



Commission of Inquiry Respecting the Muskrat Falls Project

DECISION ON AN APPLICATION FOR STANDING FOR BARNARD PENNECON LP FOR THE MUSKRAT FALLS INQUIRY

DECISION

FEBRUARY 25, 2019

LEBLANC, J.:

INTRODUCTION

[1] Barnard Pennecon LP (“BPLP”) seeks limited standing to have its counsel attend and participate on its behalf for the Phase Two public hearings for the Muskrat Falls Inquiry.

[2] BPLP is a limited partnership that has been awarded a contract for the construction of the North and South Dams for the Muskrat Falls Project (CH0009) as well as other work on the Project. As Commission Phase Two hearings will investigate the reasons for the differences between the Project estimates at sanction and the actual price on contract award, including for CH0009, BPLP requests standing based upon s. 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 2006 c. P-38.1 (the “Act”) in that its participation would further the conduct of the Inquiry, its interests may be adversely affected by the Commission’s findings and that its participation would contribute to the openness and fairness of the Inquiry.

ANALYSIS

[3] BPLP submits that standing should be granted as the Commission has served a Summons to Produce as well as requests to have two of its employees interviewed by Commission counsel. I see no reason to grant standing of any type to BPLP merely for this reason. Not every person or company served with a Summons, whether to produce documents or alternatively to have an employee appear and be questioned as a witness, should be granted standing.

[4] BPLP also seeks standing based upon an investigative report prepared by Grant Thornton and submitted to the Inquiry wherein the process of the award of CH0009 is raised as a possible concern, which may be the subject of some evidence during the Phase Two hearings. Again, based upon what I am aware of at this particular time, I see nothing to suggest that, for this reason alone, the participation of BPLP as a party would meet the criteria set out in s. 5(2) of the *Act*.

[5] However, I am prepared to grant standing to BPLP based upon evidence that I anticipate will be presented during the Phase Two hearings regarding the increase of costs for CH0009 over and above the original estimate prepared by Nalcor Energy for this contract. Allowing BPLP to participate in the Phase Two hearings on this issue will, in fact, likely further the conduct of the hearings and contribute to the openness and fairness of those hearings in that BPLP's interests could possibly be adversely affected by the Commission's findings.

[6] As a result, standing will be granted to BPLP to attend and participate during the Phase Two hearings through its counsel, limited however to the extent of its interests. Examining witnesses by counsel for BPLP will be permitted only where witnesses are speaking to, or can speak to, matters impacting the interests of BPLP and its involvement in the Muskrat Falls Project, including all work performed by BPLP and not limited to CH0009.

[7] It shall be the responsibility of counsel for BPLP to work with Commission counsel so that they will be aware of and present at those hearings where the evidence will involve or impact the interests of BPLP.

[8] As for all parties with standing, compliance with the Commission's Rules of Procedure, including Rule 19, is of utmost importance. Any outstanding disclosure must be provided to the Commission on or before March 1, 2019. This includes documents in the possession of BPLP that are not referred to in the Summons to Produce that has been issued by the Commission to BPLP but which documents relate to the Muskrat Falls Project.



**JUSTICE RICHARD D. LEBLANC
COMMISSIONER**