



O'FLAHERTY WELLS LAW*

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Delivered by Hand

The Honourable Justice Richard D. LeBlanc, Commissioner
Commission of Inquiry Respecting the Muskrat Falls Project
Beothuk Building, 5th Floor 20 Crosbie Place
St. John's, NL A1B 3Y8

Dear Mr. Justice LeBlanc:

**Re: Commission of Inquiry Respecting the Muskrat Falls Project
Application for Standing During Phase 2 and Phase 3**

We act as counsel to Premier Dwight Ball and to Minister Siobhan Coady, the Minister of Natural Resources, with respect to the Commission of Inquiry.

Premier Ball and Minister Coady are the members of Cabinet who have had the most consistent and extensive personal involvement with the oversight, governance and reporting structures for the Muskrat Falls Project since the provincial election held on November 30, 2015. Our clients respectfully request partial standing before the Commission of Inquiry during Phase 2, which will deal with the execution of the Muskrat Falls Project by Nalcor Energy and in particular oversight by government in the post-sanction time frame, and full standing during Phase 3, which will deal with policy and systemic matters looking forward.

Our clients' request for standing is based on section 5(2) of the *Public Inquiries Act, 2006* and paragraph 10 of the Commission's *Rules of Procedure*, and in particular:

1. whether the person's participation would further the conduct of the Inquiry;
2. whether the person's interest may be adversely affected by the findings of the Commission; and
3. whether the person's participation would contribute to the openness and fairness of the Inquiry.

Phase 2 of the Commission of Inquiry will inquire into whether the government has employed appropriate measures to oversee the execution of the Muskrat Falls Project, focusing on governance arrangements and decision-making processes associated with the project. In the Commissioner's decision dated March 14, 2018 it was made clear that the Commission's inquiry in respect of project execution and government oversight will include both the prior governments as well as the present government for the Province, and that the Commission will examine "the reporting structures between Nalcor and the various

government administrators, the governance models employed and the communications between the two entities as the Project progressed...what Government knew and what it ought to have known as well as what it did to ensure reasonable and appropriate oversight of the Project as it has progressed... (and) the decisions made by Government to continue to proceed with the Project.”¹. It is respectfully submitted that our clients have a direct and personal interest in certain, specific portions of the subject matter of Phase 2, primarily occurring from December 1, 2015 to April 30, 2016, and in the entirety of Phase 3 of the Commission of Inquiry, for the following reasons.

First, the Premier and the Minister are the members of the current government who had direct, personal involvement in certain issues which appear likely to be addressed under the Commission’s Phase 2 mandate to investigate and report on the oversight by the current government. The specific issues for which partial standing is sought arose primarily in the time frame December 1, 2015 to April 30, 2016, including: the factors leading to the December, 2015 decision to order an independent review of the cost, schedule and associated risks for the Muskrat Falls Project (the “E&Y Review”) and the subsequent conduct of the E&Y Review; the impact of ordering the E&Y Review and contemporaneous project execution issues on the Muskrat Falls Project upon the governance, reporting and communications relationship of government with Nalcor Energy; the leadership and governance changes occurring at Nalcor Energy in April, 2016; and, the factors leading to the decision of the current government to proceed with the completion of the Muskrat Falls Project. Other focused issues for which partial standing during Phase 2 is currently requested are the disclosure to government of the 2013 SNC Lavalin risk assessment report and the governance, reporting and communications relationships of the current government with Nalcor Energy in its response to ongoing project execution issues including the impacts of broader indigenous involvement and protests.

Secondly, as our clients’ direct, personal involvement in the above-referenced issues will potentially be addressed in evidence and argument by other participants they wish to ensure that the findings of the Commission of Inquiry dealing with those specific issues have the benefit of the best available evidence. As such, they request the right to provide evidence to the Commission of Inquiry and to call witnesses and cross-examine witnesses testifying regarding their personal involvement with respect to the issues identified herein, and regarding any other relevant issues that will be canvassed during Phase 2 of the Commission.

Thirdly, our clients’ involvement would in all likelihood contribute to the fairness and openness of the Commission of Inquiry. Granting partial standing to the most senior members of the current government for certain aspects of Phase 2 in which they were personally and directly involved, subject to the *Rules of Procedure*, will contribute to a fair and open inquiry on those issues, and their independent participation in the subject matter

¹ Decision March 14, 2018 “Interpretation of the Terms of Reference for the Muskrat Falls Inquiry”, para. 44.

of Phase 3 of the Commission of Inquiry would assist the Commission by bringing their unique and critical perspective in addressing policy and systemic matters looking forward.

Our clients therefore seek to be granted standing at the Commission of Inquiry, including the right to receive disclosure of witness transcripts and relevant documents, to call and cross-examine witnesses, and to enter exhibits into evidence at the hearings, subject to the *Rules of Procedure*, and to the limited and focused extent requested herein, in order to assist the Commission of Inquiry in completing its mandate.

Finally, as our clients were, and remain, public officials in their involvement in the subject matter of Phase 2 and 3 of the Commission of Inquiry they respectfully request that funding be ordered to permit them to retain and instruct the undersigned as counsel on their behalf.

We trust this is satisfactory.

Yours very truly,

O'FLAHERTY WELLS LAW



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