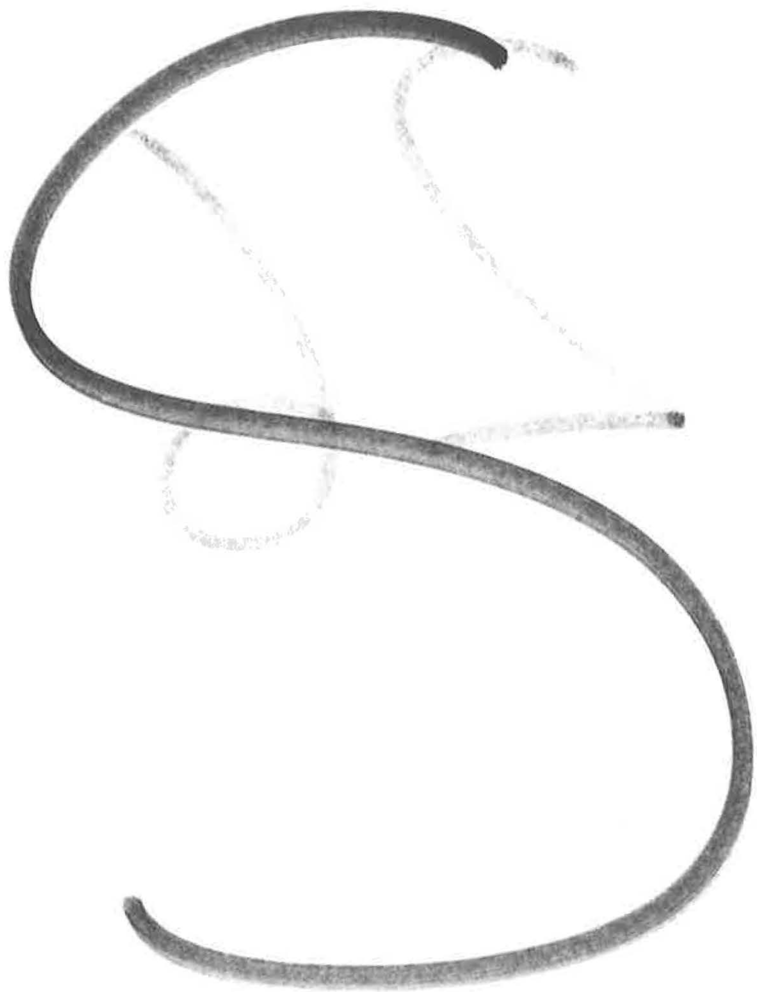

Putting a term sheet in perspective

The Telegram (St. John's) · 5 Dec 2012 · BY RON PENNEY AND DAVID VARDY Ron Penney is a former deputy minister of justice and former city manager, City of St. John's; David Vardy is a former clerk of the Executive Council and chair of the Public Utilities Board.

On Friday, the prime minister, with the premiers of Newfoundland and Labrador and Nova Scotia, signed a term sheet for a Muskrat Falls loan guarantee, leaving the details yet to be determined. What was clear from the prime minister was that the federal loan guarantee will await the sanctioning of Emera's commitment, so that Muskrat Falls will be a fully "regional" project.

Under the agreements signed between Nalcor and Emera in July 2012, Emera will have until July 2014 to make a final commitment to this project. The Nova Scotia Utilities and Review Board (UARB) has not yet received an application.

Why is our government rushing to sanction this project, recognizing that the loan guarantee is conditional upon participation by our Nova Scotian partners, who are not yet ready to make a final commitment? We are told that this will reduce the financing cost by $1 billion.

If that loan guarantee does not materialize, the burden on the ratepayer will be greater, in the amount of $1 billion. How can the government of Newfoundland and Labrador make a decision to sanction Muskrat Falls without the federal loan guarantee, which could take until July 2014, and also without the final legal agreement?

There is no question that ratepayers need regulatory protection, but why has our government placed this decision in the hands of the UARB of Nova Scotia? Yes, the Nova Scotia review will provide added transparency but the UARB is not mandated to protect this province's ratepayers.

Why do we need a regulatory review? A full regulatory review is mandatory due to the large scale of the project and the risk it entails for ratepayers. Another reason, of equal importance, is the monopolistic structure of our power industry. There is no competition from other service providers. In these monopoly situations the Public Utilities Board (PUB) has a mandate to protect ratepayers and to ensure, as far as possible, that ratepayers are not disadvantaged by the lack of benefits that would otherwise be afforded them by competition.

Ratepayers in this province depend on their own PUB for protection from excessive rates. Yet, the "take-or-pay" power purchase agreement between Nalcor and Newfoundland and Labrador Hydro will be outside of the jurisdiction of the PUB. The N.S. UARB will not protect our ratepayers from excessively high rates. The estimated capital costs of this project have increased from $6.2 billion to $7.4 billion, but this does not include allowance for funds used during construction, previously estimated at $1.2 billion. Nor does it include cost escalation on the Maritime Link, now estimated at between $1.3 billion and $1.5 billion.

Taking the lower estimate ($1.3 billion, escalated from $1.2 billion) the overall project cost is now $8.7 billion and we expect that it will escalate beyond $10 billion. The loan guarantee will be capped at $6.3 billion, leaving our province exposed to the full cost of overruns.

The prime minister's announcement on the loan guarantee places our fate squarely in the hands of the N.S. UARB. The good news is that there will be a regulatory review. But it will be in another jurisdiction and will not concern itself with the rates charged in our province. It will not substitute for a full regulatory review by this province's PUB. Only a full, transparent and independent regulatory review here, as is being conducted in Nova Scotia, will suffice to inspire confidence in this project. Have we passed the point of no return? Is the financial commitment so enormous that government cannot turn back, without the loss of political capital?

Consider what has happened in Manitoba where two hydro projects are being developed by Manitoba Hydro: the Keeyask and Conawapa projects, whose capital costs were estimated at more than $13.4 billion. These projects have been referred to a sub-panel of the Manitoba PUB. In the words of the minister: "The purpose of the Needs For And Alternatives To review is to provide an independent assessment of the need for new generation and to compare the benefits of building new hydro generation to alternatives such as natural gas."

The membership of the sub-panel is to be announced, along with detailed terms of reference, in the new year. We urge the government of Newfoundland and Labrador to take similar action.

We believe that the government's performance will be judged on whether they have done the right thing and for the right purpose. A government that has the wisdom to reassess its course in response to changing world energy conditions will gain approval from an informed public. It is not too late to do the right thing, which is to refer the Muskrat Falls project back to the PUB.