

January 27, 2010

BY E-MAIL TO <cblundon@pub.nl.ca>

Ms. Cheryl Blundon
Secretary, Board of Commissioners of Public Utilities
P.O Box 21040
St. John's, NL A1A 5B2

Re: Application by Nalcor Energy pursuant to Section 5.5(1) of the *Electrical Power Control Act*: Information Requests PUB-CIE-1 through PUB-CIE-13; our file no. 7550/004

Dear Ms. Blundon,

This is further to the Board's directions of January 25, 2010 concerning our request for advance costs in the above-mentioned proceedings and in reply to the submissions of the applicant Nalcor.

We reiterate our argument that the Board has jurisdiction to make an order of advance costs. Section 90(1) of the *Public Utilities Act*, R.S.N.L. 1990, c. P-47, simply provides that costs "shall be in the discretion of the board, and may be fixed at a definite amount, or may be taxed and the board may order by whom they are to be taxed and to whom they are to be allowed."

The statute gives the Board a broad discretion. The Board's decision in Order P.U. 8 (2001-2002) merely noted that "Section 90(1) of the [Public Utilities] Act does not specifically permit the Board to deal with the issue of costs prior to the hearing" (emphasis added).

Since that time, however, the judgment in *British Columbia (Minister of Forests) v. Okanagan Indian Band*, [2003] 3 S.C.R. 371, has specifically allowed for advance costs orders in constitutional cases. Moreover, the Supreme Court has held that "the issuance of a costs award is a quintessential example of 'the development of imaginative and innovative remedies when just and appropriate'": *R. v. 974649 Ontario Inc.*, [2001] 3 S.C.R. 575, para. 81.¹

We have no reply to points 4 and 5 of Nalcor's submissions because they do not address the issue of costs. Instead, they renew Nalcor's earlier objections to an intervention which the Board has now seen fit to grant in Order P.U. 2 (2010).

¹ <http://www.canlii.org/en/ca/scc/doc/2001/2001scc81/2001scc81.html>

Yours,

DIONNE SCHULZE



David Schulze

CC:

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