does not, of itself, mean that they should be granted standing in this Inquiry. Here, a number of prospective persons or groups have sought full standing. In considering the basis for each application for standing, I have had to be mindful of the mandate given for this Inquiry, the work involved as well as the reality of the time given to conclude the Commission's work. Notwithstanding your clients' obvious interest and involvement in the Project as you have described in your letter, I have determined that standing should be limited to those matters set out in my earlier decision.

As to your comment in your letter that expanding the scope of standing for your clients would "go a long way to diminish the public perception that Labradorian voices are being ignored", I would repeat what I stated in my earlier decision about the Commission's appreciation for the need for participation in this Inquiry for both Indigenous and non-Indigenous people residing in Labrador. The standing granted to your clients, as well as other Indigenous groups in Labrador,

must be consistent with the subject matter to be dealt with in this Inquiry. I am fully satisfied that the participation granted to your clients will address the needs of your clients as well as those of this Commission of Inquiry.

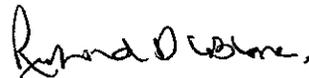
I would also add that parts of your letter suggest to me that the expectations of the Commission's mandate by both groups continues to go beyond the scope given to this Commission of Inquiry, at least to some degree. I commented on this in my earlier decision granting both parties limited joint standing. I would strongly encourage your clients to review my March 14, 2018 decision on the interpretation I am giving to what the Commission's focus will be.

I would add in response to your client's concerns about reputational risks to them, that the Commission will be cognizant of this not only for your clients but for all of the other parties to this Inquiry. As such, Commission counsel will be advising you if and when your clients' reputation is to be put in issue before the Commission so that your clients can participate as regards to this.

Finally, I would indicate that, as stated in my earlier decision on your clients' application for standing, I welcome the involvement of both groups in the Inquiry hearings to the extent provided for and to the extent of the mandate for this Commission of Inquiry.

Thank you.

Yours sincerely,



RICHARD D. LEBLANC
Commissioner

RDL/mm