



*House of Assembly
Newfoundland & Labrador*

Public Accounts Committee

50th General Assembly – Report 4

*Review of the Auditor General's Report on
Physical Mitigation of Muskrat Falls Reservoir
Wetlands*

Report to the House of Assembly

May 16, 2024

This report is privileged until tabled in the House of Assembly.



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Committee Members

Current Members:

- Pleaman Forsey, Exploits, Chair (as of April 3, 2023)
- Joedy Wall, Cape St. Francis (as of October 31, 2023)
- Jordan Brown, Labrador West
- Perry Trimper, Lake Melville (as of October 25, 2023)
- Sherry Gambin-Walsh, Placentia - St. Mary's
- Scott Reid, St. George's - Humber

Previous Members during the 50th General Assembly:

- Brian Warr, former Member for Baie Verte - Green Bay (resigned March 1, 2024)
- Helen Conway Ottenheimer, Harbour Main (appointed on October 19, 2022; up to October 31, 2023)
- Lucy Stoyles, Mount Pearl North (up to June 29, 2023)
- Tony Wakeham, Stephenville - Port au Port (up to January 24, 2023)
- Lloyd Parrott, Terra Nova (up to October 18, 2022)

Unless otherwise noted, Members were appointed by motion on June 1, 2021.



Transmittal

Speaker,

I am pleased to present the fourth report of the Public Accounts Committee for the 50th General Assembly, outlining the Committee's work in reviewing the Auditor General's report: Physical Mitigation of Muskrat Falls Reservoir Wetlands. I thank members of the Committee for their diligence and work toward fulfillment of our mandate to ensure accountability on behalf of the Legislature and the people of Newfoundland and Labrador.

Respectfully submitted,

Pleaman Forsey, MHA
Exploits
Chair



Mandate & Order of Reference

The Standing Committee on Public Accounts is established pursuant to Standing Order 65. Standing Orders 65(5) and (6) outline the Committee's mandate and prescribe the Public Accounts Committee (PAC) as the Committee to which all reports of the Auditor General shall, upon tabling, stand referred. The Committee also reviews the audited accounts of the House of Assembly and the Clerk's role as accounting officer, pursuant to the *House of Assembly Accountability, Integrity and Administration Act*. It may also request the Auditor General to perform special assignment audits on issues the Committee deems to be of concern, pursuant to the *Auditor General Act, 2021*.

The Committee is dedicated to improving public administration, including how government delivers services to its citizens, by overseeing the implementation and effectiveness of government programs and operations in accordance with intentions of the Legislature. It uses powers vested in it by the Legislature to ensure that issues and deficiencies identified by the Auditor General are corrected moving forward.



Statement of Values

The Standing Committee on Public Accounts is dedicated to improving public administration in partnership with the Auditor General. The Committee examines the administration of government policy, not the merits of it. The Committee strives to achieve consensus in its decisions, whenever possible, and members take a non-partisan approach to their work on this Committee.



Background

The provincial government established the Independent Expert Advisory Committee (IEAC) in 2016, as a result of matters raised respecting potential human health concerns from higher levels of methylmercury in country food that may result from the flooding of the Muskrat Falls reservoir wetlands. The IEAC's purpose was to provide recommendations for addressing these concerns to the provincial government. Further details regarding the composition and work of the IEAC are highlighted in the Auditor General's report.

The IEAC issued two sets of recommendations, in September 2017 and April 2018. The April 2018 recommendations included a recommendation for targeted soil removal and wetland capping prior to impoundment of the reservoir. The provincial government's deliberations regarding implementation of this recommendation resulted in the timeline for pre-flooding mitigation efforts in the reservoir to elapse. Further details respecting the timeline of events on this matter are highlighted in the Auditor General's report.

In October 2019, the Public Accounts Committee issued a special assignment request to the Auditor General, as follows:

“That the Auditor General investigate and report on the breakdown of communication that resulted in the flooding of the Muskrat Falls reservoir in violation of an agreement between the Government of Newfoundland and Labrador and the Innu Nation, the Nunatsiavut Government, and the NunatuKavut Community Council to abide by the recommendations of the Independent Expert Advisory Committee, which directed that wetland capping must precede any such flooding.”

In December 2021, the Auditor General submitted the Physical Mitigation of Muskrat Falls Reservoir Wetlands audit report to the PAC. The complete report is available [here](#).



Summary of Work

Following the Auditor General's audit and subsequent report, the Public Accounts Committee's role was to conduct a thorough examination on behalf of the Legislature, ensuring accountability for the people of Newfoundland and Labrador. The Committee does not create policy, but rather assesses its effectiveness in achieving intended outcomes. **The Committee's work on this particular matter was specific in focus and was not intended to duplicate the work of the Muskrat Falls Inquiry.**

The Committee conducted public hearings regarding matters contained in this report on [November 23](#), [November 24](#) and [December 13](#), 2022, with current and former officials of the following entities:

- Department of Municipal and Provincial Affairs;
- Department of Environment and Climate Change;
- Office of Indigenous Affairs and Reconciliation;
- Independent Expert Advisory Committee; and
- Nalcor Energy.

A full list of witnesses appearing at the hearings is provided in [Appendix A](#) of this report.

Hansard transcripts and archived audio of the proceedings of the above-noted public hearings are available on the [Committee's webpage](#).

Following its public hearings with entities and witnesses noted above, the Committee also engaged in a process providing an opportunity for the Innu Nation, NunatuKavut Community Council and Nunatsiavut Government to share their perspectives on these matters with the Committee. Further to this consultation, the Committee received a written submission from the NunatuKavut Community Council. The Innu Nation and Nunatsiavut Government did not participate.



Findings

Further to the Committee's follow-up, several key themes emerged during testimony, which summarize its findings into the following categories:

1. Varying Perspectives on Effectiveness of and Window for Physical Mitigation

- Several witnesses, including the Senior Advisor on Methylmercury, Department of Environment and Climate Change; the Chair (former), Independent Expert Advisory Committee; the Executive Vice President, Power Development (former), Nalcor Energy; and the Regulatory Compliance Lead (former), Nalcor Energy testified that there was division, even on the IEAC, as to which form of physical mitigation (soil removal or wetland capping) would be most effective. In accordance with its mandate, however, the Public Accounts Committee does not comment on the merits of policy. Rather, it focuses on the implementation of policy.
- Testimony further revealed that it was understood by some that wetland capping could be done in some form following impoundment of the Muskrat Falls reservoir, while some indicated it was clear that capping must take place prior to impoundment.

2. Authority for Permitting Decision

- Witnesses for the Department of Municipal Affairs and Environment (MAE) testified that before Nalcor could proceed with carrying out wetland capping as recommended by the IEAC and agreed to by Cabinet, Nalcor required an amendment to the previously issued permit that allowed them to begin flooding the reservoir. This permit amendment request was made in July 2018 to MAE's Water Resources Management Division, with a deadline of December 2018.
- Testimony indicated that the Director of the Water Resources Management Division in MAE is the position that typically approves permits of this nature. However, in this case it was noted that approval of the related permit had broader policy implications respecting implementation of the IEAC recommendations, therefore it was elevated to the deputy minister, who agreed and placed the permit on hold in August 2018.



- MAE determined that a Cabinet decision was necessary before proceeding, and a Cabinet paper was prepared in November 2018.
- Testimony did not provide clear information or reason as to why the matter was not placed before Cabinet for direction in time to meeting the capping deadline.

3. Communication Breakdowns

- Multiple witnesses testified that they provided input and advice to MAE when requested regarding the permit amendment request, but proactive communication was rare.
- Testimony also revealed that there was not clear communication between all entities involved regarding the deadline for wetland capping and the urgency of meeting that deadline.

4. Indigenous Perspective

- In its submission to the Committee, the NunatuKavut Community Council (NCC) highlighted what they felt was a systematic lack of communication to them on behalf of government.
- The NCC noted that prior to the commencement of any large energy project situated in the Council's recognized territory, they hope to see free, prior and informed consent of its people.



Conclusions

While the Auditor General did not issue recommendations following its audit, the Public Accounts Committee concurs in the following conclusions of the Auditor General further to its own follow-up on these matters:

- The Department of Municipal Affairs and Environment did not communicate appropriately and in a timely manner regarding the IEAC's physical mitigation recommendation and the deadlines and timelines for physical mitigation of the Muskrat Falls reservoir wetlands.
- The Muskrat Falls reservoir physical mitigation deadline was also not appropriately monitored by the proponent or the regulator. There was no evidence that government intentionally missed the wetland capping deadline.
- There were numerous missed opportunities to understand and manage the urgency of the wetland capping timelines. These missed opportunities, within the Department of Municipal Affairs and Environment and between the Department and other stakeholders, appear to have resulted in the physical mitigation of the Muskrat Falls reservoir, the capping of wetlands, not occurring.

The Public Accounts Committee urges the Government of Newfoundland and Labrador to learn from its deficiencies moving forward, and to ensure implementation of more effective communication, monitoring and awareness protocols for projects of this nature.

The Public Accounts Committee also reiterates the perspectives of the NunatuKavut Community Council shared through its written submission, that prior to the commencement of any large energy project situated in the Council's recognized territory, that there be free, prior and informed consent of its people.



Acknowledgments

The Public Accounts Committee wishes to thank all witnesses and entities who shared perspectives on this matter at public hearings and through written submissions.

The PAC wishes to acknowledge Denise Hanrahan, Auditor General of Newfoundland and Labrador, and employees of that Office for the exceptional support and guidance they provide to the Committee. The PAC looks forward to continuing the positive and collaborative relationship it shares with the Office of the Auditor General in working together to ensure accountability on behalf of the people of Newfoundland and Labrador.

The Committee also commends the work and dedication of former Chairs during its work on this matter: Tony Wakeham, Member for Stephenville - Port au Port; and Helen Conway Ottenheimer, Member for Harbour Main.

Finally, the Committee acknowledges employees in the House of Assembly Service for their work in supporting the Committee.



Appendix A

The following witnesses appeared at public hearings on the dates noted:

November 23, 2022

Department of Municipal Affairs and Environment

Jamie Chippett, Deputy Minister (2015-2019)

Erin Shea, Director of Communications (2017-2019)

Department of Environment and Climate Change

Martin Goebel, Senior Advisor on Methylmercury

Office of Indigenous Affairs and Reconciliation

Aubrey Gover, Deputy Minister (2017-2022)

November 24, 2022

Independent Expert Advisory Committee

Dr. Ken Reimer, Chair (former)

December 13, 2022

Department of Environment and Climate Change

Haseen Khan, Director, Water Resources Management Division

Nalcor Energy

Gilbert Bennett, Executive Vice President, Power Development (former)

Peter Madden, Regulatory Compliance Lead (former)

Karen O'Neill, Director of Communications (former)

The following written submissions were received by the Committee on this matter:

Fall 2023

NunatuKavut Community Council