

IN THE MATTER OF the Commission of
Inquiry Respecting the Muskrat Falls Project
Order under the authority of section 3 of the
Public Inquiries Act, 2006 (O.C, 2017-339)

**WRITTEN SUBMISSIONS OF
RESOURCE DEVELOPMENT TRADES COUNCIL OF NEWFOUNDLAND & LABRADOR
NEWFOUNDLAND AND LABRADOR BUILDING TRADES COUNCIL**

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Muskrat Falls Project
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1. The following are the written submissions of the Resource Development Trades Council of Newfoundland and Labrador (the “RDTC”) and the Newfoundland and Labrador Building Trades Council (the “NLBTC”), which collectively represent the unionized workers on the Muskrat Falls Project site pursuant to the collective agreement between the Muskrat Falls Employers’ Association Inc. and the Resource Development Trades Council of Newfoundland and Labrador for the construction of the Lower Churchill Hydroelectric Generation Project at Muskrat Falls on the Lower Churchill River, Newfoundland and Labrador (“Project” or “Muskrat Falls Project”).
2. The RDTC is the council of trade unions given exclusive bargaining rights for unions representing employees on the hydroelectric generation project by virtue of the *Lower Churchill Hydroelectric Generation Project Special Project Order* (SPO), Newfoundland and Labrador Regulation 67/13, passed under the *Labour Relations Act*, RSNL c. L-1 (“LRA”). The Muskrat Falls Employers’ Association Inc. (“MFEA”), was likewise given exclusive bargaining rights acting for and on behalf of all contractors and subcontractors carrying out work on the Project.

Background and the Negotiation of the Collective Agreement

3. The RDTC is a council of 16 building and construction trade unions and their international affiliates formed to promote and coordinate the interests of the unions and their international affiliates operating in the province. Councils of unions and international affiliates had been formed in Newfoundland and Labrador as early as 1967 for the Churchill Falls Power Project, but they gained prominence after the 1990 amendments to section 70 of the LRA which included “geographic site” in the definition of a special project. The intention was, given the anticipated boom in the offshore oil industry, to provide a stable work force from multiple trade unions for those upcoming special projects. The RDTC was first recognized by a special project order in April 2003 in the *Voisey’s Bay Special Project Order*, Newfoundland and Labrador Regulation 47/03. The RDTC has since worked at Long Harbour, Hebron, and now at

the Lower Churchill Project. The RDTC helps to meet the objectives of special project orders regarding labour stability and the maximization of labour opportunities for workers in the province.

4. Prior to the negotiation of the collective agreement for the Muskrat Falls Project, the *Labour Relations Act*, RSNL c. L-1 was again amended based on recommendations from James Oakley in his February 29, 2012 Review of Special Project Order Legislation in Newfoundland and Labrador (P-03842). Against the recommendation of the RDTC and in accordance with the submissions of Nalcor, the legislation was amended to remove “within a prescribed geographic site” from the definition of “special project” and further to state that a special project order is not invalid by reason of the fact that it overlaps temporally and geographically with another special project order. This would allow more than one SPO to operate on a particular site. Though the RDTC was under the impression at that time the changes were to allow more than one project at Bull Arm, the Labour Model Report of Feb 10, 2011 (P-03841) demonstrates that such changes were motivated by and necessary to implement this model at the Muskrat Falls Project.
5. The RDTC submits that the actions by Nalcor and government leading up to the start of the entire project, which allowed for the split of the project into three different collective agreements, had a negative impact on the Project. The RDTC was formed to ensure a stable and steady labour supply for special projects, which occurs when workers can be confident they are being treated equally and fairly and when there is congruency across an entire project. The legislation allowing the implementation of the three agreements circumvented the basic intention of labour union rights and negatively impacted the union members and labour environment, and possibly the Project.
6. Following the implementation of the above-mentioned labour model, the RDTC was asked to negotiate a collective agreement (P-03817) for the hydroelectric generation portion of the project (“Muskrat Falls Project”). However, Nalcor advised it would only

negotiate with a specific group of trades rather than the whole Council. The RDTC submits that the manner in which negotiations took place impacted the cohesiveness of the RDTC and ran contrary to the purpose of union councils to provide a broad but united labour force. The RDTC as a broad, united, and equitable labour force has worked efficiently and seamlessly on other special projects in Newfoundland and Labrador.

7. Nalcor identified five civil trades with whom it would negotiate the collective agreement that would apply to every trade working on the Project. This excluded eleven unions from having a presence and a voice in crafting the main body of the agreement to which they would later be bound. Within the RDTC, each member union has an equal vote on matters such as the acceptance of a collective agreement, so the insistence of Nalcor through the MFEA to negotiate with only five union representatives created a division in what had previously been an equal and unified labour force. This went against the purpose and intention of the creation of the RDTC, and even the purpose of SPOs generally, and ultimately had a negative impact on the working relationship once construction began.
8. Further fracturing and dividing the bargaining group and isolating select workers and unions, Nalcor moved negotiations out of province. It would have been reasonable for the eleven excluded unions to have representatives in an adjacent meeting room if the negotiations took place in St. John's. However, the move to Toronto solidified the exclusion of the other member unions and in effect allowed Nalcor to circumvent constitutional labour law principles that allow and protect workers who organize into a single bargaining unit, or council in this case. Though negotiations were later concluded in St. John's, the excluded unions were limited to the negotiation of their separate trade appendices.
9. The RDTC submits labour relations on the Project was impacted by the approach of Nalcor, the MFEA, and the Government of Newfoundland and Labrador, to circumvent labour laws and constitutional principles for the benefit of the employer in this instance. RDTC further submits these protections and principles exist to protect workers,

regardless of whether the employer is an arm of the government or a private entity. They should not have been ignored and bypassed for any reason, including in order to eliminate disputes over work which would have otherwise properly fallen to different unions, or because of an impression of Nalcor that one group of workers or unions might be more malleable at the bargaining table.

10. With respect to the collective agreement, the RDTC submits the Impact Benefits Agreement (“IBA”) (P-00298) also had an impact on the unions, the workers, and the construction work at the Muskrat Falls site. While the RDTC supported and continues to support the purpose and objectives of the agreement, it was unilaterally imposed by Nalcor and the MFEA and incorporated into the collective agreement through the Lower Churchill Construction Projects Benefits Strategy (“Benefits Strategy”) without input from the RDTC. The Benefits Strategy stated that a construction hiring protocol would be established that would implement the commitments made in the IBA and further that any collective agreements entered into by LCP shall contain provisions consistent with those commitments. Indeed, in the collective agreement, the RDTC was forced to agree to comply with and implement the Benefits Strategy (Article 7.03), which include the commitments made in the IBA, without it having been a Party to that agreement or even being provided with a copy of the document. There was no room for negotiation with respect to the hiring protocols or other facets of Article 7 with respect to Labrador Innu since the MFEA were bound by both the IBA and the Benefits Strategy to incorporate those obligations into the collective agreement. Per Article 7.02 for example, the RDTC agreed to ensure compliance with “any employment equity plan that may be applicable to the hiring of qualified Labrador Innu” but they were not provided with copies of any such plan, specifically the IBA.
11. The member union hiring halls coordinate the hiring of unionized workers for various projects throughout the province including those dispatched to the Muskrat Falls Project. However, for the purpose of the IBA, the Innu Business Centre worked in conjunction with the Innu Employment Coordinator for Nalcor, rather than through the RDTC. This created additional complications in organizing workers on the Project and further divided the workforce as a collective unit.

12. In her testimony on February 28, 2019, Ms. Kuyper from Innu Nation acknowledged the disconnect between the two separate processes and credited union involvement on many occasions. She stated,

“I felt sometimes, like, he didn’t directly gave (sic) me the same-day job request that came out. Like, usually he would give me a day or the second day late, and sometimes I would miss out the opportunities for the Innu. And also, like, how I know that I was late, the unions contacted me if I had anybody else to send some names before lunch. Like I didn’t know there was – this job was coming out until the unions, like, called me up, emailed me.”

13. Therefore, the position of the RDTC is the hiring complications, disputes, and procedures could have been improved through union cooperation and involvement before the IBA was signed and unilaterally imposed on the collective agreement. This created an additional barrier that did not exist in other projects in the province and unfortunately due to the multi-tiered hiring system, may have had a negative impact on the Project.
14. RDTC submits that if it had been consulted and included throughout the negotiation of the IBA, then a better agreement and improved implementation could have been achieved with less impact on the workers on the Project. The RDTC and its member unions could have supported a more efficient implementation of the hiring priorities of the IBA and the Benefits Strategy.
15. The further fracturing of the work force did not promote the unified work force that was the original purpose of the RDTC and SPOs, but rather created yet another tier of workers on site. It is our position that this was a complicating factor in the efficiency and production from the workforce.

Labour Relations – Nalcor, MFEA, and RDTC

16. The Muskrat Falls Project was impacted by the unique composition of the MFEA. Unlike other employers’ associations formed for other special projects in the province,

the MFEA was controlled by the owner, Nalcor. Other employer associations are made up of the contractors working on site with each contractor having an equal voice in the employer association. This gives contractors the flexibility to settle grievances, negotiate compromises, work directly with the workers and the union representatives, and troubleshoot concerns before those concerns elevate to a level where association involvement would be necessary.

17. As explained by the testimony provided in Muskrat Falls grievance #132 and submitted as an exhibit to the Commission (P-03875), the MFEA is a corporation without share capital that is comprised of Nalcor as its founding member and the contractors as its subscribing members. It was likened to a pyramid, with Nalcor at the top. The Articles of Incorporation state there are three "classes" of membership: the incorporating members (the incorporating directors), the Lead Member (Nalcor), and the contractor members. The maximum number of directors is 12, with the contractor members having the right to elect and remove 5 and the Lead Member controlling 7 directors.
18. A quorum of the MFEA's directors are required to transact the organization's business, and according to its bylaws, a quorum shall not be deemed to exist unless the directors appointed by the Lead Member are both present and form a majority. Therefore, Nalcor is the controlling mind behind the MFEA and it is not then a true "employers' association" like those that exist for the other special projects in the province.
19. RDTC submits Nalcor's control over every contractor's ability to negotiate individually with unions and workers had a negative impact on the Project. The micro-management led to an increased number of grievances which may have been settled without much time or expense on another project with a true employers' association.
20. An incorporating director of the MFEA, Mr. David Clark, was also Nalcor's Labour Relations representative on site and attended many of the arbitrations held with many of the different contractors. It is the position of the RDTC that Nalcor's control over every dispute, exercised through Mr. Clark, led to prolonged disputes, more

arbitrations, and unnecessary confusion regarding both the interpretation or the agreement for unions as a whole, and for individual workers.

21. Also submitted to the Commission in P-03875 is the evidence from grievance #132 which is captured and reported in the arbitrator's decision, and wherein Mr. Clark states that if a member contractor refused to follow a direction from the MFEA, controlled by Nalcor, then it will be expelled from the association in accordance with the by-laws. Therefore, contractors on site had no choice but to allow Nalcor to be involved in and make decisions on any issue or dispute that arose with the union or the workers on site.
22. The RDTC submits this unusual arrangement resulted in Nalcor's direct involvement in arbitrations and settlement negotiations, without it being party to the collective agreement governing the parties and the dispute resolution.
23. The RDTC further submits fewer grievances were settled through the step process, with the involvement of Nalcor through Mr. Clark, and were advanced to arbitration hearings on this Project than on any other special project with which the RDTC is or has been involved. It is the understanding of the RDTC and the evidence of Pat McCormick (Interview Transcript, April 11, 2019, page 28, and oral testimony May 27, 2019), that companies by the name of "David W. Clark Associates" and "David W. Clark Legal" had representatives present at many arbitrations. The increased number of arbitrations led to further and unnecessary delays in resolution, and significant legal and arbitration costs that would not have been incurred had the parties been able and encouraged to settle the dispute at an earlier stage in the grievance.
24. The abundance of arbitrations and the inability of individual contractors to negotiate their own settlements prior to arbitration contributed as well to increased labour relations tension on the site, which undoubtedly had an impact on the Project as a whole. Rather than amicably agreeing to a resolution, arbitrations are adversarial procedures which adduce evidence that may be controversial and create lasting impressions and divisions. It often requires workers and employers to give oral

evidence which may have an adverse effect on their working relationship, in order for an unrelated dispute to be resolved in accordance with applicable legal principles. This of course is in addition to the burden of requiring those individuals to attend hearings, sometimes days or weeks at a time, and often in St. John's. It is the position of the RDTC that allowing and encouraging individual contractors to settle disputes with the particular union involved early in the grievance process would save time and money for all parties, and more importantly, lead to a better long-term productive working relationship on site.

25. Labour relations on the Project and as between the RDTC and the MFEA were further strained on the site by the dysfunction of the government liaison committee meetings. These meetings were intended to provide a forum in which the MFEA (Nalcor) and the RDTC could meet with a government representative together to discuss and resolve any problems at the site.
26. The liaison committee was a good idea in theory, however in practice, the RDTC submits it was not productive, was not consistently attended by the MFEA, was not taken seriously by the MFEA, and the government representative did not appear to have the appropriate authority to implement the changes and improvements intended to be covered by these committee meetings. Personality conflicts between the labour representative from Nalcor and the RDTC member in attendance often resulted in the Nalcor representative refusing to attend, effectively shutting down this labour relations avenue.
27. The combination of the above issues led to a strained labour relationship between the RDTC member unions and the MFEA and Nalcor. The increase in grievances going to arbitration and the control of Nalcor over every step of the process had a negative impact on the efficiency and morale of the workforce.

On-Site Issues and General Productivity

28. The RDTC submits its workforce at the Muskrat Falls Project was qualified, highly motivated, and productive.
29. The RDTC states all workers referred to site through the hiring halls for the various unions had the requisite qualifications required by the job request from the contractor. Any allegations of unqualified workers made by Astaldi are inaccurate. Further, before workers were allowed access to site, they underwent a pre-access medical. Neither the RDTC nor its member unions had any responsibility or control over the general health or fitness level of any of its members. However, the RDTC was cooperative when contractors began assessing potential workers for strength and fitness capabilities prior to attending the site. At no point did any of the RDTC member unions refer a worker to the Muskrat Falls site who was not qualified or certified for the job requested.
30. In Pat McCormick's interview evidence on April 11, 2019 (pages 3-4) and again in his oral evidence on May 27, 2019, he notes that on the Hibernia project, the Newfoundland and Labrador workforce was praised by the Norwegian contractor and stated that the work was second to none. He further noted Clyde Wells commissioned a report which stated that in terms of productivity and safety, that project was one of the best built anywhere in North America. Though those sources are not directly in evidence, the RDTC submits its workforce, the workers of Newfoundland and Labrador, are second to none and highly capable and productive when managed and organized properly.
31. With respect to the allegation the Project was hindered by contractors hiring workers based on "who know you" and familial connections, the RDTC states the collective agreement governs the hiring process and provides strict guidelines as to how hiring occurs. The RDTC member unions provide workers based on an "out-of-work" list of workers qualified to do the job requested. That list is followed and respected and when the union is providing a worker it does not deviate from the list based on a personal or

familial connection. However, the RDTC submits that in accordance with article 7.07 of the collective agreement, the contractor can “name-hire” all forepersons and general forepersons from the union’s out-of-work list and further, for every 10 workers hired, the contractor can name-hire 5 of those workers. Therefore, any deviation from the list and hiring based on “who you know” as was advanced in testimony as an issue on site, is the fault of the contractor and in any event is permitted by the collective agreement.

32. George Jergeas gave testimony on June 19, 2019 during which he stated unequivocally that any issues with productivity on the Project were not the fault of the worker. He was qualified as an expert on productivity and gave evidence about the complexity of the issue of productivity. He stated, and the RDTC concurs, that productivity is affected by technical issues, management issues, human/labour issues, external issues/factors, and market conditions. He stated that blame is sometimes unfairly placed on workers for idle time spent waiting for direction, planning, or travel at site. (DISCL-GEN 19084, slides 96-98).
33. The RDTC submits any decreased productivity rates on the Muskrat Falls Project are related to a lack of front-end planning, and a lack of proper management of the construction operation and workforce. The RDTC states Mr. Jergeas put forward eight ways productivity could be improved and each of those strategies or approaches have to be implemented at the management level. The RDTC supports the submissions of Mr. Jergeas that no productivity issue identified with respect to the Muskrat Falls Project can be attributed to the workers. (slides 99-102).
34. The shop stewards on site reporting to the site representatives of the RDTC most consistently raised the issue of the conditions for workers at camp. Tom Walsh, during his April 11, 2019 interview with Commission Counsel, stated “every single stewards’ meeting we had complaints about the camp rooms....and every time, like, we’d try and get it fixed.” Mr. Walsh stated that normally when a contractor was not living up to the expectations in the collective agreement “someone comes down with the hammer” but in this case “it became fairly obvious that Nalcor was running this camp through

Labrador Catering. That's why there was never any reprimands or anything like that." (page 5-6, Interview Transcript, Tom Walsh). Mr. Walsh elaborated with specific examples of unclean and unfit camp conditions during his oral testimony on May 27, 2019.

35. The RDTC states the condition of the rooms at camp remained a consistent problem for workers throughout the duration of the Project and despite many attempts to have it addressed, it was never resolved. The union supplying janitors and cleaning staff were prepared to send additional workers if that was necessary but it was not requested nor was any other scheduling strategy implemented to respond to the workers' complaints. This undoubtedly impacted worker morale on the site which may in turn have had an impact on productivity.
 36. The RDTC acknowledges there were isolated challenges with some members of the labour force, with respect to incidents of theft, prolonged breaks, and safety incidents. The RDTC submits that in each case, proper oversight, management, direction, and guidance would have minimized or eliminated any such incident. In any event, the RDTC states those isolated issues were minimal and did not have a significant impact, if any, on the Project as a whole.
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General Conclusion

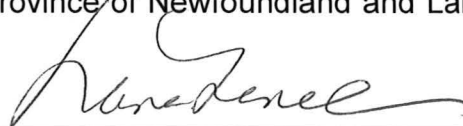
37. The RDTC states that other than labour relations tensions resulting from the structure of the MFEA and the increased number of grievances which proceeded to arbitration, and the morale issues that resulted from the prolonged disputes and problems with the camp, generally the experience of the RDTC workers on site was positive.
38. Despite the division of the whole project into three special projects, the RDTC submits the objectives of its Council to provide a stable labour force of a broad group of trades was achieved at the Lower Churchill Hydroelectric Generation Project construction site. The work teams formed under the collective agreement allowed multiple tradespersons to work together to effectively and efficiently carry out the construction

tasks required. Contractors agreed that the work teams formed with various trade unions of the RDTC were a productive and effective way to complete construction.

39. The RDTC states that on the whole, the collaboration of the RDTC with the MFEA and Nalcor has resulted in a strong and sturdy hydroelectric generation plant. People of Newfoundland and Labrador can be proud of the work done by the workers in the province. Union members who worked on the Project will benefit from the experience on a whole when working on future projects. The mega-project was the first of its kind in this province and the result is a generation of workers in the various trades who are experienced in hydroelectric generation projects and mega-projects generally.
40. The RDTC has benefited from the lessons in labour relations and despite the challenges referenced herein, enjoyed a generally positive and mutually respectful relationship with many of the members of the Nalcor labour relations team.

Respectfully Submitted on behalf of the Resource Development Trades Council of Newfoundland and Labrador and the Newfoundland and Labrador Building Trades Council.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador, this 12th day of August, 2019.



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