



## *Treaty 8 Tribal Association*

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June 13, 2014

c/o Heather Johnstone, M.A.Sc., P.Eng.  
Policy Advisor, Generation and Regulatory Branch  
Electricity and Alternative Energy Division  
Ministry of Energy and Mines  
[bcucreview@gov.bc.ca](mailto:bcucreview@gov.bc.ca)

### **Re: BCUC Independent Review – Treaty 8 Tribal Association Submission Outline**

Dear Messrs. Costello, Ostergaard and Wallace,

Thank you for the opportunity to participate in and contribute to this important Independent Review of the British Columbia Utilities Commission (BCUC), including its processes, structure, resource needs and performance.

The First Nations composing the Treaty 8 Tribal Association (T8TA) have been active participants in several proceedings before the BCUC over the years and likely will participate again in the future. We therefore have an interest in the outcomes of this Independent Review and are submitting this outline of our future written submission to be provided in July. We are requesting any direction that you or other participants in this process may wish to provide concerning the scope of this submission outline so that we can best meet the needs of the Independent Review Task Force in carrying out your work.

The T8TA is a unified political body representing the Doig River, Halfway River, Prophet River, Saulteau, and West Moberly First Nations. The purpose of this alliance is to protect and preserve the member Nations' Treaty and Aboriginal rights. The Chiefs are dedicated to the environmental, social, cultural, educational, and economic development of the Treaty 8 First Nations people.

More information on our organization is available at [www.treaty8.bc.ca](http://www.treaty8.bc.ca), and our current activities at [www.agoodplace.ca](http://www.agoodplace.ca).

## **INDEPENDENT REVIEW OBJECTIVE**

The T8TA understands that the primary objective of the review is to provide recommendations to the Minister for increasing the Commission’s “efficiency and effectiveness”, including so that BC Hydro rates can be set by the Commission in the third year of the Ministry’s planning period.

Our member First Nations generally support the need for both efficiency and effectiveness in Commission activities, recognizing that these objectives can at times be at odds with one another. There is considerable energy and industrial development in Treaty 8 territory, including electricity transmission and generation infrastructure as well as natural gas pipelines, and so the need to develop regulatory processes that effectively consider our rights and interests is essential, and is in the interests of proponents, the Crown and our First Nations.

However, the high levels of development also require that proposals are appropriately considered in preparation for review before coming to the Commission, efficiently reviewed at the Commission, and approved, amended or rejected by the Commission in a timely manner. The considerable levels of development test the capacity of our First Nations to participate in the work of the Commission and other regulatory fora. We therefore desire to avoid regulatory reviews that are unnecessary or that are unnecessarily long, and to participate in processes that provide for meaningful, properly resourced and timely consultation with our First Nations.

## **INDEPENDENT REVIEW TERMS OF REFERENCE**

In reviewing the Terms of Reference, we have identified a number of areas where we believe that we can contribute to the work of the Task Force, including in relation to the following:

1. A review of comparable utility regulators and models in other jurisdictions, along with key benchmarks.
2. BCUC processes:
  - b. Timeliness, effectiveness, efficiency and cost of reviews;
  - c. Standing/funding for interveners;
  - d. Review processes:
    - d.i. Conventional oral and written public hearings;
    - d.iii. Involvement of the BCUC in alternative regulatory processes;
    - d.v. Opportunities to make hearing processes more efficient and more focused;
    - d.vi. The role, effectiveness and use of guidelines and policies;
    - d.vii. Application cycle (turnaround) times and establishing timelines for reviews and decisions
3. Structure, resource needs and performance of the BCUC (including but not limited to):
  - a. Review the use of stakeholder representation models in other jurisdictions and implications on the role of staff;
  - c. Organizational structure and BCUC composition, including:
    - c.i. Potential Vice-Chair and Executive Director positions;
    - c.ii. Full-time versus part-time Commissioners;
    - c.iii. Experience and knowledge;
    - c.iv. The need for regulatory process and utility expertise;

## **INTERVENTIONS**

The T8TA is proposing three forms of intervention in this proceeding in the context of the focus areas identified above in the terms of reference:

- A case study of the recent experience of the West Moberly First Nations in the BCUC review and decision in relation to the Dawson Creek/Chetwynd Area Transmission Project (DCAT);
- A summary review of the Manitoba Public Utilities Board, a comparable utility board to the BCUC, specifically in relation to alternative regulatory processes for hydroelectric generation projects; and
- Review and commentary on submissions by other participants.

In order to assist the Task Force in evaluating this outline, the first two interventions are described in greater detail below.

### **DCAT Case Study**

The T8TA proposes to present a summary case study of the recent experience of one of our member First Nations, West Moberly First Nations, with the application and review process for a Certificate of Public Convenience and Necessity (CPCN) in relation to BC Hydro's DCAT.

Proposed aspects of the case study include the following:

- to evaluate the direction and guidance given to applicants respecting Aboriginal consultation in advance of and in preparation for application to the Commission;
- to evaluate Commission procedures for determining and accepting an Application as complete and suitable for review by the Commission in relation to Aboriginal consultation and related matters;
- to assess, the timeliness, effectiveness, and efficiency of the review process from the perspective of an affected First Nation;
- to assess the adequacy of intervener participant funding and procedures for obtaining and augmenting funding;
- to assess the appropriateness of the information request, hearing, motion, dispute resolution and other procedural processes from a First Nation perspective; and
- to evaluate the overall effectiveness of the review process at facilitating, evaluating and considering First Nation and intervener perspectives on matters before the Commission.

### **MANITOBA PUBLIC UTILITIES BOARD**

The Manitoba PUB is responsible for regulating a number of utilities in the Province of Manitoba. Similarly to the BCUC, the MPUB regulates the rates charged by the Crown electricity utility Manitoba Hydro, as well as some gas and propane utilities, and supervises the construction and operation of natural gas and propane pipelines. More information on the MPUB is available on their website at [www.pub.gov.mb.ca](http://www.pub.gov.mb.ca).

Recently, Manitoba Hydro proposed the development of two large-scale hydroelectric facilities, Keeyask and Conawapa, on the Nelson River in British Columbia, known as its Preferred Development Plan. Similar in scale to BC Hydro's Site C Project, the proposed new facilities were the subject of a recent review by the MPUB that could be characterized as an "alternative regulatory process" to that of the conventional Certificate of Public Convenience and Necessity in several important respects. For example, as indicated in the Terms of Reference for the review, the process was recommendatory as opposed to regulatory.

The report [of the MPUB] will include recommendations to the Government of Manitoba on the needs for Hydro's preferred development Plan and an overall assessment as to whether or not the Plan is in the best long-term interest of the province of Manitoba when compared to other options and alternatives.

Known as a Needs For and Alternatives To Review of Manitoba Hydro's Preferred Development Plan, the review was conducted under Section 107 of the Manitoba *Public Utilities Board Act*, and included the following aspects:

- Ministry issued terms of reference for the conduct of the review;
- Retention of independent expert consultants by the Board;
- Participation by funded interveners, including representatives of large consumers, ratepayers and Aboriginal groups;
- Participation by members of the public;
- Technical conferences concerning the Preferred Development Plan;
- Information requests concerning the Plan;
- Opportunity for submissions by independent experts and interveners;
- Information requests concerning the submissions of independent experts and interveners; and
- Oral hearings.

More information on the NFAT is available at [www.pub.gov.mb.ca/nfat/index.html](http://www.pub.gov.mb.ca/nfat/index.html).

The T8TA proposes to undertake a high-level comparison of the NFAT review process and a typical CPCN process for a large-scale hydroelectric facility reviewed as by the BCUC, while also identifying opportunities to improve upon the NFAT process for the British Columbia context. While the *Clean Energy Act* currently exempts the proposed Site C Project from the requirement to obtain a CPCN, the recent Joint Review Panel Report for the environmental assessment of Site C made several recommendations for referral of matters to the BCUC, including the following:

- RECOMMENDATION 46 – If it is decided that the Project should proceed, a first step should be the referral of Project costs and hence unit energy costs and revenue requirements to the BC Utilities Commission for detailed examination.
- RECOMMENDATION 47: The Panel recommends that BC Hydro construct a reasonable long-term pricing scenario for electricity and its substitutes and update the associated load forecast, including Liquefied Natural Gas demand, and that this be exposed for

public and Commission comment in a BC Utilities Commission hearing, before construction begins.

- RECOMMENDATION 48: The Panel recommends, regardless of the decision taken on Site C, that BC Hydro establish a research and development budget for the resource and engineering characterization of geographically diverse renewable resources, conservation techniques, the optimal integration of intermittent and firm sources, and climate-induced changes to hydrology, and that an appropriate allowance in its revenue requirements be approved by the BC Utilities Commission.
- RECOMMENDATION 49: The Panel recommends that, if Ministers are inclined to proceed, they may wish to consider referring the load forecast and demand side management plan details to the BC Utilities Commission.

In light of these recommendations, we believe that it is appropriate for the Independent Review to consider the potential for large-scale hydroelectric projects to be reviewed by the Commission in a manner that does not necessarily involve the issuance of a CPCN.

## **REPORTING**

Considering the limited time available for preparation of the above submissions, the T8TA report will be focus on key matters of potential relevance to the Commission. A draft of the report will be circulated internally for review by the Treaty 8 First Nations as well as by the BC First Nations Energy and Mining Council, who are unable to participate in this Independent Review but have agreed to review our submission.

## **PERSONNEL**

Participation of the T8TA in the Independent Review, including coordination with the Task Force and preparation of correspondence and submissions, will be lead by our consultant, Rick Hendriks of Camerado Energy Consulting. Mr. Hendriks' CV is attached to this letter. However, other representatives of Treaty 8 Tribal Association or our member First Nations can be made available and will participate as appropriate.

## **CLOSING**

In closing, we request that the Task Force and participants to this Independent Review provide any further direction on preparation of our written submission by no later than **Friday, June 20** so that we can address these matters in our submission due on July 7.

Finally, should the Task Force see fit to provide additional time beyond this scheduled deadline, we believe that this would benefit participants in this process and ultimately the work of the Task Force.

Sincerely,

A handwritten signature in cursive script that reads "Anna Barley". The signature is enclosed within a faint, circular dotted line.

Anna Barley,  
Acting Director Administration and Economic Development

Attachment – Hendriks CV

cc: Treaty 8 Chiefs  
Tribal Chief Logan

## SUMMARY

Richard M. (Rick) Hendriks has over fifteen years of technical, environmental, regulatory and policy knowledge and experience of the electricity sector in Canada. He provides management consulting, strategic planning, research, negotiation, training, and consultation services to Aboriginal communities and community-based organizations attempting to manage the environmental, social and economic challenges and opportunities that often accompany electricity generation, transmission, and related mining and transportation developments.

Mr. Hendriks works with community and organizational leadership to envision, implement and achieve strategic objectives. Trained in engineering, science and social science, he brings an analytical, structured and comprehensive approach to understanding and explaining the opportunities and risks of energy plans and proposals. An experienced negotiator, facilitator and teacher, Rick supports communities seeking to build partnerships with industry, to understand the implications of proposed projects and development plans, to resolve historic disputes, and to intervene in the regulatory process to change the course of development.

Rick's services are in the following areas:

**Impact Assessment.** Issues scoping studies, Aboriginal consultation negotiations, community consultations, environmental assessment study agreements, terms of reference review, baseline study design and review, technical working group representation, technical review management, need and alternatives analysis, socio-economic impacts and benefits analysis, strategic planning, written and oral testimony, monitoring agreements and plans, permit application review, succession training.

**Resource Participation Agreements.** Process and funding agreements, exploration and feasibility study MOUs, impacts and benefits agreements, negotiation management, agreement consultation, ratification.

**Historic Grievances.** Informant interviews, policy analysis, archival research, impact assessment, value estimation, proponent engagement, grievance negotiation.

**Regulatory Interventions.** Aboriginal consultation policy, environmental assessment policy, environmental assessments, energy resource planning, government inquiries, utility board reviews, and related regulatory processes.

## PROFESSIONAL EXPERIENCE

### **Camerado Energy Consulting Inc. (2009-2014)**

- Founder and director of a management consulting firm providing services to Aboriginal communities and community-based organizations

### **Chignecto Consulting Group Inc. (2002-2009)**

- Associate with a leading management consulting firm providing resource negotiation and related support services to Aboriginal communities across Canada

### **McMaster University, Engineering and Society Program (2003-2005)**

- Co-instructed an undergraduate course aimed at developing skills to assess, prevent and manage environmental and social impacts associated with engineering design, including: industrial ecology, life-cycle assessment, and design-for-environment with applications to energy, mining, and materials

### **Innu Nation (1999-2002)**

- Environmental and engineering analyst for a First Nation organization in relation to hydroelectric and related transmission development

### **Halsall Associates Consulting Engineers (1997-1999)**

- Provided engineering services relating to residential and commercial building performance including: investigations, specifications, tendering, construction review, and project management

## EDUCATION

### **Bachelor of Engineering & Society (Civil), McMaster University, Hamilton, Ontario (1996)**

- Thesis (Civil) – No More Septic Systems? Alternative Wastewater Systems for Ontario
- Inquiry (Engineering & Society) – Rural Engineering, Citizen Participation, and the Practice of Learning from Stories

### **Bachelor of Science (Honours Psychology), McMaster University, Hamilton, Ontario (2009)**

- Thesis – Acculturation and mental health issues facing adult male immigrants
- Inquiry – Health and mental health outcomes in Aboriginal children who have experienced child maltreatment

## RELATED TESTIMONY

### **Manitoba Public Utilities Board, Need for and Alternatives to Review (2013-2014)**

- Evaluating Macroenvironmental Impact
- Evaluating the Macroenvironmental and Socio-economic Implications of Additional Wind Resources in Manitoba



### **Joint Review Panel Hearings, Site C Clean Energy Project (2013-2014)**

- Treaty 8 Tribal Association – General and Specific Comments on the EIS
- Treaty 8 Tribal Association – General and Specific Comments on the EIS Addendum
- Alternative Hydroelectric Sites on the Peace River: Opportunity for Consultation and Reconciliation
- Avoidance and Mitigation Measures – Fish, Fish Habitat, and Current Use of Lands and Resources for Traditional Purposes by Aboriginal Peoples
- Sustainable Economic Development for Treaty 8 First Nations
- Treaty 8 Tribal Association – Joint Review Panel Hearings Summary Report

### **Legislative Assembly of Alberta, Standing Committee on Resource Stewardship – Review of the Potential for Expanded Hydroelectric Energy Production in Northern Alberta (2013)**

- Improving the Regulatory Process for Hydroelectric Development
- Considerations for Electricity Resource Planning in Alberta

### **BC Hydro – Integrated Resource Plan (2012-2013)**

- Aboriginal Consultation; Energy Planning; Implications for the proposed Site C Project

### **British Columbia Ministry of Energy – Industrial Electricity Policy Review (2013)**

- Transmission Service Rates; Aboriginal Policy; Environmental Policy (co-authored)

### **Joint Review Panel Hearings, Lower Churchill Hydroelectric Generation Project (2011)**

- Lower Churchill Hydroelectric Generation Project EIS – Innu Nation Comments
- Lower Churchill Hydroelectric Generation Project: Nalcor Energy Responses to JRP Information Requests – Innu Nation Comments
- Socio-economic Benefits and (Reservoir Clearing) Contracting Opportunities for Innu Nation
- Biophysical and Socio-economic Monitoring, Mitigation, and Follow-up

### **Alberta Utilities Commission – Inquiry on Hydroelectric Power Generation (2010)**

- The Policy and Planning Context for Hydroelectric Development in Alberta
- The Regulatory Process for Hydroelectric Development in Alberta

## **RELATED PROJECTS**

### **Treaty 8 Tribal Association, BC Hydro Site C Clean Energy Project (2010-2014)**

- Provide strategic direction concerning First Nation intervention in the environmental assessment, and related integrated resources planning and policy review processes
- Represent the potentially-affected First Nation communities in consultation and accommodation discussions with the Crown proponent and government agencies
- Responsible author for written submissions to the Joint Review Panel environmental assessment and related regulatory processes

### **Manitoba Métis Federation, Keeyask and Conawapa Generation Projects (2013-2014)**

- Responsible author for written submissions and information requests to a Needs for and Alternatives to Review of two proposed large-scale hydroelectric projects
- Provided written and oral expert testimony concerning macroenvironmental and socio-economic implications of the proposed developments as well as wind energy alternatives

### **Innu Nation, Nalcor Energy Lower Churchill Hydro Electric Generation Project (1999-2013)**

- Responsible author for written submissions to the Joint Review Panel of the Lower Churchill Hydroelectric Generation Project, and environmental assessment of the Labrador-Island Transmission Link
- Participated in ongoing community and Crown consultation requiring public presentations, regulatory submissions, workshops and plain-language summaries
- Participated in negotiations of the environmental protection chapter of an impacts and benefits agreement
- Provided technical and research support for negotiation of a compensation agreement concerning prior infringements

### **Wabun Tribal Council, Côté Gold Project (2013-2014)**

- Manage review of baseline socio-economic and environmental studies and review of the environmental impact statement
- Represent the potentially-affected First Nation communities in consultation and accommodation discussions with government agencies
- Participate in the environmental protection chapter of the impacts and benefits agreement between the affected First Nations and the proponent

### **Mikisew Cree First Nation, Hydroelectric Project Compensation (2013)**

- Participated as an invited practitioner in the discoveries process respecting the nature and extent of biophysical and socio-economic effects related to historic hydroelectric development on the Peace River to inform negotiation of compensation

### **Treaty 8 Alberta Nations, AUC Inquiry – Hydroelectric Power Generation (2010-2011)**

- Researched regulatory processes for hydroelectric generation and transmission development across Canada to identify best practices for environmental assessment and First Nation consultation in relation to hydroelectric development
- Prepared written submissions and provided oral testimony to the Alberta Utilities Commission on behalf of Athabasca Chipewyan, Mikisew Cree and Smith's Landing First Nations

### **Smith's Landing First Nation, Atco-TransCanada Slave River Hydro Development (2007-2010)**

- Successfully negotiated a feasibility participation agreement with Atco Power and TransCanada for the joint conduct of a multi-year baseline and feasibility study program
- Systematically reviewed the relevant literature pertaining to the ecological, social and economic effects of previous hydroelectric development on the Peace River

### **Robinson Huron Treaty First Nations, Transmission Line Compensation (2010-2013)**

- Researched and reported on historical and contemporary environmental effects, electricity policy, land use policy, and distribution and transmission line infrastructure development to inform negotiation of compensation

### **Attawapiskat First Nation, Victor Diamond Project (2003-2008)**

- Managed environmental, socio-economic and technical review of a comprehensive study environmental assessment of a proposed open pit diamond mine and associated transportation and transmission infrastructure
- Successfully negotiated the environmental protection chapter and related provisions of an impacts and benefits agreement between the First Nation and De Beers Canada
- Represented the First Nation on the joint committee with the proponent tasked with implementing the environmental provisions of the impacts and benefits agreement, including project permitting, compliance monitoring and effects monitoring
- Facilitated discussion sessions with the First Nation Elders Advisory Committee concerning the potential effects of the proposed project on traditional land use
- Lead the development of a comprehensive long-term socio-economic monitoring program, including issues scoping, data compilation, report writing and implementation planning
- Successfully negotiated a follow-up program agreement with the proponent and Canada designed to verify the accuracy of the environmental assessment with respect to environmental and socio-economic effects and to determine the effectiveness of mitigation measures

## **PUBLIC PRESENTATIONS**

**The Evolving Role of Aboriginal Communities in Renewable Energy Development**, Invited Presentation to Hatch Renewable Power Symposium, February 28, 2014.

**The End of the Dam Age?** Invited presentation to the Treaty 8 Alberta Regional Session on Water Governance, Energy Development & Indigenous Rights, October 11-12, 2012

**Treaty 8 First Nations and the Proposed Site C Project**, Invited presentation to the Treaty 8 Alberta Regional Session on Water, Land and Treaty Rights, November 29, 2011

**Community Well-Being Workshop**, Invited Practitioner, Nuclear Waste Management Organization, January 2008

**Environmental Assessment and Local Communities: Lessons in Responsibility**, Invited Presentation to Parks Canada, EA Practitioners Conference, Montreal, Quebec, November 2006

**Helping Communities Cope with Change**, Invited Presentation to the Ontario Association for Impact Assessment Annual Conference, Ottawa, Ontario, October 2006

## COMMUNITY

### **Hamilton Association for Renewable Energy, Founding Member (2013-)**

- Collaboratively founded a community-based renewable energy association with the mission of developing small-scale, cooperatively-owned renewable energy projects

### **Affiliations**

- Ontario Sustainable Energy Association (2009-)
- Ontario Waterpower Association (2010-)
- Ontario Association for Impact Assessment (2009-)