SITE C | CLEAN ENERGY PROJECT

RESPONSE TO WORKING GROUP AND PUBLIC COMMENTS ON THE SITE C CLEAN ENERGY PROJECT ENVIRONMENTAL IMPACT STATEMENT

Technical Memo

ABORIGINAL CONSULTATION

MAY 8, 2013

Subject: Aboriginal Consultation

Purpose

The purposes of this Technical Memo are to outline:

- the consultation undertaken by BC Hydro with respect to the Project
- BC Hydro's understanding of consultation undertaken by Crown agencies in the environmental assessment process for the Project

Review of Consultation Undertaken by BC Hydro with Aboriginal Groups

Information regarding BC Hydro's consultation with Aboriginal groups is provided in the EIS, as follows:

- Volume 1, Section 9.2 of the EIS describes the approach, methods and activities that BC Hydro used to inform and consult with Aboriginal groups, as required under Section 7.2 of the EIS Guidelines. Table 9.1 provides a list of the 29 Aboriginal groups that have the potential to be adversely affected by the Project, as identified in Section 20.1 of the EIS Guidelines.
- Volume 1, Appendix H, consists of an issues tracking table that presents the issues, concerns, and interests identified by Aboriginal groups listed in Table 9.1 of the EIS, as required under Section 7.2.1 of the EIS Guidelines
- Volume 3, Appendix B, describes BC Hydro's engagement with Aboriginal groups to gather social, economic, land use and human health baseline information specific to Aboriginal communities
- Volume 5, Section 34.4, describes mitigation measures, and other accommodation options, proposed by BC Hydro with respect potential impacts on the exercise of asserted of asserted or established Aboriginal and treaty rights, as well as mitigation measures suggested by Aboriginal groups, as required under Section 20.4 of the EIS Guidelines
- Volume 5, Section 34.7, describes BC Hydro's activities with respect to negotiating Impact Benefit Agreements, as required under Section 20.7 of the EIS Guidelines
- Volume 5 Appendices A1-A29, Part 2, provide a summary of consultation activities undertaken by BC Hydro with each of the 29 Aboriginal groups listed in Table 9.1 of the EIS, as required under Section 7.2.1 of the EIS Guidelines

BC Hydro began consultation with Aboriginal groups in late 2007, prior to any decision to advance the Project to an environmental assessment.[1] BC Hydro's approach to consultation has taken into account the potential impacts of the Project on a particular Aboriginal group and the degree of interest expressed by that group in participating in consultation. As stated in the EIS:

> "The extent (or level) of consultation has been guided by the potential for impacts on the exercise of asserted treaty and Aboriginal rights, as well as the level of interest expressed. In keeping with this adaptive and flexible approach, BC Hydro has engaged in consultation that has ranged from notification of key Project milestones for those Aboriginal groups where BC Hydro anticipated little to no potential adverse change in the environment from the Project, to structured consultations aimed at identifying and assessing potential effects of the Project on those groups located in

[1] EIS, Volume 1, Section 9.2, page 9-20, lines 17-18.

> and around the Project activity zone that may experience those effects, and seeking to address them.
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> [...] BC Hydro has consulted in greater depth with Treaty 8 First Nations that are in close proximity to the Project and whose members may experience direct effects that may result from the Project. For the purposes of this EIS, Blueberry River First Nations, McLeod Lake Indian Band, Saulteau First Nations, and the Treaty 8 Tribal Association (representing Doig River, Halfway River, Prophet River, and West Moberly First Nations), are considered by BC Hydro to be "Project Area Aboriginal Groups". With these groups, BC Hydro has engaged in extensive consultations regarding project components and activities, and the potential effects of the Project. […]
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> BC Hydro has also consulted with other Treaty 8 First Nations who are located in B.C. or downstream of the Project. This includes those Aboriginal groups located in Alberta and the Northwest Territories, in proximity to the Peace River watershed, and along the Slave River. Consultations with Aboriginal groups located away from the immediate Project activity zone have focused on the potential downstream changes resulting from the Project.
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> BC Hydro has also consulted with the Tsay Keh Dene Band and Kwadacha First Nation to fulfill commitments in formal agreements with these First Nations to identify and attempt to address any potential effects and to identify project opportunities associated with any new BC Hydro projects within the area of the mainstem of the Peace River between Peace Canyon Dam and the Alberta border.
>
> Métis groups have been engaged to varying degrees, dependent upon jurisdiction, level of interest expressed, and proximity to the Project or the Peace River watershed, consistent with the approach described above. The CEA Agency has also directed BC Hydro to consult with select Métis organizations in B.C., as outlined in Table 9.1." [2]

Key consultation activities undertaken by BC Hydro, as described in the EIS, include the following:

- BC Hydro pursued consultation agreements with Aboriginal groups, which were "designed to provide a framework for dialogue and a structured process for distributing and exchanging information about the Project."[3] In general, consultation agreements call for joint community meetings, joint technical briefings and, in some cases, consultation regarding permit applications as well as input from Aboriginal groups on key regulatory submissions. All consultation agreements provide funding to facilitate Aboriginal participation in the consultation process. Later agreements included capacity funding to support consultations with Aboriginal groups throughout the environmental assessment process, including the review of both the EIS Guidelines and the EIS.[4] Lists of concluded consultation agreements are provided in Sections 9.2.3.3.1 and 9.2.3.3.2 of the EIS.

[2] EIS, Volume 1, Section 9.2, page 9-21, lines 1-38.

[3] EIS, Volume 1, Section 9.2, page 9-26, lines 14-21.

[4] EIS, Volume 1, Section 9.2, page 9-39, lines 30-32.

- As of the end of March 2013, and dating back to 2008, BC Hydro had provided approximately $9.2 million in capacity funding to Aboriginal groups, including $1.5 million to support traditional land use studies.[5]
- BC Hydro also negotiated Traditional Land Use Study agreements with Aboriginal groups located immediately downstream of the Project or who may exercise rights within the area that is now defined as the Project activity zone. Completed TLUS reports (listed in Section 9.2.3.3.2 of the EIS) were provided to technical staff responsible for conducting the Wildlife Resources, Vegetation and Ecological Communities, Fish and Fish Habitat and Heritage Resources effects assessments. BC Hydro also reached agreements with several other Aboriginal groups, including one B.C. Treaty 8 First Nation, two Métis groups and three downstream Treaty 8 First Nations, to provide funding to allow for existing traditional land use information that is applicable to the Project to be assembled and shared with BC Hydro.[6]
- Beginning in 2008, BC Hydro consulted with Project Area Aboriginal Groups on the permits required from the Province for BC Hydro to complete geotechnical investigations for the Project. Such consultations were generally led by relevant provincial agencies, with support from BC Hydro technical staff and consultants.[7]
- BC Hydro provided Project Area Aboriginal Groups with regular information on the Project's environmental program. Information provided included proposed study outlines for planned work, status updates for ongoing work, and study summaries for completed work. In each case, Project Area Aboriginal groups were invited to review the information and provide input.[8]
- Beginning in 2008, BC Hydro consulted with interested Aboriginal groups (primarily those located downstream of the Project) regarding potential changes to downstream conditions, including the surface water regime, thermal and ice regime, fluvial geomorphology, and sediment transport. In 2011 and 2012, consultations focused on reports prepared by BC Hydro which summarized results of studies on expected changes in flows and water levels, ice regime, and sediment movement in the Peace River.[9]
- In 2011 and 2012, BC Hydro consulted with Project Area Aboriginal Groups and other interested Aboriginal groups with respect to the specific components of the Project. BC Hydro facilitated meetings regarding project components and prepared the relevant technical experts responsible for each component to present the materials directly to the various Aboriginal groups. This approach ensured that issues and concerns brought forward by Aboriginal groups would be heard first-hand by the subject matter experts within the project team responsible for considering the issue.[10]
- Beginning in 2011, BC Hydro worked with Aboriginal groups that have reserves located in proximity to the Project activity zone, and/or were understood to be exercising treaty rights within the Project activity zone, to gather social, economic, land use and human health baseline information specific to their communities. BC Hydro provided capacity funding and training to support the preparation of community baseline reports to support the assessment of potential social and economic effects of the Project.[11] The completed reports, as well as review tables prepared by BC Hydro, were

[5] EIS, Volume 1, Section 9.2, page 9-31, lines 11-13.
[6] EIS, Volume 1, Section 9.2, pages 9-32 and 9-33.
[7] EIS, Volume 1, Section 9.2, page 9-33.
[8] EIS, Volume 1, Section 9.2, page 9-33.
[9] EIS, Volume 1, Section 9.2, pages 9-38 and 9-39.
[10] EIS, Volume 1, Section 9.2, pages 9-34 and 9-35.
[11] EIS, Volume 3, Appendix B, page B-1.

provided to the Fish and Fish Habitat, Wildlife Resources, Vegetation, Land and Resource Use, Social, Economic and Human Health Technical Leads for review and integration into baseline information and their assessments as appropriate.[12]

- As directed by the BCEAO and CEA Agency and in accordance with the BC/Canada Agreement, BC Hydro prepared the first draft of the EIS Guidelines. This first draft was based in part on a consideration of issues, concerns, and interests raised by Aboriginal groups. BC Hydro participated in agency-led consultation as part of the environmental assessment process, including six open houses during the comment period on the draft EIS Guidelines in May 2012. BC Hydro responded to over 800 comments, suggestions, and requests submitted by Aboriginal groups with respect to the draft EIS Guidelines.
- In 2012, BC Hydro initiated consultation regarding potential effects of the Project on the following topics: fish and fish habitat; vegetation and ecological communities; wildlife resources; and, heritage resources. Consultations with Aboriginal groups on potential effects of the Project focused on the following: reviewing the results of baseline studies; seeking to integrate traditional knowledge as made available to BC Hydro, including through the traditional land use studies; reviewing and seeking input from Aboriginal groups into BC Hydro's preliminary effects assessment; requesting input from Aboriginal groups regarding potential impacts to the exercise of Aboriginal and treaty rights; and, requesting input from Aboriginal groups on potential mitigation strategies.[13]
- In the Spring of 2012, BC Hydro secured a mandate to enter into impact benefit agreement (IBA) negotiations with First Nations that, in BC Hydro's view, are likely to be adversely affected or impacted by the Project and where BC Hydro considers that accommodation beyond the mitigations listed in the EIS is necessary. BC Hydro advised seven First Nations that it had secured a mandate to negotiate an IBA, and that it was prepared to engage in initial discussions with those First Nations that were interested. Three First Nations (Blueberry River First Nations, Saulteau First Nations, and McLeod Lake Indian Band) accepted BC Hydro's offer to enter into initial discussions toward an IBA. As of the filing of the EIS, impact benefit agreement offers have been made to the three First Nations. BC Hydro remains prepared to enter into discussions with the four remaining First Nations.[14]
- BC Hydro has tracked the issues, concerns, and interests identified by Aboriginal group through the consultations described above. A summary of these issues, concerns, and interests, and BC Hydro's corresponding consideration and response are provided in in Volume 1 Appendix H of the EIS. BC Hydro's approach to resolving outstanding issues raised by Aboriginal groups is described in Volume 1, Section 9.2.4 of the EIS.

BC Hydro's Understanding of Consultation Undertaken by Crown Agencies in the Environmental Assessment Process

BC Hydro's understanding of consultation undertaken directly by the BCEAO and CEA Agency is based on copies of correspondence the BCEAO and CEA Agency sent to Aboriginal groups that the agencies provided to BC Hydro. BC Hydro's knowledge of the full extent of consultation between Aboriginal groups and the BCEAO and CEA Agency may not be complete.

[12] EIS, Volume 3, Appendix B, page B-5.
[13] EIS, Volume 1, Section 9.2, pages 9-37 and 9-38.
[14] EIS, Volume 5, Section 34.7, pages 34-27 and 34-28.

In March and April 2012, the BCEAO and the CEA Agency wrote to Aboriginal groups to explain their respective roles and engage in a dialogue with respect to the consultation process for the environmental process. The letters included an outline of a proposed approach to Aboriginal consultation, focusing on opportunities where consultation could be integrated into the environmental assessment.

The BCEAO letters included a list of consultation opportunities being offered to Aboriginal groups during the three stages (Pre-Panel, Panel Review, Post-Panel) of the environmental assessment process. Opportunities included participation in the Working Group, review the procedures and methods for conducting the environmental assessment, the BC/Canada Agreement, the EIS Guidelines and the EIS.

Related Comments / Information Requests:

This technical memo provides information related to the following Information Requests:

gov_0010-620	pub_0246-002	pub_0535-005	pub_0599-001	pub_0600-002
pub_0626-001	pub_0641-001	pub_0850-001	pub_0861-001	pub_0862-001
pub_0894-001	ab_0003-322	ab_0004-005	ab_0006-039	ab_0006-041
ab_0006-042	ab_0010-002	ab_0012-005		