

Budden & Associates

REPLY TO: GEOFFREY E. BUDDEN
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File No.: G 8872

November 9, 2018

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

Attention: Commission Counsel Kate O'Brien

Dear Kate,

RE: Muskrat Falls Commission of Inquiry

With respect to The Commissioner's "water management" Decision, to be announced next week, my clients have instructed me to make the following comments.

We believe the exclusion of counsel and the officers of our client from a Public Inquiry is unauthorized by the Public Inquiries Act. While s. 6 of the Act does contemplate the exclusion of the public, which power is confirmed by s. 40 of the Rules of Procedure, this would not, we submit, encompass parties with standing, or their counsel.

Even if some support for this exclusion can be found in the Ratushny text, such exclusion should, at a minimum, only follow a hearing at which submissions are made and less draconian measures are considered. In the absence of such a hearing, the imposition of such an exclusion order contravenes, we submit, fundamental duties of fairness owed to our client.

Our client is particularly disadvantaged by this decision as they, uniquely among parties with full standing (other than the Consumer Advocate), are not associated with either Nalcor or with the GNL. The exclusion will disproportionately impact our client as, frankly, all other parties and their counsel are to one degree or another already knowledgeable about the matters which will be discussed in camera. We also note that the officers of our client are citizens of high repute in the community and there is no reason to doubt that they would not respect their undertakings to the Commission. The CCC also brings to this Inquiry, we submit, a unique and important perspective, one informed not only by Messers Vardy, Penney and Sullivan but also by other knowledgeable citizens working with them.

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We anticipate that similar in camera/exclusion orders will follow as this Inquiry inevitably touches on other issues under litigation. In the result, our clients fear that they may no longer be able to play a useful role in this Inquiry. Public confidence in this Inquiry will also be undermined by the exclusion of parties, particularly if the exclusions impact some parties differently than others.

I would ask for the opportunity to put these concerns on the record.

Trusting the above to be satisfactory.

Yours truly,
BUDDEN & ASSOCIATES


GEOFFREY E. BUDDEN

GEB/kf