



Commission of Inquiry Respecting the Muskrat Falls Project

OPENING STATEMENT ON STANDINGS FOR THE MUSKRAT FALLS INQUIRY

APRIL 6, 2018

LEBLANC, J.:

INTRODUCTION

[1] Good morning and welcome to what was to be our second public session of the Commission of Inquiry respecting the Muskrat Falls Project. While this Project has and will have an impact on all of the citizens of this Province, the Commission had planned to hold our first public session in Labrador. Much of the Project construction has occurred in, and infrastructure is present in Labrador, and, of course, the raw material necessary to produce power has come from the Churchill River. It was only fitting to schedule the Inquiry's first public session in Labrador.

[2] In order to organize this, considerable effort was made to ensure that proper space, technology and personnel would be in place. Notwithstanding our preparation, events beyond our control arose that made it impossible to proceed on April 3, 2018 as planned. We want to assure the people in Labrador that we are continuing our preparations to have some of the hearings of the Inquiry there.

[3] This morning, here in St. John's, we will be hearing from those seeking to have standing at the Inquiry hearings. An option was given to those seeking standing or their legal counsel to appear in person or by telephone. This was prepared in order

to minimize cost to those who were outside of the St. John's area or whose legal counsel were outside of this area.

[4] My name is Richard LeBlanc. On November 20, 2017, I agreed to act as the Commissioner for this Inquiry. I am a Justice of the Supreme Court of Newfoundland and Labrador.

[5] Before we commence hearing the standing and funding applications to be dealt with here today, I would like to take a few minutes to talk about the approach the Inquiry team will be taking as regards the conduct of this Inquiry and other pertinent matters.

PRINCIPLES AND INQUIRY FOCUS

[6] In the recent decision I gave on my interpretation of the Order in Council creating the Inquiry, and particularly the Terms of Reference or the mandate given to this Commission of Inquiry, I referred to certain principles that I expect will guide the Commission's work and the conduct of the hearings that will be held. I wish to reiterate those principles at this time and will likely repeat them often as this Inquiry proceeds. It is my full expectation that not only will Commission staff be bound by these principles but also that the parties granted standing and their counsel will be guided by them.

[7] These principles can be summarized as follows:

1. The Commission of Inquiry is totally independent of any party, including the Government of Newfoundland and Labrador, and will proceed with no pre-conceived or pre-formed bias or position.
2. The Inquiry is to be conducted on the basis of encouraging cooperation between all parties so as to promote the hearing of all relevant matters

in the least adversarial manner possible. This will ensure an efficient use of time, effort and expense so as to best promote the interests of the participants in the Inquiry as well as the interests of the public.

3. The Inquiry will be thorough in doing its work. Due, in part, to the volume of material related to this Project's sanction and execution as well as the limited time available to conclude this Inquiry, the Commission shall be taking a proportionate approach as to what evidence is most relevant to present and consider in order to respond to the mandate given. Being thorough does not mean the investigation needs to be a fully exhaustive one. There is a story to be told about the Muskrat Falls Project. In telling that story, in line with the Terms of Reference as I have interpreted them, there may well be subplots that emerge that will have to be assessed as to their significance or importance to the whole of the story to be told. Therefore, proportionality will be considered when determining the extent of the investigation the Commission will be conducting and the evidence to be presented at the hearing.
4. The Inquiry will be conscious of the need to be expeditious in all aspects of its work as this Inquiry must be, and will be, completed by December 31, 2019. I am also very conscious of the need to be fiscally prudent in expending public funds and being expeditious will best ensure such prudence.
5. The Inquiry will be conducted in as transparent and open manner as possible while bearing in mind any privilege claims protected by law and the need to ensure that any disclosure provided would not negatively impact the overall costs of the Project.
6. Finally, but certainly not least important, is the need to ensure fairness not only to the public but also to those involved as parties and witnesses during this Inquiry. This includes fairness in a procedural sense as well as ensuring that the conduct of those involved not be judged on the basis of any inappropriate reliance on hindsight but rather on the basis of the knowledge available at the time.

WHAT A PUBLIC INQUIRY DOES

[8] Let me now speak briefly about what a public inquiry is and what it is not. A public inquiry is generally established to investigate and report on matters of substantial public interest. In this case that interest relates to the Muskrat Falls Project sanction and construction and, particularly, the involvement of Nalcor and the Government of Newfoundland and Labrador. A public inquiry is not a trial. No one is charged with any criminal offence, nor is anyone being sued. I am not permitted to express any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization as part of my findings or in any recommendations I might make.

[9] It seems to me that an apt manner to describe the work of this Commission of Inquiry in meeting its mandate is to set out the story of what occurred as regards this Project from the time of its conception and the events that have occurred since to its expected completion and operation. This means giving all those integrally involved an opportunity to explain what occurred. Questions will be asked on the basis of the explanations and facts presented so that the full story can be made known. As the Commissioner, it will then be for me to assess the evidence presented, make findings based upon the requirements of the mandate of the Inquiry and then to make recommendations.

[10] Having said this, I want everyone to understand that there is a difference between telling the story and presenting a soap opera. Grandstanding on the part of any party, their counsel or any witness will not serve the interests of anyone, including the public interest. Emotions and feelings may well be strong here but this Inquiry will be one that will be controlled and *it will be* limited to those matters reasonably relevant to the Inquiry's mandate. As stated earlier, this Inquiry will be one that is fair to all those involved in it as well as the citizens of this Province.

[11] The Terms of Reference, as interpreted by me in my decision of March 14, 2018 are specific and I intend to ensure a responsible spending of public funds as well as an efficient and fair process. I will be ensuring that our work, including the

efforts of Commission counsel and the parties given standing, focus on the specific areas listed in the Terms of Reference as interpreted by me.

[12] The hearings to be conducted will generally be open to the public. As well, we have established a website, www.muskratfallsinquiry.ca, that will provide a live webcast of all of the public hearings held by the Commission of Inquiry. The website will also have other information, including transcripts of witnesses' testimony, public exhibits and information about the Commission's work.

[13] I expect that the media will be covering this Inquiry, at least to some extent, which will provide a further opportunity for the public to be kept informed. To ensure that the media can accurately report what is happening at the Inquiry in a timely manner, we will be making materials as accessible as possible to the media. As well, Inquiry staff will be available to respond to their needs as best as can be done.

HOW THE INQUIRY WILL PROCEED

[14] As stated earlier, the Commission's work must be completed by December 31, 2019. I, as well as the Commission team, are completely committed to doing our best to meet the deadline notwithstanding that we are dealing with a huge volume of documents that must be reviewed and investigated as well as the complexities surrounding many of the matters that are to be investigated. We have been moving quickly to put necessary key staff in place, establish an office and hearing space in St. John's, develop a budget for the Inquiry as well as build an information management system that allows us to do a thorough review of many terabytes of data. We have developed Rules of Procedure, issued some summonses for relevant documents and Commission counsel have begun to do interviews. An investigative audit, independent of the Commission, into certain aspects of the Project has commenced.

[15] Although not set in stone, the plan we have is to conduct the hearings in three separate phases in order to best organize the evidence. Phase One, dealing primarily

with pre-sanction matters for the Project as well as the involvement of the Public Utilities Board, will take place in the fall of 2018 beginning on September 17 till December 6, 2018 with possibly a further week or so added if required. Phase Two, dealing with the construction of the Project as well as oversight by Nalcor and the Government will take place from February 4, 2019 to April 4, 2019 and then April 29 to May 16, 2019. Phase Three, dealing with policy and potential systemic matters focused on looking forward, will take place from June 17 to July 4, 2019. Final submissions are presently scheduled for *early* August 2019. These dates are somewhat tentative but the hearing schedule should not change drastically from what I have just set out. More than one hundred hearing days will be necessary in order for the Commission to meet its mandate.

[16] Based upon our present thinking, most of the hearings will likely be conducted in St. John's based upon considerations such as the place of residence of the various witnesses to be called and bearing in mind cost issues. Having said this, *we are* cognizant of the need for some of the hearings to take place in Labrador and there will certainly be hearing days scheduled in Happy Valley-Goose Bay.

[17] The hearings will be conducted in the manner most public inquiries follow. Witnesses to be called will be decided upon by Commission counsel, in consultation with the parties given standing. Witnesses will, in the normal course, be examined first by Commission counsel and then examined by counsel for the parties having standing.

[18] For this hearing, each party given standing will be expected to have legal counsel to represent them at the hearings. This is necessary in order to ensure appropriate communication channels with Commission co-counsel as well as an efficient hearing process. Where necessary, funding for legal counsel will be recommended for parties requiring such assistance. The relatively short timeframe given for the Inquiry to report dictates the need to organize the hearings to ensure the most efficient use of time. Being represented by legal counsel will assist the parties in understanding the hearing process and will also promote fairness for all parties involved.

[19] I intend to consult with counsel for the parties granted standing on an ongoing basis on issues that I believe are necessary and which may directly impact them. Counsel for those parties should feel free to provide their thoughts and feedback about procedural issues and processes through Commission co-counsel so that I may consider them.

INTRODUCTION OF COMMISSION STAFF

[20] I now wish to introduce Commission staff. Our Chief Administrative Officer is Gerry Beresford. Our Operations Manager is Diane Blackmore. We also have four researchers presently on staff; Kate Dutton, Chris McGee, Rosie Myers, Stephen Kiraly, as well as two dedicated information management people, Jackie Barry and Courtney Careen. I have appointed Kate O'Brien of O'Brien, White and Barry Learmonth, Q.C. of Learmonth, Dunne & Boulos as co-counsel to the Commission. I have also two Associate legal counsel, Michael Collins and Adrienne Ding providing assistance to Commission co-counsel and myself. Finally, Marcella Mulrooney is our administrative assistant and hearing clerk. Contact information for our staff members can be found on our website.

STANDING AND FUNDING

[21] Standing means the right to participate in the Inquiry. Section 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 2006 c.P38.1 provides that:

- 5.2 A person may be granted standing upon a consideration of the following:
- (a) whether the person's interests may be adversely affected by the findings of the Commission;
 - (b) whether the person's participation would further the conduct of the inquiry; and
 - (c) whether the person's participation would contribute to the openness and fairness of the inquiry.

[22] In the Rules of Procedure for this Inquiry, it is encouraged that persons with similar interests seek joint standing in order to avoid duplication and to promote time and cost efficiencies. Even where not applying jointly, I will be encouraging parties with similar interests on certain issues to work collaboratively so as to avoid duplication of effort and questioning at the hearings.

[23] I must decide not only who will have standing but also the extent to which a party granted standing will participate in the Inquiry. There are three types of standing that I will be considering for this Inquiry; full standing, limited standing and special standing.

[24] A person given full standing will have full participatory rights in all aspects of the Inquiry to the extent of that person's interest. Limited standing will generally mean that the person will have full participatory rights (including the right to cross-examine) but only in respect to certain limited phases or parts of the Inquiry that engage their interest. Special standing participants will not have any right to participate in the Inquiry hearings except as I will describe but, due to their particular interests, knowledge and/or expertise, they will be given an opportunity to make submissions to the Commission of Inquiry. Counsel for the person granted special standing will be seated with all other counsel and will be able to consult with Commission counsel and make suggestions or recommendations to them as to witnesses to be called, questions to be asked on matters of interest to them and they will also be provided with all documents disclosed to other parties having full standing.

[25] As to applications for funding, section 5(5) of the *Public Inquiries Act, 2006* permits me to make recommendations to the Government of Newfoundland and Labrador to provide funding for counsel and other expenses of a person granted standing. It is presumed, however, that counsel will be retained at the expense of a party. Where it is shown that without funding a person with standing would be unable to participate in the Inquiry or for any other reason funding is necessary, I am permitted to recommend that funding for counsel come from the Government. However, that is a recommendation only and not a binding order. I would obviously hope that the government will honour my recommendation as I will only make a recommendation where such is appropriate. It is also to be noted here that I have no

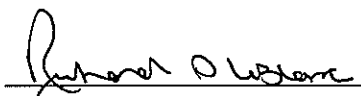
power to set rates to be paid for legal counsel. I also have the discretion here to recommend, or not recommend, that other specific expenses be funded by Government.

[26] Having said all this, I will now call upon Commission co-counsel to set out who we will be hearing from today and the order in which they will be heard. I would advise the applicants for standing that I have read their applications and would remind you that you must limit your submissions today to a maximum of twenty minutes. I may also use some of that time to ask questions in order to better understand your standing request.

[27] Finally, all persons who are seeking standing should clearly understand that upon the grant of standing they agree to be bound by the Commission's Rules of Procedure and, as well, will act in accordance with the focus of the Inquiry as set out in its Terms of Reference as interpreted by me in the March 14, 2018 decision.

[28] After our session ends, particularly for those parties granted standing who have yet to retain counsel, Commission co-counsel will conduct an information session. I encourage all those parties without counsel to attend and this will give you the opportunity to learn more about the Inquiry process and to ask any questions that you might have. A light lunch will be provided (as an incentive to attend!)

[29] As well, after all of the parties granted standing have had time to retain and instruct their legal counsel, I plan to meet with all legal counsel to discuss the process and timing for the hearings. I realize that we all have lives outside of this Inquiry but adhering to the schedule that we develop to conclude this Inquiry will be a priority for the Commission.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER