

April 18, 2018

Dear 

Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act, 2015* [File #: EC/16/2018]

On March 19, 2018, Executive Council received your request for access to the following records/information:

“On June 17, 2011 Government issued a reference directing the Board to review and report on whether the development ... The two options to be compared were set out in the Terms of Reference as the Muskrat Fall Provide re MF June 17 2011 terms of reference for MF PUB review --- for the period Jan 01 2011 to Dec 31 2011 provide All documents and correspondence including, but not limited to: briefing notes, text messages, emails (including attachments) , handwritten notes, and any other record or document , electronic or otherwise, created between Jan 01 2011 - Dec 31-2011 to &from Kathy Dunderdale re the MF PUB terms of reference.”

I am pleased to inform you that a decision has been made by the Deputy Clerk of Executive Council to provide partial access to the information requested. A portion of the records, specifically pages 4-5 are considered Cabinet records and access is refused in accordance with the following exception to disclosure, as specified in the *Access to Information and Protection of Privacy Act* (the *Act*):

27. (1) In this section, "cabinet record" means

(h) a record created during the process of developing or preparing a submission for the Cabinet; and

(2) The head of a public body shall refuse to disclose to an applicant

(a) a cabinet record;

As required by 8(2) of the *Act*, information that cannot be disclosed has been severed, and you have been provided with as much information as possible. In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

You may ask the Information and Privacy Commissioner to review the processing of your access request, as set out in section 42 of the *Access to Information and Protection of Privacy Act* (the *Act*). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner.

The address and contact information of the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John's, NL. A1B 3V8

Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the *Act*. A copy of sections 42 and 52 of the *Act* has been enclosed for your reference

This response will be published as outlined on the Completed Access to Information Requests website. (<http://atipp-search.gov.nl.ca/>). If you have any further questions, please feel free to contact me by telephone at (709)729-5691 or by e-mail at rachellecutler@gov.nl.ca.

Sincerely,



Rachelle Cutler
ATIPP Coordinator

Enclosure

Access or correction complaint

42.(1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

Direct appeal to Trial Division by an applicant

52.(1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45(2).

Date : 5/17/2011 12:34:48 PM

From : "Thompson, Robert"

To : "Brown, Milly" , "Taylor, Brian W." , "Dunderdale, Kathy"

Subject : RE: Answers to Premier's questions on MF

Q5: Residential rate regulation in Labrador from Upper Churchill power

The PUB regulates residential electricity rates in Labrador (Happy Valley-Goose Bay and Labrador West). The provincial government has not ordered PUB to apply any rate-setting policies and thus PUB follows normal regulatory practices when setting rates.

However, the PUB does not regulate the rates for other usages of Upper Churchill power.

From: Thompson, Robert

Sent: Tuesday, May 17, 2011 12:30 PM

To: Brown, Milly; Taylor, Brian W.; Dunderdale, Kathy

Subject: Answers to Premier's questions on MF

(four below; one more to follow)

Q1: List of projects not subject to PUB oversight:

- Rattle Brook (Algouguin Power) –
- Star Lake (ENEL) –
- Rose Blanche (Newfoundland Power) - due to its size it did not trigger PUB scrutiny, so no exemption required.
- NLH's Granite Canal project; December 14, 2000
- Labrador Hydro Project – December 14, 2000
- Exploits River incremental energy project at Grand Falls and Bishop's Falls - Abitibi and Fortis; July 9, 2002
- Corner Brook Pulp and Paper thermal co-generation project; October 31, 2000
- Additionally, the decision to develop two of the largest generation developments in the province's history, Bay d'Espoir (670MW) and Holyrood (500MW), were approved by Cabinet and were not subject to regulatory review.

Q2: Emera share of Transmission – Labrador Island Link – 29%

Q3: Rate Impact of Loan Guarantee

If the loan guarantee causes a 2% reduction in the interest rate for the project, it will produce value that will translate into an estimated 6% reduction in consumer electricity rates in 2017. In other words, the loan guarantee will cause consumer rates to be 6% lower than if the loan guarantee was not in place.

Q4: Utility Rate of Return

The forecast cost of common equity as designated by the PUB for 2011 is 8.38%. This type of determination would be a benchmark for the rate provided to Emera.

Date : 12/22/2011 6:18:57 PM
From : "KMD"
To : "Thompson, Robert"
Subject : Re: PUB Letters

Good to go Robert.
K

Sent Via BlackBerry

From: Thompson, Robert
To: KMD; Taylor, Brian W.
Sent: Thu Dec 22 17:07:55 2011
Subject: PUB Letters

Further to my previous message, here are the two revised drafts.

December 22, 2011

Mr. Andy Wells

RE: Muskrat Falls Review

I acknowledge receipt of your correspondence of December 16, 2011 requesting a further extension of time for the Board to submit its report on the Reference Question. The Board will no doubt appreciate Government's announced intention to have the Board's report tabled during the Spring session of the House of Assembly. It is therefore of critical importance that the Board's report be received not later than March 31, 2012 so as to allow Government to meet its commitment to the people of the Province.

Government feels confident that the Board will be able to adjust its schedule so as to accommodate those processes that need to be taken so as to complete the review by the deadline. In an effort to streamline the process, Government has issued new guidelines to the Consumer Advocate to ensure that his focus is only on those areas which will avoid any duplication of the Board's mandate. In addition, as I advised in my letter of December 12, 2011, Government is committed to assisting the Board in meeting the March deadline and is willing to provide whatever additional resources are reasonably necessary to enable the Board to adjust its processes and hearing schedule on other matters if necessary.

It is acknowledged that the process referenced in your letter of December 16, 2011 adopts the process that the Board followed in 2005 when it was asked to complete a review of automobile insurance rates pursuant to Section 3.1 of the *Insurance Companies Act*, a far reaching activity which involved matters of public policy and an investigation of competing insurers proprietary information and loss experiences. That activity was not burdened by the same time sensitivities as the current review. Given that the Terms of Reference are confined to a review of whether Nalcor's proposal represents the least-cost option for the supply of power to island connected customers, Government queries whether all of the processes employed by the Board in the Insurance review are necessary in the Board's review of the Reference Question.

It is Government's understanding that, for some considerable time preceding the actual filing of Nalcor's formal submission on November 10, 2011, Nalcor had been working with the Board's experts, Manitoba Hydro Inc. ("MHI"), and, as a result, an extensive amount of technical information respecting this project has already been supplied. Has the Board considered whether this activity might permit it to economize on the time it proposes to allot for receipt of the MHI Report as well as the necessity for allotting additional time during the month of March for the receipt of technical reports and the attendant holding of a technical conference?

Government feels confident that with additional resources being made available to the Board, the March 31 deadline can be met so that its report can be tabled in the House of Assembly as Government has publicly committed to do. I or any of my officials are available to discuss the supply of additional resources to the Board.

Jerome P. Kennedy, Q.C.

December 22, 2011

Mr. Thomas J. Johnson

I am writing further to your letter dated December 15, 2011, to the Board of Commissioners of Public Utilities (the "Board") regarding timelines for the Muskrat Falls Project review (the "Review"). Your letter was referred to the undersigned from the Board's website.

As you are aware, Government has advised the Board that the Review must be completed by March 31, 2012, in order to ensure that the Board's report can be examined and debated by members of the House of Assembly during the Spring sitting. Extending the March 31, 2012 completion date would result in a risk of the report not being reviewed in the House of Assembly prior to final sanctioning of the project.

In order to meet the March 31, 2012 completion date, it will be imperative that all parties involved in the Review limit their activities to those necessary to complete their respective roles. From the Consumer Advocate's perspective, this means ensuring that the electricity ratepayers of the Province have a consolidated voice in the Review process.

In your December 15 letter to the Board, you indicated that you would be "having several public sessions around the Province in order to receive customer input directly on the matters engaged in the review." While public participation through the Consumer Advocate will play a critical part in the Review, it was not Government's intention for the Consumer Advocate to conduct any public hearing process separate and apart from hearings being conducted by the Board. It is Government's position that the Consumer Advocate's role in the Review process is to coordinate public comment and participation, through submissions to the Consumer Advocate, and to then represent the Province's electricity ratepayers in the public process being completed by the Board.

Your letter to the Board also addressed the fact that you have not been provided with certain confidential exhibits. This is a necessary limitation given the extreme commercial sensitivity of the confidential exhibits and the fact that Nalcor is precluded from producing others under non-disclosure agreements entered into with third parties. The Terms of Reference were drafted to ensure that the Board and its expert could conduct a complete examination of the Reference Question. In order to conduct a thorough review, it was imperative that the Board have access to all documents to which Nalcor had access. The Consumer Advocate's role is to ensure that a thorough analysis is completed by the Board. It was not contemplated that the Consumer Advocate would complete its own independent analysis of the project.

Meeting the March 31, 2012 deadline for a report will require significant effort by the Board, the Consumer Advocate and Nalcor. The role of the Consumer Advocate is to assist the Board in this process by making representations on behalf of electricity ratepayers into the processes established by the Board. We expect that contribution to be on an informed and expert basis within the terms of reference. We are prepared to provide assistance as may be requested in the Consumer Advocate's fulfillment of this important role.