



Commission of Inquiry Respecting the Muskrat Falls Project

**ADDENDUM TO MY DECISION ON INTERPRETATION
OF THE TERMS OF REFERENCE FOR
THE MUSKRAT FALLS INQUIRY**

DECISION

FEBRUARY 7, 2019

LEBLANC, J.:

INTRODUCTION

[1] On March 14, 2018, I released a decision providing my interpretation of the Terms of Reference for the Muskrat Falls Inquiry to better define the scope of the Commission’s investigation. As indicated on paragraph 13 of that decision, my review and interpretation at that time was at an early stage in the Commission’s work and, as a result, I reserved the right to alter my interpretation of the Terms of Reference “as is necessary based upon information that emerges”.

[2] It has now become obvious to me that I need to clarify part of my decision based upon information that the Commission has received.

[3] Paragraph 53 of my decision states as follows:

I will hear evidence related to the obtaining of the Federal Loan Guarantee, which ultimately impacted the Project’s financing costs, and also I will review the terms of that Guarantee and the impact of those terms on the Province. However, what

the Federal Government did as regards its due diligence, and otherwise, prior to providing this is a matter that I am unable to investigate. Nor is this within the mandate provided in the Terms of Reference.

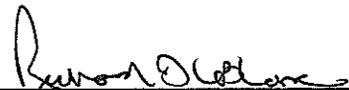
[4] It has now become apparent to me that in order to properly respond to the Commission's Terms of Reference it is necessary to investigate the work done by the Independent Engineer who was put in place as part of the Federal Loan Guarantee process and agreement. During the Phase One hearings, some of the witnesses testifying who were involved with the consideration, approval and oversight of the Muskrat Falls Project on behalf of the Government of Newfoundland and Labrador and Nalcor referred to their reliance on work done by and on behalf of the Independent Engineer. As such, it is clearly within the mandate of this Commission to investigate that work and what was actually being disclosed to the Government of Newfoundland and Labrador and Nalcor as part of that process.

[5] For instance, I will need to review and consider certain reports, emails and other communications provided to or between the Independent Engineer and the Government of Newfoundland and Labrador as well as with Nalcor Energy and its subsidiaries. There are other communications that Commission counsel are aware of from Alison Manzer, a lawyer and agent of the Government of Canada, that were provided to the Government of Newfoundland and Labrador and Nalcor and its subsidiaries that are considered to be relevant to the Commission's mandate.

[6] Therefore, I am satisfied that the investigation referred to above will involve a review of what occurred prior to the sanction decision for the Project in December 2012 prior to financial close in late 2013 and up to the present.

[7] I would add that, based upon what Commission counsel have advise me, the Independent Engineer, while acting in a consulting role to the Government of Canada and others, was not acting contractually as an agent of the Federal Crown. They have also indicated their understanding that the agreement in place called for the Independent Engineer to be paid by Nalcor Energy and its subsidiaries.

[8] In reaching this conclusion, I am well aware of the Terms of Reference for this Commission of Inquiry as well as the jurisdictional limitations involving provincially called Inquiries. Recognizing this, I will reiterate that I have no intention of investigating the level or extent of due diligence that took place on behalf of the Government of Canada or any internal decision making by the Government of Canada. My investigation into the communications referred to above is limited to understanding how these communications affected the work of the Independent Engineer, which was relied on by the Government of Newfoundland and Labrador and possibly Nalcor.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER