

Submission from Ronald Penney and David Vardy of the Muskrat Falls Concerned Citizens
Coalition

1. Inquiry Counsel Kate O'Brien has asked us to prepare a paper describing our involvement with the Muskrat Falls Project pre-sanction. In particular, we have been asked to describe our involvement in the PUB Reference and any involvement with Government or Nalcor officials, the key issues we raised prior to sanction, and responses from Government and/or Nalcor to our efforts.
2. This paper has been prepared by Ronald Penney and David Vardy, who are respectively Chair and Secretary of the Coalition, who worked closely together prior to the sanction of the project on December 17, 2012 to bring their concerns about Muskrat Falls to the public, and continued to do so throughout the construction of the project. The paper refers to various documents in the Appendix which describe in greater detail the position we have taken on this major public policy issue.
3. We are both former senior public servants. Mr. Penney served as a Deputy Minister in three Government Departments, including Justice, and as City Manager of the City of St. John's. He is a lawyer. He is an Adjunct Professor with the Department of Political Science. Mr. Vardy has been Clerk of the Executive Council, Deputy Minister of Fisheries, President of the Marine Institute, and Chair of the Public Utilities Board. He served as director of the Public Policy Research Centre and as associate director for public policy with its successor, the Harris Centre, at Memorial University. He is an economist.

4. When the project was announced on November 18, 2010, we were very concerned about the risks posed to the Province by Muskrat Falls and felt that it wasn't the right approach to our long-term energy needs, particularly given the fact that the Upper Churchill Contract would be coming to an end in 2041 ensuring the long term energy needs of the Province.
5. On April 14, 2011, we attended a meeting with Mr. Ed Martin, then CEO of Nalcor and his senior executives. We were accompanied by Dr. Jim Feehan, Professor of Economics at Memorial University and Mike Clair, Associate Director of the Harris Centre at Memorial University. This came about as a result of inquiries made by Mr. Vardy to the Director of Corporate Communications of Nalcor. We expressed concerns with the exemption of the project from the jurisdiction of the PUB, along with the reliability of Muskrat Falls power which depends upon 1450 km of transmission lines and a submarine cable across the Strait of Belle Isle along with the risks of depending upon emergency power from Nova Scotia through the Maritime Link with the shutdown of the Holyrood Thermal Plant. We argued that we need a large block of emergency power available on the Avalon Peninsula to deal with high winds and icing which often occur on the Isthmus of Avalon.
6. During the meeting Mr. Penney also recalls raising concerns about potential cost overruns, of which he had first-hand experience with on major projects built by the City during his tenure, such as the Civic Centre and the Riverhead Sewerage Treatment Plant.
7. On May 3, 2011 we wrote the then Minister of Natural Resources, Shawn Skinner, asking that the exemption of the project from the oversight and approval of the Public Utilities Board be rescinded for the reasons set out in the letter. (Appendix A)

8. We received a reply from the Minister on June 22, 2011 advising us “that the Board had been asked to provide a supplemental review of the process used to determine that Muskrat Falls represents the least-cost option for the supply of power to Island Interconnected customers, compared with the Isolated Island development option.”(Appendix B)
9. This response fell short of our request as it did not rescind the exemption order but rather asked the Board to provide advice to Government on which of the two options set out in paragraph 8 was the least-cost one.
10. Action Canada asked Mr. Vardy to prepare an essay on the Lower Churchill. This essay is dated August 31, 2011 and is entitled “Making Best Use of the Lower Churchill”. The essay was published on the website of the Harris Centre.(Appendix C)
11. Mr. Vardy was interviewed about this essay by James McLeod of the Telegram which was included in an article published on November 8, 2011. (Appendix D)
12. The essay took into account the report of the Joint Environmental Assessment Panel which was released on August 25, 2011. The essay notes that the Joint Panel “questioned Nalcor’s analysis which showed that Muskrat Falls is the best and least cost way to meet domestic energy requirements. It recommended that an independent analysis of economic, energy and environmental considerations be undertaken before governments make their final decision.” The essay also notes that the Joint Panel recommended that “In light of the prominence given to the 2041 expiration date for the Upper Churchill Contract in the Province’s 2007 Energy Plan the Joint Panel recommended that Nalcor include Churchill Falls power in its planning for 2011-2067, which includes the period 2041-2067.”

13. On January 12, 2012 we wrote a letter to the Editor of the Telegram which was published under the title “Muskrat Falls must have a full review.” In that article we were critical of the decision of the Government to deny the request of the Public Utilities Board for an extension of the deadline imposed on it for the completion of the reference. (Appendix E)
14. We were quoted in a Telegram article published on the same date which gave the views of the then Minister of Natural Resources, Jerome Kennedy, to our letter and also to an article by Dr. Jim Feehan questioning the necessity of Muskrat Falls. (Appendix F)
15. On February 11, 2012 the Telegram published an article titled “Minister tackles Muskrat Falls critics” in which Minister Kennedy was critical of comments he attributed to Mr. Vardy concerning the future of the Corner Brook Mill. (Appendix G) Mr. Vardy was sent an excerpt from the transcript of the Minister’s remarks. (Appendix H) The transcript refers to a meeting held between the Minister and the Chair of Hydro and his lawyer, where this issue was raised. We question the appropriateness of such a meeting which, based on the excerpt of the Minister’s remarks to the Greater Corner Brook Chamber of Commerce, dealt with substantive and not just procedural issues.
16. On February 14, 2012 the Telegram published an article titled “Former PUB chairman takes exception to Minister’s comments. (Appendix I)
17. On February 20, 2012 we made a presentation to the Public Utilities Board on the Muskrat Falls Reference. (Appendix J) In that presentation we again noted the potential for significant cost overruns, reliability issues, risk mitigation, the Manitoba Hydro Report commissioned by the Board, the end of the Upper Churchill Power Contract in 2041, the capital structure

and cost of service, and water management. We responded to the notion of “inherent uncertainty” on the availability of Churchill Falls power. We said:

“The least uncertain event for the energy future of this province is that the Churchill Falls contract expires in 2041; we even know the exact day of expiry.” (Page 10)

We expressed concern with the deferral of costs into the future and with the departure from cost of service methodology. We also expressed concern about future rates and how these rates should reflect the actual cost of service.

“The bulk of expenditures under the interconnected option are being assessed outside of cost of service methodology while the isolated Island option is assessed through traditional cost of service rate-making. Is this a concern of the Board?

There has been discussion of the costs and prices of Muskrat Falls power. The pricing regime proposed is unusual and unclear to many. The result is that there is a lack of clarity on the issue which should be absolutely clear, and that is the cost of power produced from Muskrat Falls. The Board should consider asking Nalcor to prepare a document that clearly indicates (a) the cost of power and (b) the rates charged to customers, for each year. This distinction between cost and price is important. (Page 13)

18. During our presentation we asked that the report of the Joint Review Panel be formally entered into evidence before the Board. Counsel for Nalcor objected to this request. The Board agreed to our request on February 29, 2012. (Appendix K)

19. On February 29, 2012 we made a supplementary submission to the Board, in response to additional evidence submitted to the Board, with respect to the capital cost estimates, load

growth, departure from traditional cost of servicing rate setting, and transmission costs.

(Appendix L)

20. On March 9, 2012, counsel for Nalcor wrote the Board with respect to the evidentiary weight to be given to the report of the Joint Review Panel. (Appendix M)
21. We responded to that letter on March 14, 2012. (Appendix N)
22. On March 28, 2012, a letter to the Editor from us titled "Reviewing all the Alternatives" was published in the Telegram. (Appendix O) In that letter we continued to raise the same concerns we had with the project from the very beginning and also noted that the Nova Scotia component of the project was to be subject to a full regulatory review by their Utilities and Review Board.
23. On March 30, 2012 the Public Utilities Board issued its report concluding "that the information provided by Nalcor in its review is not detailed, complete or current enough to determine whether the Interconnected Option represents the lessor-cost option for the supply of power to Island interconnected customers, over the period 2011-2067, as compared with the Isolated Island Option." We attended the House of Assembly that afternoon to hear reaction to the report.
24. On October 11, 2012, the Telegram published a letter to the Editor, titled "Nova Scotia is doing due diligence" in which we noted the work of the Nova Scotia Utility and Review Board on the Maritime Link Project, which contrasted with the type of review we were doing in our province. (Appendix P)
25. On October 12, 2012 the Financial Post published a letter from us, titled "Needed: Muskrat Review." in which we urged the Federal Government to insist that we have a full PUB

hearing into the project similar to what was taking place in Nova Scotia with respect to the Maritime Link. Further to that, on November 9, 2012, Mr. Penney and Mr. Vardy were two of the signatories to a letter to the Federal Minister of Finance in which we asked that he require a full PUB review similar to that conducted in Nova Scotia prior to finalizing the loan guarantee. (Appendix Q)

26. We received an acknowledgment on November 20, 2012 but no substantive response.

(Appendix R)

27. On December 5, 2012, the Telegram published a letter from us titled "Putting a term Sheet in perspective" in which we commented on the signing of the loan guarantee term sheet and again urged a full PUB review. (Appendix S)

28. The project was sanctioned on December 17, 2012. We continued to urge a full PUB review after sanction and have continued to express our concerns about the project during the construction phase to the current day.

29. On January 17, 2013 the Frontier Center published a two part article from us titled "Muskrat Falls: Why we need a regulatory review," which summarized the concerns which we articulated in the pre-sanction phase of the project as set out above. (Appendix T)

30. As well, during and after sanction we gave numerous interviews to radio and television on our concerns about the project.

31. Our main objective during the pre-sanction period was to have a full PUB review similar to that which took place in Nova Scotia on the Maritime Link. We argued that Muskrat Falls did not take into account the end of the Upper Churchill project in 2041, that cost estimates were too low and the project was likely to cost in excess of \$10 billion, that demand estimates

were too optimistic, that we were likely to have to continue to have the Holyrood plant as a backup and that revenues from exports were likely to be very low because of the shale gas revolution and resulting low electricity prices in the eastern United States. We believe that had such a review taken place the project would never have received approval from the Public Utilities Board, nor would it have been sanctioned.

32. In addition to the above we wish to bring to the attention of the Commissioner

correspondence between us and the PUB starting on July 28, 2016, with respect to meetings held between the Minister of Natural Resources, Jerome Kennedy, referred to in paragraph 15 above, and asking if any other meetings had been held between the Board and Ministers and public officials during the course of the Muskrat Falls Reference. While this correspondence is after sanction it does refer to events which occurred prior to sanction.

(Appendix U)

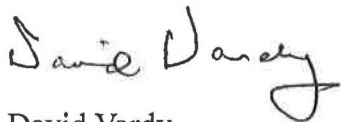
33. In its response of March 1, 2018 the PUB directed us to make a formal request for the information we requested, which we did. The heavily redacted response is attached.

(Appendix V)

Respectfully submitted



Ronald Penney



David Vardy

July 31, 2018