

August 10, 2018

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VIA REGULAR MAIL

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Commission of Inquiry Respecting the Muskrat Falls Project
5th Floor, Suite 502
Beothuck Building
20 Crosbie Place
St. John's, NL A1B 3Y8

Dear Commissioner LeBlanc:

Re: Lack of Consultation and Accommodation by Nalcor - Muskrat Falls Project (Transmission Lines)

We are the Northern Peninsula (Mekap'sk) Mi'kmaq Band ("Mekap'sk"). Mekap'sk is an indigenous collectivity, recognized and protected under section 35 of the Constitution Act. It represents the approximately 1,200 Mi'kmaq people of the Northern Peninsula of Newfoundland who collectively hold Aboriginal Title over their area. Attached as Schedule "A" is a map showing the lands and waters of our Primary Land Claim Area. We are currently engaged in a collaborative research project on our land claim with the federal government.

We are writing to you with great concerns related to actions of Nalcor in relation to the transmission lines on the Northern Peninsula. As per section 2(d) of the Inquiry's *Terms of Reference*, the transmission lines on the Northern Peninsula fall within the definition of the Muskrat Falls Project (the "Project") for the purposes of the Inquiry.

Recently, and without any consultation with us, Nalcor has announced plans to remove bridges and to gate roadways, thereby restricting access to tracts of land near the transmission lines located on our territory. Our people use this land to harvest berries, hunt moose and to exercise other Aboriginal rights we have exercised long before Nalcor came to our territory. Will our members be arrested for accessing our own territory? Will our members be arrested for exercising their constitutionally protected rights? These are but a few of the troubling questions that arise as a result of Nalcor's decision to not consult with us.

We want these bridges left in place, and we do not want to be prohibited from crossing these access roads. These are not significant requests, but the decisions of Nalcor have significant adverse effects on our Aboriginal Rights and Title. The Hon. Christopher Mitchelmore, Minister of Tourism, Culture, Industry and Innovation, shares our views. Minister Mitchelmore has stated that more consultation is required before Nalcor proceeds with any decisions.¹

If we were consulted in some manner, we would have the ability to partner in these decisions and perhaps reach a mutually acceptable alternative that is less intrusive of our Aboriginal Rights and Title.

To make this matter more troublesome, it is only non-Indigenous groups that Nalcor is consulting and accommodating in regards to the impacts of the Project. Nalcor, in consultation with the Newfoundland and Labrador Outfitters Association (the "Outfitters"), are to work together in developing a monitoring and mitigation plan regarding the potential impacts of the Project on the Outfitters. Further, should Nalcor and the Outfitters decide there is direct impact on the interests of the Outfitters, Nalcor will then provide the Outfitters with reasonable compensation. This is unjust and discriminatory.

It is our understanding that the Indigenous groups in the region impacted by the Project were granting standing at the Inquiry as regards the following matters:

1. What consultation occurred between the established leadership of the Indigenous people and Nalcor as well as the Government of Newfoundland and Labrador;
2. What risk assessments and reports were done as regards the concerns of the Indigenous peoples;
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 Indigenous groups both at the time of and post-sanction of the Project.

Mekap'sk did not apply for standing in the Inquiry as, at the time, we did not anticipate that we would be impacted by the Project or the conduct of Nalcor. However, points 1 and 4 outlined above are now two topics that we unfortunately have experience with and are able to speak to. The lack of consultation we have received from Nalcor and the Government, and the lack of appropriate measures to mitigate against the adverse effects to our Aboriginal Rights and Title are

¹ See: <http://www.thewesternstar.com/news/local/tourism-minister-christopher-mitchelmore-says->

The *Interpretation of the Terms of Reference for the Muskrat Falls Inquiry* states that a principle of the Inquiry is to achieve thoroughness, which will require an examination of all the relevant issues in order to make appropriate recommendations. Our input regarding the relationship between Mekap'sk and Nalcor and the Government can contribute to the Inquiry and facilitate the Inquiry in achieving its goals.

Further, in section 6 of the *Interpretation of Terms*, titled "Role of Indigenous People", it states that it was the intention of the Lieutenant Governor-in-Council that established Indigenous leadership would play a part in the Inquiry.

We are in a position to contribute to the Commission of Inquiry, and are happy to discuss any role Mekap'sk can play in assisting the Inquiry to achieve its mandate, including by the grant of limited standing.

Sincerely,

A handwritten signature in blue ink that reads "Chief Mildred Lavers". The signature is written in a cursive, flowing style.

Chief Mildred Lavers
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SCHEDULE "A"

