



COMMISSION OF INQUIRY  
RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript

Hearings for Standing and Funding

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*Commissioner: Honourable Justice Richard LeBlanc*

Friday

6 April 2018

**MS. MULROONEY:** This Commission of Inquiry is now open.

The hon. Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

**THE COMMISSIONER:** (Inaudible.)

While this project has, and will have, an impact on all of the citizens of the province, the Commission has planned to hold our first public session in Labrador.

Much of the project construction has occurred in and infrastructure is present in Labrador. And, of course, the raw material necessary to produce power has come from the Churchill River. It was only fitting to schedule the inquiry's first public session in Labrador.

In order to organize this, considerable effort was made to ensure that proper space, technology and personnel would be in place.

Notwithstanding our preparation, events beyond our control arose that made it impossible to proceed on April 3 as planned. We want to assure the people in Labrador that we are continuing our preparations to have some of the hearings for this inquiry there.

This morning here in St. John's, we will be hearing from those seeking to have standing at the inquiry hearings. An option was given to those seeking standing or their legal counsel to appear in person or by telephone. This was proposed in order to minimize cost to those who were outside of the St. John's area or whose legal counsel was outside of that area.

My name is Richard LeBlanc. On November 20, 2017, I agreed to act as the commissioner of this inquiry. I am a justice of the Supreme Court of Newfoundland and Labrador.

Before we commence hearing the standing and funding applications to be dealt with here today, I would like to take a few minutes to talk about the approach of the inquiry team and the approach that it will be taking as regards to conduct of this inquiry and other pertinent matters.

In my recent decision I gave, regarding the interpretation of the order-in-council creating the inquiry, and particularly the terms of reference or mandate given to this Commission of Inquiry, I referred to certain principles that I expect will guide the Commission's work and the conduct of the hearings that will be held. I wish to reiterate those principles at this time and likely will be repeating them often as this inquiry proceeds.

It is my full expectation that not only will the Commission staff be bound by these principles, but also that the parties granted standing and their counsel will be guided by them. These principles can be summarized as follows: the Commission of Inquiry is totally independent of any party, including the Government of Newfoundland and Labrador, and will proceed with no perceived – preconceived or preformed bias or position; secondly, the inquiry is to be conducted on the basis of encouraging co-operation between all parties so as to promote the hearing of all relevant matters in the least adversarial manner possible. This will ensure an efficient use of time, effort and expense so as to best promote the interests of the participants in the inquiry as well as the interests of the public.

The inquiry will be thorough in doing its work. Due in part to the volume of material related to this project's sanction and execution, as well as the limited time available to conclude this inquiry, the Commission will be taking a proportionate approach as to what evidence is most relevant to present and to consider in order to respond to the mandate given.

Being thorough does not mean the investigation needs to be a fully exhaustive one. There is a story to be told about the Muskrat Falls Project. In telling that story, in line with the terms of reference as I've interpreted them, there will be some sub-plots that may emerge that will have to be accessed as to their significance or importance to the whole of the story to be told. Therefore, proportionality will be considered when determining the extent of the investigation the Commission will be conducting, and the evidence to be presented at the hearing.

Fourthly, the inquiry will be conscious of the need to be expeditious in all aspects of its work,

as this inquiry must be, and will be completed by December 31, 2019.

I am also very conscious of the need to be fiscally prudent in expending public funds and being expeditious will best ensure that prudence.

Fifth, the inquiry will be conducted in as transparent and as open manner as is possible, while bearing in mind any privilege claims protected by law and the need to ensure that any disclosure provided would not negatively impact the overall costs of this project.

And finally, sixth, but certainly not least important is the need to ensure fairness, not only to the public but also to those involved as parties and witnesses during this inquiry. This includes fairness in a procedural sense as well as ensuring that the conduct of those involved not be judged on the basis of any inappropriate reliance on hindsight, but rather on the basis of the knowledge, reasonably, available at the time.

Now, I want to speak a little bit about what a public inquiry does. A public inquiry is generally established to investigate and report on matters of substantial public interest. In this case, that interest relates to the Muskrat Falls Project sanction and construction, and particularly the involvement of Nalcor and the Government of Newfoundland and Labrador.

A public inquiry is not a trial. No one is charged with any criminal offence, nor is anyone being sued. I'm not permitted to express any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization as part of my findings or in any of the recommendations I might make.

It seems to me that an apt manner to describe the work of this Commission of Inquiry in meeting its mandate is to set out the story of what occurred as regards to this project from the time of its conception and the events that have occurred since, to its expected completion and operation. This means giving all those integrally involved an opportunity to explain what happened. Questions will be asked on the basis of the explanations and facts presented so that the full story can be made known.

As the Commissioner, it will be then for me to assess the evidence presented, make findings based upon the requirements of the mandate of this inquiry and then to make recommendations.

Having said this, I want everyone to understand that there is a difference between telling a story and presenting a soap opera. Grandstanding on the part of any party, their counsel or any witnesses will not serve the interests of anyone, including the public interest. Emotions and feelings may well be strong here, but this inquiry will be one that will be controlled and it will be limited to those matters reasonably relevant to the inquiry's mandate. As stated earlier, this inquiry will be one that is fair for all of those involved in it, as well as the citizens of this province.

The terms of reference, as interpreted by me in my decision of March 14, 2018, are specific, and I intend to ensure a responsible spending of public funds as well as an efficient and fair process. I will be ensuring that our work, including the efforts of Commission counsel and parties given standing, focus on the specific areas listed in the terms of reference as they have been interpreted by myself.

The hearings will be – to be conducted will be generally held in an open and public setting. As well, we have established a website, [www.muskratfallsinquiry.ca](http://www.muskratfallsinquiry.ca) – all lowercase – that will provide a live webcast of all of the public hearings held by this Commission of Inquiry. The website will also have other information on it including transcripts of witnesses' testimony, public exhibits and information about the Commission's work.

I expect that the media will be covering this inquiry, at least to some extent, which will provide a further opportunity for the public to be kept informed. To ensure that the media can accurately report what is happening at the inquiry in a timely manner, we will be making materials as accessible as is possible to the media. As well, inquiry staff will be available to respond to their needs as best as can be done.

Now, how will this inquiry proceed? As stated earlier, the Commission's work must be completed by December 31, 2019. I, as well as the Commission team, are completely

committed to doing our best to meet that deadline, notwithstanding the fact that we are dealing with a huge volume of documentation that must be reviewed and investigated, as well as the complexity surrounding many of the matters that are being investigated.

We are moving quickly to put necessary key staff in place. We have established an office and hearing space here in St. John's, developed a budget for the inquiry and, as well, have built an information management system that allows us to do a thorough review of the many terabytes of data that we have received and will be receiving.

We have developed rules of procedure, issued some summonses for relevant documents and Commission counsel have begun to do interviews. An investigative audit, independent of this Commission, into certain aspects of the project has also been commenced.

Although not set in stone, the plan we have is to conduct the hearings in three separate phases in order to best organize the evidence. Phase one, dealing primarily with pre-sanction matters for the project, as well as the involvement of the Public Utilities Board, will take place beginning in the fall of 2018, specifically beginning on September 17. And we plan to sit until December 6, 2018, with the possibility that a further week would be added if required.

Phase two, during the – dealing with the construction phase of the project as well as the oversight by Nalcor and the government of that project, will be taking place from February 4, 2019 to April 4, 2019 and then April 29, 2019 to May 16, 2019. Holiday plans should be scheduled for the time we won't be sitting.

Phase three, dealing with policy and potential systemic matters focused on looking forward, will be taking place from June 17 until July 4, 2019. Final submissions are presently scheduled for early August 2019. These dates remain tentative but the hearing schedule should not change drastically from what I've just set out. More than 100 hearing days will be necessary in order for this Commission to meet its mandate.

Based upon our present thinking, most of the hearings will likely be conducted here in St. John's due to considerations such as the place of

residence of the various witnesses to be called and bearing in mind, of course, cost. Having said this, we are cognizant of the need for some of the hearings to take place in Labrador and there will certainly be hearing days scheduled in Happy Valley-Goose Bay.

The hearings will be conducted in the manner most public inquiries follow. Witnesses to be called will be decided upon by Commission counsel in consultation with the parties given standing. Witnesses will, in the normal course, be examined first by Commission counsel and then examined by counsel for the parties having standing.

For this hearing, each party given standing will be expected to have legal counsel to represent them at the hearings. This is necessary to ensure appropriate communication channels with Commission co-counsel as well as an efficient hearing process. Where necessary, funding for legal counsel will be recommended for parties requiring such assistance.

The relatively short time frame given for the inquiry to report dictates the need to organize the hearings to ensure the most efficient use of time. Being represented by legal counsel will assist the parties also in understanding the hearing process and will promote fairness for all the parties involved.

I do intend to consult with counsel for the parties granted standing on an ongoing basis on issues that I believe are necessary and which may directly impact them. Counsel for those parties should feel free to provide their thoughts and feedback about procedural issues and processes through Commission co-counsel so that I may consider them.

Next, I wish to introduce Commission staff. Our chief administrative officer is Gerry Beresford. You met him just before the hearings began. Our operations manager is Diane Blackmore. We also have four researchers presently on staff: Kate Dutton, Chris McGee, Rosie Myers and Stephen Kiraly. As well as two dedicated information management people: Jackie Barry and Courtney Careen.

I've appointed Kate O'Brien of O'Brien and White and Barry Learmonth, Q.C., of

Learmonth, Dunne & Boulos as co-counsel for this Commission. I've also hired two associate legal counsel: Michael Collins and Adrienne Ding, providing assistance to Commission co-counsel and myself. Finally, Marcella Mulrooney is our administrative assistant and hearing clerk. Contact information for all staff members can be found on our website.

Standing and hearing – the standing and funding, rather. Standing means the right to participate in an inquiry. Section 5(2) of the *Public Inquiries Act, 2006* provides as follows: A person may be granted standing upon a consideration of the following: “(a) whether the person’s interests may be adversely affected by the findings of the commission; (b) whether the person’s participation would further the conduct of the inquiry; and (c) whether the person’s participation would contribute to the openness and fairness of the inquiry.”

In the rules of procedure for this inquiry, it was encouraged that persons with similar interests seek joint standing in order to avoid duplication and to promote time and cost efficiencies. Even where not applying jointly, I will be encouraging parties with similar interests on certain issues to work collaboratively so as to avoid duplication of effort and questioning at the hearings.

I must decide not only who will have standing but also the extent to which standing will be granted for those who will be participating in this inquiry. There are three types of standing that I will be considering for this inquiry: full standing, limited standing and special standing.

A person given full standing will have full participatory rights in all aspects of the inquiry to the extent of that person’s interest. Limited standing will generally mean that the person will have full participatory rights, including the right of cross-examination, but only in respect of certain limited phases or parts of the inquiry that engage their interest. Special standing participants will not have any right to participate in the inquiry hearings per se, except as I will describe, but due to their particular interest, knowledge and/or expertise, they will be given an opportunity to make submissions to the Commission of Inquiry.

Counsel for the person granted or group granted special standing will be seated with all other counsel and will be able to consult with Commission counsel and make suggestions and recommendations to them as to witnesses to be called, questions to be asked on matters of interest to them and they will also be provided with all documents disclosed to other parties having full standing.

Now, as to applications for funding. Section 5(5) of the *Public Inquiries Act, 2006* permits me to make recommendations to the Government of Newfoundland and Labrador to provide funding for counsel and other expenses of a person granted standing. It is presumed, however, that counsel will be retained at the expense of the party.

Where it is shown that without funding, a person with standing would not be able to participate in the inquiry or for any other reason funding is necessary, I am permitted to recommend that funding for counsel come from the government. However, that is a recommendation only and is not a binding order. I would, obviously, hope that government will honour my recommendation, as I will only make a recommendation where I feel it is appropriate.

It is also to be noted here that I have no power to set rates to be paid for legal counsel. I also have the discretion here to recommend or not recommend that other specific expenditures be funded by government.

Having said all of this, I will now call upon Commission co-counsel to set out who we will be hearing from today and the order in which they will be heard. I would advise the applicants for standing that I have read their applications fully and remind you that you must limit your submissions today to a maximum of 20 minutes. I feel certain that many of the applicants will not need that full 20 minutes. I may also use some of the time that is set to ask questions in order to better understand the standing request.

Finally, all persons who are seeking standing should clearly understand, upon the grant of standing, that they are bound by the Commission’s rules of procedure and, as well, will act in accordance with the focus of the inquiry as set out in its terms of reference as

interpreted by me in the March 14, 2018 decision.

I would also point out that after this session ends, particularly for those granted standing who have yet to retain counsel, Commission co-counsel will conduct an information session. I encourage all those persons without counsel to attend and this will give you an opportunity to learn more about the inquiry process and to ask any questions that you might have. A light lunch will be provided; perhaps that will be an incentive.

As well, after all of the parties granted standing have had the time to retain and instruct their legal counsel, I plan to meet with all legal counsel to discuss the process and timing for these hearings. I realize that we all have lives outside of the inquiry but adhering to the schedule that we developed to conclude this inquiry will be a priority for this Commission.

Mr. Learmonth, Ms. O'Brien.

**MR. LEARMONTH:** Thank you, Commissioner.

I appear today with Commission co-counsel Kate O'Brien. Also present is associate counsel Adrienne Ding. There have been 22 applications filed in total. Some of these applications are for standing alone; others are applications for standing, together with a request for a recommendation from you for funding. Some applications will be presented today in person. There are approximately five, I believe, that will be presented by telephone.

I'll just repeat what you said, Commissioner, that it's not necessary for the applicants to read out their full applications because the Commissioner has already done that and also has reviewed the affidavits that has been filed. So when it is your turn to speak, a simple summary of the position that you're taking in support of your request will be sufficient. And there is a 20-minute time limit in any event.

I just repeat the Commissioner pointed out that is the considerations that must be taken into account under section 5(2) of the *Public Inquiries Act, 2006*. At the completion of your

presentation, the Commissioner may have some questions for you.

I'll now turn to the first application that will be heard today, and that is the application of Nalcor. Could Nalcor's counsel please sit at the counsel table? And I'll turn the matter over to you, Mr. Simmons.

**THE COMMISSIONER:** You might just introduce yourself.

**MR. SIMMONS:** Yes, good morning, Commissioner.

Dan Simmons appearing for Nalcor Energy this morning and thank you for the opportunity to do this today. Nalcor Energy has applied for standing to participate fully in the inquiry as I have it in the written submission that has been applied – has been delivered, so my remarks this morning will be brief.

As you've already pointed out, it is very important that the Commission here have the ability to address the wide scope set out in the terms of reference, as they've been interpreted in the interpretation that you have provided, and to do that in a full, fair and as open a manner as is possible. And it's very important for the Commission to have access to all the information it needs in order to fulfill that role and to hear points of view from all sides.

Nalcor Energy has already been engaged with the Commission, primarily through its counsel, including by providing information and documentation that the Commissioner requires to carry out that mandate. Regardless of whether standing is granted to it or not, Nalcor Energy will continue to give the Commission its fullest co-operation throughout the inquiry process.

In addition to that, granting standing to Nalcor Energy to participate in the proceedings of the inquiry is, we submit, appropriate, taking into account the considerations that are set out in the *Public Inquiries Act* and the rules of procedure which are addressed in our written submission.

We, therefore, respectfully request that due consideration be given to granting Nalcor Energy full standing to participate in the inquiry.

And, Commissioner, unless you have any other questions, that would conclude my submission.

**THE COMMISSIONER:** Yes, I do have a question, Mr. Simmons, and it doesn't relate specifically to your standing application. But you can correct me if I'm wrong, but I understand that Nalcor is taking the position that with regard to its employees who may be interviewed by Commission counsel and they're called as witnesses, that Nalcor are providing counsel for those individuals if they request it.

**MR. SIMMONS:** Yes, Commissioner, that is correct.

**THE COMMISSIONER:** I wonder if you could possibly advise me as to whether or not a similar policy or procedure has been adopted for others such as, for instance, former Nalcor board members?

**MR. SIMMONS:** The approach that's been taken to this point is that we are acting as counsel for Nalcor Energy at the inquiry. And as part of that process, in order to facilitate the participation of Nalcor personnel, current or former, we've offered – they've been offered the opportunity to use our services in order to facilitate their participation in interviews, in providing information and at the hearing process.

It may very well be that some of those people will elect to have their own counsel or to have different counsel made available to them during that time. And it may be that as we proceed through the hearing process we will find that there will be some other counsel involved in acting for them in that department.

**THE COMMISSIONER:** Right. So is there a policy, and if there isn't, feel free to say it.

**MR. SIMMONS:** Hmm.

**THE COMMISSIONER:** But I wonder is there some sort of policy developed by Nalcor wherein the cost of having counsel separate and apart from yourselves who are representing Nalcor as the incorporated body or those are covered by Nalcor.

**MR. SIMMONS:** There is no policy to cover all costs of anyone who may be involved.

I can inform the Commission that there has recently been an arrangement made with a second law firm to be available to provide independent advice on a limited basis to people who are called upon to participate either in interviews or as witnesses at the inquiry. That's a limited retainer. It's set up to be entirely independent of Nalcor, and some witnesses may choose to avail of that. We will have to see as we move forward.

The extent of their services that will be provided doesn't extend necessarily to the full range of what witnesses may want. So there may very well be people who will choose to have their own counsel at their own cost involved in it.

**THE COMMISSIONER:** Okay, thank you.

You can be seated.

**MR. SIMMONS:** Thank you.

**THE COMMISSIONER:** So this is a matter that I am prepared to give a decision on today. For obvious reasons, I think it's obvious that Nalcor is going to be a party in this inquiry.

Nalcor Energy has been tasked with the management of the development and construction of the Muskrat Falls Project. It will be front and centre in this Commission of Inquiry conducting its investigation pursuant to the mandate given. In fact, Nalcor Energy has already been responding to a summons for document disclosure and it has been generally co-operative in its dealings with the Commission to date.

It is clear that the interests of Nalcor Energy may be adversely affected by the findings of this inquiry, that Nalcor's participation will further the conduct of the inquiry and that the granting of standing to Nalcor Energy is necessary to contribute to the openness and fairness of this inquiry. As a result, full standing is granted to Nalcor Energy.

I would take this opportunity to reiterate to Nalcor Energy and its employees that the Commission is desirous of a fair – of fairly and

without bias, telling the whole story around the Muskrat Falls Project, both those things that are positive and those things which may well be negative. To tell that story, I am looking for continued co-operation from Nalcor Energy.

The grant of standing has with it the acceptance by the party of an obligation to comply with the Commission's rules of procedure, as well as focusing its participation on the mandate given to this Commission of Inquiry as interpreted by me in my March 14, 2018, decision. As a result, Nalcor Energy will be a party with full standing.

Next.

**MR. LEARMONTH:** Commissioner, the next application has been filed by Philip Helwig.

I ask Mr. Helwig to –

**THE COMMISSIONER:** I understand he's going to be appearing by telephone and he's available now. Can you plug him through?

Mr. Helwig?

**MR. HELWIG:** Yeah.

**THE COMMISSIONER:** Okay, we are ready to hear from you with regard to standing. I'm not certain whether or not you've been privy to or watching the webcast as to what I said earlier.

**MR. HELWIG:** Yeah.

**THE COMMISSIONER:** Have you been doing that?

**MR. HELWIG:** Yeah.

**THE COMMISSIONER:** Okay, so you –

**MR. HELWIG:** But I haven't been able to understand all of it because the voice level is too low.

**THE COMMISSIONER:** Okay.

So this is your opportunity now. I've already read your submissions and this is your opportunity, obviously, to tell me to relate your reason for standing to the requirements under

section 5(2) of the act that I referred to earlier and anything else that you might like to say.

**MR. HELWIG:** So I'm speaking to Mr. LeBlanc.

**THE COMMISSIONER:** You are speaking to Justice LeBlanc, yeah.

**MR. HELWIG:** Okay, so I'll just get my computer because it's confusing. You've seen the article I submitted.

**THE COMMISSIONER:** Yeah.

**MR. HELWIG:** I thought – in speaking today of the gentleman, I thought I'd resume the main points. First of all, I believe there's a substantial risk of bias between evaluations of the Muskrat Falls and the (inaudible) Island alternative.

Simply put the huge disparity between the investments in the project preparation for the alternative and Muskrat is spectacular. The 400 million-plus was devoted to developing the Muskrat project, whereas the alternative had perhaps \$2 or \$3 million only in preparing the costs and the feasibility studies. So I believe that there's a possibility of bias and that the principle, which I stated in the first part of my article, that the cost of alternatives and the – should be of equal length standards of accuracy, I suspect has not been met.

The second point relates to cost overruns which, ultimately, have a bearing on how well the estimates were prepared. The experience in eastern North America, principally Churchill Falls and the projects in Quebec, have shown that wealth of prepared projects, costed by experienced estimators, have generally been robust, and cost overruns were the exception rather than the rule.

In the case of Muskrat Falls, almost doubling the base fee, the essential cost is practically unheard of in the hydro power business, both nationally and internationally. I believe part of the explanation may be related to the effects of having several megaprojects happening concurrently in the province all competing for a rather small qualified and experienced labour force.

I noticed in presentations to the PUB in reviews of – undertaken by the consultant to the project providing oversight, nobody seemed to have noticed the fact that having concurrent megaprojects could seriously impact the ability of having skilled workers and plus a strong tendency for pushing up costs. My guess, which is somewhat rule of the thumb, was that something – a quarter to a third of the project's costs could be explained by this omission. I believe it should be investigated.

**THE COMMISSIONER:** All right. Mr. Helwig, if I could just interrupt you just for a moment.

I have read your submissions here –

**MR. HELWIG:** Yeah.

**THE COMMISSIONER:** – and your thinking on this. I guess my main question this morning, because I have to determine whether or not you should be given standing, what form of standing you should be given.

I'm trying to – I'd like you to try to concentrate on telling me why it is you, in particular, should be given standing to appear before this hearing, to conduct examination, to obtain full document disclosure and things of that nature. Can you sort of relate – because in your submission you haven't really said anything about the criteria that I have to look at.

**MR. HELWIG:** I have two points in this respect.

**THE COMMISSIONER:** Okay.

**MR. HELWIG:** First of all, like all the other, all of the people who live in this province, I would be impacted by this project. I would be impacted in terms of the power bills I'd have to pay in the future, but I'll be also impacted on the diversion of the province's wealth to paying down this project at the expense of investments in other aspects. Especially as a senior citizen, questions of, going forward, not having the same standards and quality of health care that may be necessary later in my life.

The second point, I think, I believe the – I can contribute to the inquiry is that I have over 40 years of experience in the hydro power business as a consultant in detail design, in the planning of projects and some years in the operation of projects. I work internationally. So I've been involved in projects in four continents: Asia, Africa, South America and North America. I believe I can bring some insight to the Commission from my experience that, I believe almost unique in the province of, in the public sector.

**THE COMMISSIONER:** (Inaudible) for taking the time to make your application and to participate today.

**MR. HELWIG:** Yeah.

**THE COMMISSIONER:** And I will be providing you with my decision in due course. I need to think a little bit more about this. Obviously, I have to consider here, you know, part of the reason that you're suggesting that you should have standing would be, I think, a reason why 500,000 Newfoundlanders and Labradorians might have standing at a hearing like this. So I have to carefully consider your application and also consider the other persons and groups who are applying for standing and, you know, I will give careful consideration to your request.

And I thank you for your time this morning.

**MR. HELWIG:** Yeah. I believe I sent you a summary of my (inaudible).

**THE COMMISSIONER:** I'm sorry, I didn't hear what you said, Sir.

**MR. HELWIG:** When I submitted my documents to the Commission I attached a CV, a summary CV of my experience.

**THE COMMISSIONER:** Yes, you have.

**MR. HELWIG:** Have you seen that?

**THE COMMISSIONER:** Yes, I have seen that.

**MR. HELWIG:** Okay.

**THE COMMISSIONER:** All right?

**MR. HELWIG:** Yeah, well –

**THE COMMISSIONER:** Thank you very much.

**MR. HELWIG:** Thanks for hearing me.

**THE COMMISSIONER:** All right.

Thank you very much, Mr. Helwig, and I'll get back to you very shortly.

**MR. HELWIG:** Yeah, okay.

Have a good day. Bye.

**THE COMMISSIONER:** Bye-bye.

All right, next.

**MR. LEARMONTH:** The next applicant is Her Majesty the Queen in right of Newfoundland and Labrador.

**MR. RALPH:** Good morning, Mr. Commissioner.

**THE COMMISSIONER:** Would you just identify yourself?

**MR. RALPH:** Yes. My name is Peter Ralph and I represent Her Majesty in right of Newfoundland and Labrador.

And before I start my remarks regarding the application, I'd just like to thank yourself, Mr. Commissioner, and Commission staff for taking on this task. I think that anyone who's aware of the number of documents alone involved in this appreciates that it's a daunting task ahead of you, and there will be a lot of sacrifices on behalf of yourself and your staff to get this completed in the time allotted. So again, thank you for that.

So this is an application for standing and basically to determine who should be able to participate in this inquiry. And my client has

created this inquiry because we believe that the work of this inquiry is very important to the future of the province. I have a number of issues that I think need to be addressed in this application. But perhaps the first one is identifying exactly who is my client. And I think that's a fair question and the answer is clear to me and, hopefully, it'll be one that satisfies yourself.

My client, Mr. Commissioner, is the Government of Newfoundland. Now, in the *Proceedings Against the Crown Act*, in section 10, it states: "In proceedings under this Act the Crown shall be designated 'Her Majesty in right of Newfoundland and Labrador'." So again, we have Her Majesty in right of Newfoundland and Labrador which is synonymous with the Crown. What exactly does that mean in terms of instructions?

Ultimately, I take my instructions from the Executive Branch of government which is the Executive Council. And for the purposes of this proceeding, the Executive Council has authorized the deputy clerk of that council to provide me with these instructions.

So in terms of the meaning of this, or the interests of Her Majesty the Queen or the Crown, my client, the government, recognizes that its public interest mandate includes the interests of those whose acts fall within the ambit of its legal responsibility. As well as the interests of those that it serves.

And with respect to this proceeding, my client's primary interest is to assist the conduct of the inquiry, to ensure that it has all the access – or the access to all the information, resources and witnesses required to fulfill the terms of reference.

Now perhaps, I'll stop at that point, Mr. Commissioner, and ask if you have any questions regarding –

**THE COMMISSIONER:** I think you can almost bank on it that I'm probably going to address this in my remarks in a few minutes but, no, I have no questions right now.

**MR. RALPH:** So with regard to the application, certainly we filed an application in writing and I could review that application –

**THE COMMISSIONER:** No need.

**MR. RALPH:** – now just to demonstrate that I read.

**THE COMMISSIONER:** No need; I’ve read it.

**MR. RALPH:** And so if there’s any questions regarding the application, I can certainly answer those or attempt to answer those. Otherwise, my submissions are complete.

**THE COMMISSIONER:** Okay.

I just note, in paragraph 17 – it’s paragraph 17, or paragraph 18. So you’re indicating here – and this goes probably to some of the issue that you just discussed about who it is that you are representing. It’s my understanding from your application that the present Premier and the ministers of the Crown are not applying right at the moment for a separate standing in this hearing.

**MR. RALPH:** That’s correct.

**THE COMMISSIONER:** Okay.

So you are appearing on behalf of Her Majesty the Queen and not specifically on behalf of the Premier and the ministers.

**MR. RALPH:** That’s correct.

**THE COMMISSIONER:** Okay.

That’s the only question I have.

Thank you.

**MR. RALPH:** Thank you.

**THE COMMISSIONER:** I am prepared to give a decision on your application now. You can sit there if you like or you can return to your seat, whatever you want to do.

**MR. RALPH:** I’ll return to my seat.

Thank you.

**THE COMMISSIONER:** So Her Majesty the Queen in right of Newfoundland and Labrador, who I will now refer to as the province, has applied for full standing at the hearings of this inquiry. Like Nalcor Energy, the province has already been responding to a summons for document disclosure issued by the Commission, and its efforts in doing so are very much appreciated.

It is clear from my interpretation of the terms of reference that the province will be affected by the investigation to be conducted, in that Nalcor Energy is a Crown corporation, and that the actions and decisions of the province in sanctioning and in the oversight of the construction of this project will be much in focus with regard to this inquiry.

Clearly, the participation of the province will further the conduct of the inquiry and will contribute to its openness and fairness. It should be noted that counsel for the province has indicated that the present Premier and Cabinet will not at this time be applying for standing. I will say at this juncture that some of the present government Members may well be interviewed by Commission counsel and may well be required to testify at the inquiry hearings.

While they, like any other witness, will be entitled to have counsel of their choosing present for this, no formal standing will be given to them except to provide their personal counsel with the opportunity to examine that party at the inquiry, if requested. My understanding then is that the standing request is made here only on behalf of the province and not on behalf of any political party in power at the time of the relevant events that are to be reviewed.

As a result Her Majesty the Queen in right of the Province of Newfoundland and Labrador is granted full standing to participate in the inquiry hearings. By having standard – standing, rather, the government accepts the Commission’s rules of procedure and the mandate of the Commission as interpreted by me.

All right, next.

**MR. LEARMONTH:** The next application is by the Innu Nation and it will be done over the telephone line.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** If that connection can be made.

**THE COMMISSIONER:** And I understand somebody is on the telephone line representing the Innu Nation?

**MR. LUK:** Yes, good morning.

Is that Commissioner LeBlanc?

**THE COMMISSIONER:** It is. And if you could identify yourself.

**MR. LUK:** Yes, Commissioner. My name is Senwung Luk. I am counsel for Innu Nation.

**THE COMMISSIONER:** Okay.

**MR. LUK:** And good morning, Commissioner LeBlanc and good morning counsel, staff and members of the public. I'd like to begin by apologizing for not being there at the inquiry in person for this session. And I'm grateful for, grateful to the Commission for permitting us to appear by telephone. It's a helpful way for us to reduce costs. And I can also say thank you to the Commission for setting up the very helpful webcast that I've been following along on.

Now, the subject of this Commission of inquiry is the Muskrat Falls Project. And Innu Nation is seeking to be accepted as a party with full standing in this inquiry, and to ask the Commission to recommend that government provide financial assistance for Innu Nation participation.

Now, can I just ask if people are hearing me well enough?

**THE COMMISSIONER:** Yes, I think we are.

**MR. LUK:** Great. Thank you. Thank you, Commissioner.

Now, just by way of background, the Muskrat Falls Project has been linked to the Innu Nation in many ways over the life of the project. The project has taken place predominantly on Innu Nation's traditional territory. This is land where the Innu of Labrador have lived for at least

7,000 years. Innu Nation participated in the environmental assessment for the project. It was consulted about the project and has consented to it through an Impact and Benefits Agreement, or IBA.

Innu workers and Innu contractors have helped build the project. And finally, the Innu communities of Sheshatshiu and Natuashish, are the two Innu communities of the province, are each consumers of power in the province with an interest in good decision making about energy projects, especially as it impacts Labrador.

Now I know that the Commissioner is familiar with the statutory criteria for granting standing in a commission of inquiry, and I don't need to repeat that, but I'd just like to draw the Commission's special attention to section 5(a) of the order establishing the inquiry, which mandates that the Commission consider participation by the established leadership of the indigenous people of Labrador.

Now, the Innu Nation is the established leadership of the Innu people of Labrador, and for that reason section 5(a) of the order mandates a serious consideration of Innu Nation's participation. As the Commission may inquire into the consultation of indigenous peoples before project sanction and on the mitigation of adverse effects on indigenous peoples, the Innu Nation has a singularly important contribution to make to the conduct of the inquiry.

First off, the Innu Nation consented to the project through an Impact and Benefits Agreement, or IBA, which is a crucial aspect of the consultation done for this project. Now the IBA itself is a confidential document, and for that reason alone the Innu Nation's interests may be affected by the findings of the inquiry and by the conduct of the inquiry. But, to the extent that the Commission will inquire into this document, the Innu Nation can assist the Commission by contributing its perspective on how its interests may be best protected if the Commission decides to look into the process by which Nalcor and the province consulted with the Innu Nation.

Innu Nation's interests are also implicated as electricity consumers in Labrador. Of the Innu

Nation's two communities, Sheshatshiu is on the interconnected electrical system, while Natuashish remains on an isolated diesel electrical system.

We note that in the ordinary courts of decision making about electricity infrastructure in the province, the Public Utilities Board is mandated to ensure that the electrical system is rationally and efficiently planned for the entirety of the province. What if the effect of truncated review of the Muskrat Falls Project by the Public Utilities Board is that only the supply needs of the Island, and not Labrador, were considered?

As this Commission is mandated to consider the effects of the exemption of the decision to sanction the project from PUB oversight, it must consider the counterfactual of what would have been considered had the PUB been able to fully consider this project. In our submission, this increased consideration of what power needs of Labrador were ignored in the sanctioning process. As consumers of electricity in Labrador, the Innu Nation has a unique interest in this matter in (inaudible) contribute its perspective.

Now, with regard to the construction and execution of the project, the Commission is mandated to investigate how the project was carried out and look into the source of the cost overruns. The Lower Churchill idea makes provisions for the participation of Innu workers and Innu contractors in the execution of the project, and these workers and contractors did help to build the project.

Innu Nation's interests are therefore directly implicated by the inquiry's investigation into how the project was executed. In addition, many Innu workers experienced racism on the job site. And Innu Nation also has a special perspective on the extent to which best practices were adhered to in the construction process and in the management of employment relations.

That concludes the substance part of our submissions regarding standing. We can move on to the request for funding, unless the Commissioner has any questions for us in relation to the (inaudible) part of the application.

**THE COMMISSIONER:** Yes, I have a couple of questions, Mr. Luk.

**MR. LUK:** Yes.

**THE COMMISSIONER:** First of all, I'm just wondering – I'm assuming you have read the decision on the interpretation because you certainly reviewed it, referred to it in your submission.

**MR. LUK:** Yeah.

**THE COMMISSIONER:** Paragraph 47 basically sets out the parameters of the Commission's mandate, as I have interpreted it, with regard to the participation of indigenous peoples in this inquiry. I'm assuming that you are aware that I am limited with regard to how far I can actually go with regard to this. I think I have tried to, as best as is possible, explain how I'm going to handle these issues based upon the wording in section 5(a) and then the other wording in the terms of reference.

So your client is aware then of the four areas: consultation, the assessments and reports, the consideration of those as well as the, any mitigation efforts that are taken. Your client is aware of those, I assume?

**MR. LUK:** Yes, Commissioner, we are aware for paragraph 47. And my interpretation of your reason, Commissioner, in this part of your decision is that this is an elucidation of section 5(b) of the order about what it means for – what kind of topic in relation to the effects on Aboriginal and treaty rights of the indigenous peoples of Labrador, what the Commission will look into with respect to that. However, for Innu Nation, Muskrat Falls means much more than that because Innu Nation has had a deeper relationship with the project as a result of the Impact and Benefits Agreement and as a result of the participation of Innu Nation and Innu workers and contractors in the construction of the project.

So I don't know if the Commissioner is meaning that the participation of indigenous people should only be restricted to topics related to Aboriginal and treaty rights?

**THE COMMISSIONER:** I think it's fair to say that, obviously, in considering the applications of the indigenous groups, and there are others besides the Innu Nation, obviously what I've said in paragraph 47 will apply.

In your case, I accept the fact that the Innu have had a greater – well, at least it's indicated in your application – have had greater involvement in the sense that there is this Impacts and Benefits Agreement and that, obviously, is a matter that will be considered by the Commission. So I'm well aware of that and of your claim to confidentiality, and we'll deal with that subsequently.

And I'm also aware that the Innu Nation has – through contractors, employees at the site, things of that nature – have been involved in the construction phase. So it may well be that in the Innu Nation's case, we may be going: your interests will not be just as regards to section 5(a) but also with regard to the specific terms that are referred to in those terms of reference in section 4. So I'm not saying I'm limiting the Innu Nation just to what I said in paragraph 47. There are other things that you have referred to that obviously I will consider in deciding on standing.

The other query I have for you would be, obviously, I indicated earlier on that I am going to be encouraging parties to work together.

**MR. LUK:** Um-hm.

**THE COMMISSIONER:** So in this particular case, at least with regard to the issues of consultations, assessments and reports, mitigation, those sorts of things involving the indigenous groups, I'm wondering what your client's position is with regard to working collaboratively, at the very least, with any other indigenous group that standing may be granted to so that we can avoid unnecessary duplication with regard to the evidence at the hearings and whatever.

I'm not trying to suggest that there are individual matters that may well need to be questioned on. I'm just looking to see what your client's views are with regard to my encouragement of collaboration.

**MR. LUK:** Thank you, Commissioner.

I meant to start out with it's in the Innu Nation's interests for the Commission to carry out its work in the most efficient way possible and with the least amount of duplication possible. And in that spirit, I think Innu Nation would be pleased to collaborate in any way that's appropriate and that will advance the efficiency of the inquiry.

**THE COMMISSIONER:** Okay.

**MR. LUK:** However, that being said, there are, as I understand it, three different indigenous communities in Labrador: Innu Nation, Nunatsiavut Government, and the NunatuKavut council. And each community has its own history, has its own culture, and has its own different sets of rights and different sets of processes by which those rights are becoming recognized by the province and by Canada.

So for that reason, the perspectives of each of these communities are very different in a number of ways that I think will be apparent as the inquiry proceeds on its work. And as a result of those differences the consultation processes for each of these communities has also been discrete, as I understand it, and different from one another.

So we'd be pleased to co-operate and work with other parties in any way that makes sense, but I just put that out there as – my understanding of the differences between where each of the parties comes from is going to make the evidence that relates to each of these processes somewhat different as well.

**THE COMMISSIONER:** Uh-huh.

Okay, and the other query I have – just before you move on to your funding request, because your time is nearly up – is to ask about the issue of the contractors, the Innu contractors. It's my understanding, and you can correct me and maybe explain this to me a little bit, but my understanding is that Innu contractors are not separate and distinct as contractors would normally be in a non-indigenous group.

My understanding is, for instance, that there is something known as the Innu register with regard to contractors. And I just wonder if you

could just explain a little bit to me about what that means.

**MR. LUK:** I'm afraid, Commissioner, I don't have a full grasp of that area of – my understanding is that the contractors do operate their own companies. And a register, I believe, was established under the auspices of the IBA, which set out the identities of the businesses that were identified as Innu contracting businesses.

Now I'm just speaking to that out of personal knowledge. And I can't say that I've done a deep dive into the evidence, but that's my understanding of the arrangement. Now I'm not aware of any of the Innu businesses and Innu contractors that have applied for standing at this inquiry. So I believe that Innu Nation is the established voice for the Innu people in this matter.

**THE COMMISSIONER:** So more importantly, are they the established leadership or voice for contractors?

**MR. LUK:** I can't – I don't have that specific piece of information. I can speak to the fact that we haven't – my understanding is there hasn't been an explicit mandate from the businesses to, with respect to instructions to this inquiry; however, I'm not aware of any of those businesses seeking standing. I don't believe that Innu Nation is aware of that either.

And to the extent that interests of those businesses are implicated in the investigations of the inquiry, Innu Nation will speak on behalf of those businesses as well.

**THE COMMISSIONER:** I guess my query would be is before you can speak on behalf of those businesses I think I'm going to need something to indicate that you have the authority to do that. But, anyway, I'll leave that in your hands –

**MR. LUK:** Okay.

**THE COMMISSIONER:** – and you can certainly provide that to Commission counsel subsequently if, in fact, it can be provided.

**MR. LUK:** Okay.

**THE COMMISSIONER:** Do you want to speak to your funding request?

**MR. LUK:** We do, Commissioner.

So with respect to funding, we're requesting that the Commission recommend that the government provide funding for Innu Nation's participation. And the first submission I'd like to make is in relation to a terms of reference order in section 5(a) which mandates that the Commission consider the participation by the established leadership of indigenous peoples from Labrador, that being Innu Nation.

Now I think that indicates the importance to Cabinet of our indigenous participation in the inquiry. And this intention in our submission is relevant to a commission's consideration of whether to recommend financial assistance for Innu Nation.

Now, Innu Nation's interests are implicated through a broad cross-section of the inquiry's terms of reference from consultation and mitigation measures through project sanction and the project execution as well. And we expect that it'll be necessary to participate judiciously but in a number of different parts of the inquiry as required.

Innu Nation doesn't have the financial capacity to fully participate in this inquiry and the sources of funding that are available to Innu Nation are taken up by its governmental activities such as treaty negotiations with Canada in services for its members and in providing for cultural revitalization activities.

Participation in this inquiry was not an anticipated expense and hasn't been budgeted for. And the extent of interpretation of consultation and mitigation as a subject that the inquiry will be looking into has made Innu Nation's participation even more important.

So the Innu Nation is pleased to present its perspective on these matters. And due to the lack of funding capacity to participate, we are asking for financial assistance in order to do so.

**THE COMMISSIONER:** Okay, thank you very much, Mr. Luk –

**MR. LUK:** Thank you, Commissioner.

**THE COMMISSIONER:** – I hope to meet you in person at some stage, and I will be considering your request and giving a decision on it in due course.

**MR. LUK:** Thank you, Commissioner.

**THE COMMISSIONER:** Thank you very much.

All right, next.

**MR. LEARMONTH:** The next applicant is Emera Inc.

**MR. NOEL:** Morning, Commissioner.

**THE COMMISSIONER:** Morning.

**MR. NOEL:** Glen Noel and Griff Roberts, appearing on behalf of Emera. My remarks, Commissioner, will be less than five minutes.

Emera's application for standing arises from the interpretation of the terms of reference for the inquiry issued on 14 March. In particular, paragraph 38 of your decision specifically indicates that you interpreted section 4(a) of the terms of reference to include subject matter which is very likely to bring Emera into the scope of the inquiry; namely, the contractual negotiations conducted by Nalcor with Emera regarding the project.

Given that Emera was expressly referenced in the interpretation, its involvement in the portion of the inquiry dealing directly with section 4(a) of the terms of reference appears to be likely. And we submit the application for the standing on that basis.

Emera's assistance and participation on these matters will further the conduct of the inquiry by enabling the Commissioner to complete a full and accurate review as it pertains to Emera. Emera, therefore, seeks that it be granted standing at the inquiry with respect to any matters involving Emera's interest. On the issues that involve Emera, we ask respectfully that Emera be granted full participatory rights.

Thank you, Commissioner.

**THE COMMISSIONER:** Thank you.

Mr. Roberts, are you going to be adding anything or nothing?

All right, thank you, I'll give my decision on this application right now.

Emera Inc. has applied for limited standing at the hearings to be held at the Commission of Inquiry respecting the Muskrat Falls Project. Standing is requested only with respect to matters involving Emera Inc.'s interests.

In my decision, interpreting the Commission's terms of reference, particularly paragraph 38, I decided that the mandate of this inquiry includes a consideration of negotiations and contractual arrangements agreed upon involving Emera Inc. Such falls within section 4(a) of the terms of reference set out in the order-in-council.

It is anticipated that those matters, including any involvement of Emera Inc., will likely only arise at or will be at Phase I of the inquiry, which will begin in the fall of 2018. As a result of my interpretation of the terms of reference, I'm satisfied that Emera Inc. is a necessary party to that part of the hearings where their interests are engaged.

That involvement will further the conduct of the inquiry and will contribute to its openness and fairness. Emera Inc. therefore is granted limited standing to appear and participate in the inquiry where its involvement in the project and its interests are an issue.

At this time, as stated above, I see this only occurring in Phase I of the inquiry. Obviously if their interests are at stake during any other part of the hearings, they will have standing to appear and participate in that hearing. Commission co-counsel will be alert to any possibility that this could arise and will notify counsel for Emera Inc.

The granting of standing includes with it a requirement to comply with the Commission's rules of procedure. Rule 19 is of particular significance and I would encourage counsel for Emera Inc. to be in touch with Commission co-counsel in the very near future.

Thank you very much.

**MR. NOEL:** Thank you, Commissioner.

**THE COMMISSIONER:** Next.

**MR. LEARMONTH:** The next application by telephone is by the Nunatsiavut Government.

**THE COMMISSIONER:** Okay. All right.

So who is appearing on behalf of the Nunatsiavut Government?

**MR. MCLEAN:** Yes, thank you, Commissioner LeBlanc. It's Carl McLean, Deputy Minister of Lands and Natural Resources.

**THE COMMISSIONER:** So I'm sorry, could you just give me your name again, please?

**MR. MCLEAN:** Sure, it's Carl McLean. I'm the Deputy Minister of Lands and Natural Resources with Nunatsiavut Government.

**THE COMMISSIONER:** Okay. Thank you.

And have you been watching the webcast up to now? Are you aware of what's gone on up to now?

**MR. MCLEAN:** Yes, I've been watching it. There have been times when it's been cutting in and out but, for the most part, I've seen the majority of it.

**THE COMMISSIONER:** Okay, so the purpose then this morning is for you to indicate the reasons why you believe that standing should be granted to the Nunatsiavut Government. And, as well, I'm assuming that there is an application here for funding as well, and I'll hear from you on both those matters.

**MR. MCLEAN:** Okay, thank you, Commissioner. And thanks for hearing us this morning.

We think we should be given standing, you know, for a few reasons. First of all, part 5 of the *Public Inquiries Act*, part 5, where we think we meet the points that fall under that. And also your interpretation of the terms of reference that were given for this inquiry; namely, the

Commission has to consider participation of the leadership of indigenous people who settled or asserted aboriginal or treaty rights which may have been adversely affected by the project.

And also you're able to investigate what consultation occurred between the established leadership of the indigenous people and Nalcor, as well as the government prior to sanction; what risk assessments and reports were done with regard to the concerns of the indigenous people, whether it be that assessments were appropriately and reasonably considered by Nalcor and the government; and whether appropriate measures were taken to mitigate against reasonably potential adverse effects to the settled or asserted rights of indigenous people, both at the time of and full sanction.

So having said that, the Nunatsiavut Government spent considerable time participating in the environmental assessment process for the Lower Churchill generation project in order to assert its views that the project could have potential negative impacts on Labrador Inuit and their environment, their culture and way of life, especially the Inuit living in Upper Lake Melville area and Rigolet.

The proponent Nalcor did not consider that Inuit would be affected by its projects through the environmental assessment. We, the Nunatsiavut Government, made approximately 37 submissions to the panel. These submissions involved collaboration with scientific experts and Inuit experts. We were pleased to see that the panel felt many of our concerns to be valid and agreed with many of our recommendations.

Some of those key recommendations included the potential bioaccumulation of methylmercury. We were pleased that the panel concluded that Nalcor did not carry out a full assessment of the fate of mercury on the downstream environment, including potential pathways that could lead to mercury bioaccumulation in seals and fish, and the potential for accumulative effects of the project, together with effects of other sources of mercury.

The statement from the panel differed significantly from Nalcor's assertions throughout the environmental assessment process that they were certain that there would

be no measureable downstream effects from the project. With regard to the importance of the Labrador Inuit, the panel also recognized the dietary and cultural importance of fishing and seal hunting in Goose Bay and (inaudible), including the Labrador Inuit settlement area. They concluded that there would be significant adverse effects on the pursuit of traditional harvesting activities by Labrador Inuit, including the harvesting of country foods, should sub-advisories be required. So we were therefore pleased that the panel recommended a new comprehensible assessment – comprehensive assessment of downstream effects with independent third-party oversight.

The lack of assessment of the downstream environment should have halted a decision on sanctioning of the project until this downstream assessment was completed and the risks properly assessed by the experts. Because of the decision, and the province and Nalcor mostly ignoring the concerns raised by the panel, the Nunatsiavut Government was tasked with spending a lot of resources to complete this work and do what it could to protect our health and way of life. And we are still dealing with this mission.

Risks to infant's health and the health of other residents that use (inaudible) should have been taken much more seriously by the regulators prior to sanctioning and after sanctioning. For this reason, we are asking for standing at this inquiry.

**THE COMMISSIONER:** Okay.

All right and with regards to your funding request?

**MR. MCLEAN:** Our funding request, we have not budgeted for any participation in this inquiry. We develop an annual budget and so there's no line item for that in our budget. So what we would be asking for is funding, if there's any travel involved, to get to the hearings outside of Happy Valley-Goose Bay, or bring people in from the coast, if necessary, to Happy Valley-Goose Bay and, also, if we have to retain independent counsel to help us with this file. So that's the extent of our funding we'd like.

**THE COMMISSIONER:** Okay.

So I have reviewed your documentation that you provided with regards to the budget. It seems to me that what you're indicating is that the budget is earmarked – the budget that you have is earmarked for certain activities such as social requirements – social cost requirements, things of that nature, and that you don't have any additional revenue to participate in the inquiry.

**MR. MCLEAN:** Yes, that's correct.

**THE COMMISSIONER:** Okay.

Mr. McLean, the Nunatsiavut Government is – has read and is aware of the decision that I made interpreting the terms of reference?

**MR. MCLEAN:** Yes, we have to do that.

**THE COMMISSIONER:** Yes, okay.

All right, and I asked an earlier group, the Innu Nation, as to – because there may be some common interest here or similar interests with regards to the issues of consultation, assessments, reports, mitigation efforts and things of that nature, whether they would be prepared to work collaboratively so as to avoid duplication at the hearing.

Assuming that you get legal counsel, is the position of the Nunatsiavut Government that they, too, would be willing to act collaboratively where there are similar interests?

**MR. MCLEAN:** Yes, where there are similar interests, we'd certainly be willing to consider that.

**THE COMMISSIONER:** Okay.

All right.

Thank you, Mr. McLean.

I will be providing a decision on your application in short order, so I thank you for your submissions. I also want to apologize to you because you were one of the two parties that wanted to be heard in Labrador that we couldn't get there on April 3. And thank you for appearing this morning.

Thank you.

**MR. MCLEAN:** Yes, thanks for the opportunity.

**THE COMMISSIONER:** Thank you.

All right, next.

**MR. LEARMONTH:** The next applicant is Edmund Martin.

**THE COMMISSIONER:** Okay.

Good morning.

**MR. SMITH:** Good morning, Commissioner.

**THE COMMISSIONER:** Good morning.

**MR. SMITH:** Mr. Commissioner, Harold Smith appearing with Mr. Martin.

**THE COMMISSIONER:** And, Mr. Martin, you're appearing as well. Just so for people who may be hearing us but not seeing us, so the two of you are here?

**MR. MARTIN:** Yes.

**THE COMMISSIONER:** Okay, and who will be speaking first?

**MR. SMITH:** Mr. Martin will speak.

**THE COMMISSIONER:** Okay.

**MR. MARTIN:** Mr. Commissioner, as noted, my name is Ed Martin. I'm the former – well, I'll start again, the microphone was not on.

As noted, my name is Ed Martin. I'm the former president and CEO of Nalcor Energy, Newfoundland and Labrador Hydro, the Churchill Falls (Labrador) Corporation and several other corporations involving the Churchill River, as well as Nalcor Oil and Gas and a myriad of other subsidiaries related to Nalcor.

I began my employment there in 2005 and that ended in April of 2016. I think it's clear to people from my previous discussions and any type of media coverage that I fully believe in Muskrat Falls and the fact that it will contribute

significantly over the life of the facility to, not only Nalcor, but the people of the province.

And I strongly believe in the integrity and thoroughness of the decision processes that have been associated with my tenure as CEO of Nalcor Energy and continue to do so, and seeking an opportunity to make sure the full picture is presented to the Commission as the inquiry unfolds.

During my employment, I became obviously knowledgeable in many of the matters that the Commission will be investigating. And I also became very familiar with the use of public disinformation to criticize the project and those that sponsored or let it. So in that context, with respect to my application for full standing, I look at the three categories that were presented in the *Rules of Procedure*; number one, the adverse effect of Commission findings. And, you know, I believe that, you know, the captious critics of the product – of the project, have been generally under informed and that their perspectives often arise from incomplete or partial information.

You know, my participation here is to make sure – was asked to make sure that I have the ability to complete pieces of information, provide a fuller picture. And without that ability, I feel that there's a possibility that my professional reputation could be impacted over time without the opportunity to provide a full picture of anything that comes up. And I do have the background to be able to provide that perspective to the commissioner.

With respect to further conduct of the inquiry, I think that goes to the heart, again, of I do have a wealth of information just because of my participation. And anything I can offer to the Commission to expedite things or, you know, get to the heart of a particular matter, I'm fully willing and prepared to do that, to help with the efficiency of the process.

And with respect to the contribution to openness and fairness, once again, it goes to the heart of the fact. I have the ability to provide some perspective on many of the topics and issues that may come up. And in – with respect to that, that's the basis for my request for full standing.

**THE COMMISSIONER:** Thank you.

Anything you want to add, Mr. Smith?

**MR. SMITH:** No, Commissioner.

**THE COMMISSIONER:** Okay.

All right, I just have one question for Mr. Smith. You can be seated there, Mr. Martin, if you like. Actually, no, I don't think I will ask the question, I think I'll deal with it in my remarks, in my decision.

So I have given Mr. Martin's application consideration and I am prepared to decide on that today.

Mr. Martin has applied – Edmund Martin has applied for full standing at the hearing that's to be held in this Commission of Inquiry. He was employed as president and chief executive officer of Nalcor Energy and later became responsible for proposing and overseeing the construction of the Muskrat Falls Project. He was also employed prior to January 1, 2008, as president and CEO of Newfoundland Hydro and other related companies. His employment ended with these companies, as I understand it, in April of 2016.

As a result of his employment, I am satisfied that he has – he had considerable involvement in the Muskrat Falls Project, both administratively and in a management role, and has significant knowledge as to all of the matters this Commission will be investigating pursuant to its terms of reference. As such, his having standing will further the conduct of this inquiry, pursuant to section 5(2) of the act.

Furthermore, I am satisfied that the interests of Mr. Martin may be adversely affected by the findings of the Commission, and that he therefore should be given an opportunity to participate fully in the inquiry hearings, which will be conducted in accordance with this inquiry's terms of reference as interpreted by me on March 14, 2018.

I'm also satisfied that the openness and fairness of this inquiry requires the full participation of Mr. Martin. Therefore, it is appropriate to grant full standing at the inquiry hearings to Mr. Martin. This will enable his counsel to deal with Commission co-counsel directly in order to provide recommendations and suggestions as

regards evidence and witnesses to be called at the hearings.

Subject to the rules of procedure in advance of a witness's testimony at a public hearing, Mr. Martin will be entitled to receive notice of the names of the witnesses to be called, copies of documents relevant to that witness and a statement of the witness's expected evidence. Being granted full standing, he will also be permitted through his counsel to examine witnesses to be called and to make final submissions.

There is one other matter that I wish to address with regard to this application. First of all, Mr. Martin has not asked me to make a recommendation for funding, so I will not be doing so. However, I do raise a concern about a possible conflict of interest arising, as I note that one other proposed party, Ms. Kathy Dunderdale, has also applied for standing with her counsel being a member of the same law firm as that proposed from Mr. Martin. I have no doubt that this is a matter that Stewart McKelvey will give special consideration to, prior to the commencement of the hearings. So standing, full standing is granted.

One other thing that I would mention is that I understand that there's a need, Mr. Martin, to, very soon, have contact with you and have an interview done. I recognize as well that you may well be out of the country for some of that time, but I need you to understand that this has to be done as quickly as possible, so we're gonna try to fit it in to accommodate your schedule the best that we can.

**MR. MARTIN:** I understand that, and I'm working to make some changes to accommodate the Commission as well.

**THE COMMISSIONER:** Thank you.

All right, thank you very much.

**MR. MARTIN:** Thank you.

**THE COMMISSIONER:** All right, next.

**MR. JANZEN:** Can you hear me okay?

**THE COMMISSIONER:** Yes, I'm just wondering, Mr. Janzen, have you been privy to, or watching the webcast up to now? Do you know what's gone on up to now?

**MR. JANZEN:** Yeah, I've just turned it off –

**THE COMMISSIONER:** Okay.

**MR. JANZEN:** – for the last couple minutes because – to avoid any feedback problems, but I had been watching for the rest of the morning.

**THE COMMISSIONER:** Okay, good.

So, as you know, we're here to hear your application for standing. It's quite lengthy. I've reviewed it all in detail and I'm prepared to hear from you now with regards to both your request for standing and for funding.

Go ahead.

**MR. JANZEN:** Thank you very much and thank you also for the opportunity to do this by phone. It does help to keep the costs down.

And since you have the applications in writing, I will try to be brief. The Innu of Ekuanitshit are the First Nation with a reserve located in Quebec but whose traditional territory extends into Labrador and land use in the Labrador area affected by the project. And that has been reflected in the – and the council is the elected governing body for the First Nation and they have been involved in consultations related to the project right from the outset.

They've participated in the environmental assessments for the hydroelectric generating facilities and the environmental assessment of the transmission lines. They participated in consultations subsequent to the project's authorization, made submissions to the joint review panel. The province's guidelines for conducting the environmental assessment specifically mentioned Ekuanitshit as a community, an indigenous community that should be consulted with. So there's a very long-standing interest in the project and the Ekuanitshit council has been a very active participant throughout the entire history of the project.

And as you noted in your decision on the interpretation of the terms of reference, and in particular the paragraph which you referred to earlier this morning dealing with the role of indigenous peoples before the Commission, I think that given the long history of involvement with the project and consultations, that the Ekuanitshit council is particularly well placed to assist to further the conduct of the inquiry with respect to questions like the consultations that occurred between the leadership of indigenous peoples and Nalcor and government prior to the project sanction, what risk assessments and reports were done regarding the concerns of indigenous peoples, whether these assessments were appropriately and reasonably considered, and what mitigation measures were taken in order to mitigate against the adverse effects on the settled and asserted rights of the indigenous people, both at the time of sanction and after the sanctioning of the project.

So I think that the – as I say given Ekuanitshit's active participation and long history of involvement in the project, that it is particularly well placed to further the conduct of the inquiry with respect to those questions and in addition that its participation would contribute to the openness and fairness of the inquiry as an indigenous community that has been so involved since the outset.

So those the essence of the submissions with respect to the Ekuanitshit council's application for standing.

**THE COMMISSIONER:** So can I just inquire – so you're setting out the terms upon which I have indicated the Commission will investigate with regards to the indigenous people's involvement in paragraph 47 of my decision. Are you – that being said, your application appears to be one for full standing, which means that you would be seeking, or your clients would be seeking to have standing at the full of the hearing even though when we're not dealing with those particular issues that I've set out. Am I correct in my understanding of that or is it, in fact, a request on the part of your client to seek limited standing?

**MR. JANZEN:** Those are certainly the parts of the inquiry that are of most interest to our client. You know I understand from earlier this

morning in how the inquiry will be divided into different phases and I don't – I think that the, those questions and interests span across, do span across the different phases of the inquiry, you know, dealing with pre-sanction matters, dealing with matters related to the construction, and also there are questions related to have more policy and systemic review.

So, you know, I think that the nature of those interests is one that does span across the different phases of the inquiry, although certainly those are the types of questions that are of the most interest to the Ekuanitshit council.

**THE COMMISSIONER:** All right.

With regard to your funding request ...

**MR. JANZEN:** So with respect to funding, we've asked for – the Ekuanitshit council has asked for funding in order to facilitate its participation before the inquiry. I think that they have very useful contributions to make to the inquiry. However, the funding that they receive is largely funding which is dedicated funding for specific programs and services. So there is not a lot of room to manoeuvre. That's not an anticipated expense or something that has been previously budgeted for. And, in addition, in the case of Ekuanitshit, there are a couple of specific circumstances that could raise the expense of participating in the inquiry.

In particular, being a community with a reserve located in Quebec there are potentially more significant travel expenses that could be involved. In addition, the community is one in which almost everybody the first language is Innu and the second language is French. There are very few English speakers in the community. So in so far as their participation in the inquiry will involve the production of English documents, translation of documents and those kinds of things, either by their council or by others, that will also involve additional expenses for the community. So there are a couple of specific circumstances, I think, that would justify perhaps a recommendation for funding in the case of the Ekuanitshit council as well.

**THE COMMISSIONER:** Just a couple of other questions that come to mind. One is that we've already had an application here this

morning on behalf of the Innu Nation, which, as I understand it, is an incorporated body representing the Innu in the Province of Newfoundland and Labrador, in particular, those in the two communities in Labrador. You also indicate that your client is part of the Innu Nation.

So I take it that there's two different meanings to Innu Nation. There's an Innu Nation in Labrador and then there's an Innu Nation that encompasses both Quebec and Labrador. Is that correct?

**MR. JANZEN:** In terms of – the Innu are one of the Aboriginal peoples whose rights are recognized and affirmed by section 35 of the Constitution. So when I – the part of the Innu Nation I think that the Innu people are a people whose rights are guaranteed under section 35 of the Constitution and the Ekuanitshit is an Innu First Nation in Quebec, whose reserve is located in Quebec.

I think there are nine Innu First Nations with reserves located in Quebec and then two more with reserves located in Labrador.

**THE COMMISSIONER:** Okay.

And finally, as I asked the other two indigenous groups that have applied for standing this morning, seems to me that in assessing those matters that are set out in section 47, or paragraph 47 in my decision, that there will likely be some similarity of interest with regards to all of the indigenous groups. And in that regard, obviously, I'm wondering about your client's willingness to collaborate and to work with the other groups, should they be given standing, so that we can ensure that, as far as is possible, we can be efficient and avoid duplication at the hearings.

**MR. JANZEN:** Yes, I think they're certainly open to collaboration and working to avoid duplication.

I think as some other applicants have noted this morning, there are communities with different histories, different perspectives and different experiences. For example, Innu Nation with the IBA related to the project, and this is not the experience of Ekuanitshit, for example.

So there are, I think, different experiences that different communities have had and so different perspectives to bring to the inquiry. But where collaboration is appropriate and where communities have similar interests, then I think that that's something that the Ekuanitshit council is certainly open to.

**THE COMMISSIONER:** Okay. Thank you, Mr. Janzen.

I will be providing a decision on your client's application shortly, and I thank you for your co-operation this morning and your participation.

**MR. JANZEN:** Thank you very much.

**THE COMMISSIONER:** Thank you.

All right, next.

We'll deal with one more and then we'll take a break.

**MR. LEARMONTH:** The next applicant is a group named Former Government Officials, 2003 to 2015. The group includes or consists of Danny Williams, Thomas Marshall, Paul Davis, Shawn Skinner, Jerome Kennedy and Derrick Dalley.

**MR. WILLIAMS:** Good morning, Mr. Commissioner. Tom Williams appearing on behalf of the group.

**THE COMMISSIONER:** Thank you Mr. Williams.

**MR. WILLIAMS:** Mr. Commissioner, I'd start by acknowledging counsel's introduction and that I appear to make an application on behalf of a group as permitted under Rule 8 of the *Rules of Procedure* governing the inquiry. The group is known as Former Government Officials, 2003 to 2015.

This application is twofold in that there's an application for full standing and funding on behalf of the group as a whole and an application for limited standing on behalf of the individual members in their personal capacity, with no request for funding for the individuals.

The group application is comprised of six former elected government officials who served in public office from the years 2003 to 2015 in the capacities as either Premier of the province or Minister of Natural Resources, and in one case, in both capacities.

The group is made up of the following individuals: Danny Williams, former premier, December 6, 2003 to December 7, 2010; Tom Marshall, former premier, January 24, 2014 to September 26, 2014 and Minister of Natural Resources from January 16, 2013 to October 9, 2013; former Premier Paul Davis, December 26, 2014 to December 14, 2015; Shawn Skinner, Minister of Natural Resources, December 6, 2010 to October 28, 2011; Jerome Kennedy, Minister of Natural Resources, October 28, 2011 to January 16, 2013 and finally Derrick Dalley, Minister of Natural Resources, October 9, 2013 to December 15, 2015.

As a group, these individuals, in varying capacities during the 12-year period that spanned from 2003 to 2015, were involved in decision-making roles throughout this period related to the Muskrat Falls Project. For all intent and purposes, they were the government of the day during the period, which I have outlined, and had knowledge and decision-making authority during the tenure as government.

As has been rightly acknowledged and recognized by the Commissioner in your remarks regarding the interpretation of the terms of reference, you quite correctly stated that such examination will have to include both the prior government, as well as the present government.

Furthermore, the terms of reference of the inquiry mandate that involvement – excuse me – that such involvement, that the Commissioner will be charged with the duty to determine – and I quote – whether the government was fully informed and was made aware of any risks or problems anticipated with the Muskrat Falls Project, so that government had sufficient and accurate information upon which to appropriately decide to sanction this project and whether the government employed appropriate measures to oversee the project, particularly as it relates to the matters set out in the previous paragraphs.

In addition to this particular responsibility, the terms of reference also refer to issues pertaining to the determination that the project should be exempt from oversight from the Public Utilities Board, as well as the exchange of reports and assessments as between Nalcor Energy and government. Given the critical period in time in which the members of this group, as elected public officials, were involved in various aspects of this project from its inception through to December 2015, then this group's participation in the full inquiry is essential in the public interest.

Finally, we would respectfully submit that the rules of procedural fairness would mandate that whereby persons who could be directly affected by the findings of the Commission of Inquiry, they should, too, have a right of full participation in the proceedings. In addition, the composition of all six individuals as one group was structured keeping in mind the Commission's obligations to act efficiently and to maintain minimum costs as possible.

The request for limited standing; the Commissioner will note that there has been an application of limited standing on behalf of the six members of the group in their individual and personal capacity, and there has been no request for funding in this regard. Such request and application is thought to be very limited in nature and may have very restricted applications.

The rationale behind the application is that these individuals require the right to be able to retain their own independent counsel at their own expense in the event of one of three scenarios: During the course of the inquiry a matter should arise for which the group counsel may be deemed to be in a conflict of interest which may necessitate separate individual counsel; two, during the course of the inquiry should a matter arise which may be deemed to impact personally on the individual and is separate and apart from the interests of the group which may necessitate separate individual counsel and, furthermore, which recognizes the key roles which these individual played at the various stages; and, finally, each individual may wish to seek their own separate and individual counsels for purposes of preparation and the giving of evidence at the interview and hearing stages.

Each individual has requested that I advise that they may choose not to have separate counsel but only request that this be granted – this request be granted for limited standing in the event that such need should arise. Furthermore, if such individual was to exercise such right, then there will not be a duplication of counsel efforts and that group counsel will not participate in the examination and cross-examination of witnesses.

Furthermore, and more importantly, rule 28 and rule 35 of the rules of procedure contemplate the right of witnesses to have counsel for the interview and hearing process. The application that we are making is broader in context and somewhat wider in scope. Given the personal involvement of each of these individuals, we feel that such a request is essential to ensure fairness to the parties.

While the individual members of the group have made every effort to recognize the efficiencies and cost savings of assembling as one group, such cannot be done at the cost of foregoing their individual rights and protections. The granting of such limited standing application comes at no additional expense to the Commission and recognizes the efficiency which the group application achieves while maintaining the rights and protections of the rules of procedural fairness to individuals involved, all who may play a key role in this inquiry.

With respect to funding; the application for funding is on behalf of the group of Former Government Officials, 2003 to 2015. This group was solely formed for the purposes of participation in the inquiry and, again, to achieve efficiencies as cost to the Commission. The group does not have any sources of funding and revenue, and without such funding would not be able to appear before the inquiry.

The group stands before this inquiry as a group of former elected officials whose participation in the inquiry process has been recognized as necessary and essential for the Commission to fulfil its mandate. They appear not in regard to their individual interests but as a collective body who were elected members of the Government of Newfoundland and Labrador, serving as

either premiers or ministers of natural resources during the period between 2003 and 2015.

As is the case with the current government administration, this group's participation is essential in order to fulfill the mandate of the terms of reference, and like the current government administration, should be funded in a similar like manner. Accordingly, to ensure that there exists –

**THE COMMISSIONER:** Just if I can, I'm not so sure that I've granted any funding to the current government.

**MR. WILLIAMS:** What I'm implying by that is, obviously, the current government is self-funded in the fact that they have called the inquiry and will be looking after their own counsel, and government are being represented by – for the sake of another term – in-house counsel through the Department of Justice. So our comparison is that –

**THE COMMISSIONER:** No, there's a distinction that I understand was made this morning, and that distinction is that Mr. Ralph is appearing on behalf of Her Majesty the Queen in right of the Province of Newfoundland and Labrador, that the individuals – the Premier and the Members of Cabinet – have made no separate standing application. And if they did, I would have to deal with it.

I don't see their dealings with Mr. Ralph's dealing as being on behalf of the Liberal government. I see them dealing on behalf of the Government of Newfoundland as represented by Her Majesty the Queen. There is a distinction.

**MR. WILLIAMS:** There is a distinction, I recognize the same; but, obviously, we could not have two parties presence as representing Her Majesty in these proceedings. There's only one entity that exists at any one point in time –

**THE COMMISSIONER:** I take no issue with that. I just –

**MR. WILLIAMS:** – representing Her Majesty. And, obviously, our group was formed to such that they could not present themselves before the Commission as representing Her Majesty of the province at a period in time. Because they no

longer, cease to be in office, they formed a group to represent those interests. So, accordingly, we are trying to make the parallel that a current administration – while I do recognize that they stand before the Commission representing Her Majesty, we have no capacity to stand before this Commission as representing Her Majesty.

And given the fact that we are here in a representative role as a former government when they did represent Her Majesty, we are asking that funding be provided in a similar fashion being that Her Majesty is self-funded. And we would ask that self-funding be applied to this group as well, given the fact that there is a distinction. I recognize that distinction but the only way to overcome such an obstacle is to apply as a group, given the fact that they no longer constitute Her Majesty.

**THE COMMISSIONER:** Okay.

Thank you.

I'm prepared to give a decision on this application today.

**MR. WILLIAMS:** Okay, that's fine. That's all –

**THE COMMISSIONER:** You can be seated there and I can do that.

**MR. WILLIAMS:** Okay.

Thank you.

**THE COMMISSIONER:** Danny Williams, Thomas Marshall, Paul Davis, Shawn Skinner, Jerome Kennedy and Derrick Dalley have applied as a group, referred to as Former Government Officials, 2003 to 2015. All are members of the past Progressive Conservative Administrations in place from 2003 up to December 2015. It was during this period of time that the Muskrat Falls Project was initiated, sanctioned and construction commenced.

Mr. Williams, Mr. Marshall and Mr. Davis were the premiers of the Province at various times throughout this period, while Mr. Skinner, Mr. Kennedy and Mr. Dalley, along with Mr. Marshall, were the ministers of Natural

Resources at various times. In those capacities, all were significantly involved in this project.

The applicants now apply as a group for full standing at the inquiry hearings on the basis that they have a common or similar interest in the inquiry's investigative mandate. The applicants also seek a funding recommendation for one counsel to act on behalf of the group in order to represent their interests at the inquiry hearings.

There's also a request by the applicants that they individually be entitled to retain their own separate legal counsel without any funding request to represent the interest of each individual as they may arise during the course of the inquiry. Included with this would be a right to have their individual counsel assist them in preparing to give evidence when interviewed by Commission co-counsel and should they be requested to testify at the hearings.

Based upon the application filed as a result of their positions in the various government administrations from 2003 until 2015, as well as the degree of their involvement with the Muskrat Falls Project during that time, it is obvious to me that they meet the criteria set out in section 5(2) of the *Public Inquiries Act, 2006*, for standing.

Clearly, based upon the terms of reference for this inquiry, in my decision interpreting those terms of reference, the individual interests of those involved in this group could be adversely affected by the findings reached by the Commission. As well, this group's participation will likely further the conduct of the inquiry and contribute to its openness and fairness. In line with rule 12 of the Commission's *Rules of Procedure*, the individual applicants have applied for standing as a group based upon their similar interests. I appreciate their willingness to do so as this will promote time and cost efficiencies in the conduct of the inquiry.

Regarding the application for standing by each of the – by each of the individuals in the group, I am unable to conclude that this is necessarily required at this time. Full standing has been granted to the applicants as a collective or a group and I'm satisfied that this will provide for participation at the hearings that is needed.

Counsel retained by this group can be expected to represent the interests of each of the group members. Rules 28 and 35 of the Commission's *Rules of Procedure* will allow them, what they are seeking individually, at least in part, in that they can retain their own counsel to assist in preparing for interviews and in questioning at the hearings. With regards to the other two arguments about a potential conflict of interest or another area where the personal involvement of the person may not jibe with the interests of the group, these are matters that I would be prepared to consider, if they should arise, as the inquiry hearings proceed.

One further comment must be made regarding the present application for standing. It is suggested by the applicants that the current government administration that's represented by Dwight Ball and Siobhan Coody will be applying for standing. Such an application has not been made, and nor do I see the standing application filed by Her Majesty the Queen in Right of Newfoundland and Labrador as being one made on behalf of the present government administration.

That applicant will be – that party will be speaking to – or that applicant, rather, Her Majesty the Queen in Right of Newfoundland and Labrador will be speaking to the actions of the government public service and all governing administrations, both Progressive Conservative and Liberal, as they relate to the Commission's mandate of the inquiry hearings.

I wish to make it clear that the Commission's investigation will not take on the political differences as between differing political parties. As stated in my decision in interpreting the terms of reference, the Commission's role is to examine the actions of the individuals involved in the conception, sanction and construction of this project. It matters not what political stripe these individuals may have. I intend to deal here with the facts and not politics. And it should be understood that the hearings will be conducted in that matter.

As indicated earlier, the group of individuals have applied for one counsel to be retained to represent that group. Full standing will be granted to this group on that basis. A funding recommendation has also been sought by the

group to have their one counsel funded, as well as expenses related to attendance at the hearings.

I've decided to make the recommendation for funding as requested as I believe it is appropriate to do so in these circumstances. One of the reasons I am doing so is not as is suggested in the group's funding application. There they argue that this group should be funded in the same manner as the present government administration. As pointed out earlier, present government administration has not applied for funding.

I am prepared to recommend funding for one counsel along with expenses for attendance of the inquiry hearings where travel is required. It is relevant here to consider that when each of the individual group members were involved with the Muskrat Falls project, they were doing so as elected representatives of the people of this province. As such, I am satisfied that it would be unfair to expect them to personally pay for legal representation for what would be a lengthy public hearing proceeding.

By applying for standing and funding as a group, these individuals have acted in accordance with the Commission's request to do so where such is possible. Doing so will significantly reduce the cost of legal representation for them at this inquiry. As a result, I will be recommending that they be provided with funding for one legal counsel along with expenses, as I say, for attendance at the inquiry where travel is necessary.

Finally, I would remind this group, as well as all groups applying for standing, that they are bound by the Commission's *Rules of Procedure* and particularly rule 19 which requires the provision of all relevant information and documents within the possession of each individual member of the group to be with the Commission within 14 days of the grant of standing. Counsel for the group is encouraged to discuss this obligation with Commission co-counsel as soon as is possible so that compliance with the rule, as well as all other rules, will not be an issue. There may well be an extension of time if one is required and it's reasonable – it's reasonable in the circumstances.

As I say, I will deal with the issue of any individual representation or standing when and if that issue should arise during the inquiry.

Thank you (inaudible).

**MR. WILLIAMS:** Thank you Mr. Commissioner.

And I do note your comments. I would only state that we were not aware of the individuals or parties who would be making standing, so our assumption is with respect to government and Her Majesty.

**THE COMMISSIONER:** Right.

Thank you very much, Mr. Marshall.

**MR. MARSHALL:** Thank you.

**THE COMMISSIONER:** All right, I think we'll take a break for 10 minutes and then we'll come back and continue on.

**MR. LEARMONTH:** We're adjourned.

**MS. MULROONEY:** All rise.

### Recess

**MS. O'BRIEN:** Thank you, Commissioner.

Next, we'll hear from applicant Kathy Dunderdale.

**MR. GRANT:** I'm glad to say good morning, Mr. Commissioner. We have a few more minutes before we get into good afternoon. My name is Bruce Grant; I appear on behalf of the applicant Kathy Dunderdale.

First off, we have attempted in our written materials to address all the criteria for both standing and funding, and I'm not going to spend a lot of time repeating our submission, of course. A few things, however; I think my client Ms. Dunderdale has a very unique and individual perspective and held very unique and individual positions within government at critical times, and the time periods that the Commission is going to be looking at. And to use a phrase that I believe you used as well, Mr. Commissioner, we need the story to be told, and

I think Ms. Dunderdale's position is one, an essential position, to have that story told.

Particularly, she was in a position, both as minister of Natural Resources and as premier, when all of the key elements of the political interface occurred. She would've been integrally related to the studies that occurred pre-sanction. She would've had advice that's both internal and external and, again, would have a unique perspective on that, given the fact that, in many of the instances, the final decision-maker was Ms. Dunderdale.

As an example of that, and again as noted in the materials, she was involved with the New Dawn Innu land agreement, the memorandum of understanding with Emera, the federal loan guarantee, which was essential for the project to go ahead, of course the sanction decision itself and, again, she would have been aware of all the pre-sanction reports and reviews that were done prior to that decision.

And last, she also was involved in terms of the decision to exempt the project from a Public Utilities Board oversight, and again would have a somewhat individual and unique part to play in regards to that decision. We've also, of course, requested funding, Mr. Commissioner. We have filed an affidavit in support of the criteria that's set out for funding. From that it can be seen, the public may – maybe we can disabuse the public of certain notions, but Ms. Dunderdale is a lady of limited means and, right now, is living on pension income. Her involvement in the inquiry would be, for all intents and purposes, impossible without a recommendation of funding on her behalf.

Other than that, I have no further submission to make. If you have any questions –

**THE COMMISSIONER:** I do. I just have a couple of questions. My understanding is that Ms. Dunderdale's involvement in this project would have ended about January 2014. Am I right on that?

**MR. GRANT:** That's correct.

**THE COMMISSIONER:** Okay.

And so her interest in the hearings will be at least with regard to activities up to that date?

**MR. GRANT:** That's correct, Mr. Commissioner.

**THE COMMISSIONER:** But I think there will be also be other involvement as well.

**MR. GRANT:** Yeah, her view is that when she resigned as premier, she had no further political involvement or, to a certain extent, control or interest in what went on after that point. And so, again, as you've seen in our submission, we've sort of put parenthesis around the period of time that, you know, she was publicly engaged. But anything following January 2014, she has no public function and, in fact, I don't believe in any way attempted to influence anything that went on after that period.

**THE COMMISSIONER:** Okay.

And the one other question that I have relates to what I've asked of some of the other groups. So it seems to me that there may well be some commonality of interest between Ms. Dunderdale and the Former Government Officials group that I granted standing to and –

**MR. GRANT:** Yes.

**THE COMMISSIONER:** – I accept the fact that Ms. Dunderdale is applying separately, and I take no issue with that, but I assume that notwithstanding the fact that she is seeking standing separately, she would be willing to attempt to try to work collaboratively with the other groups to avoid duplication.

**MR. GRANT:** I'm sure that she would, Mr. Commissioner. There is some continuity of interest in some respects and maybe there won't be continuity of interest in other respects, but in terms of the efficiency of the running of the Commission, anything that we can do to do so in a collaborative fashion, you know, would be done.

**THE COMMISSIONER:** Okay. Thank you.

I am prepared to make a decision on this today.

So Kathy Dunderdale is seeking full standing and a recommendation for funding in order to participate in the hearings for this inquiry. Ms. Dunderdale states that her participation in the inquiry is necessary as she was – quote – the lead, whether as minister or premier, during the pre-sanction period – end quote – for the project, as well as being involved in other major files associated with the project including the New Dawn land claims agreement with the Labrador Innu, negotiation with Emera Inc. and with the federal government as regards to the loan – federal loan guarantee. She was also involved in the decision to exempt the project from oversight by the Public Utilities Board.

I'm satisfied that Ms. Dunderdale's interests will be affected, possibly adversely, by the findings of this Commission and that her participation in the inquiry hearings will further the conduct of the inquiry, as well as its openness and its fairness. As such, she will be granted full standing on the understanding that her participation in hearings will only be to the extent necessary based upon her involvement and her interest.

Ms. Dunderdale has also applied for funding based upon her financial inability to pay for legal counsel at this time. I have reviewed her financial documents, as well, all her – as well as her affidavit in support of her funding request. Based upon that, and the fact that her involvement in this project was in her capacity as an elected Member of the House of Assembly, I will recommend that she receive funding for one legal counsel as well as expenses including travel for her and her legal counsel to attend hearings outside of St. John's. I'm not, at present, recommending any further funding for expenses relates to consultants and/or experts.

Obviously, the grant of full standing is subject to Ms. Dunderdale's compliance with the Commission's *Rules of Procedure*, including her duty now to disclose all documents in her possession to Commission counsel within the next 14 days. That time period may well be able to be extended upon agreement by Commission co-counsel.

One final matter that must be raised is a concern that I have about the possibility of a conflict of

interest arising in that another party given standing, Edmund Martin, has counsel representing him from the same law firm as proposed counsel for Ms. Dunderdale. No doubt that this a matter that Stewart McKelvey will give special attention and consideration to prior to the commencement of the hearings.

**MR. GRANT:** Thank you.

**THE COMMISSIONER:** Thank you, Mr. Grant.

Next.

**MS. O'BRIEN:** Thank you, Commissioner.

The next applicant will be Dennis Browne who we understand is making his application through his office as Consumer Advocate.

**THE COMMISSIONER:** Okay, Mr. Browne.

**MR. BROWNE:** Mr. Commissioner, I'm making application on behalf of the ratepayers of the province, the electricity ratepayers of the province who are paying for the Muskrat Falls Project.

And who might these be? These will be Newfoundland and Labrador – Newfoundland Power, I should say, Newfoundland Power's 263,000 customers and it would include another 20,000 customers of Newfoundland and Labrador Hydro. It includes customers – all these customers are on the Island portion of the province.

The reason that we are seeking funding for these customers is because thus far they have had no voice. They have no voice. These rates now are being imposed on them because they had no opportunity, early on, to react to the costs which they've now been told they have to incur because the normal routine would be, if Newfoundland Power had been applying for a project, they would've gone to the Public Utilities Board.

The Public Utilities Board would've examined it. There would've been public hearings, consumers would've been able to react, but in this particular instance that was voided, and despite the fact that it was power that was being

constructed to import in the province that affected rates. So the Public Utilities Board and its processes were effectively discarded and the ratepayers are suffering accordingly.

The order-in-council specifically states – order-in-council 2013-343 – that cost, expenses and allowances to be recovered in full by Newfoundland and Labrador Hydro in the Island connected rates charged to the appropriate classes of ratepayers. So it's the Island interconnected rates which are paying for this.

**THE COMMISSIONER:** So let me just sort of assist you along here.

I would welcome the participation of somebody who could represent the interest of the ratepayers of the Province of Newfoundland and Labrador. That someone it seems to me should likely be someone like yourself who has been – who has experience in appearing on behalf of ratepayers at various PUB hearings as a consumer advocate.

The difficulty I have right at the moment, Mr. Browne, is that I believe that your office, or the Office of the Consumer Advocate, is a creature of statute and, as much looking as I did to try to find it, I'm not able to find a means by which I could find some authorization that you are appropriately to be assigned the role of the Consumer Advocate for all ratepayers of the province.

So you have amended – you have provided some additional information. I'd like to hear a little bit about – seeing that, you know, if in fact you are cloaked with the necessary authority, I have no doubt that you will be awarded standing on behalf of the ratepayers of the province, but I'd like you to address for me what is happening with regards to that need to have some authority.

**MR. BROWNE:** Yes.

Commissioner, you're correct, when I was initially received a phone call from your counsel to ask if I was going to be seeking standing, I pointed out then and there that the Consumer Advocate does not have a role at large. The Consumer Advocate's role is pursuant to two particular statutes, the statutes have to be – it has

to do with matters before the Public Utilities Board.

When stepped outside of that role, there's usually an order-in-council that will be issued, stating what the terms and conditions of the appointment are.

Now, when I was first approached, I approached the government who were interested that I had standing and that ratepayers have standing before this particular Commission.

Where that is, they had difficulty because there were into the funding, how the funding was going to come, and I guess they wanted to – with all due respect to your own jurisdiction probably – not to intervene, although, it's my not prerogative to speak on behalf of the government. But the letter I will read into the record from the government, I can confirm the Department of Justice and Public Safety, as the department responsible for both the Public Utilities Board and the Commissioner Inquiry Respecting the Muskrat Falls Project, has reviewed and agreed and supports my application for standing and participation before the Commission of Inquiry as consistent with the roles and responsibilities of the Consumer Advocate.

We are currently finalizing the development of a policy respecting the compensation of legal counsel fees for parties granted standing before the Commission and will ensure matters dealing with the funding of the representation of the Consumer Advocate before the Commission of Inquiry will be dealt with in that policy.

And I think that's exactly where it's at. There will be an order-in-council because there has to be. I can't be activated out there on my own. There's no consumer advocacy act in the province, so I fully anticipate that there would have to be an order-in-council coming.

The order-in-council usually sets out the terms and conditions of the appointment, and the terms and conditions always relate to funding and how the funding is to be obtained. And I – it's my understanding that the Department of Justice and your counsel will be meeting to discuss, among other things, that particular funding.

I can offer nothing more or nothing less. I understand where my authority is. My authority is vested in legislation or it's vested in an order-in-council.

Previously, in matters – one of the regulatory studies on gasoline in 1998, a separate order-in-council was provided. And, previously, when there was an inquiry, when the terms of reference were put before the Public Utilities Board in that restrictive format, the previous Consumer Advocate received an order-in-council in reference to that.

So there will be an order-in-council. That's the only way I can function. Without an order-in-council I can't function, but it's a bit of the chicken and the egg here. I guess I need standing, subject to the order-in-council, so that the order-in-council can be activated.

I think the department is on board with the application.

**THE COMMISSIONER:** Okay, thank you.

You can be seated. I am going to give my decision on this. And I'd ask Mr. Ralph, who's representing Her Majesty the Queen in right of Newfoundland and Labrador, to maybe take some note of this.

So Dennis Browne QC, in his capacity as Consumer Advocate, pursuant to section 117 of the *Public Utilities Act* in paragraph 9(2)(a) of the *Independent Appointments Commission Act*, representing the interest of domestic and general service of electricity and power consumers, has applied for full standing and funding so that he can participate in the hearings to be held for this inquiry on behalf of electricity consumers and ratepayers in this province.

While I would welcome the involvement of Mr. Browne in these hearings, based upon his past experience representing consumers before the Public Utilities Board, I do have a concern regarding his authority to act on their behalf at this inquiry.

The Office of the Consumer Advocate is a statutory creature and any authority given to that office is provided by the statute creating it. There is no authority at present in any statute

that would permit him being the Consumer Advocate for power consumers or on behalf of ratepayers before this Commission of Inquiry.

I understand that the Department of Justice and Public Safety may now well be taking steps to permit the appointment of Mr. Browne to appear on behalf of the province's ratepayers – power ratepayers – at this inquiry as a consumer advocate. If and when that should happen, that would obviously address any concerns that I have with regard to his authority to act as a consumer advocate before this inquiry.

To be quite frank, I would welcome his appearance as a consumer advocate to represent the interests of the ratepayers of this province. As a result, I've decided to defer the request for standing presently before me pending the Government of Newfoundland and Labrador cloaking Mr. Browne with the necessary authority to appear on behalf of all electricity and power ratepayers in the Province of Newfoundland before this Commission of Inquiry. I would welcome his involvement, as I say, should and when this happens.

If given standing, I will be giving – I will be encouraging Mr. Browne to work collaboratively with other groups given standing who may well have similar or common interests. Working together we'll avoid duplication with regard to the questioning of witnesses and the presentation of evidence. I will repeat that and I will be repeating it more.

Next, as to Mr. Browne's request for funding, I would refer to section 5(5) of the *Public Inquiries Act 2006*, which states that: "A commission may recommend that the government of the province provide funding for counsel and other expenses of a person who is permitted to participate in an inquiry."

I will now obviously be deferring my consideration of this funding application pending Mr. Browne's appointment as a consumer advocate if and when that happens. Having said this, I feel it is necessary to make an initial comment about part of his application for funding, as I think the Government of Newfoundland and Labrador will have to take this into account.

Mr. Browne is not only seeking a recommendation for funding for legal counsel but he is also seeking funding for himself. I recognize that Mr. Browne is a lawyer, and, as I understand it, there is no compensation paid to him as a consumer advocate other than as is provided for in the statutes that authorize his appointment.

While I am prepared to consider a recommendation for funding for counsel for Mr. Browne, should standing be granted, as well as necessary expenses, I do not have the authority to recommend to government that Mr. Browne be paid for his participation as a consumer advocate in this inquiry as a lawyer. It will be for the Government of Newfoundland and Labrador to negotiate and pay Mr. Browne if he is acting as the consumer advocate.

I would also point out, in view of what Mr. Browne has indicated that there are going to be discussions between ourselves and the Department of Justice. To my knowledge, there are no discussions ongoing, nor do I expect there will be.

Notwithstanding the request to do so, I am not prepared to recommend to government at this time to pay the expenses for expert reports and consultants if required. The marshalling of witnesses and evidence is to be done through Commission co-counsel. As such, it will be up to Mr. Browne, on his being given standing, to consult with and make suggestions and recommendations to Commission co-counsel in this regard.

We also ask Mr. Browne to advise me of his appointment if and when that should occur so that I can immediately grant him standing and also deal with his funding application.

**MR. BROWNE:** Thank you, Commissioner.

I think that's the correct decision.

Thank you.

**THE COMMISSIONER:** Thank you very much.

All right, next.

**MS. O'BRIEN:** Thank you, Commissioner.

The next applicant is the Muskrat Falls Concerned Citizens Coalition.

**THE COMMISSIONER:** Good Morning.

**MR. SULLIVAN:** Good morning, Commissioner.

**THE COMMISSIONER:** When you begin, you can just start off by identifying yourselves for the purpose of the record.

**MR. VARDY:** Thank you very much, Commissioner.

There are three of us who submitted these applications. Our missing Mr. Penney is not here today, and so there'll be the two of us. And Mr. Sullivan and I will be sharing this presentation here today.

**THE COMMISSIONER:** So Ronald Penney is one of your applicants. He's not present.

**MR. VARDY:** That's right.

**THE COMMISSIONER:** You're David Vardy.

**MR. VARDY:** I'm David Vardy.

**THE COMMISSIONER:** And you're Des Sullivan.

**MR. SULLIVAN:** That's right.

**THE COMMISSIONER:** Okay.

**MR. VARDY:** So thank you very much.

**THE COMMISSIONER:** So you can go ahead and, as I said, I read your submission. It's lengthy but very helpful and I'm prepared to hear you now with regard to your standing and funding request.

**MR. VARDY:** Mr. Commissioner, we're very pleased to have this opportunity to present here today. This inquiry provides a venue for public dialogue on one of the most urgent public policy issues facing the province, one whose outcome will impact on many generations to come.

My colleagues and I believe the inquiry's investigations will disclose fundamental problems in our government system and in the democratic process by which decisions are taken. These problems arise from flaws in how public policy decisions are taken, as well as in the project management processes by which they are executed.

The inquiry will find out what went wrong and will examine the reasons the province chose to embark on this project. The inquiry will also have an opportunity to identify options which governments may pursue to minimize the damage, to maximize the benefits. While many decisions have been taken which limit our future options, there are measures which can be taken in the public interest to seek better outcomes than those that confront us at this time.

The Commission must seek an appropriate balance between past decisions and future avenues for improved outcomes. We believe the Commissioner's interpretation of his terms of reference anticipate such a balance between past and future. We also believe your interpretation takes a holistic approach to the Muskrat Falls Project and recognizes that all aspects of the project must be considered including the social impact on low-income people, local economics, project financing, environmental impact, health and safety, and also the question of why our democratic system failed us so egregiously. We've been concerned with all aspects of the project and that is why we wish to intervene on all aspects of the inquiry rather than to limit ourselves to any particular aspect.

Our founding members consist of Ron Penney, Des Sullivan and myself. We have, in the past few days, invited like-minded citizens throughout the province to become members and supporters of the Muskrat Falls Concerned Citizens Coalition, and we are gratified by the response so far. We've extended this invitation to all concerned citizens through the Uncle Gnarley blog as well as through Facebook.

Should we be granted standing, we will incorporate a company without share capital to be known as the Muskrat Falls Concerned Citizens Coalition and will retain legal counsel who will participate in the examination of evidence and research presented during the

inquiry. We've invited the public to support our application and to become members of our organization. We've submitted a list of 200 people, who have responded positively, along with our written submission.

We all have considerable experience in public service and public policy as described in the application, and we can elaborate if you wish. Section 10 of your rules of evidence asks (a) whether a "person's interest may be adversely affected by the findings of the Commission ...." Our response to that is – to this is that we are residents of the province who believe the Muskrat Falls Project is a major threat to the well-being of our citizens and who will suffer if the Commission cannot identify measures to minimize the damage.

Question 10(b) asks "whether the person's participation would further the conduct of the Inquiry ...." And our response is we have dedicated a lot of time to analysis and study of the project and have written extensively on it in various media. Our expertise can be of value to the inquiry. With respect to question 10(c), "whether the person's participation would contribute to the openness and fairness of the inquiry," we believe our expertise and our connections with others who have expertise, both within the province and outside, will assist the Commission.

In the absence of the length of information on the length of the hearings, the scope of investigations by the Commission and the rates which government will set for legal counsel, we've simply advised in our application for funding that we intend to participate fully. It was not until this morning that we learned that you intend to have 100 days and so we had – with that information, we can prepare a budget. We had assumed a lesser number of days but that can easily be adjusted.

So we are asking that you make a recommendation to the Government of Newfoundland and Labrador supporting funding for legal counsel for the Muskrat Falls Concerned Citizens Coalition. The funds are required in order to retain legal counsel to represent the coalition at the hearings in St. John's and in Happy Valley-Goose Bay.

We do not intend to retain legal witnesses of our own and anticipate that our expenses will be comprised mainly of the cost of retaining legal counsel. The founding members and other members of the coalition will contribute their time, expertise and research on a voluntary basis. And that will represent a considerable amount of volunteer time, a donation in-kind in the public interest, in the same manner as we've done during the course of the public debate on the Muskrat Falls Project.

Because the undersigned and some of our members and supporters have examined all aspects of the project, we seek funding for counsel to attend and participate in the entirety of the hearings so that we can assist the inquiry in all of the matters before us. Our treasurer will be Des Sullivan who, through one of his companies, (inaudible) Investments, will provide accounting services on a pro bono basis. The coalition will have a separate bank account with signing officers being at least two members of the board of directors of the coalition, and we will provide a full accounting at the conclusion of the inquiry.

Now, before I call upon Mr. Sullivan to complete our presentation, I want to raise another matter and seek your leave. And the issue in question is the submission that's just been made to you just prior to ours. And I would like to ask whether you would entertain comments by us with respect to the propriety of representation of ratepayers by the Consumer Advocate.

**THE COMMISSIONER:** I think not, Mr. Vardy.

And with greatest respect, I'm not – I haven't sought the input of others with regards to the standing applications. I don't think it would be fair at this stage to, sort of, change course and change the rules. So, you know, I'd appreciate it – you know, I'd appreciate not having to do – to go into that at this stage.

**MR. VARDY:** Would you entertain a letter subsequent to today's hearing on that matter?

**THE COMMISSIONER:** You can send a letter. Whether or not it's considered is another matter. But I'm going to be deciding the issue of

standing on the past party on the basis of what I've just indicated. And I think to do otherwise would be a real big stretch for me at this stage of the game.

I really do see – even if there's involvement of your group, I really do see the benefit of having somebody acting specifically on behalf of the ratepayers of the Province of Newfoundland, somebody who's had experience doing so before the Public Utilities Board as a Consumer Advocate. And I'm hopeful government will proceed to do what I've asked it to do.

**MR. VARDY:** Okay.

On that basis, I will now turn this presentation over to my colleague, Des Sullivan.

**THE COMMISSIONER:** Mr. Sullivan.

**MR. SULLIVAN:** Mr. Commissioner, maybe – first, Sir, we commend you for your thoughtful appraisal in the terms of reference given the Commission. The Commission can't reverse what has occurred since Muskrat Falls sanction, as some might wish, but the public is deserving of the best answers explaining why the debacle occurred. I believe that David Vardy, Ron Penney and I, together with a group from around the province, more than 200 people so far who having already confirmed that they wish to support the application, will help the Commission find truth.

The response of this group speaks to the growing concern that Muskrat will severely impact our fiscal future. It also confirms, I believe, that as long-time spokespersons on both mainstream and social media platforms, orally and in writing, the applicants have earned a significant level of trust – of trust on Muskrat-related issues. There is a confidence that we will do our utmost to represent the public interests earnestly and without bias or partisanship. We respect that confidence and their trust.

That said, I suggest, Sir, that our long-standing engagement on issues pertaining to Muskrat constitutes qualification in support of our request for standing under section 5(2) of the *Public Inquiries Act*. And there are other reasons too. David Vardy's contribution to public service and to public policy and development at

the highest level is very well known. Ron Penney offers a lengthy and distinguished public service career from which to draw insights and sound analysis.

On a personal level, I believe I have something to add, having served on the staff of two premiers over 11 years, served a six-year term as part-time member of the C-NLOPB and having run a successful business for 30 years. It is experience that I found essential in giving analysis and perspective to Muskrat on the Uncle Gnarley blog, which I host. The blog was, and still is, a response to a void in public policy analysis and comment in public forums on the Muskrat Falls Project and on related issues, including what are thought to be serious weaknesses in our democratic institutions.

The blog now lists approximately 600 posts, the majority dealing with some aspect of the Muskrat Falls Project. Therefore, the site and its significant following bears upon my qualifications for standing. While I am the principal writer, it has become a platform for public policy wonks like David Vardy and Ron Penney and others, like Kevin Martin, engineer, Phil Helwig, whom you heard from earlier, to name just a few, who parsed, criticized and otherwise gave perspective to Nalcor's and the government's claims regarding the project.

The blog accommodated people from outside the province, including Canadian hydro engineers like James L. Gordon and transmission line design specialist Joe Schell. It was an avenue for many frightened and frustrated people, engineers chiefly, some of whom were employed in one capacity or another on the project, all wanting the public to share a more accurate understanding of the events, problems and issues unfolding in the field, which often, I might add, contrasted with Nalcor's rose-tinted version.

Some did so under aliases. JM was a critical voice. The person dubbed the anonymous engineer used a blog to tell the story about falsification of the construction estimates. Agent 13 wrote about the enormous shortcomings of project management. Others reports on quality assurance and quality control issues; Mud Lake flooding and welding issues affecting the towers on the LIL. Much of this expertise is still available. Those professionals, Sir, are eager to

see our coalition function, they're eager to share their knowledge and to help this effort.

Several new people on the list of supporters have indicated that they want to help too. David Vardy, Ron Penney and I want to do everything possible to ensure that they have a portal into the inquiry's work. We hope to have them review the findings of the Commission, to digest reports and prepare summaries. We hope to facilitate their attendance as observers of the hearings. All with the objective of giving our legal counsel the best possible insights and analysis, should the inquiry approve funding for same.

We are also counting on some of those informed people to review the list of witnesses the Commission plans to call and to give us advice if the list can be made more complete. We are cognizant of the fiscal condition of the province and have asked for limited funding, as David Vardy has described in general terms. We intend to promote the Commission's work and to communicate with coalition members by developing a website and via social media.

Finally, it is our hope that when the last chapter of Muskrat is written, Newfoundlanders will learn not just what occurred and if they were too naive and trusting, but also how we, as a society, must change to prevent a repeat of such a debacle ever happening again. We want our children, Sir, who will also suffer over, possibly the next 50 years, from the economic fallout of this project to at least know that we did not spare ourselves the truth.

Thank you.

**THE COMMISSIONER:** So I was prepared to give my decision on this, but I'm a little bit nervous about doing that right at the moment, to be quite frank.

You can be seated there, Sir.

Two things come to mind as I listened, and this is outside of the fact that I do believe that your group, particularly the three of you, have a right to be heard here. But I think I need to temper the expectations a little bit. So, first of all, there are *Rules of Procedure* and you've indicated, Mr. Sullivan, that, you know, your plan is to disseminate documents that are provided at the

hearings and whatever. That is not a problem; we will be doing the same thing.

But there will be some documents that your counsel is going to get that we will not be disseminating to the public, and the reason for that is not to hide anything. The reason for that is I don't want to cost this project any more money than it's already costing, and I don't want to, basically, limit in any way what is ongoing right now with regards to the conclusion of the construction of this project.

The second thing is, is that – and there is a group that's coming later this morning – we talk about the democratic deficit. I only wish that I had the time to delve into the democratic deficit. I think, in some ways, there will be some issues that we will deal with in this inquiry that will speak to involvement of the public and with regards, potentially, to the Public Utilities Boards, things of that nature; but, this inquiry is not about deciding what the democratic deficit is, if there is one.

I – to be quite frank, based upon what I've seen to date with regards to what I have to get through, I'm going to be lucky if I can get through what I got to get through. And I'm not minimizing the importance of that, but I also have to be mindful of the mandate given to me, and I would remind you and your group of what I said in paragraph 48 of my interpretation of the terms of reference with regard to that.

So having said that, I will, I think, give my decision because I think it's important that I do so, and I think you know that you're going to get standing.

Ronald J. Penney, David Vardy and Des Sullivan together have applied for standing with this inquiry on behalf of an entity to be incorporated, to be known as the Muskrat Falls Concerned Citizens Coalition. Some 218 people have indicated that they wish to be members of this organization. There may be more now. All three of the individual applicants on behalf of the entity to be incorporated have been critics of the Muskrat Falls Project for some time.

Mr. Penney is a retired public servant who has served in many high-level capacities in the government's public service. He is trained as a

lawyer. Mr. Vardy has served as Clerk of the Executive Council in the past, as well as having senior positions in other government agencies. He's an economist.

Mr. Sullivan is a former executive assistant to Premier Frank Moores and Premier Brian Peckford. He's president of the Sullivan Group of Companies and has published – has been publishing the Uncle Gnarley blog since 2012 dealing with public policy in this province, particularly involving the Muskrat Falls Project. All three of these individuals have maintained a significant public presence and profile regarding the Muskrat Falls Project and appear to represent the views of other people in the province who have concerns emanating from the sanction and construction of this project.

I'm satisfied that these three individuals have been writing and researching on this project for some time and, as a result, could have permitted assist in the conduct of the inquiry, as well as contributing to openness and fairness. I would note here that these three individuals have done as the Commission has requested as regards to joining forces with others of similar interests in making their standing application. In this particular case as well, it is to be noted that they have an arrangement made with the Grand Riverkeeper Labrador and Labrador Land Protectors groups to work co-operatively with them at the inquiry, should those other parties be granted standing.

I have now considered this application and am prepared to grant full standing to the Muskrat Falls Concerned Citizens Coalition, once it is incorporated, as represented by Mr. Penney, Mr. Vardy and Mr. Sullivan. In doing so, it must be understood that standing is premised on the party being required to comply with the *Rules of Procedure* for this Commission of Inquiry, together with limiting representations, questions and submissions to those matters within the Commission's mandate as interpreted by me on March 14, 2018.

I expect this party and all other parties to work co-operatively with Commission co-counsel. I also welcome the agreement to work with the Grand Riverkeeper Labrador and Labrador Land Protectors groups. I would also note here that there is another party seeking standing who I

believe this group should work co-operatively with, that being the Consumer Advocate if, in fact, he is ultimately granted standing. Such co-operation will assist in ensuring that the time available will be productive and will avoid unnecessary duplication costs for the hearings.

Funding has also been requested. While the Muskrat Falls Concerned Citizens Coalition has no revenue, although some funds may be available through memberships, without a recommendation for funding, this group would not be able to participate in this inquiry.

As this group's participation will further the conduct of the inquiry, in my view, I will recommend funding for one counsel, as well as reasonable expenses for one counsel and one representative of the group for travel where hearings are held outside of St. John's. I'm not making any recommendation at this time for the payment for consultants or other experts as I expect that Commission co-counsel will be marshalling the necessary evidence and witnesses for the hearings in consultation with all parties who have standing.

So thank you very much.

**MR. SULLIVAN:** Thank you very much, Mr. Commissioner.

**THE COMMISSIONER:** And I assume you will – your counsel will notify us as to when your – when he's retained or she's retained so that we're aware and we can deal with that person.

Thank you very much.

**MR. SULLIVAN:** Thank you, Commissioner.

**THE COMMISSIONER:** All right, next.

**MS. O'BRIEN:** Thank you, Commissioner.

Our next applicant is Astaldi Canada Inc. I understand that Astaldi's counsel will be attending by telephone.

**THE COMMISSIONER:** Okay.

All right, and I understand counsel is on the phone. Mr. Glaholt, I understand.

**MR. NATHWANI:** It's Jay Nathwani and Lena Wang from Glaholt LLP.

**THE COMMISSIONER:** Okay. I'm sorry; can I have your names again, please?

**MR. NATHWANI:** Yes, it's Jay Nathwani, N-A-T-H-W-A-N-I. And Lena, L-E-N-A, Wang, W-A-N-G.

**THE COMMISSIONER:** All right.

Thank you very much.

And have you been listening in on the inquiry proceedings this morning?

**MR. NATHWANI:** Yes, we have.

**THE COMMISSIONER:** Okay, so you know what the route is here so I'll let you go ahead.

**MR. NATHWANI:** Thank you very much.

And good morning, Commissioner LeBlanc and counsel.

As I mentioned, my name is Jay Nathwani and as I mentioned, with me here is Lena Wang. We're lawyers at Glaholt LLP. Glaholt LLP represents Astaldi Canada and we have represented Astaldi with respect to this project since May of 2015.

Thank you very much for granting us this hearing. We understand the time constraints and we'll be brief.

Astaldi has been delivering infrastructure to public owners globally for almost a century now and remains at work today completing the extensive civil works on this project. Astaldi is fully supportive of the work of the Commission and our remarks today are all addressed to that point.

We appreciate the phase nature of the inquiry, which you describe this morning. In light of the guiding principles adopted by the Commission and the enumerated factors for standing set out in the *Public Inquiries Act*, Astaldi respectfully seeks limited standing at the first phase of the inquiry and full standing at the second phase of the inquiry.

Allow me first to address the issue of Astaldi's participation in the first phase of the inquiry. Of course, Astaldi was not involved in the process of project sanction, so it's natural to ask why Astaldi should be granted standing for the first phase of the inquiry.

In Astaldi's respectful submission, its participation in the first phase of the inquiry will assist the Commission in understanding how and why the executive of the project has unfolded as it has. Decisions made and processes set in motion at the project sanction stage, before Astaldi's involvement, may well have sown the seeds of what followed during project execution. Indeed, in Astaldi's view, there are inextricable causal relationships between the factor's underlying sanction of the project and the subsequent management and execution of the project.

In Astaldi's view, the course of construction cannot be understood without reference to the timelines for power production agreed prior to construction. These contractual commitments in existence prior to construction were, in Astaldi's view, critical in driving the increased costs during the execution phase.

Granting Astaldi standing in the first phase of the inquiry would give the Commission the benefit of Astaldi's unique experience and would assist the Commission in understanding these important causal relationships. Astaldi will, of course, be guided by the Commission as to the appropriate scope of its participation, if it is granted limited standing for the first phase of the inquiry.

With respect to the second phase of the inquiry, dealing with the execution of the project, Astaldi seeks full standing. Astaldi is one of the principal civil contractors and Astaldi's participation is, in our view, essential in allowing the Commission to give – to having a full understanding of the circumstances of project execution and the cost escalation which the project has experienced.

Further, Astaldi's interest could be affected by the findings of the Commission. Astaldi is an international publicly traded company with over 10,000 employees worldwide. Given the potential impact on Astaldi's reputation of the

Commission's eventual findings, it is appropriate for Astaldi to be granted full standing for the second phase.

Subject to any questions, those are Astaldi's submissions.

**THE COMMISSIONER:** All right. Thank you very much.

I am prepared to make a decision on your application this morning, or this afternoon I guess it is now.

Astaldi Canada Inc. has provided considerable construction services for the Muskrat Falls Project. Astaldi states that its services were affected by matters outside of its control that ultimately impacted the schedule and costing of this particular project. Astaldi is concerned about its reputation as a publicly traded company as a result of this inquiry's mandate and its involvement in the project; therefore, it seeks standing at the inquiry hearings and, initially, in reading their application, I took that as being an application for full standing.

Based upon the Commission's work to date, I am satisfied that Astaldi is a necessary party to this inquiry, based upon its interest being possibly adversely affected by the Commission's findings, and on the basis that their participation to the extent necessary will further the conduct of the inquiry. I'm also satisfied that fairness dictates their participation in the hearings at least to some extent.

I'm not satisfied that Astaldi should be granted full standing. Much of the hearings will deal with matters not in any way related to the issues involving Astaldi. It is unnecessary then to grant them the right of full participation in the hearings in these circumstances.

I am prepared to grant Astaldi limited standing in that they will be permitted to participate only in relation to those matters involving its interests. At this time, I see this as being when the hearings will focus on the construction and cost escalation for this project. I expect that these matters will be dealt with in Phase II of the inquiry, which will be likely commencing in February of 2019.

During that phase of the inquiry, counsel for Astaldi will be limited to questioning only those witnesses speaking to issues impacting the interest of Astaldi and its involvement in the Muskrat Falls Project. Documents and other disclosure normally provided to counsel for the parties with standing will be similarly restricted.

To accommodate this, Commission co-counsel will be informing counsel for Astaldi where it is anticipated that evidence will be possibly impacting their interests. While limiting Astaldi's standing, as I have, should Commission co-counsel or Astaldi determine that Astaldi's interests may be impacted at other times during the inquiry, they will be required to discuss this with counsel for Astaldi so that it can be determined whether or not they can participate in that part of the hearings.

I say this as, in its application, Astaldi has indicated that Nalcor had issued a request for proposals from pre-qualified bidders for work eventually performed by Astaldi. This was done prior to the official sanctioning of the project. Should it be necessary for Astaldi to be heard on this, I leave it open to consider a further grant of standing to them on matters where its interests are engaged.

Finally, the granting of standing means that Astaldi must comply with the Commission's *Rules of Procedure*. I would remind counsel for Astaldi of the requirements of rule 19, in particular with regards to its obligations related to document disclosure not yet received by the Commission.

All right. Thank you, Sir.

**MR. NATHWANI:** Thank you very much, Commissioner.

**THE COMMISSIONER:** All right. Thank you very much.

Next.

**MS. O'BRIEN:** Thank you, Commissioner.

Next you're going to hear from three separate applicants. Two of them, Julia Mullaley and Charles Bown, are represented by the same counsel, Mr. Andy Fitzgerald, who I believe is

here. And the third is Mr. Robert Thompson who I understand is represented by separate counsel, Mr. Bernard Coffey, QC.

**THE COMMISSIONER:** Okay.

So I should explain, I know that there are separate applications here. One by Ms. Mullaley and Mr. Bown, and one by Mr. Thompson. So I decided that the best way to handle this would be to – as they all had very similar situations and interests, I felt that I'd hear their applications together.

So, Mr. Fitzgerald, let me hear from you first.

**MR. FITZGERALD:** Thank you, Justice.

As you are aware, I have two applications before you with respect to Mr. Bown and Ms. Mullaley. By way of background, this representation of these individuals came to me by virtue of the Department of Justice.

In terms of Ms. Mullaley – and I guess to back up a bit further, they both have unique interests, Ms. Mullaley and Mr. Bown. In terms of Ms. Mullaley, she's the current Auditor General and the province didn't feel it would be appropriate – or I should say, it wouldn't be appropriate for the province to be representing the Auditor General at the inquiry even though she's here in her personal capacity, given that she's an independent statutory officer of the House of Assembly.

Mr. Bown is a bit of a different situation. He is probably the key figure, the key bureaucrat in the entire Muskrat Falls Project. Unlike everyone else that we've heard here today, in terms of ex-politicians, ex-members of Nalcor, Mr. Bown was there from the very beginning, right through sanction, post-sanction, and he continues to work on the project today. His representation throughout the whole inquiry will provide a level of continuity to the Commissioner that no other individual can provide. So in terms of fairness and openness and a complete hearing, we would submit that Mr. Bown, more than anybody else, can assist the Commissioner in terms of what went on, when it went on and how decisions were made.

I provided two applications and I've basically looked at section 5 of the *Public Inquiries Act* and tried to impress upon you when reviewing your decision and the terms of reference, why these individuals should have standing. In terms of Mr. Bown, and I will start with him. Briefly, I think it's important that we recognize the role that he played. While he occupied the roles of deputy minister of Natural Resources, basically from June 2006 forward, he participated directly in the conceptualization and drafting of the province's Energy Plan which laid out the strategy to develop the Lower Churchill and the role that Nalcor would play in development and management of the province's natural resources.

In paragraph three of my application, I've also set out the number of items in which Mr. Bown was the departmental lead from the Department of Natural Resources on this project. Briefly, he was involved with new legislation on amendments to create Nalcor Energy and facilitate the Lower Churchill project; the evaluation of project scenarios and alternatives including internal departmental studies on available options for energy; negotiations with Emera Inc., including participation in negotiation of agreements regarding supply of power to Nova Scotia; negotiations with the Government of Canada concerning federal loan guarantee one and two; and also providing specific and general project advice to the Minister of Natural Resources and the Premier on project options and sanction.

He was also involved with reviewing and commenting on the terms of reference to the Public Utilities Board. In essence, and as I state in my application, he was the prime contact person and liaison between the government and Nalcor Energy. He would frequently meet with representatives of Nalcor and senior management at Nalcor and Mr. Martin, and then bring those concerns back to government. He was the key player throughout all of this. At present, he is also the chair of the Muskrat Falls Oversight Committee. He was on that committee at the start and now he continues to be on that committee.

Given the nature of his involvement with this project from beginning to almost end, it is more likely than not that his name will certainly come up in testimony, will certainly appear in

numerous documents, voluminous documentation, and he's most concerned about his own professional representation and any adverse findings that may be made with respect to his participation on the project. This is one of the reasons why I would suggest that the government has allowed Mr. Bown to go outside the Department of Justice to make sure his interests, separate and apart from the government's interests, are protected throughout this inquiry.

With respect to Ms. Mullaley, as you are aware, as I mentioned, she is the current Auditor General. But at the times relevant to the Muskrat Falls Project, she held the position of deputy clerk of the Executive Council from April 4, 2011 to August 22, 2012. She was also involved post-sanction during the construction stage with respect to, as clerk of the Executive Council, and I describe the role as clerk in my application. I don't think I need to get into that. It's a very key role. And she was the first chair of the Muskrat Falls Oversight Committee. She has also been involved in this throughout the life of the project and can provide useful submissions to the tribunal and she is very concerned as well about her professional representation in the future.

I note Mr. Coffey is here representing Mr. Robert Thompson. It's a bit of a different situation in terms of Mr. Thompson because he's not currently employed with the Government of Newfoundland and Labrador. And when I was approached, I was approached by the government to take care of these two particular individuals. And it's my understanding that Mr. Coffey has subsequently been retained by Mr. Thompson. So it's a bit of a different situation.

**THE COMMISSIONER:** So I guess my query would be for Ms. Mullaley and Mr. Bown, because notwithstanding the fact that I expect they will be interviewed by Commission co-counsel and whatever. Is it my understanding that they see themselves as being separate or distinct or having a different interest from Her Majesty the Queen in Right of Newfoundland and Labrador?

**MR. FITZGERALD:** Well, yes and no is the short answer. Yes, in terms of – my representation of these two individuals is really an offshoot of the provincial government in

terms of Mr. Ralph is going to be representing all the government's interests and employees and whatnot. But these two individuals, number one, because Ms. Mullaley is the current Auditor General, should not be seen as being represented by Her Majesty the Queen. Her interests may or may not diverge, we don't know yet. It's very early in the game.

Mr. Bown is a bit of a different situation. Because of the pivotal role he's played throughout this entire process, it's my understanding he approached Justice and said, you know, it's probably best I have my own counsel. And his interest may or may not diverge with the government on some issues. He was very concerned about his professional representation and the analysis of his conduct that's going to take place throughout this inquiry. And that's essentially why outside counsel has been appointed for these two individuals.

**THE COMMISSIONER:** Right.

**MR. FITZGERALD:** It's a bit of a separate animal.

**THE COMMISSIONER:** Okay, I understand.

**MR. FITZGERALD:** Thank you, Justice.

**THE COMMISSIONER:** All right, let me hear from you Mr. Coffey, on behalf of Mr. Thompson. I'm not sure – you can stay there if you like Mr. Coffey.

**MR. COFFEY:** No, that's fine, Commissioner. Thank you.

Commissioner, as you indicated, my name is Bernard Coffey. I represent Robert Thompson in relation to his application for standing.

Commissioner, Mr. Thompson's written submission explains why he seeks standing. Paragraphs six and seven of that application explain his interest in terms of the terms of reference for (a), (c) and (d). While his application does not explicitly reference term 4(b), I do note that in paragraph 40 of your March 14 decision you found there to be overlap between terms 4(b) and 4(d). I also note that in paragraph 41 of your March 14 decision you

found there to be overlap between terms 4(a) and 4(b).

Commissioner, I understand that has been communicated to Commission counsel by Mr. Thompson that he did so on April 3, that he advised Commission counsel that he would not be seeking a recommendation from the Commissioner in relation to funding of counsel. And Commissioner, his written application for standing is self-explanatory, I would suggest. And I would endeavour to answer any questions you might have.

**THE COMMISSIONER:** The only question I would have would be similar to the one I just posed to Mr. Fitzgerald and that is, is that, does Mr. Thompson see that his interests may well be distinct or different from those of Her Majesty the Queen in Right of Newfoundland?

**MR. COFFEY:** Well, Mr. Thompson, Mr. Commissioner, retired as a civil servant in August of 2013. He has a professional life that he has pursued, a significant professional life he's pursued since that time. His reputation, his professional reputation is very important to him. Whether his interests will always be an idem with Her Majesty the Queen's in Right of Newfoundland and Labrador, as Mr. Fitzgerald just pointed out to you, is difficult to predict at this point in time because, of course, we're not privy to the sheer amount of information that's going to be forthcoming, you know, here. And his interests, and in particular the potential for a finding being made or any findings being made that might negatively impact his reputation, are pointed out in his application for standing. And that, I would suggest, separates him from any current government employees.

**THE COMMISSIONER:** All right, thank you, Mr. Coffey.

I'm prepared to make a decision on this application at this time. I will be dealing with the standing applications of Ms. Mullaley, Mr. Bown and Mr. Thompson together, based upon similarities of their interest and involvement in their applications.

Julia Mullaley was the deputy clerk of the Executive Council of the Government of Newfoundland and Labrador from April 4, 2011,

until August 22, 2012, and later was appointed as clerk of the Executive Council beginning in August 2013. In those roles she was in a senior public service position in this province at times that were very much relevant to the sanction and/or construction of the Muskrat Falls Project.

As clerk of the Executive Council, Ms. Mullaley advises that she acted as deputy minister to the premier, as well as being the secretary to Cabinet. As such, she advises that she was directly involved in discussions, reviews and analysis conducted at various points in time related to the project. As well, Ms. Mullaley was appointed the chairperson of the Muskrat Falls Oversight Committee established by government in March 13, 2014. And she's presently the Auditor General of the Province of Newfoundland and Labrador, having been so appointed on December 7, 2017.

Mr. Thompson acted as clerk of the Executive Council from October 2003 until May of 2007. He became the deputy minister of Natural Resources from December 2008 to December 2010, after which time he resumed the position of clerk of the Executive Council until he left that position in August 2013. In all of these positions Mr. Thompson was privy to and involved in discussions and activities related to the Muskrat Falls Project at a senior management level within the government.

Charles Bown was the assistant deputy minister, Energy Policy, with the Department of Natural Resources from June 2006 until September 2010. He was then appointed an associate deputy minister of Energy until September 2012 at which time he was made the deputy minister of Natural Resources, a position which he held until December 2016. He states that he has participated in the conceptualization and drafting of the province's Energy Plan, was involved as regards to Nalcor's role in that project and its sanction, construction and other negotiation. He was the government's principal contact person with Nalcor on project matters and issues and has been a member – and is currently the chairperson of the Muskrat Falls Oversight Committee. He is also now acting as chief executive, Major Projects and Initiatives, with the Province of Newfoundland and Labrador.

Upon hearing from each of these applicants' counsel, I'm fully satisfied that they have had significant involvement at senior authoritative and management levels within the Government of Newfoundland and Labrador in both the pre-sanctioning, sanctioning and construction phases. As such, it is appropriate that each of these parties be granted full standing at the inquiry hearings. At the least, their involvement will further the conduct of the inquiry based upon their knowledge and involvement in the Muskrat Falls Project to date.

With regard to Mr. Thompson, I note that his involvement with the Muskrat Falls Project ended in 2013. As a result, his interest may not be engaged for those parts of the hearings dealing with a project after that date. I would expect that his counsel will exercise his or her professional judgment so that any questioning will be related to issues relevant to Mr. Thompson.

In fact, the same applies with regards to Ms. Mullaley and Mr. Bown. Their counsel will also be required to use their professional judgment to ensure that their questioning relates to only those issues that are engaged belonging to Ms. Mullaley and as well, Mr. Bown.

It's my understanding that Ms. Mullaley, Mr. Bown and Mr. Thompson are not seeking a recommendation for funding for legal counsel or otherwise, as their legal costs will be paid for by the government. I would add that as these parties each apparently have similar interests, it would be most prudent and efficient if all three were represented by the same counsel; however, that is a matter that I will leave for the parties to consider.

And I will leave it at that. Obviously, documents that are in the hands of these parties, if not already basically disclosed, should be disclosed within the meaning of our *Rules of Procedure*. And counsel, as well as these parties, by view of the exercise of the grant of standing, now are committed to comply with these terms of the *Rules of Procedure* that are set up for this Commission of Inquiry.

All right, good. Thank you very much.

**MR. COFFEY:** Thank you.

**THE COMMISSIONER:** Next.

**MS. O'BRIEN:** Thank you, Commissioner.

Next, you're going to hear from three groups who joined together to make a joint application. The groups are Democracy Alert, the St. John's chapter of the Council of Canadians and the Social Justice Co-operative of Newfoundland and Labrador.

**THE COMMISSIONER:** Good afternoon.

Thank you for your patience.

**MS. REID:** Thank you.

**THE COMMISSIONER:** Could you identify yourself, please.

**MS. REID:** I will. My name is Marilyn Reid and I submitted an application with Ken Kavanagh who, unfortunately, is out of the province and can't be here today. And we are members of these three groups.

So with respect to the terms of reference, I think that we looked and we felt that we fell under the section that talked about government arrangements and the decision-making processes associated with the project. Our groups anticipate that the inquiry will establish that inappropriate measures were taken throughout the project, but our fear is that in the end, the public, having listened to all this, will choose to apportion blame to individuals in leadership roles. So that could be senior management at Nalcor or various premiers, perhaps Cabinet ministers. And what won't happen is that people will not look at the failure of the democratic process to constrain what we see as unidimensional, perhaps even blinkered thinking and decision-making that has dominated the process. So, in other words, it will be government as usual; assign blame and then go on.

So if we are given standing before the Commission – and I think we're probably looking for special standing – we want to focus on the culture in the different levels and institutions of government that seem to have prevented a full discussion and analysis of the

pros and cons of the project. And that would include, for example, the House.

Was there any kind of meaningful discussion and debate in the House on Muskrat Falls? To what extent was debate and discussion undermined or trivialized? And we feel that we need to hear from people; former MHAs, present MHAs who can talk about that experience. Did their concerns get through to government? Were they given appropriate information? And if we are granted status, our task would be to find those voices and make them heard.

There's also the question of the governing parties. How were discussions or decisions about Muskrat Falls made? Was there open debate and discussion within the party or was it all done behind closed doors? In our submission to you, we talked about the Nova Scotia experience that had been written about by a former NDP Cabinet minister in which he said the role of MHAs in Nova Scotia had been essentially as cheerleaders and the big decisions were made behind closed doors, vested interests.

Is that us? And we believe that we need some sort of disclosure to the Commission about the amount of information MHAs had and the kind of input they had into the decision-making process. We think it's very important to get that perspective and so we would be looking to provide information there.

We've been talking to former retired civil servants and so the question then comes – and it's been raised by these people – as to what extent has the civil service been politicized. I think the quote we got from one was, how difficult is it now to speak truth to power? What are the risks to one's career in the civil service of being anything less than a cheerleader to political decisions? I think it's important to look at that culture.

And, finally, there are the Crown corporations themselves. And, of course, we're not going to talk about Nalcor at all because I think a lot of other groups are going to be doing that. But we have noticed that there has been silence from another Crown corporation, which is Memorial University. There's been virtually no analysis or very little from the business school on the finances of the project, very little concerns

raised from the political science department on due process and then there's the geology department, the engineering.

So what's ended up happening is that the most meaningful criticism of the project has come from outside the system, from ordinary people who have had to make themselves into experts. And we feel that there's something wrong there, especially in a primarily rural province with only 500,000 people. Where is the expert analysis on matters supposed to come from if not from our publicly paid intellectuals in the civil service and university?

So I want to conclude by saying that – you know, some sobering statistics. We have the lowest voter turnout in the country in both provincial and federal elections. And that was true of the last provincial election, in spite of being in crisis. We have an admiration for strong leaders and a tendency to put our faith in them and give them free rein and we have Muskrat Falls.

So we understand that the mandate of the Commission of Inquiry is not to put democracy on trial and not to put governance on trial, but we think it is important to at least find some space to talk about the culture in the different levels of government that have enabled all these decisions to go through. And that's the, if you like, the missing ingredient that we want to bring to the Commission.

**THE COMMISSIONER:** So your request is basically for a form of special standing?

**MS. REID:** Well, it seems to me, having listened to everybody else, I would take your advice there.

**THE COMMISSIONER:** Okay. And are you making any application for funding because I didn't see any in your application.

**MS. REID:** No, we understand now that we probably need to do that. I – we need advice on that as well.

I would say that you are talking to an ordinary citizen here. We haven't got – you know, I'm not a lawyer; we haven't looked to all of that. We did look in the initial reports and said that it

wasn't necessary to do that, but now we think perhaps we do need.

**THE COMMISSIONER:** Hmm.

**MS. REID:** But I would – we're under your advice on that –

**THE COMMISSIONER:** Right.

**MS. REID:** – if you grant us standing.

**THE COMMISSIONER:** So you've obviously, reviewed the interpretation of the terms of reference that I did.

**MS. REID:** Yes.

**THE COMMISSIONER:** So you're aware of what I said in paragraph 48 which dealt with the issue of democratic deficit?

**MS. REID:** I think you need to refresh my memory on that.

**THE COMMISSIONER:** Right. So what I would have said was: "One further matter raised in some of the submissions is a purported 'democratic deficit' apparent in the whole of the Muskrat Falls Project process. Pursuant to section 6 of the Order in Council which requires me to make recommendations related to the matters raised in sections 4 and 5 of the Order in Council, I am satisfied that the Commission's mandate permits me to look to the future. As such, it is apparent to me that some of the Commission's effort will need to focus on such things as the future role of Crown Corporations in large-scale projects and, specifically, governance and transparency issues related to public accountability. Any systemic issues impacting the appropriate sanctioning and execution of large-scale projects will need to be considered as well. Public involvement and processes to permit input can also be addressed. As such, the Commission will need to consider how these and other matters related to the future can be part of the Commission's considerations. Having said this, it is not within the Commission's mandate to somehow reconsider the whole of the democratic process in this Province as seems to be suggested in some of the submissions received."

So there is a distinction here. What you're asking me to do or what you're asking for standing, and assuming I have the authority to do it, is actually – it is actually putting the democratic process on trial.

**MS. REID:** Well, we're asking, I think, to look at – we're not asking you to judge it but we're asking you to look at the culture that enable these kinds of decisions to be made.

**THE COMMISSIONER:** Okay, so assuming that I do it to the extent that I've set out in paragraph 48, how do you think you could assist us with that?

**MS. REID:** Well, I think that, for example, if it might be very interesting for the Commission to hear from MHAs who are not part of the government who might say what kind of opportunities they had for discussion and debate in the House, whether it was mere theatre or whether it went forward.

I think it would be interesting to hear from past MHAs who perhaps could say what kind of discussion and debate went on in the – it's really the two political parties here because they are the governing parties – on the issues. Were there opportunities for open discussion, debate and how much input did they feel – as an MHA elected to represent democratic interests in the province, how much input did they really feel that they had?

**THE COMMISSIONER:** Hmm.

**MS. REID:** Those, I think, are – we're not asking for a pronouncement on whether there's a democratic deficit, just simply to hear that voice.

**THE COMMISSIONER:** Okay. I guess my challenge will be to try to look at what it is you're saying and whether – and try to see if it can fit within the mandate that I have.

**MS. REID:** Okay.

**THE COMMISSIONER:** And you have to understand – and I certainly very much appreciate your thoughtfulness and your presentation. You have to understand as well that I have very little time to get a big job done. And, unfortunately, the big job is focused, as I

said in that decision on the business case, primarily on the business case for the Muskrat Falls Project. So that's the challenge that I'll have in assessing your application, but I do plan to carefully consider it and I will be giving you a decision in due course.

If, ultimately, you are granted standing, I will permit you an opportunity as well to make a written application for funding. All right?

**MS. REID:** Okay.

**THE COMMISSIONER:** Good. Thank you very much.

**MS. REID:** Thank you.

**THE COMMISSIONER:** All right, next.

**MS. O'BRIEN:** Thank you, Commissioner.

Next you'll hear from Newfoundland Power Inc. who's represented by legal counsel.

**THE COMMISSIONER:** Okay.

Good morning.

**MR. KELLY:** Good afternoon, Commissioner.

**THE COMMISSIONER:** Or afternoon, yes.

**MR. KELLY:** Ian Kelly, appearing for Newfoundland Power Inc.

Commissioner, Newfoundland Power requests full standing before the inquiry. Newfoundland Power is the principal distributor of electricity on the Island of Newfoundland. It has approximately 265,000 customers which are the bulk of all of the electricity consumers in Newfoundland and Labrador.

Muskrat Falls will be a critical supply element of the future electricity supply. Newfoundland Power will be required to purchase Muskrat Falls power and the cost of that purchase will be reflected in rates to Newfoundland Power's customers. So Newfoundland Power and Newfoundland Power's customers have a very direct interest in the inquiry.

Our interests, as I've set out in our submissions, are primarily forward looking, and they relate to three essential items: one is the future electricity supply, including reliability issues; number two, the rate impacts and rate mitigation measures; and number three, the regulatory processes. And that really has two components. It's the Public Utilities Board role but also, and in many ways equally as important, the role of government in providing public policy directives and decisions going forward.

In many ways, the first two phases of the Commission's inquiry will set the factual matrix then for the third phase, which is the recommendations.

Newfoundland Power understands the importance of being expeditious. Especially in the first two phases of the Commission's inquiry, we'll work co-operatively with Commission counsel to ensure that there is no duplication, that the actual mechanics of how things occurred is not our principal concern.

So we see a rather limited need for questioning in the first two phases but because that forward constitutes the factual matrix for Phase III, we believe our participation is important throughout. So we are requesting full standing in the inquiry and if you have any questions, I'd be happy to address them.

**THE COMMISSIONER:** That's fine.

Your comments today are a little different from what was in your application. So I think I'd like to give some further thought to your application. So I will not be providing a decision this morning but I will be very shortly.

**MR. KELLY:** Thank you, Commissioner.

**THE COMMISSIONER:** Thank you, Mr. Kelly.

**MS. O'BRIEN:** Thank you, Commissioner.

There are three more applicants to hear from. The next one is a joint application by two groups. And they would be the Grand Riverkeeper Labrador and Labrador Land Protectors.

**THE COMMISSIONER:** Good afternoon and thanks for your patience.

If you could just identify yourselves before we begin.

**MS. BENEFIEL:** Good afternoon.

My name is Roberta Benefiel and I'm with the Grand Riverkeeper.

**THE COMMISSIONER:** Okay.

**MS. FLOWERS:** And my name is Marjorie Flowers. I'm with Labrador Land Protectors.

**THE COMMISSIONER:** Okay, there's another mic in front of you. And just press it so it's red and you're on.

**MS. FLOWERS:** It looked too formidable.

**THE COMMISSIONER:** Ha ha.

First of all, welcome, and glad you were able to make your flight yesterday. I was getting a bit worried myself, but I was watching it online so I figured you guys were going to get out. So I'm glad you made it this morning.

**MS. BENEFIEL:** Yeah, it's great.

**THE COMMISSIONER:** So who wishes to proceed?

**MS. BENEFIEL:** First of all –

**THE COMMISSIONER:** You'll speak first or –?

**MS. BENEFIEL:** Pardon me? Yes.

**THE COMMISSIONER:** You're going to speak first?

**MS. BENEFIEL:** Yes.

**THE COMMISSIONER:** Okay, go ahead.

**MS. BENEFIEL:** I want to thank the Commission for the ability and for the tickets, actually, to be here. We appreciate that. We were hoping to be in front – face to face with the

group in Labrador but we understand complications come up.

So our groups, Grand Riverkeeper Labrador and the Labrador Land Protectors, while one was formed ages ago in 2003, 2004 and the other in 2016, most of our members are either part of the same groups. And we've agreed to join together for this inquiry so that, you know, resources can be saved and our volunteer resources along with the Commission's resources.

So we've also agreed to collaborate with the Muskrat Falls Concerned Citizens Coalition because a lot of their issues are the same issues that we have. There are a few differences. Not really differences but different areas so we thought it would be better for us to apply separately.

So just a little bit about Grand Riverkeeper and the Labrador Land Protectors, we're both organizations composed of Labrador citizens who are concerned about the implications of Muskrat Falls. I'm sure everybody realizes that. The purpose of our corporation, Grand Riverkeeper Labrador, is to preserve and protect the water quality and the ecological integrity of the Grand River. And we have various ways that we hope to do that.

Our interest in this is mostly our members, both GRKL and the Labrador Land Protectors, we live in the watershed of the Grand River. And most of the environmental, social, cultural and even the economic concerns are going to rest squarely on our shoulders.

As residents of the province, we are also cognizant of the detrimental effects the cost of the project will have on every citizen, including us. Most of our members live within a hundred-kilometre radius and many of them within 35 kilometres, directly downstream from the path of any flood, dam break or failure of any of the dams.

Some of our members live in other countries and are supportive of us. That said, we are confident that this inquiry will go a long way to revealing the information that people in the lower valley and Mud Lake area need in order to feel safe in their home.

We have various questions that we've asked – those are in our submission – that we think should be asked to Nalcor. We are motivated by a sincere concern for the health and safety of the people downstream of our project – of the project, including the community of Mud Lake and the lower portion of Happy Valley-Goose Bay.

Since our inception our main focus – although we have other areas of concern and interest, our main focus, of course, has been the Lower Churchill hydroelectric project and the environmental concerns related to this undertaking. Our view, of course, is that it was unnecessary. It was environmentally devastating. It's overpriced, even at the beginning, oversold by the proponents and successive governments and would have immense negative social effects for our communities.

Throughout the years, since 2005 when Grand Riverkeeper became incorporated, and even before that under the names Friends of Grand River, we've continued to research and reach out to like-minded citizens. To that end, Grand Riverkeepers sought and received federal funding and has been actively involved in every phase of the environmental assessment of the project, from the beginning right through – from the guidelines right on through to the environmental assessment of the Lower Churchill.

We participated in the Labrador-Island Link process. We were an active participant in the Public Utilities Board review request. We've been recognized as an intervenor in the Public Utilities Board investigation into the hearings and supply issues. And we've done all this with pretty much zero – ha ha – zero money other than some financing that we got from the environmental assessment process from CEA.

So over the – over the years we have many, many times reached out about an inquiry. We had concerns about this project from every angle. We sent a letter on May 9, 2017, to Premier Dwight Ball with a thousand signatures that we stood at the Co-op store and the NorthMart store, and wherever we could stand and wherever our people could stand, to ask our citizens to join with us to ask for an independent

inquiry and a forensic audit. And we are so pleased to be standing here today, that this has come to pass. We believe a lot of our efforts were what helped this come to pass.

So on that issue, I believe we've – we have an interest, a deep interest, in the subject of the inquiry. Our participation will further the conduct of the inquiry but will also contribute to the openness and fairness. We are, after all, the people downstream from this project.

Due to our long involvement and our huge history with this project, we believe we can contribute to the Commission's understanding of events and issues, both through our member's testimony and through the questions we will put to witnesses about various issues that are related to business case, waste associated with the project, the integrity of the process leading to sanction, whether the government was fully informed and made aware of any risks or problems anticipate with – anticipated with the project.

And we have a – we have a specific interest in that, with issue on risks that we can – we can speak to that we've talked to an attorney about in the past few days. Our submissions and letters requiring information on the Public Utilities review process, the exemption of the Muskrat Falls Project from PUB scrutiny, et cetera, et cetera.

So I mention these things because I want to say that we – both our groups and as I mentioned, you know, many of our members are members of both groups, because we're a community, we're a small community, 7,500 people. So when you have a grassroots group, you often have overlapping interests and overlapping people.

We've played a huge role in getting this inquiry and forensic audit process on government's radar, we feel. We're committed to see it through to the end no matter what it takes. We're also confident that our passion for the land and the rivers of our homeland, which have been shown time and time again through the work we've done, through the commitment many of our members have put in place – not put in place, through their commitment, some of them even being arrested, putting themselves in

harm's way. We're confident that this passion and commitment will see us through this next, for us, monumental hurdle by being here today and that our involvement in this process is critical.

Our interests could certainly be adversely affected by the findings of the Commission. We're fairly certain of that.

**THE COMMISSIONER:** How so? How is – how are the findings of the Commission, how would they adversely affect members of your group? I can see your argument that the project itself might well do that, but I'm wondering –

**MS. BENEFIEL:** I think decisions by government after your recommendations could adversely affect us maybe.

**THE COMMISSIONER:** No, it's not the inquiry that will –

**MS. BENEFIEL:** Well, it depends on what the inquiry is able to recommend, I think. And that all depends on how many, or which witnesses are called and what information you're able to glean from some of the issues that we've had for so many years.

And I think that if those issues – if your recommendations are similar to what ours are, we hope, that absolutely we could be adversely affected. Because those decisions – for instance, the Muskrat Falls North Spur project, if your decision and your recommendation is that a new study should be done for that project or for that – that studies weren't done or that risks weren't studied properly, if that's a recommendation to the government, that's – you know, we are in the throes of finishing that project.

Somewhere along the way we should end up having another study done, or another recommendation from someone that says studies weren't done. And I think that if those are not recommended, that we are adversely affected again. So –

**THE COMMISSIONER:** I just have a couple of questions, if I can. If it's okay?

**MS. BENEFIEL:** Certainly.

**THE COMMISSIONER:** So, first of all, I want to talk a little bit about your application because you also applied for funding and I've read your funding request.

**MS. BENEFIEL:** Right.

**THE COMMISSIONER:** So you – my understanding is there is some agreement between both of your groups, as well as the Muskrat Falls Concerned Citizens Coalition, TBI, the one that's going to be incorporated.

**MS. BENEFIEL:** To share information, yes.

**THE COMMISSIONER:** To share information and to work together. In fact, I see your name and the name of the person who signed on behalf of the Labrador land keeper – or river keeper, rather, land keeper, protector, rather – both as signatories as supporters of the Muskrat Falls Concerned Citizens Coalition.

**MS. BENEFIEL:** Absolutely.

**THE COMMISSIONER:** So I suspect there's going to be a fair degree of work together that will be involved that we'd avoid duplication and also unnecessary time at the hearing. Correct?

**MS. BENEFIEL:** Absolutely.

**THE COMMISSIONER:** Okay.

**MS. BENEFIEL:** There is, however –

**THE COMMISSIONER:** And I understand there's also a difference because your two groups are in Labrador itself and your – I understand that distinction and I'm there with you on that.

**MS. BENEFIEL:** Okay.

**THE COMMISSIONER:** The issue of – there are some things that are referred to in your application. Because you're not represented by counsel, I think it's fair to say that I think you do need that representation should you be granted standing. Because I think there may well be a misapprehension again about the extent to which this inquiry or this Commission can inquire. So I think that's important.

I do have a request or a question as well about your funding request. First of all, I should say that I don't propose a budget to government if I make a funding recommendation. All I can do is make a recommendation for funding. It's up to the government and then the party involved to negotiate – or the lawyers to negotiate the rate and whatever.

**MS. BENEFIEL:** We understand that.

**THE COMMISSIONER:** So I just want to make that clear.

The other thing is that you put in your budget a reference to the fact for travel for members. Now, aside from witnesses, witnesses will travel on their own and they'll be taken care of.

The issue of travel for members; who are you proposing or how many are you proposing would be travelling to the hearings? Because there will be, as I said, a likelihood that most of the hearings are going to be here. So I need to know how many of your members – how many of your members do you expect that you would want to have travel funded?

**MS. BENEFIEL:** We'd love to bring them all.

**THE COMMISSIONER:** Well, I know that but –

**MS. BENEFIEL:** But we understand that won't happen.

**THE COMMISSIONER:** – it's not going to happen.

**MS. BENEFIEL:** No.

**THE COMMISSIONER:** So I'm trying to get to a feel from you as to what it is you're actually looking for with regard to expenses for travel?

**MS. BENEFIEL:** I think it would be just for a member from each one of the groups, and that's the way we did it today.

By the way, I would like to comment that we are talking to counsel.

**THE COMMISSIONER:** Okay.

**MS. BENEFIEL:** We have – he is not available today.

**THE COMMISSIONER:** Fine.

**MS. BENEFIEL:** And was sorry. I've been texting back and forth and he's not able to get out of court.

**THE COMMISSIONER:** Yeah, no (inaudible).

**MS. BENEFIEL:** So we are talking to counsel.

**THE COMMISSIONER:** Yeah, okay. So if you're granted standing, when you have your counsel, you can have your counsel notify Commission co-counsel –

**MS. BENEFIEL:** Uh-huh.

**THE COMMISSIONER:** – and that would be great.

Do I need to hear from you this morning?

**MS. FLOWERS:** I'd like to speak, yes.

**THE COMMISSIONER:** Okay. Do you want to stand up? And go ahead.

**MS. FLOWERS:** Would it be out of the question to request a couple of people from each of our groups?

**THE COMMISSIONER:** So I'm not –

**MS. FLOWERS:** I mean – what I –

**THE COMMISSIONER:** What I'm going to say to you is that I need to understand what your funding request is.

So you indicated it would be one. You're suggesting it's going to be, possibly, two in each group.

**MS. FLOWERS:** Well, I questioned if that's a possibly, yes.

**THE COMMISSIONER:** Well, you tell me what you want.

**MS. FLOWERS:** Okay, great; 30.

No, kidding.

**THE COMMISSIONER:** Well, let's get serious now.

**MS. FLOWERS:** Yes.

**THE COMMISSIONER:** What is it – what would you want?

**MS. FLOWERS:** Well, personally, I wouldn't – I'd rather see several from each group, like –

**THE COMMISSIONER:** Right, but understanding now that I'm not going – I can't spend that kind of money from the public.

How many – aside from witnesses, because it has nothing to do with the witnesses who will be called. How many representatives of your group – so I'll ask you on behalf of the Labrador land keepers, land protectors. How many people from your group do you want to have at the hearings?

**MS. FLOWERS:** I'd like to see two land protectors here.

**THE COMMISSIONER:** Did you say two?

**MS. FLOWERS:** Two land protectors.

**THE COMMISSIONER:** Okay. Thank you.

**MS. FLOWERS:** But that's different than the Grand Riverkeepers.

**THE COMMISSIONER:** Okay, fine.

Okay, you can go ahead now.

**MS. FLOWERS:** Okay. I don't have a whole lot more to add, other than what Roberta has already said.

My name is Marjorie Flowers. I'm actually a transplant into the Upper Lake Melville area. I'm from Rigolet in Nunatsiavut. I moved to Goose Bay 2003. I'm an Inuit woman who lived a traditional lifestyle all my life, lived in a household where Inuktitut was spoken and we ate traditional food that came from Groswater Bay, which is, and will be, directly affected by that methylmercury that's coming into our water, in our surrounding water where we

depend on the fish, the migrating birds, the shellfish in the area.

So that is from where I'm coming from. I believe that as a land protector I should have standing because my life is directly impacted, my family's life is directly impacted, my community's life is directly impacted.

This gets very emotional for me; I'm really sorry.

**THE COMMISSIONER:** Take your time.

**MS. FLOWERS:** That part of it has always been a very huge issue for me, the poisoning of waters and the poisoning of traditional food web. Now, in addition to that, is the threat of lives for our beneficiaries and local people in the community in Upper Lake Melville with the refusal of Nalcor to have an independent study of the North Spur, which is that natural dam which is comprised of marine clay, which liquefies under pressure.

They have refused to do that, and so we live in fear. There are people in Mud Lake, in the lower valley, who are literally losing sleep every night with a life preserver under their bed. And that's the reality of it. That's why we need standing. That's why we need to hear what's going to happen with this inquiry. We've been calling for this inquiry for two or three years, or longer, more, you know. And it's finally here. We need to be present and we need to be heard. That's pretty, really very simple.

So I'm going to read a little bit from what I have here. We are grassroots Labradorians who have grouped for the purpose of protecting our sacred homeland, our health, our environment, our traditional food web, the rivers and waters that have sustained us for centuries. Labrador Land Protectors was formed as a voluntary association in 2016 in the face of the environmental damage in and around the river, as well as the social crisis that is ensuing. It is in the process of incorporation as a not-for-profit organization and expects to complete that in coming weeks. I just wanted to make note of that.

We are aboriginals and non-aboriginals that depend on this river for sustenance as a culture, as a unique group of people in this province.

People from the Upper Lake Melville area as well as the (inaudible) into Rigolet, Nunatsiavut's most southerly Inuit community, depend on the health of surrounding rivers – this river included. Our livelihood's health and well-being as a unique group of people rests upon the Grand River's survival. Its survival is our survival.

As this river is poisoned, we are poisoned. This methylmercury poisoning is being disputed by our own government. A government which we trusted stood on a foundation of democracy. This is painfully disconcerting given the results of a Harvard study commissioned by the Nunatsiavut Government. In relation to the North Spur, given that our groups have been denied requests for an independent review of the North Spur, it tells us only one thing; it is that we, the lower valley and Mud Lake residents are an expendable population.

This was reiterated by Dr. Steve Crocker, of MUN's political science department at a recent Muskrat Falls symposium held in Goose Bay. The precariousness of the North Spur has also been confirmed by world-renowned marine clay expert, Dr. Stig Bernander and his team. People in Mud Lake live in perpetual fear now, with little consolation for a loss of trust – not to mention loss of property in the last flood, and loss of, you know, traditional food and transportation, vehicles, snowmobiles, four-wheelers, whatever, however way they get around. And there's a lot of them not compensated, to this day.

In addition to this, an injunction was signed which readily, unfairly and swiftly took away our right to oppose this project. It was never within our financial means or expertise to challenge such a process, and Nalcor knew this. This injunction and the ensuing court actions positioned the locals to be completely and thoroughly bowled over. I went to jail. I'm one of the people that was carted out of Goose Bay in 50 pounds of chains because I stood up for my land and my people and my way of life. And that really bothers me. That really, really bothers me, the injustice that happened there. There is no justice in that.

We are dealing with a judicial process which chose to ignore ethics, morals and integrity –

three pillars which should, in fact, guide them based on foundation of justice and fairness.

The Land Protectors has played an important role in bringing public attention to the risks to human life being created by the Muskrat Falls Project. It has called upon the federal government and the provincial government to do three things: to guarantee progress and accountability on the methylmercury agreement signed in October of 2016 by the Labrador indigenous leaders and the Newfoundland government; to initiate an independent review of the North Spur, continually denied; and ensure that the Commission of Inquiry includes a forensic audit of Nalcor and focuses more attention on the environmental, social and indigenous factors involved.

We believe this inquiry will address all of these factors and we commit our support to aid in it any way we can.

**THE COMMISSIONER:** Okay, good.

**MS. FLOWERS:** Thank you.

**THE COMMISSIONER:** Thank you very much.

So I'm not going to make my decision today with regards to the issue of standing. I will be taking your comments and your application into account in making that decision. You'll hear it in due course.

Thank you very much.

**MS. FLOWERS:** Thank you.

**THE COMMISSIONER:** Next.

**MS. O'BRIEN:** Thank you, Commissioner.

You'll next hear an application from two groups that have jointly applied together. That would be the Newfoundland and Labrador Building and Construction Trades Council and the Resource Development Trades Council of Newfoundland and Labrador.

**MS. HYNES:** Good afternoon, Commissioner.

Valerie Hynes, appearing on behalf of the Newfoundland and Labrador Building and Construction Trades Council and the Resource Development Trades Council of Newfoundland and Labrador, which I have collectively referred to in my application as the Trades Council, but are two distinct organizations. And while I do not want to reiterate my entire application, I thought it might be a good idea just to outline the difference between the two groups.

The Resource Development Trades Council is a group that was brought together under the *Labour Relations Act* for the purposes of the special project order that was issued for the Muskrat Falls Project on June 17, 2013. The Resource Development Trade Council has been brought together for other projects as well in the past in this province for the Hibernia project, Voisey's Bay, the Hebron project and for the Long Harbour plant as well.

When the special project order created this distinct labour relations regime, the 16 unions that they represent came together and allowed the RDTC to collectively bargain on their behalf, under the regime. So that is one part of it. But then, also, I represent the Newfoundland and Labrador Building and Construction Trades Council which is the provincial chapter of the Canadian Building Trades Union which is itself a Canadian chapter of the North American Building Trades Union.

So this group has a wider mandate, not just with respect to the Muskrat Falls Project or any particular project, but these same 16 unions working collaboratively to ensure that skilled trades in this province are prepared for certain projects like this, like the Muskrat Falls Project, they have the skills that they are – their safety standards are up to scratch. They work collectively. So in preparing for this application for seeking standing in the inquiry it was obviously logical for them to work together. They are essentially the same group but with different mandates.

We are seeking, on behalf of these groups – the Trades Council I've called them – participation in the inquiry on a limited basis. In my application I had described that to be limited with respect to section 4(b) of the terms of reference. I think this morning in your opening

comments that would limit our participation primarily to Phase II, if I am correct on that. My feed on my computer at the office today actually cut out when you were describing –

**THE COMMISSIONER:** Yes, Phase II.

**MS. HYNES:** – Phase III.

**THE COMMISSIONER:** Yeah.

**MS. HYNES:** So I wasn't sure about that but Phase II is my understanding. So we would not be looking to participate in Phase I or any issues with respect to 4(a) or with respect to section 5. We want to participate simply in the elements with respect to the construction of the Muskrat Falls hydro generating facility, and primarily because this is a construction site and I represent the men and women who have built this facility. And if – Nalcor has sought standing and been granted it this morning; I understand Astaldi sought limited standing and was granted. They are the employer and we represent the employees.

I think, in consideration of the principles of fairness, that the employees should have representation at the inquiry to represent their interests to make sure that their side of the story is told as well, to question witnesses about things that we may have particular interest in, to maybe offer to Commission counsel potential witnesses that they may wish to call and just co-operate in any way we can to get to the full story, full facts with respect to this construction project.

I think that your interpretation with respect to section 4(b) that the project execution and cost escalations you specifically referred to, and this could impact the reputation of the Trades Council that I represent. You know, your recommendations, findings and things like that may impact their reputation, as well as some of the recommendations that you may make may impact future projects, so both of my associations are interested in participating to protect their interests in that regard.

Do you have any further questions for me?

**THE COMMISSIONER:** No, that's fine.

I have a decision for you though.

**MS. HYNES:** Okay.

**THE COMMISSIONER:** So, jointly, the Newfoundland and Labrador Building and Construction Trades Council and the Resource Development Trades Council of Newfoundland and Labrador have applied for limited standing at the hearings of the Commission of Inquiry Respecting the Muskrat Falls Project.

The first co-applicant represents a number of unions involved in construction on the project and also has a mandate regarding construction industry workers in his province. The second co-applicant has acted for and represented all of the affiliated unions representing employees employed in the construction on this project. As such, both organizations submit that the investigations, findings, and recommendations of this Commission of Inquiry would impact them and the employees they represent.

They claim that the Commission may well cause further impact as regards to major construction projects in this province, including future special project orders, collective bargaining and work conditions. They also submit that the Commission will likely be investigating the performance, productivity and conduct of employees they represent who are involved in project construction.

The applicants believe it is necessary to give the employees, who worked and continue to work on the project who they represent, a voice at the hearings and that their involvement will further the conduct of the inquiry. They also argue that as Nalcor and other major contractors for the project will likely seek standing, it is only fair that they obtain some form of standing at the hearings on behalf of the unionized employees working for those companies.

Both co-applicants seek to have limited standing in the sense that they can participate in the hearings in all matters involved – involving them as regards to the construction of the project, and particularly pursuant to section 4(2) of the Commission's terms of reference. That term speaks generally to why there has been a significant escalation of cost of the project since the time of sanction, bearing in mind a number

of factors including Nalcor's retention and dealings with contractors and suppliers, as well as Nalcor's contractual arrangements and procurement strategy.

I'm satisfied that the co-applicants being given limited standing as requested at these hearings will further the conduct of the inquiry. The employees they represent may well have information that could assist the Commission in its investigation. The participation of both of these parties jointly will contribute to the openness and fairness of the inquiry as well; therefore, the co-applicants will be granted a limited standing in their – in that their participation will be limited to that part of the hearings where the Commission is dealing with section 4(b) issues under its terms of reference in those matters that engage their interest.

I've decided to conduct the hearings in three phases. Phase II of the hearings, which I've tentatively set to begin in February 2019, will deal with all matters related to the construction of the project. The applicants jointly will have standing at and during Phase II of the hearings as to matters that engage their interest, and will be permitted to make submissions at the conclusion of the inquiry related to their interest.

Counsel for both applicants will be entitled to make suggestions and recommendations to Commission co-counsel on evidence to be called. They'll be provided with documents relevant to witnesses to be called. They will be permitted to receive advance notice of the schedule of witnesses to be called and will receive a statement of the witnesses' expected testimony related to those issues for which they've been granted limited standing. Counsel will also have the right to cross-examine witnesses and to make closing submissions as I've indicated above.

I would now suggest to counsel for the co-applicants that they – that she coordinate her involvement with the Commission co-counsel. I would also caution counsel to avoid unnecessary examination of witnesses or duplication of efforts on the part of other counsel.

**MS. HYNES:** Thank you.

**THE COMMISSIONER:** Thank you.

All right, next.

**MS. O'BRIEN:** Thank you, Commissioner.

There is one further application to be heard. It is a joint application by a group who can be known as the form – as former Nalcor board members from the years 2004 to 2016. This group includes Kenneth Marshall, Thomas Clift, Gerald Shortall and Leo Abbass.

**THE COMMISSIONER:** Last but not least, Ms. Best.

**MS. BEST:** Thank you very much for accommodating me.

**THE COMMISSIONER:** So I apologize you happen to be last on the list, but sometimes that's the way it works.

**MS. BEST:** Well, it accommodated my hearing in any event.

**THE COMMISSIONER:** Okay.

**MS. BEST:** So thank you very much for that.

Good afternoon, Commissioner, Ms. O'Brien, Mr. Learmonth.

I am here today seeking full standing on behalf of the board of directors of Nalcor Energy. We have previously heard this morning from a representative for Nalcor, for Mr. Martin, president and CEO and for the former government Members between 2003 and 2015.

The fourth aspect of the decision-making process for Nalcor rested with the board of directors. And in this capacity, the board of directors has sought standing rather than coverage. And I understand the conversation you had with Mr. Simmons this morning with respect to whether or not Nalcor would provide independent legal advice for its employees or individuals represented.

The concern of the board of directors is that there may, in fact, arise a conflict between the information that they have available and the information of various individuals who may be employed with Nalcor. And as a result, they have sought standing themselves as a group in

order to facilitate and to ensure that the Commission has all of the information before it that may be necessary for it to make its decisions.

With respect to the board of directors, the other concern raised in our application was that they were knowledgeable with regard to the integrity of the decision-making process because they were fully involved in that process. There is concern that there has been a suggestion that only partial information was dispersed and there may not have been full and open line of communications between the government and Nalcor Energy. The individual members of the board were involved in these decisions and, thus, have information and knowledge important to this Commission.

The other concern that we have is with respect to the professional reputations of each of those board members coming out of this inquiry. These individuals were not compensated for their involvement in the Nalcor board. They acted, from their perspective, with integrity and having considered all of the information that was before them and, as such, they have concerns that information will be placed before the Commission that may infect their reputations.

Finally, the board is looking for funding for its participation for one counsel and for the expenses incurred with regard to travel or participation in the Commission. This is a group of individuals who have come together for the purpose of assisting the Commission in reaching its decision.

These individuals, as we've indicated, were not compensated for their role with Nalcor Energy and they, themselves, have no independent source of funding as a group to appear before this Commission. We have, in our application, specified the circumstances of each of the individual members of the board, and we would submit that it would be unfair to the process if they were granted standing without funding for that standing and their participation.

**THE COMMISSIONER:** Okay.

So I have one issue that I want to be explored before I'm prepared to make a decision –

**MS. BEST:** Uh-huh.

**THE COMMISSIONER:** – with regards to this application, and that goes to the very first application that was made this morning.

**MS. BEST:** Uh-huh.

**THE COMMISSIONER:** As I understand it these four individuals were long-time board members, board chairpersons, et cetera, of Nalcor during the relevant time that the Muskrat Falls Project was basically sanctioned and was being constructed. And, as such, it seems to me that the issue of funding is one that really rests with – first of all, rests with the responsibility with Nalcor.

So I will – and I don't see it being problematic if there is independent counsel that is appointed, assuming Nalcor agrees to do it, with the issue of potential conflict with regards to the present administration of Nalcor and the past administration of Nalcor.

So what I want before I'm prepared to decide the application of Mr. Marshall and Mr. Abbass, Mr. Shortall, and as well, the last one – his name escapes –

**MS. BEST:** Mr. Clift.

**THE COMMISSIONER:** Mr. Clift – is I want confirmation that an effort has been made by each of those individuals to – as a group, to seek standing – to seek funding, rather, from Nalcor energy based upon the fact that when it was acting, it was acting as the board of Nalcor Energy. And as such, to see whether or not individual counsel or separate counsel for that group can be funded by Nalcor. If and when I get that information –

**MS. BEST:** Uh-huh.

**THE COMMISSIONER:** – that's when I will make a written decision with regards to the issue of standing, and as well, if necessary, the issue of funding.

Any questions?

**MS. BEST:** No, I have no questions. I'll speak with Mr. Simmons.

**THE COMMISSIONER:** All right, good.  
Thank you very much.

Any other submissions?

**MS. O'BRIEN:** That concludes all the applications, Commissioner.

**THE COMMISSIONER:** I want to thank everyone for their patience this morning; it's been a long morning, but I felt we should keep on going so that people can have the afternoon to themselves. I want to thank a couple of people – Gerry Beresford and Diane Blackmore who have gone above and beyond the call of duty with regards to getting this place organized and whatever in the last couple of weeks. Without that, we wouldn't be here.

And I can only say that I look forward now to meeting with counsel in the not-too-distant future and I remind people that are here, particularly those who are self-represented, of the information session that co-counsel are prepared to put off for you this afternoon.

Thank you very much. We'll adjourn.

**MS. MULROONEY:** All rise.

This Commission of Inquiry is now concluded for the day.