



Commission of Inquiry Respecting the Muskrat Falls Project

DECISION ON APPLICATION FOR STANDING FOR DWIGHT BALL AND SIOBHAN COADY FOR THE MUSKRAT FALLS INQUIRY

DECISION

December 14, 2018

LEBLANC, J.:

INTRODUCTION

[1] Dwight Ball, the Premier of the Province of Newfoundland and Labrador and Siobhan Coady, the Minister of Natural Resources for the Province of Newfoundland and Labrador, as a group of two, have applied for standing for Phases 2 and 3 of the Commission of Inquiry Respecting the Muskrat Falls Project. Both individuals state that of the present governing party, they have had the most involvement with the “oversight, governance, and reporting structures” for the Muskrat Falls Project since the election on November 30, 2015.

[2] Of interest here is the position taken by the applicants regarding their desire to have what they have referred to as “partial” standing for Phase 2 of the hearings. I am not certain exactly what is meant by this. I would suggest that even if Phase 2 standing is granted, both applicants can participate to the extent of their interests. Thus, it seems to me to serve little purpose to categorize standing for any phase of the Inquiry in the matter referred to in the application before me. To date, most counsel with standing have tended to be present and participate only where their clients have an interest.

[3] The applicants seek standing as a group based upon their similar interests. They also seek a funding recommendation for one counsel to act on their behalf during Phase 2 and Phase 3 of the hearings.

ANALYSIS

[4] Phase 2 of the Inquiry hearings will generally review section 4 (b) and (d) of the Commission of Inquiry's Terms of Reference. To be dealt with are the reasons for the difference between the estimated costs for the project from sanction until the conclusion of the project and whether the government has put in place an appropriate oversight process during project execution and construction, focusing on government arrangements and decision making processes associated with the process. At paragraph 44 of my interpretation decision for the Terms of Reference for this Commission of Inquiry dated March 14, 2018, I stated the following, which is specifically related to Phase 2 of the hearings:

Section 4(d) also requires me to investigate the measures taken by government to oversee the project's execution. As there were different government administrations in place at various times, my review will involve both the past and present administrations. I am also satisfied that I will need to examine the reporting structures between Nalcor and the various government administrators, the governance models employed in the communications between the two entities as the project progressed. The Commission will examine both 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 progressed. Implicit in such an investigation will be a consideration of the decisions made by government to continue to proceed with the project.

[5] As regards to Phase 3 of the Inquiry, the mandate that I have interpreted from the Commission's Terms of Reference is to investigate or focus on such things as the future role of Crown Corporations and large scale projects and specifically governance and transparency issues supporting public accountability. Any systemic issues impacting on the issue of sanction or the execution of large scale projects will be considered as well.

[6] Based upon the content of the application filed by both applicants, as a result of both individuals' roles in government and with this project after November 30, 2015, it is obvious that they meet the criteria for standing set out in Section 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 2006, c.P-38.1. I am satisfied that both applicants have had, and continue to have, significant involvement in the project subsequent to their election. Their participation during the Phase 2 and Phase 3 hearings will further the conduct of the Inquiry and contribute to the openness and fairness of the Inquiry. As well, due to the positions they hold in government and their actions taken regarding the project, it is clear that their personal interests could possibly be adversely affected by the Commission's findings. With regard to Phase 3 of the inquiry hearings, as I have given full standing to former provincial government officials who were in place from 2003 to 2015, I am prepared to grant standing for Phase 3 as requested. As a result, both applicants, as a group, will be granted standing during Phase 2 and Phase 3 of the Inquiry to the extent of their interests.

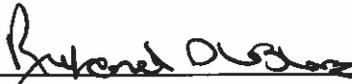
[7] In granting standing, I wish to repeat what I stated in my April 6, 2018 decision involving the Standing Application of Danny Williams Q.C., Thomas Marshall Q.C., Paul Davis, Shawn Skinner, Jerome Kennedy Q.C., and Derrick Dalley. In that decision at paragraph 9, I stated the following, which is also applicable obviously to the present applicants:

“I wish to make it clear that the Commission's investigation will not take on the political differences as between differing political parties. As stated in my decision in interpreting the Terms of Reference, the Commission's role is to examine the actions of the individuals involved in the conception, sanction and construction of this Project. It matters not what political stripe these individuals might have. I intend to deal here with facts and not politics and it should be understood that the hearings will be conducted in that manner.”

[8] As regards to the issue of the funding request made by counsel, I have decided that it is appropriate to recommend to government that both Mr. Ball and Ms. Coady be funded for one counsel. As I indicated with regard to the application of the former elected government officials for standing, it is relevant here to consider the fact that both Mr. Ball and Ms. Coady are involved with the Muskrat Falls Project as elected representatives of the people of the province. It would be unfair in my mind to

expect them to personally pay for legal representation during Phase 2 and Phase 3 of this Inquiry. By acting as a group of two, they have requested funding for one counsel. That is also a factor that I have taken into account. Therefore, I will be recommending to Government that both applicants be provided with funding for one legal counsel, along with expenses for attending the inquiry where travel is necessary.

[9] As with all other groups currently with standing, I would remind Mr. Ball and Ms. Coady that they are bound by the Commission's Rules of Procedure, and particularly Rule 19, which requires the provision of all relevant information and documents within the possession of each individual member of the group to the Commission within 14 days of the grant of standing. Counsel for Mr. Ball and Ms. Coady is encouraged to discuss this obligation with Commission Co-Counsel as soon as is possible so that compliance for this rule, as well as all other rules, will not be an issue. An extension of this timeframe may be considered based upon the reasons given at the time.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER