

SEXQÉLTKEMC

The Lakes Division
of the Secwepemc Nation

“Spider’s Web and Coyote”



BCUC Section 5 Inquiry
Lakes Division Submission
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BCUC INQUIRY PROCESS

Process Summary & Timelines

On December 11, 2008 Honourable Richard Neufeld, Minister of Energy, Mines and Petroleum Resources (MEMPR) submitted to Mr. Len Kelsey, Chair and Chief Executive Officer of the BCUC the approved Terms of Reference for the Inquiry.

Before this point in the Inquiry, the Lakes Division should have been contacted and properly consulted so that they could work together with the MEMPR to create a “new institution or structure(s) to negotiate Government-to-Government Agreement(s) for shared decision-making regarding land use planning, management, tenuring and resource and benefit sharing” (The New Relationship 2005). This process would have allowed the Lakes Division to articulate and provide input and advice for inclusion to the Order and Terms of Reference. If this had been done the MEMPR would have had the opportunity to approve an Order and Terms of Reference that supported the inclusion of Aboriginal interests in partial fulfillment of their legal responsibility to consult with First Nations. In this best case scenario the Lakes Division would have insisted that the scope of the Inquiry include the footprint impacts of the Transmission Line and Corridor construction as an issue to be addressed. Instead the Terms of Reference were granted merely stating 10(a) “the Commission: must invite and consider submissions, evidence and presentations from any interested person, including without limitation, First Nations” (BC December 11, 2008).

BCUC’s first contact with First Nations was on April 1, 2009 with a letter of invitation titled: *Re: British Columbia Utilities Commission Project No. 3698545/Order G030-09 Inquiry into British Columbia’s Long-Term Transmission Infrastructure.* BCUC in this letter declares, “By way of this letter, the Commission is inviting participation in the inquiry by interested First Nations of First Nation groups. First Nations groups may participate individually or through another First Nation organization such as the First Nations Energy and Mining Council. First Nations are invited to attend the preliminary workshop and Procedural Conference, but not attending will not preclude the ability to make submissions or engage in the proceedings at a later date”.

The result of the MEMPR’s lack of consultation with First Nations has resulted in an illegal process which breaches BC’s Provincial Consultation with First Nations Policy (BC October 2002). This is also in direct conflict with The New Relationship and its principle to achieve “integrated intergovernmental structures and policies and to promote co-operation including practical and workable arrangements for land and resource decision-making and sustainable development”. Consequently the entire Inquiry process, including the approved Terms of Reference (BC December 11, 2008), for the BCUC section 5 Inquiry is illegal and in direct dereliction of Aboriginal interests of the Lakes Division.

In the BCUC staff scope document (BCUC May 21, 2009) the staff acknowledge where the Terms of Reference invite and consider submissions, evidence and presentations from First Nations. They further point out the regional sessions to be held in the fall 2009 that are apparently consistent with the First Nations Energy and Mining Council. Firstly, the Lakes Division is not represented by the First

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BCUC Inquiry

Scope Submission

Nations Energy and Mining Council. Secondly to limit our “informed decision-making” to a regional session is unacceptable.

The staff further show that a number of participants in the Inquiry note the importance of First Nations issues and participation in the Inquiry. BCUC staff further stipulate that “First Nations must have an opportunity to participate in the Inquiry in a manner that is consistent with the Terms of Reference for the Inquiry and which aligns with the BC Hydro/BCTC consultation process”. We again point out that neither of these processes were developed with any input, guidance or advice from the Lakes Division and are therefore in contradiction to the New Relationship (2005).

In its letter dated April 1, 2009 the Commission stated that it also understands that “the Province has requested that BC Hydro undertake consultation with First Nations regarding any evidence and submissions that BC Hydro and BCTC will be providing to the inquiry. The Commission wishes to be clear that the consultation to be undertaken by BC Hydro does not preclude any First Nation or First Nation group from providing evidence or submission to, or otherwise participating in, the Transmission Inquiry directly.”

In its letter dated June 30, 2009 the BCUC Inquiry Panel stated that it has considered the matter of consultation and has concluded that a process including both written submissions and another procedural conference would be helpful to address the following questions: (1) What, if any, is the duty to consult with First Nations and accommodate with respect to determinations of the Long-Term Electricity Transmission Inquiry? (2) If there is a duty to consult, how would that duty be fulfilled and how can it best be fulfilled such that the Panel can also fulfill its legal requirements to hold an Inquiry and complete its draft report by June 30, 2010? Additionally, the Inquiry Panel is prepared to allow Participants to address any sub-categories of these questions that Participants may identify.

The Lakes Division maintain that the duty to consult is triggered as the commission is delegated to conduct an inquiry to make determinations [decisions] with respect to British Columbia's infrastructure and capacity needs for electricity transmission for the period ending 20 years after the day the inquiry begins or, if the terms of reference given under subsection. Section 5 (6) states, for an inquiry under subsection (4), the minister may specify, by order, terms of reference requiring and empowering the commission to inquire into the matter referred to in that subsection, including terms of reference regarding the manner in which and the time by which the commission must issue its determinations under subsection (4). As such the duty to consult lies with both the Minister of Energy Mines and Petroleum Resources and the BCUC because these determinations/decisions will affect and infringe on Aboriginal Title and Rights. The duty to consult therefore cannot be delegated to BC Hydro and/or BCTC and any consultation tables they develop do not absolve the MEMPR or BCUC of their duties to consult.

The BCUC and MEMPR may best fulfill its duty to consult with the Lakes Division by upholding BC's New Relationship and its principle to achieve "integrated intergovernmental structures and policies and to promote co-operation including practical and workable arrangements for land and resource decision-making and sustainable development" (2005). We call for the creation of a "new institution or structure(s) to negotiate Government-to-Government Agreement(s) for shared decision-making regarding land use planning, management, tenuring and resource and benefit sharing" (2005)

The Lakes Division Issues are these:

1. MEMPR developed the Order and Terms of Reference without consultation.
2. Due to this there is no institution/structure or mutually developed agreement to describe our participation in the BCUC section 5 Inquiry, ensuring that our interests are properly supported and incorporated.
3. The BCUC is now supporting a "BC Hydro/BCTC consultation table" and process which we have shown only supports the BC Hydro and BCTC contribution to the Inquiry (i.e. NOT First Nations), therefore the duty to consult lies with the government (MEMPR, and BCUC) not BC Hydro and/or BCTC.
4. The Lakes Division is receiving no funding or monetary support to allow us to take the Inquiry issues back to our communities for consideration and/or make INFORMED DECISIONS regarding the Inquiry.

The Lakes Division Solutions are these:

1. Creation of a consultation process under the Secwepemc Consultation and Accommodation Guidelines (March 9, 2005).
2. Development of a government to government consultation table including MEMPR and BCUC (August, 2009) with supporting Capacity Funding.
3. Development of government to government Energy Agreement September, 2009 to September 2010 with supporting Capacity Funding.
 - a. Development of Energy Agreement subsection regarding BCUC section 5 Inquiry (September 2009-December 2009)
4. Implementation of BC-Sexqéltkemoc Energy Agreement BCUC section 5 Inquiry subsection (January 2010 to June 2010) with supporting Capacity Funding.
5. Sexqéltkemoc informed decision making regarding approval of BCUC section 5 Inquiry (June 2010).

PAST- (TRANSMISSION LINE CONSTRUCTION)

Infringement & Losses

Before the transmission lines, the forested areas cut down and cleared for the power lines, provided nourishment and shelter. These lands were a part of a carefully managed ecosystem, which acted as the foundation for our people. In essence the Land and the People act as mirrors to one another and now both reflect the effects of western civilization like a battle scarred soldier.

When the transmission corridors were cleared and lost owing to the construction of the transmission lines many losses were experienced. Social, emotional, spiritual/ceremonial, economic, health, environmental (water, land and resource use), language and traditional skills & knowledge were all losses experience by the Lakes People. The magnitude, nature and severity of these losses must be properly examined and documented through the provision of adequate funding.

Reconciliation

Some of these losses can be addressed, at least in part, through mitigation activities and compensation, whereas other losses cannot be addressed except through accommodation. The Lakes Division must be adequately funded to examine, document and explore these options so that appropriate means are applied in accordance with the severity and magnitude of the social, emotional, spiritual/ceremonial, economic, health, environmental (water, land and resource use), language, and traditional skills & knowledge losses.

PRESENT (LINE MAINTENANCE & FURTHER ADDITIONS)

From Infringement & Losses to Mitigation & Accommodation

To try and disseminate one transmission line or corridor from another would be like Coyote trying to pull a single thread from spider's web. We must look at the effects of the entire transmission system in our territory and how its effects interact with the many other impacts on our territories.

Environmental (Water, Land and Resource Use)

The environmental effects of the Transmission Corridors and Lines felt at present are no more or less than a continuation of the effects which started with their inception. For us to purport that we can support further transmission line installations and operations we must first know what the baseline data and effects of the current Transmission system.

The environmental studies and data will need to be compiled and analysed in order to quantify the magnitude and nature of the effects created by the transmission lines and their corridors. For example the clearing of corridors creates edge habitats, which may be higher in overall species diversity, but at the same time may be detrimental to interior habitat species like the endangered Spotted Owl.

We strongly recommend that projects are undertaken to feed into an overall Cumulative Effects Modelling project. Around the world, landscapes are undergoing rapid transformation in response to multiple overlapping land and water uses that include the energy sector. Collectively these land uses create a "footprint" that impacts ecosystem health and sustainability. Using computer simulation models, we could undertake cumulative effects assessments to assist with evaluating the potential consequences of different land and water uses strategies in a virtual environment. This could help us to understand the level of risk that different management strategies would impose on the sustainability of natural systems and also help identify strategies that will minimize the overall adverse affects.

We propose that the Lakes Division is adequately funded to undertake an extensive Cumulative Effects Modelling Project for its traditional territory. This model would include the many other impacts (forestry, mining, original dam construction, etc...) in order to assess the magnitude of the effect of the transmission system and any proposed additions. We would in essence be able to predict if the current ecosystem in its altered state can handle further impacts and possibly identify areas and means for mitigation.

We would also like to see a campaign made on how even "green-energy" is detrimental to our lands and waters. The idea that Run-of-River, or large hydroelectric dams are a "green" and safe alternative to carbon based electrical generation is a myth. We must educate the public and government on the costs felt by our rivers, lands, fish, birds, insects, reptiles, amphibians, mammals, and plants. This is a cost that will be paid by our future generations and people must know that there is a cost and an effect when we increase the use of hydro-electricity as a means of reducing carbon emissions.

Economic

The Inquiry Terms of Reference specifically identify consideration for the export of excess “green-energy”. When a structure is created between MEMPR, BCUC and the Lakes Division we will be able to address revenue sharing. The electricity generation and transmission is occurring on lands and waters stolen from the Lakes People and this issue must be addressed.

Health, Social, Emotional

Old One was the one who reminded us to be respectful to all living things. This notion of respect is at the core of our beliefs about our interaction with the land and all things in it: Xyemstém/me7 xyemstec (“be respectful”) entails the management and careful harvesting of all plant and animal resources, lest they disappear on us in disgust, and we become pitiful (qwenqwént).

Coyote built an underground house on the Upper North Thompson River, at a place now called Coyote’s House. It was afterwards turned into rock, and may be seen there at the present day. He spent several winters at this place. One fall, salmon came up the river in great numbers, and he made up his mind to catch a large supply, saying, ‘I will dry very many, and then will invite all the people to a great feast.’ By the time the salmon ceased running, he had filled many sticks, and was delighted when he viewed the large amount of fish he had on hand. One day as he was passing underneath the sticks where salmon was hanging, his hair caught in one of them, and this made him angry. Four times this happened, and each time he became angrier. The last time he became very angry, saying, ‘Why can’t I pass underneath these fish without their catching in my hair?’ He tore down the offending salmon and threw it into the river. At once it came to life and swam away. Then all the salmon came down from the sticks and plunged into the river. In vain Coyote tried to stop them by catching them and clubbing them. In a short time they had all disappeared, and he was left without supplies for the winter, and had to give up the project of giving a feast. Now he gathered up all the slabs of wood which he had used for splitting salmon on, and all the poles on which they had been hanging. He took them up to his house, and said, ‘I will boil them in the winter-time and have fish soup.’ (Teit 1909; story told by George Sisylecw from Simpcw).

We have spent many years now in direct disrespect to our surroundings and the living things which give us life. We are all suffering the consequences of that disrespect as sickness, addictions, greed and sadness plague our people. We suffer sicknesses from the drowning of our rivers; blocking of the salmon; overall mismanagement of our territory and all the effects it has had on ourselves and our relatives and our communities. Only when we (*Tknémentem Secwepemcúlecw*), respect the earth and do not waste natural resources in our traditional territory will our sicknesses recede. Only when we reclaim our rightful place as (*Yecwemíntelmin Secwepemcúlecw*) caretakers and stewards of the Secwepemc traditional territory through a newly developed management model will health and harmony return to our people and our lands.

Heritage Effects

(Spiritual/Ceremonial, Archaeological, Language, Traditional Skills & Knowledge)

Many spiritual, ceremonial, and archaeological sites were decimated and destroyed during the clearing of the transmission corridors and installation and maintenance of the lines. These losses must be assessed and addressed.

The Lakes Division sees the first step in this process as the development of a Memorandum of Understanding between BCTC and the Lakes Division regarding the Lakes Division's Heritage Management Framework. This would be immediately followed by an extensive inventory and qualitative analysis of all sites on all transmission lines throughout our territory. This would be followed with an analysis of the losses which could be examined for reconciliation activities and measures.

The transmission lines and corridors have also destroyed historically utilized places (e.g. berry picking patches) and as a result both the traditional skills and knowledge regarding these areas, and the language which surrounded them. These losses must also be examined, documented and analysed to look into reconciliation for these losses.

FUTURE

Co-Management Framework

We call on the MEMPR and the BCUC to uphold BC's New Relationship and its principle to achieve "integrated intergovernmental structures and policies and to promote co-operation including practical and workable arrangements for land and resource decision-making and sustainable development" (2005). We also call for the creation of a "new institution or structure(s) to negotiate Government-to-Government Agreement(s) for shared decision-making regarding land use planning, management, tenuring and resource and benefit sharing" (2005)

NEXT STEPS:

- 1) Province of British Columbia (MEMPR) and BCUC recognize that the Lakes Division of the Secwepemc Nation have Aboriginal Title and Rights.
- 2) MEMPR (Minister), BCUC (Commission), BCTC (CEO), BC Hydro (CEO) meet with Lakes Division Political Leadership to plan the creation of an Energy Management Agreement.
- 3) Within the Energy Management Agreement, a section developed to outline how the Lakes Division will participate in the decision-making regarding the BCUC section 5 Inquiry.

REFERENCES

BC, M. o. E., Mines and Petroleum Resources (December 11, 2008). Terms of Reference for the BCUC section 5 Inquiry. M. P. R. Ministry of Energy. Victoria, BC.

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