

**SUBMISSION dated February 3, 2014**

**To the Pre-Hearing Conference to be held on Wednesday February 5, 2014, with regard to an Investigation and Hearing into Supply Issues and Power Outages on the Island Interconnected System by the Board of Commissioners of Public Utilities**

**(1) The timeframe of the risks, potential future outages and issues covered by the present inquiry should extend beyond the proposed in service date for Muskrat Falls (presently slated for 2017 or 2018).**

As we can now appreciate more than ever, the Holyrood thermal generating station was designed to play, and does play, a vital role in NL Hydro's ability to provide reliable electricity on the Avalon and indeed throughout the Island.

The proposed shutting down of the Holyrood plant (as part of the Muskrat Falls Project) in 2021 or 2022 and its replacement (as the Province's key On Island winter peaking plant) with a generating facility on the Lower Churchill River at Muskrat Falls, some 1100 km away from the delivery point on the Avalon Peninsula would create a new reliability context for the On Island electrical system.

The relative reliability of that new context in the post Muskrat in service period is a proper object of the Board's investigations in this inquiry.

The present inquiry cannot take place in a vacuum.

If this inquiry were to be circumscribed by any sort of "no looking at anything after Muskrat comes on stream" restriction then any recommendations, orders or measures flowing from this inquiry would potentially be rendered impractical, if not a nullity, by a Muskrat driven reliability context.

**(2) The Board should include Muskrat Falls related reliability issues and the reliability of alternative supply options in its current inquiry.**

The Board is set to investigate such areas as “ asset readiness, maintenance practices, load forecasting, planning criteria and assumptions, equipment performance and reliability, emergency preparedness, system response, and restoration efforts” with respect to the future provision of electricity to On Island customers.

Any examination of the reliability of any electrical system must focus on the reliability of each key generating component making up that system and the transmission lines connecting those generating facilities to residential, commercial and domestic customers.

In this case, the reliability of NL Hydro’s ability to provide electricity from a generation facility at Muskrat Falls is of key importance to the work of the Board.

This reliability is particularly linked to the risk of a Muskrat Falls reservoir containment failure due to a major landslide at the North Spur and the reliability of the Labrador to Island Transmission Line - in Labrador, crossing the Strait of Belle Isle and on the Island)

Given the harshness of our winter climate and the overwhelming importance of reliability of electrical service to our economy and way of life, the Board should examine whether or not the Muskrat Falls Project is the best way to fix our current recently demonstrated reliability problem.

This should include an examination of the reliability of the continued long term operation of the Holyrood generating station using natural gas as fuel ( either imported as LNG and/or from our own offshore natural gas resources) as compared to reliance on Muskrat Falls.

A comparative risk assessment of alternative supply systems is at the heart and soul of any reliability analysis.

**(3) The inclusion in this inquiry of :**

**(i) potential outages in the supply of electricity from Muskrat Falls if that facility were to come on stream (including a major outage on the Labrador to Island Transmission Line and the failure of the reservoir containment system due to a major landslide at the North Spur); and**

**(2) a reliability risk assessment of supply alternatives;**

**is within the powers of the Board under the Public Utilities Act and is not barred by the provisions of Bill 61 - AN ACT TO AMEND THE ELECTRICAL POWER CONTROL ACT, 1994, THE ENERGY CORPORATION ACT AND THE HYDRO CORPORATION ACT, 2007 .**

The Board's power to investigate and inquire rests on the wide powers of regulation and investigation that the Legislature has given the Board in order that it can protect the public interest in relation to the provision of electricity to the public of the Province. These powers have been explicitly expressed in the broadest possible manner.

And no restrictions on those powers can be reasonably read into any legislation governing this process given Section 118 of the Public Utilities Act which calls on the Board and the courts to adopt a **liberal construction of the Public Utilities Act in favour of the powers of the Board.**

**Section 118 states:**

**“Act to be liberally construed**

**118.** (1) This Act shall be interpreted and construed liberally in order to accomplish its purposes, and where a specific power or authority is given the board by this Act, the enumeration of it shall not be held to exclude or impair a power or authority otherwise in this Act conferred on the board.

(2) The board created has, in addition to the powers specified in this Act, all additional, implied and incidental powers which may be appropriate or necessary to carry out all the powers specified in this Act. “

(3) A substantial compliance with the requirements of this Act is sufficient to give effect to all the rules, orders, acts and regulations of the board, and they shall not be declared inoperative, illegal or void for an omission of a technical nature.

**Furthermore,** Section 119 of the Public Utilities Act states that the Public Utilities Act shall prevail against an “general, special, public or private Act “ except “where and to the extent that this Act has been specifically excluded from a general , special , public or private Act” .

The onus is thus clearly on those who claim that the ambit of the Board in this matter is circumscribed by showing that this process has been “specifically excluded” by Bill 61.

Section 119 states:

**“This Act to prevail**

**119.** (1) A general, special, public or private Act, whenever enacted, relating to a public utility, as defined by this Act, shall be read and construed as subject in all respects to this Act, and where the general, special, public or private act conflicts with this Act, this Act shall prevail.

(2) Subsection (1) shall not apply where and to the extent that this Act has been specifically excluded from a general, special, public or private Act. “

In contrast to these broad legislative directions, Bill 61 provides only that restrictions on Board activities can be embodied in subordinate legislation ( by Orders in Council) which by their nature must be read restrictively in relation to any attempt to curtail the investigative powers of the Board ( particularly in the face of the broad provisions of Sections 118 and 119 of the Public Utilities Act).

**(4) If the Board has any doubts as to its jurisdiction in the matter it should use a “Stated Case” to the Court of Appeal to resolve the matter**

If there is a challenge to the Board’s jurisdiction in this regard, Section 101 the Public Utilities Act provides a quick and effective mechanism whereby the Board can seek a judicial ruling by way of a “stated Case” to the Newfoundland Court of Appeal on how these two sections should be reconciled in the case of Muskrat Falls.

Section 101 states:

**“Stated case**

**101.** The board may of its own motion or upon the application of a party, and upon the security being given as the board directs state a case in writing for the opinion of the Court of Appeal upon a question which in the opinion of the board is a question of law and a similar reference may also be made at the request of the Lieutenant-Governor in Council

Cabot Martin

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