

# O'FLAHERTY LEGAL SERVICES

1 CHURCH HILL, SUITE 301  
ST. JOHN'S, NL A1C 3Z7

**PETER A. O'FLAHERTY, Q.C.**

709.754.1472 (direct)  
peter@oflahertywellslaw.com

November 29, 2019

Delivered by Electronic Mail

Honourable Justice Richard LeBlanc, Commissioner  
Commission of Inquiry Respecting the Muskrat Falls Project  
5<sup>th</sup> Floor, Suite 502  
Beothuck Building  
20 Crosbie Place  
St. John's, NL A1B 37B

Attention: Hon. Justice Richard LeBlanc

Dear Commissioner LeBlanc,

**Re: Commission of Inquiry Respecting the Muskrat Falls Project  
Response to Commission Questions Posed to Premier Dwight Ball**

Please find below the answers to two questions posed to Premier Dwight Ball during his evidence on July 4 and 5, 2019 in respect of which he agreed to review the issue raised and provide a follow up response. The first question concerned the position of the government on the appropriateness of the method or process used in mapping of the geology of the North Spur, and the second question concerned whether the government will order further analysis of the North Spur.

## **1. The Mapping of the Geology of the North Spur**

The first issue my client was requested to review arose as a result of the questioning of counsel for the Grand River Keepers at p. 67 and p. 68 of the transcript, and Premier Ball's response at p. 67 and p. 68 of the transcript.

The transcript excerpt is referring to geological mapping of the North Spur and a concern expressed in the Independent Engineer's (IE) July 2016 site visit report. The IE's "Muskrat Falls Project July 2016 Site Visit" report states, "*It was noted during the January 2016 Montreal meeting that very little information was being documented or mapped by site staff about geological features. It was agreed that geological mapping of surficial geology and soil mechanics related features would be done in the future.*"

My client requested a briefing on this issue, and was informed that Nalcor Energy's subsidiary, Lower Churchill Management Corporation, responded to the specific issue raised in the IE report on December 2, 2016 in correspondence from Mr. Gilbert Bennett Executive Vice President, Nalcor Energy Power Development. That response stated: "*As-built or record*

*drawings/documents are typically completed after a work scope is completed and informed by data collected during the construction process. The IE acknowledges in their report that data is being collected, and I can confirm this information will be compiled as as-built/record drawings or documents."*

My client was further informed that Nalcor officials subsequently advised the Department of Natural Resources that all field notes taken by geotechnical engineers and geologists during the North Spur stabilization works construction have been integrated into SNC Lavalin's "North Spur Stabilization Works – Construction Report", which he is informed constitutes the complete As-Built document for the North Spur.

As a result, my client can advise the Commissioner that the government is satisfied that the concerns raised regarding the process and timing of integrating the data collected during the construction process have been fully and satisfactorily addressed.

## **2. The Request for Further Testing and Analysis of the North Spur**

The second issue my client was requested to review arose as a result of questioning by counsel for the Grand River Keepers at p. 69 of the transcript, and Premier Ball's response at p. 69 of the transcript.

The issue raised is whether, in light of the concerns raised by Professors Bernander and Elfgren, the government will now order Nalcor Energy to undertake the specific test and analysis advocated by the professors. My client requested a briefing on this issue and was informed that the expert advice received by government does not support the need for the further testing and analysis advocated. Since the North Spur was first identified as an important part of any development of the Muskrat Falls Project in the 1960s, more than 50 engineering documents, studies and reports have been completed to inform the design, construction and assessment of the North Spur.

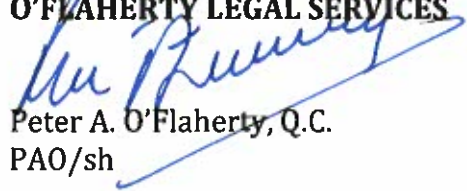
My client is further informed that, working with the benefit of this extensive body of work, Nalcor Energy employed SNC Lavalin, an experienced engineering firm, to design the North Spur stabilization works. Several independent third parties have since reviewed SNC Lavalin's engineering work including a Geotechnical Peer Review Panel of respected experts from three universities, dam safety experts at Hatch, and the Muskrat Falls Project Independent Engineer. Mr. Ball is informed that these independent reviews support the existing design, the construction, and the ongoing monitoring program for the North Spur.

While the government acknowledges that Professors Bernander and Elfgren have expressed contrary opinions to those of the independent reviewers of the North Spur stability issue, my client remains satisfied, based on his review of the issue, that there is not a need to now order a further analysis or testing of the North Spur.

I trust this satisfactorily addresses the questions posed to Premier Ball, however if you have further questions, I would be pleased to communicate them to my client.

Yours very truly,

**O'FLAHERTY LEGAL SERVICES**



Peter A. O'Flaherty, Q.C.

PAO/sh