



THE NEWFOUNDLAND AND LABRADOR GAZETTE

EXTRAORDINARY

PART II

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**NEWFOUNDLAND AND LABRADOR
REGULATION**

NLR 101/17



NEWFOUNDLAND AND LABRADOR REGULATION 101/17

*Commission of Inquiry Respecting the Muskrat Falls Project Order
under the
Public Inquiries Act, 2006
(O.C. 2017 - 339)*

(Filed November 20, 2017)

Under the authority of section 3 of the *Public Inquiries Act, 2006*, the Lieutenant-Governor in Council makes the following Order.

Dated at St. John's, November 20, 2017.

Ann Marie Hann
Clerk of the Executive Council

ORDER

Analysis

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Short title

1. This Order may be cited as the *Commission of Inquiry Respecting the Muskrat Falls Project Order*.

Definitions

2. In this Order

- (a) "government" means the government of the province;
- (b) "Isolated Island Option" means the isolated island option as defined in the June 17, 2011 reference question to the Board of Commissioners of Public Utilities;
- (c) "Muskrat Falls Project" means the Muskrat Falls Project, as defined in subsection 2.1(1) of the *Energy Corporation Act*; and
- (d) "Nalcor" means Nalcor Energy and its subsidiaries;

Commission of
inquiry established

3. There is established a commission of inquiry respecting the Muskrat Falls Project and the Honourable Richard D. LeBlanc is appointed as the sole member of the commission.

Terms of reference

4. The commission of inquiry shall inquire into

- (a) the consideration by Nalcor of options to address the electricity needs of Newfoundland and Labrador's Island interconnected system customers that informed Nalcor's decision to recommend that the government sanction the Muskrat Falls Project, including whether
 - (i) the assumptions or forecasts on which the analysis of options was based were reasonable,
 - (ii) Nalcor considered and reasonably dismissed options other than the Muskrat Falls Project and the Isolated Island Option, and
 - (iii) Nalcor's determination that the Muskrat Falls Project was the least-cost option for the supply of power to Newfoundland and Labrador Island interconnected system over the period 2011-2067 was reasonable with the knowledge available at that time;
- (b) why there are significant differences between the estimated costs of the Muskrat Falls Project at the time of sanction and the costs by Nalcor during project execution, to the time of

this inquiry together with reliable estimates of the costs to the conclusion of the project including whether

- (i) Nalcor's conduct in retaining and subsequently dealing with contractors and suppliers of every kind was in accordance with best practice, and, if not, whether Nalcor's supervisory oversight and conduct contributed to project cost increases and project delays,
- (ii) the terms of the contractual arrangements between Nalcor and the various contractors retained in relation to the Muskrat Falls Project contributed to delays and cost overruns, and whether or not these terms provided sufficient risk transfer from Nalcor to the contractors,
- (iii) the overall project management structure Nalcor developed and followed was in accordance with best practice, and whether it contributed to cost increases and project delays,
- (iv) the overall procurement strategy developed by Nalcor for the project to subdivide the Muskrat Falls Project into multiple construction packages followed industry best practices, and whether or not there was fair and competent consideration of risk transfer and retention in this strategy relative to other procurement models,
- (v) any risk assessments, financial or otherwise, were conducted in respect of the Muskrat Falls Project, including any assessments prepared externally and whether
 - (A) the assessments were conducted in accordance with best practice,
 - (B) Nalcor took possession of the reports, including the method by which Nalcor took possession,
 - (C) Nalcor took appropriate measures to mitigate the risks identified, and
 - (D) Nalcor made the government aware of the reports and assessments, and

- (vi) the commercial arrangements Nalcor negotiated were reasonable and competently negotiated;
- (c) whether the determination that the Muskrat Falls Project should be exempt from oversight by the Board of Commissioners of Public Utilities was justified and reasonable and what was the effect of this exemption, if any, on the development, costs and operation of the Muskrat Falls Project; and
- (d) whether the government was fully informed and was made aware of any risks or problems anticipated with the Muskrat Falls Project, so that the government had sufficient and accurate information upon which to appropriately decide to sanction the project and whether the government employed appropriate measures to oversee the project particularly as it relates to the matters set out in paragraphs (a) to (c), focusing on governance arrangements and decision-making processes associated with the project.

Commission's
considerations

- 5. The commission of inquiry, in carrying out the terms of reference referred to in section 4 shall consider
 - (a) participation in the inquiry by the established leadership of Indigenous people, whose settled or asserted Aboriginal or treaty rights to areas in Labrador may have been adversely affected by the Muskrat Falls Project;
 - (b) the need to provide consumers in the province with electricity at the lowest possible cost consistent with reliable service;
 - (c) the powers, duties and responsibilities of a Crown Corporation;
 - (d) the need to balance commercial considerations and public accountability and transparency in carrying out a large-scale publicly-funded project; and
 - (e) the need to balance the interests of ratepayers and the interests of taxpayers in carrying out a large-scale publicly-funded project.

Findings and
recommendations

6. The commission of inquiry shall make findings and recommendations that it considers necessary and advisable related to section 4.

Conclusion or
recommendations
limited

7. The commission of inquiry shall not express any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization.

Special expertise
services

8. The commission of inquiry may engage the services of persons having special expertise or knowledge including those with financial, engineering and construction expertise.

Final report

9. The commission of inquiry shall terminate its work and deliver the final report to the Minister of Natural Resources, who shall be the minister responsible for the commission of inquiry, on or before December 31, 2019.

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Public Inquiries Act, 2006

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