

Our File: 115064

December 22, 2015

The Board of Commissioners of Public Utilities
Prince Charles Building
120 Torbay Road, PO Box 21040
St. John's, NL A1A 5B2

**Attention: Ms. Cheryl Blundon,
Director of Corporate Services & Board Secretary**

Dear Ms. Blundon:

Re: In the matter of an Investigation and Hearing into Supply Issues and Power Outages on the Island Interconnected System: Phase 2 – Response to Motion to Order Complete Responses to Requests for Information

We are counsel for Newfoundland and Labrador Hydro ("Hydro"). Hydro is in receipt of the Grand Riverkeeper Labrador, Inc. ("GRK") Motion to order complete responses to Requests for Information dated November 26, 2015 ("Motion to Compel"). The following is Hydro's reply to the GRK's Motion to Compel.

At the outset Hydro would note that the Motion to Compel deals with matters directly related to the ongoing Hydro Quebec litigation and issues related to the North Spur. For the specific reasons noted below, Hydro submits that the GRK is continuing to attempt to extend the ambit of the Phase 2 inquiry inconsistent with the Board's various prior Orders in this regard.

In the Board's Order No. P.U. 15(2014) dealing specifically with the GRK's late request for intervenor status the Board specifically noted at page 4 as follows:

"The Board has determined that it would address adequacy and reliability of the Island Interconnected system following the interconnection with Muskrat Falls. The Board agrees with Newfoundland Power, Hydro and the Consumer Advocate that the issues in the matter should not be extended to the construction, legal, contractual and physical risks of the Muskrat Falls development, as raised by Grand Riverkeeper Labrador, Inc."

The Board continued on page 4 of that Order as follows:

"To ensure an efficient and effective proceeding all parties must respect the parameters and scope of the issues which have been established and must restrict the evidence in submissions filed to matters which may be of assistance

to the Board in determining these issues. The investigation and hearing cannot be allowed to be complicated by issues and evidence which are not relevant and helpful to the Board in its determination. To that end the Board will be diligent in ensuring that only matters that are relevant are raised and will exercise its discretion, either on its own or in response to motion from a party, to strike out any matters which are irrelevant or may tend to prejudice, embarrass or delay the proceeding upon its merits.”

Despite the very specific findings made by the Board directly in relation to the GRK’s request to be added as a late intervenor, the GRK continues to attempt to extend the ambit of the Phase 2 inquiry.

Hydro respectfully submits that its responses to the Requests for Information (“RFIs”) challenged by the GRK were fully appropriate within the parameters and scope of the issues which have been established by the Board in this proceeding. Each of these is discussed in detail below.

GRK-NLH-93

This RFI requested Hydro to “explain in what way ‘the manner in which water will flow down the Churchill River from the Churchill Falls plant . . . could be impacted’” if Nalcor’s interpretation of the renewal of the Churchill Falls Contract is not upheld, and to describe in detail the way in which this could affect “the timing of when energy is produced at Muskrat Falls”.

In its response Hydro specifically noted that:

“The ‘manner in which water will flow’ relates specifically to the timing of water releases from the Churchill Falls plant, and therefore the timing of inflows into the Muskrat Falls reservoir.”

Hydro then specifically noted that the consequences of changes in the timing of inflows have already been addressed in Hydro’s response to GRK-NLH-021(Revision 1, January 14-15) and the mitigations were discussed in the response to GRK-NLH-044.

Hydro’s already existing response to GRK-NLH-021(Revision 1, January 14-15) specifically states in part as follows:

“If Nalcor’s interpretation of the renewal of the Churchill Falls Contract is not upheld, then depending on the finding of the court and the response by Hydro Quebec to such finding, the manner in which water will flow down the Churchill River from the Churchill Falls plant and thus the timing of when energy is produced at Muskrat Falls could be impacted. It could therefore impact the degree which Hydro can influence the timing of delivery of energy to the Island Interconnected System to maximize the efficient use of the water resources it has control over. This would not impact system reliability but could impact how Hydro utilizes the resources available to it at any given time to meet system requirements. Hydro would evaluate the circumstances arising at the relevant time and run its system accordingly. Please refer to Hydro’s response to GRK-NLH-044 for options available to Hydro.”

Accordingly, Hydro has already addressed this issue fully to the best extent possible at this time as noted by the cross-references in its response to GRK-NLH-093. Hydro is unable to comment on hypothetical potential scenarios arising from the outcome of the litigation.

The GRK contends that Hydro has ignored the explicit requests in the second paragraph of GRK-NLH-093. However, Hydro's response to the RFI which cross references to various prior Hydro RFI responses, addresses this issue as best Hydro is able at this time as noted above. The second paragraph of GRK-NLH-093 requests information with respect to hypothetical scenarios which are not Hydro's position with respect to the Hydro Quebec litigation. As noted in Hydro's response to GRK-NLH-093, the Board has previously accepted the adequacy of Hydro's responses to GRK-NLH-021(Revision 1, January 14-15) and GRK-NLH-024(Revision 1, January 14-15) in Board Order No. P.U. 5 (2015) at page 3. Hydro respectfully submits that it is inappropriate for the GRK to request information with respect to potential future hypothetical interpretations.

GRK-NLH-100

The GRK contends that Hydro's response to GRK-NLH-100, which cross references GRK-NLH-99, is not relevant because the references in GRK-NLH-99 to other RFI responses that "deal with the options available to Hydro in the very unlikely event of a dam breach at Muskrat Falls" are not appropriate, as GRK-NLH-100 is not concerned with the options available to Hydro in the event of a dam breach.

However, the question in GRK-NLH-100 was, "on what basis was it determined that 'the probability of risk of failure is negligible.' Please provide all supporting documentation leading to this conclusion." As noted in the citation in GRK-NLH-100, Hydro had already previously confirmed that the Muskrat Falls dam was being designed similar to all other Hydro dam facilities, and in GRK-NLH-099 Hydro indicated that its determination was "based on Hydro's understanding of the principles associated with the engineering design of large-scale dams". That response then went on to cross-reference Hydro's responses to GRK-NLH-044, 096 and 097 which deal with the options available to Hydro in the very unlikely event of a dam breach at Muskrat Falls.

The associated response to GRK-NLH-098 specifically noted that:

"The design principles for dam engineering design are sufficiently conservative that, consistent with all of Hydro's water retaining structures, the probability of an outage resulting from a dam failure to be used in a reliability study is negligible."

Further, the Board has already previously ordered that the ongoing Phase 2 review does not include a review of detailed technical and engineering information associated with the Muskrat Falls project. In a letter ruling dated February 26, 2015 to Messrs. Ronald Penney and David Vardy the Board reiterated that "this proceeding will not involve a study of the engineering or construction of the Muskrat Falls project". Hydro submits that the GRK is attempting to turn the Phase 2 inquiry into exactly the type of review which the Board has repeatedly stated it is not carrying out.

GRK-NLH-104

With respect to this RFI, Hydro noted in its response that the RFI requires Hydro to respond to potential hypothetical scenarios “should Hydro-Quebec’s interpretation of the Renewal Contract be endorsed by the Courts”. Hydro then referred to Board Order No. P.U. 41(2014) at page 23 where the Board indicated that it did not believe it reasonable to require Hydro to create information based on a hypothetical scenario as it is not clear how it would be of assistance and may be an undue burden to produce. Hydro also referred to the Board’s finding in that same Order, at page 14, that addressing possible alternative approaches is “not relevant or necessary to address the matters before the Board and would serve to unduly complicate and protract this investigation”.

Similarly, with respect to GRK-NLH-104, Hydro responded that it was neither relevant nor appropriate to respond to the implications of hypothetical scenarios and that the provision of such responses would unduly complicate the proceeding.

The GRK contends that Hydro took these quotes out of context. Hydro disagrees. The GRK states that this request is different because it requests no quantitative analysis nor any data. Hydro does not understand that the Board’s prior Order was premised solely on the issue of the preparation of quantitative analysis or data, and if so, Hydro still submits that it would be completely inappropriate to have Hydro attempt to elaborate on the implications of hypothetical eventualities which pre-judge the litigation and which Hydro does not support. In fact, Hydro would have to undertake analysis to determine what these implications may be in any event, based on the hypothetical eventualities posed by the GRK. The requests are clearly premised on hypothetical outcomes.

With respect to the issue of the response being able to address consequences regarding the availability of a reliable and adequate supply of power to the Island Interconnected System associated with the risks outlined, Hydro notes its specific response to GRK-NLH-021(Revision 1, January 14-15) noted above. Hydro is unable, nor is it appropriate for it, to reply to hypothetical scenarios.

GRK-NLH-105 AND GRK-NLH-107

As the GRK itself notes these RFI’s ask Hydro to consider certain hypothetical scenarios under two conflicting interpretations of the Renewal Contract.

The GRK essentially recites its argument with respect to GRK-NLH-104. Hydro’s response above is equally applicable to these two hypothetical scenarios, and clearly illustrates why it is inappropriate for Hydro to be asked to evaluate the outcome of hypothetical situations. This would seriously unduly complicate and protract the inquiry, and to do so on the basis of hypotheticals is, in Hydro’s respectful submission, inappropriate for the reasons the Board has itself previously ordered.

GRK-NLH-115 THROUGH GRK-NLH-117

With respect to each of these RFIs, Hydro was asked to confirm that no analysis had been carried out in regard to these specific points raised in relation to the North Spur. Hydro’s response to GRK-NLH-115 specifically notes that:

"As required by the Board, Hydro has directed its responses to the risks and consequences to the Island Interconnected System of the scenarios and issues raised."

In that regard, Hydro referred back to its response to GRK-NLH-045(Revision 1, Feb. 27-15) which it noted stated in part that:

"The approach used to stabilize the North Spur focuses on eliminating triggers to progressive failure to prevent them from disturbing the site and then to undertake specific analysis to address the remaining triggers (such as seismic events) to ensure they will not trigger a slide event."

Hydro does not believe it is appropriate or useful to confirm if a particular type of study has not been carried out. Interestingly the GRK asked the RFI in the negative, and then posited that if there was such a study that a copy be provided, notwithstanding that the Board has already ordered that it is unnecessary and inappropriate to provide such information in this proceeding.

Hydro does not agree that its reference to the risk of failure of the North Spur in any way has changed the Board's finding or has now rendered relevant and admissible any evidence that would contradict or put into question its validity. Hydro has continuously been attempting to provide responses to the GRK RFI's in a manner that accords with the Board's Orders which focus the discussion on the risks and consequences to the Island Interconnected System of the scenarios and issues raised.

In its response to GRK-NLH-098, in discussing its comment brought out by way of its response to prior GRK submissions, that the "probability of risk of failure is negligible" with respect to Muskrat Falls, Hydro specifically noted as set out above:

"The design principles for dam engineering design are sufficiently conservative that, consistent with all of Hydro's water retaining structures, the probability of an outage resulting from a dam failure to be used in a reliability study is negligible".

This is the context of Hydro's statements made in reply to the GRK, and does not bring into play the requirement for provision of studies to be evaluated dealing with the specifics of the construction of the North Spur.

The GRK goes on to state that it submits it has a right to be heard concerning these matters, and in order for it to be meaningfully heard in this regard its expert Dr. Stig Bernander requires access to the requested documents in order to prepare his testimony. This is exactly what the Board had ordered would not be the case in this proceeding. The issues regarding the construction of the Muskrat Falls facility and the North Spur are not matters within the scope of this proceeding. Hydro also refers to its letter to the Board of December 2, 2015 regarding the report of Dr. Bernander filed by the GRK in this regard.

Hydro also noted in its response to GRK-NLH-117 that the question posed is generally the same question as posed in GRK-NLH-046 that has been previously responded to by cross-reference to Hydro's response to GRK-NLH-045(Revision 1, Feb. 27-15).

GRK-NLH-118 THROUGH GRK-NLH-121

As discussed above, these questions regarding detailed specific technical information regarding the North Spur and if such exists that the data be provided. Again, this is clearly the type of information that the Board has already consistently ruled is out of scope for the Phase 2 inquiry. The GRK states that Hydro's response that the IE (Independent Engineer) was provided with information as requested so as to permit the IE to formulate its opinion is a "transparent attempt to avoid responding to the RFIs, which seek specifically to identify the information that was provided to the IE". The GRK then goes on to state that "no motives have been provided by Hydro to justify its refusal to identify this information".

However, Hydro specifically stated in its response to GRK-NLH-118 that:

"The Board determined in Order No. P.U. 41(2014) that the information requested in GRK-NLH-047 was outside the scope of the current proceeding, and consequently the current request does not inform the matter before the Board."

Hydro noted in response to GRK-NLH-118 that the RFI essentially repeated the request in GRK-NLH-047, which asked for Hydro to provide copies of the most recent and detailed studies that exist with respect to soil structure and soil properties at the North Spur. Hydro disputes the GRK's comment that it is incorrect to state that the RFI repeats GRK-NLH-047. For all intents and purposes these questions seek the same underlying information and ask that the information if it exists be provided. This is clearly out of scope.

In any event, in response to GRK-NLH-121 Hydro specifically refers not only to its response to GRK-NLH-118 but also to its prior response to GRK-NLH-057(Revision 1, February 27-15). In the response to GRK-NLH-057(Revision 1, February 27-15), Hydro specifically responded to the question of whether the North Spur stabilization plan had been subjected to independent third party review, and noted that the Muskrat Falls Independent Engineer discussed multiple reviews of the North Spur stabilization plan in its September 19, 2014 report, attached as GRK-NLH-057 Attachment 1. A very extensive excerpt from Section 8.3 of that report was reproduced in the response to GRK-NLH-057. Hydro refers the Board to that specific response.

Further, at the end of the response to GRK-NLH-057, Hydro specifically noted as follows:

"This excerpt summarizes the multiple reviews that were undertaken as work on the stabilization plan progressed. After an initial review undertaken by the Independent Engineer in the fall of 2013 (see Attachment 1 to Hydro's response to PUB-NLH-210), additional studies as noted above were undertaken by LCP, and the results of those additional studies were reviewed by the Independent Engineer and two renowned experts within their respective areas of study."

The GRK then submits that somehow further information outside of the scope of the proceeding has now been made relevant simply by virtue of the fact that Hydro responded to PUB-NLH-210 by presenting the Independent Engineer's report in response to the Board's question regarding risk analysis carried out regarding the Muskrat Falls project. This simply cannot be the case. Hydro responded appropriately to the Board's question. That does not bring into scope issues already consistently determined to be outside of scope by the Board.

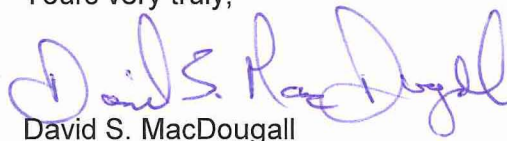
The GRK then goes on to state that PUB-NLH-210 does not include the North Spur among "the key risks for the project which have already been successfully mitigated". However, Attachment 1 to PUB-NLH-210 at page 173 in Section 10: Conclusions and Independent Engineer's Opinions and Recommendations, specifically states as follows:

"The North Spur area has been geologically explored and studied in the past by several engineering organizations as well as during the most recent studies conducted by the Integrated Project Team to develop a satisfactory solution to reduce seepage and provide stabilization remediation procedures that should provide a useful life beyond the design life of 50-years, in our opinion. The planned North Spur remediation measures are appropriate to stabilize the slopes, arrest natural mass wasting and to control seepage and piezometric pressures after impoundment of the reservoir. Recommended additional studies on the sensitive clays will be useful to confirm current design assumptions, but should not significantly affect the current design scheme."

Finally on this point, the GRK states that the documents requested in GRK-NLH-118 to 121 are relevant to the proceedings for the reasons set out in paragraphs 42 through 44 of the GRK's Motion. Those paragraphs are, as discussed above, the ones where the GRK suggests this information is necessary in order for its expert to prepare his testimony. Again, it is clear that the GRK wishes to obtain this information to bring in to scope matters which have been clearly and consistently noted by the Board to be outside the scope of this proceeding.

For all of the foregoing reasons, Hydro respectfully submits that the responses it has provided to the RFI's in question are appropriate and that the GRK's motion should be denied.

Yours very truly,



David S. MacDougall

cc: Interested Parties