Needed: Muskrat review

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Federal taxpayers at risk in $6.2-billion project

Newfoundland and Labrador Premier Kathy Dunderdale met last week in Ottawa with Prime Minister Stephen Harper to discuss the proposed Muskrat Falls project on the Churchill River. Muskrat Falls (824 megawatts) is the smaller of two potential power sites on the Lower Churchill River, below the giant Churchill Falls project named after former British prime minister Winston Churchill. Churchill had been approached by then premier Joseph Smallwood in 1952 to intercede with Major Edmund de Rothschild on financing the Upper Churchill project.

A private-sector consortium that included Rothschild, known as Brinco (British Newfoundland Corp.), completed the Churchill Falls project in 1976, on time and within budget, with minimal (about 1%) financial participation by the provincial government. The Muskrat Falls project, on the other hand, will require major equity participation by the province, along with a federal loan guarantee.

The Churchill Falls project turned out to be a debacle from the standpoint of the people of Newfoundland and Labrador since the province received no significant economic benefits from the increase in energy prices that occurred after the signing of the 1969 power contract between Brinco and Hydro-Québec. Now, 60 years after Churchill's intervention, the Muskrat Falls project has the potential to be another public policy debacle, both from a provincial and national perspective, for completely different reasons, related principally to its high energy cost, poor market prospects and the risks imposed on taxpayers.

The project involves the construction of a dam and hydroelectric plant on the Lower Churchill River in Labrador and a transmission line across to the island of Newfoundland and then to Nova Scotia. The estimated cost in 2010 of $6.2-billion is expected to rise when more current cost figures are released, in advance of a debate on the project in the Newfoundland and Labrador House of Assembly this fall.

The federal government has agreed in principle to a loan guarantee, making this a national issue. Federal taxpayers would have a stake in the project should it go badly wrong, causing the loan guarantee to be called by the bondholders.

The main focus of our participation in the public debate has been to advocate for a complete review of the project by the Newfoundland and Labrador Public Utilities Board (PUB) before it is sanctioned. The provincial government had previously, by order-in-council and without public notice, removed the PUB's normal jurisdiction to review the project as part of its review of the capital expenditures of public utilities. In a 2011 letter to the NL Minister of Natural Resources, we asked the government to reinstate the PUB's jurisdiction.

It instead referred the matter to the PUB on a very narrow question: whether Muskrat Falls would be less costly than what has been termed the "isolated island option," which includes the rehabilitation of an oil-burning plant. The PUB was not permitted to examine other alternatives such as conservation, demand management, the use of natural gas, the purchase of power from Hydro-Québec, or to consider the effect of the end of the Upper Churchill power contract in 2041.

Instead of allowing Nalcor Energy, its energy Crown corporation, to take the lead as the proponent, the government itself inappropriately assumed this role, going so far as attacking citizens who spoke out against the project and repudiating the

PUB, its own quasi-judicial tribunal. The government would not agree to an extension requested by the PUB to ensure that it had the requisite time to do its job, or to explore other options and to receive more definitive and up-to-date cost estimates.

As a result, the PUB could not convene what it termed a "technical conference" that would have allowed a full testing of the merits of the project, particularly through the participation of NL's private electricity distributor, a subsidiary of Fortis Inc. Nor was the PUB given an updated load forecast to validate the questionable need for the power.

The PUB concluded on March 30 that Nalcor didn't provide it with enough information to determine which option would be preferable. This conclusion is consistent with the report of the August 2011 Joint Environmental Assessment Panel, which concluded that "Nalcor has not demonstrated the justification of the project as a whole in energy and economic terms," and "that there are outstanding questions ... regarding their ability to deliver the projected long-term financial benefits to the province."

We believe that the only way in which both provincial and federal taxpayers can be protected is to adopt the approach taken by our partner in the project, the province of Nova Scotia, which is to have a full and unencumbered review by their Utilities and Review Board before the Nova Scotia component of the project is sanctioned.

We urge the federal government to insist that, as a condition of the loan guarantee, the project be subject to a PUB hearing, consistent with the approach being taken in Nova Scotia. This hearing should be based upon the new cost estimates soon to be released by Nalcor Energy, along with an updated load forecast, and should consider those options deemed appropriate by the PUB in meeting their obligations under the Electrical Power Control Act, to implement a power policy, among other things, "that would result in power being delivered to consumers in the province at the lowest possible cost consistent with reliable service."

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David Vardy is former clerk of the Executive Council and chair of the Newfoundland and Labrador Public Utilities Board. Ron Penney is former NL deputy minister of justice and former St. John's city manager.

Richard Cashin, P.C., O.C.
[redacted]

November 9, 2012

Honourable James M. Flaherty, P.C., M.P.
Department of Finance Canada
140 O'Connor Street
Ottawa, Ontario K1A 0G5

Dear Minister Flaherty:

Re: Muskrat Falls Project, NL

We refer to the Agreement dated August 19, 2011 between the Governments of Canada, Nova Scotia and Newfoundland and Labrador setting out the terms and conditions under which the Federal Government would be willing to give its guarantee for an unspecified part of the cost of the proposed Muskrat Falls Project.

We note that the Federal Government's willingness to give such a Guarantee is contingent on it being satisfied on a number of points, including receiving certain "detailed analyses and representations by credit rating agencies". And we are sure that the Federal Government also assumed that this project would be reviewed in a full and transparent process.

However, the review process on the multi-billion dollar Muskrat Falls Project in NL was neither full nor transparent. When the Project was initially referred to the Public Utilities Board, the Government of Newfoundland and Labrador imposed a deadline. In the proceedings that followed, the Public Utilities Board asked for additional time. The PUB claimed that considerable information pertinent to the Project was not forthcoming from Nalcor. This information, the PUB asserted, was critical for them to do a proper job. The Government of Newfoundland and Labrador denied that extension. Here is an excerpt from the PUB's 2012 Muskrat Falls opinion:

> **The Board concludes that the information provided by Nalcor in the review is not detailed, complete or current enough to determine whether the Interconnected Option represents the least-cost option for the supply of power to Island Interconnected customers over the period of 2011-2067, as compared to the Isolated Island Option.**

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The Province and Nalcor, who are the proponents of the project, refused to have the Province's Public Utilities Board or a similar regulatory-type review process undertaken.

In contrast, in Nova Scotia, that Province's segment of the Muskrat Falls Project will not be sanctioned until Nova Scotia's equivalent of our Public Utilities Board has conducted a full review of the Muskrat Falls Project and has considered all potential alternatives.

We believe the Government of Canada has the right, indeed the obligation, to ensure that public expenditures are only undertaken after due diligence has been completed. While the Government of Nova Scotia is fulfilling its obligation pertaining to due diligence, the Government of Newfoundland and Labrador is not.

Accordingly, we hope that the Government of Canada, before proceeding with its guarantee pertaining to this Project, will ensure the Province of Newfoundland and Labrador will follow the rule of law and subject all costs relating to the Project to a full and transparent process as Nova Scotia is doing and as is done in other jurisdictions when projects of this nature are proposed.

It is in the interests of all Canadians that such due diligence is undertaken.

Yours truly

Richard Cashin, P.C., O.C.

Dr. John Collins
Former Minister of Finance

Roger Grimes
Former Premier of NL

Cabot Martin, Senior Policy Advisor
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David Vardy
Former Chair/CEO Public Utilities Board
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Ron Penney
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