



Commission of Inquiry Respecting the Muskrat Falls Project

OPENING STATEMENT (FIRST DAY OF HEARINGS – HVGB)

SEPTEMBER 17, 2018

LEBLANC, J.:

INTRODUCTION

[1] Good morning. Today we begin the public hearings of the Commission of Inquiry Respecting the Muskrat Falls Project. I welcome those present here in the Lawrence O'Brien Arts Centre as well as those persons joining online by webcast. My name is Richard LeBlanc and I am a Justice of the Supreme Court of Newfoundland and Labrador and Commissioner for this Inquiry.

[2] Let me first of all thank everyone here in Happy Valley-Goose Bay and elsewhere who has assisted us in any manner to begin the Commission hearings in Labrador. I recognize that the Muskrat Falls Project has, and will have, a significant impact to all of the Province but, in particular, to the residents of Labrador,

indigenous and non-indigenous, as much of the physical infrastructure for the Project is constructed and situate on the Churchill River. While most of the hearings of the Inquiry must be held in St. John's due to space requirements, practicality and cost considerations, this Commission has scheduled further hearing dates here in Happy Valley-Goose Bay in recognition of the link between the Project and Labrador.

[3] The last nine months or so have been extremely challenging for the staff of the Commission in order to prepare for these hearings. We have received over two and one-half million documents that have had to be dealt with. I must acknowledge the efforts of those involved who provided documents, in particular of the Government of Newfoundland and Labrador and Nalcor from whom the vast majority of documents emanated. We have been actively reviewing what we have categorized as potentially relevant documents in preparing for these hearings. Numerous witnesses have been interviewed and experts have been engaged where necessary.

[4] I could never thank the staff of the Commission enough for their dedication and countless hours of work, including evenings and during very warm weekends, to assist in the investigation conducted. Led by Kate O'Brien and Barry Learmonth,

Commission co-counsel, our team of three associate lawyers, six researchers, two IM staff as well as our CAO, Operations Manager, able administrative assistant and a summer student, significant work has been done to prepare for these public hearings. The workload and output by the staff has been gargantuan from my perspective. I wish to publicly express my sincere appreciation to all of them for their past and continuing service to this Commission of Inquiry. I am satisfied as of now that we have used the limited time we have been given to investigate the Project as best as possible considering the magnitude and complexity of the what it is we have been given as a mandate to do.

[5] I can say that the work of this Commission of Inquiry has been framed by the Terms of Reference establishing this Inquiry as well as my interpretation decision of those Terms of Reference on March 14, 2018.

[6] Full standing has been granted to ten parties while eleven others have been granted limited or special standing as regards the Inquiry hearings. While those parties granted full standing may participate in all aspects of the Inquiry hearings,

limited and special standing parties will participate only to the extent of their interests as determined by the basis upon which each has been granted standing.

[7] In making my opening remarks this morning I am keenly aware that they must be shorter than what I would have liked based upon the importance of giving as much time to the first witness to be called today as is possible. This too means that I will only be able to call upon Commission counsel to speak to the plans and schedule we have established for Phase 1 of this Inquiry after we complete the evidence of the first witness.

[8] However, it is important that I reiterate some of what I stated on April 6, 2018 at the Standing Hearings. First of all, it is important to describe what a public inquiry is and what it is not. A public inquiry is generally established to investigate and report on a matter of substantial public interest. Here the sanction and construction of the Muskrat Falls Project is generally what will be looked at, particularly as regards the involvement and actions of the Government of Newfoundland and Labrador and of Nalcor. What this public inquiry is not is that it is not a trial as that term is generally understood. No one is charged with a criminal offence and nor is

anyone being sued. I am not permitted to express any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization as part of my findings or in any recommendations I might make.

[9] Here I see the Commission's purpose as being to permit the relevant parties and people involved to set out the story as regards the Muskrat Falls Project from its conception to its expected completion and operation based upon the mandate given to us. This Commission of Inquiry and the public must be given the opportunity to hear about what has transpired and to be able to assess this. I will be ensuring that the witnesses called are given a fair opportunity to provide the relevant information they have. Counsel to this Inquiry are well aware of my desire in this regard.

[10] I do recognize that we have set an aggressive and robust schedule for these hearings. This is necessary again due to the complexity and extent of the issues we must deal with, the number of witnesses that are needed as well as the limited time that we have to conclude all phases of this Inquiry. This means that all counsel present, and the parties they represent, must be cognizant of the need to move along in the most efficient yet thorough manner possible. I intend to keep us all on track

as regards the schedule we have. While I am quite aware that some of the public want me to extend the Terms of Reference or mandate for this Inquiry, I am not able or willing to do so. Participation by the parties given standing is restricted to the Terms of Reference as interpreted by me in my March 14th, 2018 decision as well as the basis upon which each party has been granted standing.

[11] I also recognize fully the importance of transparency and openness in these hearings. However, it now seems clear to me that I may be receiving some evidence that I must not make fully public. This is not being done to hide anything. I am bound by certain legal privileges that require that some evidence not be presented. For instance, evidence subject to solicitor–client privilege cannot be led unless the privilege is waived by the applicable parties.

[12] The issue of water management on the Churchill River is a matter that I will be considering. There is litigation between Nalcor and Hydro Quebec currently ongoing in the Quebec courts possibly impacting the management of the flow of water on the Churchill River. While I have already indicated that I will be looking at what consideration was given to water management at the time of sanction, I do

not want to do or say anything that could negatively impact the interests of this Province and the position taken by Nalcor in that court case. That would not be in the public interest. Therefore, some of the evidence that I hear and consider regarding this issue may not be able to be made public notwithstanding that I will be considering it in making my findings and recommendations.

[13] As well, particularly for Phase two of the Inquiry regarding cost overruns and oversight, with a project of this magnitude and with construction continuing, it can be expected that certain of the issues we will deal with may be subject to further court or legal processes. As a result, and to ensure that the parties and the public are protected as much as is possible from further negative legal and/or financial consequences, there may well be some evidence that cannot be fully accessible to the public or all of the parties, although, again, such will still be part of my consideration in making findings and recommendations at the conclusion of these hearings. For such evidence, I have instructed Commission counsel to ensure that they should presume that the evidence is to be led in public and it is only where they are satisfied that it would not be in the public interest or unfairly damaging to a party should they seek to have this evidence heard without full public scrutiny. I wish here to be clear that merely because the evidence in question may cause

embarrassment, a loss of confidence or amount to serious misbehavior, such is not a basis for the evidence to be withheld from public scrutiny at these hearings. In any event, where it is decided that evidence will not be presented for public viewing, I am hopeful that some notice of what that evidence generally entails will be made accessible to the public where possible. Having said this, it is clear that the vast majority of the evidence to be presented at this Inquiry will be available to the public.

[14] The focus of these hearings, being Phase 1, is on the sanction decision for this Project as well as a review of the involvement of the Public Utilities Board. This Phase will take us up to the Christmas break. Commencing in late February 2019, as indicated above, the Commission's focus will be on the construction of the Project, the resultant cost escalation and the oversight of construction and costs by both Nalcor and the Government. That phase, Phase 2, will take us to mid-May and will be followed by the final phase of the hearings, Phase 3, dealing with future policy and systemic matters.

[15] Finally, there has been much publicity and discussion regarding this Project to date. Now the opportunity to hear about the significant details of the story of Muskrat Falls has arrived. We at the Commission are determined to present the facts

in as fair a manner as is possible for all involved in order for there to be fair and appropriate consideration of the evidence.

[16] With all of this in mind, I now ask Commission co-counsel to call their first witness for these hearings.

JUSTICE RICHARD D. LEBLANC
COMMISSIONER