

February 2, 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*; our file no. 7550/004

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Dear Ms. Blundon,

This is further both to the your letter of today's date, the Board's "Rules of Procedure – January 2010" and the outstanding Information Requests addressed to the Conseil des Innus de Ekuanitshit in the above-mentioned application.

**Request for a *corrigendum***

Before we incur unnecessary costs and in order to understand the Board's procedure, we would appreciate the Board indicating pursuant to which rule it was able to decide on our request for advance costs in Order P.U. 5 (2010) without any motion before it and by virtue of which rule it is nevertheless prohibited from correcting its order without a motion.

**Outstanding information requests**

Pursuant to s. 15(2) of the *Board of Commissioners of Public Utilities Regulations, 1996* the Conseil des Innus de Ekuanitshit is hereby informing the Board that any responses if may provide to the information requests which the Board has addressed to the intervener are made under reserve of its inability to provide a full and adequate response.

Concerning PUB-CIE-1, Ekuanitshit objects to providing the information requested pursuant to s. 15(2)(a) of the *Board of Commissioners of Public Utilities Regulations, 1996*, on the grounds set out below and, further, submits pursuant to s.15(2)(b) that for the same reasons, the information necessary to provide a response is not available.

As a practical matter, it will be impossible for Ekuanitshit to “detail the nature and extent of the Aboriginal rights and title claimed by the Intervener in the territory affected by the Water Management Agreement [and] setting out the facts and evidence of these rights” adequately by February 10, 2010.

As a matter of law, the Board could not render a reasonable nor a correct decision on the basis of on an evidentiary record established in such a haphazard manner. With respect, the Board erred when it allowed Ekuanitshit less than a week from Order P.U. 2 (2010) to its January 28<sup>th</sup> deadline for providing this evidence. The error is not cured by the concession in your February 2<sup>nd</sup> letter adding seven and one-half working days to February 10<sup>th</sup>.

We submit that the Board’s legal duty is either to set a timetable which allows Ekuanitshit to prove its *prima facie* case for Aboriginal rights and title or else to declare itself unable to rule on the matter. By setting deadlines which are impossible to meet, except by filing inadequate evidence, the Board is effectively depriving Ekuanitshit of its right to be heard and any conclusions the Board might reach on the duty of consultation will have been arrived at without jurisdiction.

Any responses we provide to PUB-CIE-1 will be under reserve of our fundamental objection to the procedure. We submit that any inadequacies will be the direct result of the Board’s own decisions.

Concerning PUB-CIE-3, 4, 14 and 16, the information is unavailable within the meaning of s. 15(2)(b) of the *Board of Commissioners of Public Utilities Regulations, 1996*. The Board has already been informed that the Conseil des Innus de Ekuanishit has received no funding from any source for its intervention in this application and its budget has no surplus with which to do so. The answers to these information requests require technical and scientific expertise which Ekuanitshit cannot afford to retain.

Any responses we provide will be without the benefit of expert advice. We submit that any inadequacies that may result could have been cured if the Board had refrained from rendering Order P.U. 5 (2010) on 48 hours’ notice and without allowing Ekuanitshit time to adduce evidence.

### **Motion to suspend**

In addition to the submissions above, we reserve the right to invoke the prejudice to our ability to adduce evidence arising from the deadlines imposed by the Board as grounds for a motion to suspend, whether or not we provide answers to some or all of the information requests by February 10, 2010.

We also reserve the right to bring such a motion after February 10<sup>th</sup> and our compliance in whole or in part with the “Schedule of Dates” established by the Board should in no case be taken to represent agreement that those dates are either reasonable or correct in law.

Yours,

**DIONNE SCHULZE**



David Schulze

cc:

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