

Astaldi Canada-Nalcor Energy dispute hits Muskrat Falls Inquiry

Ashley Fitzpatrick (ashley.fitzpatrick@thetelegram.com)

Published: Nov 17, 2018 at 2:45 p.m.

Updated: Nov 19, 2018 at 8:11 a.m.



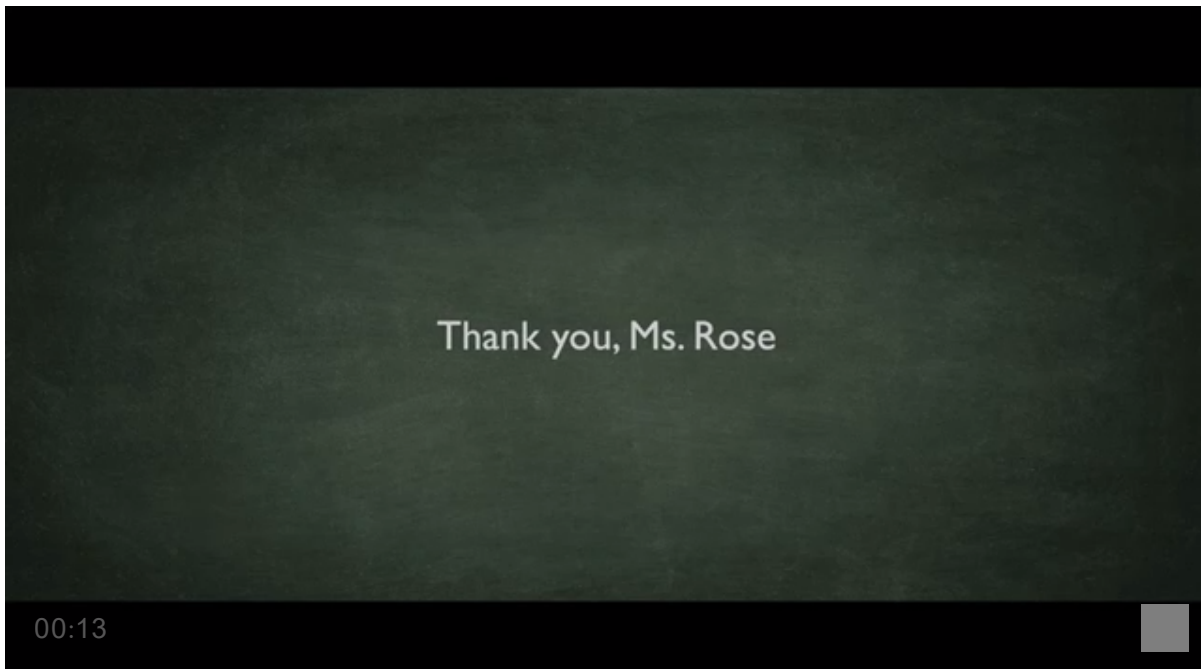
The Muskrat Falls Inquiry heard more on Saturday about the intersection between the ongoing inquiry and civil disputes. — File Photo

Commissioner warns he has no plans to deal with build ‘in camera’

Commissioner Richard LeBlanc says the Muskrat Falls Inquiry was tasked in part to determine why there were massive cost overruns on the project during construction. He said he has no plans for large portions of that work to be “in camera,” out of the public eye.

Construction of the hydroelectric megaproject is still ongoing. It was once estimated to cost \$6.2-billion and last estimated at \$12.7-billion (the latter including increased financing costs).

ADVERTISEMENT



While the public inquiry was launched and is well underway, civil disputes have also launched relating to the increased project costs and payments, with one major dispute involving Crown corporation Nalcor Energy and Astaldi Canada — the main contractor for the build of the intake and powerhouse, spillway and transition dams. Astaldi Canada is a subsidiary of Astaldi SpA.

"The Astaldi (Canada) contract I understand has now been terminated," said Nalcor Energy lawyer Dan Simmons, speaking at the inquiry Saturday. He noted an injunction application related to credit and payment filed by Astaldi Canada on Nov. 14, to be heard in the Supreme Court of Newfoundland and Labrador on Monday.

"It's a significant dispute, consequences for Nalcor Energy and indeed, because of the many things we've heard here, we know that it has consequences ultimately perhaps for taxpayers and ratepayers in the province. So it is an important interest that needs to be taken into account," Simmons said.

The inquiry was in an unusual sitting, to address procedural issues arising, specifically related to limiting the public disclosure of documents and to proposals for "in camera" sessions, including two specific requests to address part of the testimony from SNC-Lavalin's lead estimator on the project Paul Lemay in camera (he is expected to be recalled, having given partial testimony Nov. 2) and for Nalcor Energy Oil and Gas lead Jim Keating (scheduled to testify on Nov. 22).

Nalcor Energy argues some of the specifics of Lemay's information could potentially be used in the ongoing dispute with Astaldi Canada. The issue with Jim Keating was related to commercial sensitivity and private oil companies — the naming of companies as Keating speaks to pricing of natural gas for possible domestic use in 2010-2012.

The main issue of the day was the Astaldi Canada-Nalcor Energy dispute. And Astaldi Canada lawyer Paul Burgess said his client is not looking for information to use elsewhere, given the disclosure process in other proceedings. But he did for notice if any information tied to cost increases during construction on Astaldi's work package were going to be discussed "in camera" during the rest of the



Lawyer Paul Burgess for Astaldi Canada told Muskrat Falls Inquiry Commissioner Richard LeBlanc his client would like to have notice if anything about the company's contract was being raised in any "in camera" sessions.

first phase of the inquiry (on the project pre-construction). It's not an issue moving into 2019, when the inquiry will begin to focus on construction, and Astaldi Canada will have standing in the hearings.

Burgess said his client is interested in the estimates. "If Nalcor knew, and had information that would say 'you shouldn't have relied on that,' or 'if you said that to us, we didn't tell you different,' Astaldi would say you have an obligation — as part of its argument — that you ought to have informed us of that," he told LeBlanc.

The civil dispute and cost involved is a problem yet to be fully resolved, LeBlanc said, in looking ahead to the next step of his inquiry. He acknowledged the Public

Inquiries Act allows him "in camera" hearings and limiting the involvement of different parties.

"Now this is a public inquiry. To me, at this point in time, what might be the expectation is everything we do with Astaldi which is, from what I can see is probably about a third of the cost overrun of this particular project or a third relates to what work they were doing. I'd like to know how in the world we could have what I call — and what the government has asked for — a public inquiry, that we're going to basically conduct quite a lot of the time in phase two potentially in camera, without the public having the ability to scrutinize that. That is very problematic for me," he said. "And I'm not sure whether the government has put its mind to this or whatever, but it's not just my problem as far as I'm concerned. There are people who set these terms of reference and I think they need to look at it. And if they're serious and they want this done, then they have to understand that it may well be in the public eye potentially, and I'm assuming the government has considered that."

Ralph said there has been a "great deal" of discussion to date relating to the challenges for the inquiry.

With some discussion amongst the lawyers and deliberation, LeBlanc ruled some of Lemay's information and testimony could be dealt with in the next phase of the inquiry, while he would allow introduction of a breakdown of a \$300 million allowance in the SNC-Lavalin estimate Lemay had previously mentioned. He also ruled oil company names could be expected in Jim Keating's time on the stand, but added any evidence presented would be restricted to the inquiry's terms of reference and considerations to the point the Muskrat Falls project was sanctioned.

ashley.fitzpatrick@thetelegram.com

Twitter: @TeleFitz

Related Stories:

Nalcor working to ensure 129 former Astaldi workers will get paid

The Muskrat Falls Inquiry