

**PEACE RIVER SITE C HYDRO PROJECT**

**BC HYDRO RESPONSE TO TREATY 8 TRIBAL  
ASSOCIATION'S SUBMISSION ON STAGE 2  
CONSULTATION**

**December 2009**

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**Background**

BC Hydro is in Stage 2, of a 5-stage planning and development process for the Peace River Site C Project. The mandate to proceed to Stage 2 was provided in the Province's 2007 *BC Energy Plan* which directed BC Hydro and the Province to:

*"...enter into initial discussions with First Nations, the Province of Alberta, and communities to discuss Site C to ensure that communications regarding the potential project and the processes being followed are well known."*

As a result, Stage 2 work has focused on initiating consultations with First Nations, communities, stakeholders and Alberta and Northwest Territories, as well as initiating a technical review of the potential Site C Project which has included engineering and environmental studies. Baseline environmental and socio-economic studies provided BC Hydro with an understanding of the current physical, biological and socio-economic environment. During Stage 2, BC Hydro also undertook additional work on outstanding engineering issues related to the design, construction and operation of the potential project.

As part of BC Hydro's Stage 2 review of Site C, BC Hydro has been consulting with Doig River First Nation, Fort Nelson First Nation, Halfway River First Nation, Prophet River First Nation, Sauteau First Nation and the West Moberly First Nations, collectively known as Treaty 8. BC Hydro and Treaty 8 entered into a Consultation Agreement (December 2008) designed to help guide the consultation process between the Parties. By Treaty 8 (T8) requesting that their submission be included as an appendix to the Stage 2 Report, BC Hydro understands that T8 consents, in accordance with the confidentiality provisions (Section 34(d)) of the Consultation Agreement, to the public disclosure of the information in both its submission and BC Hydro's response.

**Context**

On May 20, 2009, at a consultation meeting Treaty 8 raised the question of how the First Nations chapter of the Stage 2 Report would be drafted and whether Treaty 8 would have an opportunity to co-author the document. BC Hydro responded that given its engagement with 41 Aboriginal groups in Stage 2, the process of completing the chapter would become an untenable process if all groups were invited to participate in the drafting process.

Having heard Treaty 8's interest, however, BC Hydro returned to the next consultation meeting on June 24, 2009 with an offer for Treaty 8 to submit an interest paper that would be appended directly to the Stage 2 Report. In late October, the document entitled "*Appendix-Treaty 8 First Nations' Report on Stage*

*2 Consultation*" ("Treaty 8's submission") was delivered to BC Hydro outlining Treaty 8's issues. Treaty 8's submission contained a number of areas where BC Hydro has a different view and accordingly BC Hydro believes it is important to provide a response. This response and T8's document will form an appendix to the Stage 2 report for Site C.

## **BC Hydro's Response**

BC Hydro believes that its consultations with Treaty 8 have been honourable. To date, consultation with Treaty 8 was undertaken as broadly and as reasonably possible, and was started early in the potential Site C Project development phase and well before any decision to build the potential Site C Project is made.

The resources and efforts extended by BC Hydro have been significant in actively engaging with Treaty 8. To date BC Hydro has provided Treaty 8 with significant capacity funding to participate fully in the consultation process.

The Parties have met 31 times and have exchanged over 100 letters and 800 emails regarding the potential Site C Project. BC Hydro has shared extensive information with Treaty 8 during Stage 2 to facilitate work and dialogue contemplated under the Consultation Agreement.

Treaty 8 has identified and provided to BC Hydro questions and concerns related to the potential Site C Project direct effects on land and water where treaty rights to hunt, fish and trap may be exercised, as well as the possible impacts to their cultural and heritage resources.

The consultation process with Treaty 8 continues and is funded until March 2010 when the Consultation Agreement expires. BC Hydro has offered to commence negotiations on a stage 3 Consultation Agreement in the event the potential Site C Project proceeds to Stage 3.

It is important to note that as of the writing of this document, no decision has been made to proceed to Stage 3 of project planning and development. Should a decision be made by the Province to proceed to Stage 3, that stage would involve independent regulatory reviews and further consultation with First Nations. Consultation would continue with a focus on impact assessment, mitigation and accommodation. BC Hydro concludes that, if the project proceeds to Stage 3, it would be honourable to do so provided that consultation with Aboriginal groups continues and formal filing of an application for regulatory approval only occurs if it remains honourable to do so after further consultations with Aboriginal groups are considered.

In this paper, BC Hydro will respond to Treaty 8's key issues and concerns raised in Treaty 8's Submission to the Stage 2 Report. We have not attempted to provide detailed responses to each of the points in Treaty 8's submission, rather we have responded to the following key areas.

## **1. *Timing of Stage 2 Engagement***

Treaty 8 is concerned that BC Hydro is preparing a recommendation to the Province in the Fall of 2009, while the Consultation Agreement with Treaty 8 concludes in March 2010.

BC Hydro formally commenced Stage 2 on December 4, 2007 with the release of the Stage 1 report and the start of Pre-Consultation with the public, stakeholders and local governments. Prior to this announcement, a telephone call from Jack Weisgerber, Senior Project Advisor, () was made and a formal letter from Bob Elton, President and CEO, was sent to Treaty 8 in November of 2007 advising of BC Hydro's desire to begin consultations with Treaty 8 on the potential Site C Project. On December 14, 2007, Treaty 8 responded in writing with concerns about the appropriateness of BC Hydro, rather than the Crown, undertaking consultations with First Nations. BC Hydro reviewed this concern with both the Province and Treaty 8. Once this issue was resolved, a meeting was held with Treaty 8 on March 6, 2008.

Both BC Hydro and Treaty 8 are aware that the scope and nature of First Nation consultation is very different from public consultation. When looking at the development timeline overall, BC Hydro initiated consultation with First Nations, including Treaty 8, at a very early stage of the potential Site C Project. BC Hydro began First Nation consultation while the potential Site C Project was and is still being defined. This would be deemed best practices and, in part, ensures the Crown's consultation obligations are met or exceeded.

Since the initial meeting in March 2008, the parties formally met 8 times prior to a Consultation Agreement being reached. Since the signing of the Consultation Agreement, the parties have held 7 main table consultation meetings, 6 technical meetings and 10 other meetings in smaller groups. As well, BC Hydro has met individually with each of the 6 First Nation communities represented by Treaty 8.

BC Hydro has advised Treaty 8 on a number of occasions that consultation will continue after the Stage 2 report is provided to the Province and there has been a clear understanding that the Stage 2 report would be provided to the Province in the fall of 2009. BC Hydro has also stated publicly and to Treaty 8 that consultation with First Nations, and in particular Treaty 8, will continue throughout the life of the potential Site C Project, regardless of the stage.

## **2. *Delays in Sharing Information***

Beginning in April of 2009, after Treaty 8 appointed its Chief Negotiator and staffed its team pursuant to the Consultation Agreement, BC Hydro provided Treaty 8 with access to over 400 historical reports related to Site C. In addition, as studies from Stage 1 and Stage 2 were finalized, BC Hydro forwarded them to Treaty 8 without delay in May and September of 2009 respectively. It is important to note that these baseline studies focused on characterizing the current conditions in the

project area; fish and aquatic habitat, vegetation and wildlife, water quality, local climate and greenhouse gas, heritage, community services and infrastructure, economic, and land use and resources.

Throughout 2009, Site C technical advisors also shared a significant amount of information in the form of presentations, outlines of proposed studies, proposed archaeological modeling, GIS data, etc., and sought input from their Treaty 8 counterparts.

BC Hydro endeavored to provide a full and accurate response to Treaty 8's concerns reflected in "97 questions" that were submitted to BC Hydro in late June. As the questions covered a wide range of topics related to the potential Site C Project, BC Hydro business operations (e.g., energy trading) and provincial energy policy (e.g., exploration of alternative energy sources), considerable time and effort were required to understand fully the questions being posed before embarking on the task of coordinating with Site C team members and numerous business groups within the company to prepare appropriate responses.

In each instance of information sharing of baseline studies and data, BC Hydro balanced the need to release information expeditiously with the need to ensure the accuracy, completeness and integrity of the data or information shared through a rigorous system of internal and/or peer review.

Should the project proceed to an environmental and regulatory review, technical studies would advance from baseline work to effects assessment, which would determine the potential effects of the project, and identify ways to avoid or minimize undesirable effects and enhance desirable effects.

### ***3. Treaty 8 Participation in the Technical Advisory Committees (TAC)***

Treaty 8 submits that it declined to participate in the Technical Advisory Committee ("TAC") for a variety of reasons.

BC Hydro acknowledges that it established the TAC process prior to the completion of a Consultation Agreement with Treaty 8. The purpose of the TAC process was to bring parties together from various government agencies – federal, provincial, local and First Nations – to discuss baseline studies already underway and, importantly, to identify potential issues in advance of effects studies, or information needs and preliminary mitigation measures in advance of the formal regulatory process. Copies of the baseline studies (studies to characterize current conditions) were not provided to TAC members because the studies were not complete and work was still underway with data being collected through field work. Also, effects assessment studies were not undertaken in Stage 2 as their scope and nature are defined by regulators. Again, this illustrates BC Hydro's effort to consult early - before plans and studies are completed.

BC Hydro offered Treaty 8 the opportunity to participate in the TAC early in the consultation process. Any questions to Treaty 8 regarding its refusal to participate

in the TAC process were aimed at identifying Treaty 8's underlying concerns. As an example, Treaty 8 raised concerns regarding the potential participation of community stakeholders on the TACs. To accommodate this concern, BC Hydro amended the TAC Terms of Reference to only include representatives from government agencies, BC Hydro and other BC Treaty 8 First Nations. Although the Blueberry First Nation participated in the TAC consultation process, a separate process was established for Treaty 8.

#### **4. BC Hydro – Treaty 8 Consultation Agreement (Consultation Agreement)**

It is BC Hydro's belief that Treaty 8's concerns may stem from its view that the work contemplated in the Consultation Agreement:

- must occur in a rigid, linear and step-wise fashion;
- requires BC Hydro to provide all information on potential impacts before Treaty 8 can respond;
- requires the completion of a Traditional Land Use Study (TLUS); and,
- must be completed before Stage 3 can begin, otherwise Treaty 8's views will not be considered;

BC Hydro considers Treaty 8's interpretation as unnecessarily inflexible and not reflected in the terms of the Consultation Agreement or in the spirit with which the Consultation Agreement was negotiated. Again, BC Hydro believes that it has provided Treaty 8 with detailed information (see attached appendix) affording Treaty 8 ample opportunity to provide comment and feedback.

The Consultation Agreement contemplated "overlap" between the various phases and the "continued exchange of information between the Parties" throughout the term of the Consultation Agreement. Section 13(d) is set out below in full:

*Notwithstanding the three phase approach set out above, the Parties expect that there will be continued communication and exchange of information between the Parties on an ongoing basis throughout the term of the Agreement. The Parties acknowledge that the three phases set out above are not necessarily exclusive and may overlap. The Parties will make best efforts to complete the three phases before the end of the term of this Agreement, but also acknowledge that the three phases may not be completed by the end of the term of this Agreement.*

Treaty 8 has also expressed its concern that there should be further information related to the assessment of impacts and the development of mitigation measures during Stage 2 consultations. BC Hydro and Treaty 8 did agree to "identify potential effects and impacts of the proposed potential Site C Project and potential mitigation and accommodation measures." Further work including the "attempt to identify" mitigation measures can and should be continued under the Consultation Agreement. This is consistent with the terms of the Consultation Agreement and the expectation of the parties. It was not expected that this work would conclude during a Stage 2 review of Site C.

With respect to traditional knowledge, in negotiating the Consultation Agreement, BC Hydro believed in good faith that Treaty 8 would take historical and current potential Site C Project information provided by BC Hydro and augment it with existing traditional ecological knowledge already possessed by Treaty 8 and then participate in an ongoing dialogue respecting potential impacts and mitigation measures with BC Hydro throughout Stage 2.

Indeed, the need to complete a formal traditional land use study ("TLUS") was not contemplated during the lengthy negotiations leading to the completion of the Consultation Agreement. Instead, the Consultation Agreement specifically provides for Treaty 8 to assess BC Hydro's information "against the Treaty 8FN's own land use information and traditional ecological knowledge". In fact, the proposal to undertake a formal TLUS was first raised by BC Hydro in June of 2009 when it became evident that a more systematic approach may be required to solicit traditional land use information from Treaty 8.

BC Hydro is receptive to funding a TLUS with Treaty 8 and is working with Treaty 8 to arrive at an agreement to undertake this work.

In response to Treaty 8's letter of June 30, 2009 to Hon. Blair Lekstrom, Minister of Energy, Mines and Petroleum Resources, on its concern that a recommendation to proceed to Stage 3 would preclude consideration of concerns Treaty 8 may identify in the coming months, Minister Lekstrom responded by reassuring Treaty 8 that BC Hydro would bring any significant issues raised by Treaty 8 to his attention, even after the stage 2 report is submitted. In his letter, the Minister also assured Treaty 8 that BC Hydro will continue to consult in good faith and that the opportunities for Treaty 8 to review relevant environmental studies, discuss possible impacts and options for mitigation and other accommodation will continue into stage 3, should a decision to advance the potential Site C Project be made. The Minister confirmed further that Treaty 8's concerns and interests will be given full and serious consideration at all decision points leading up to any final decisions to build the potential Site C Project.

## **5. PREJUDICE TO TREATY 8**

Treaty 8 submits it will be significantly prejudiced if the decision to advance the potential Site C Project to Stage 3 before the consultation processes initiated under the Consultation Agreement are completed.

BC Hydro believes that no prejudice will result to Treaty 8 from the submission of the Stage 2 Report. Consultation will continue, and a TLUS will be conducted when the parties agree on the appropriate terms.

## **Conclusion**

BC Hydro believes that its consultation with Treaty 8 during Stage 2 has been honourable and conducted in good faith. Specifically:

- Consultations with Treaty 8 commenced early in Stage 2, during the potential Site C Project definition phase and well before any decision to build the potential Site C Project is made;
- To date, BC Hydro has provided Treaty 8 with significant capacity funding to participate fully in the consultation process;
- The Parties have met 31 times regarding the potential Site C Project; and
- BC Hydro has shared extensive information with Treaty 8 during Stage 2 to facilitate work and dialogue contemplated under the Consultation Agreement.

If the project proceeds to Stage 3, this stage could, subject to definition by provincial and federal governments, involve the following components:

- a Pre-Application phase where First Nations would participate in the working group to provide input into the scope and nature of the effects assessment studies and,
- an Application phase which would involve the review of the completed studies.

Treaty 8 has identified a wide range of questions, interests and concerns regarding the potential Site C Project during Stage 2. Consultation will continue in accordance with the terms of the Consultation Agreement and beyond and BC Hydro is committed to a process of reconciling the treaty interests of Treaty 8 and will fully consult on these interests should the Project proceed to Stage 3.