



Tom A. Loski

Chief Regulatory Officer

Phone: 604-623-4046

Fax: 604-623-4407

bchydroregulatorygroup@bchydro.com

January 26, 2016

Ms. Erica Hamilton
Commission Secretary
British Columbia Utilities Commission
Sixth Floor – 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Ms. Hamilton:

**RE: Project No. 3698854
British Columbia Utilities Commission (BCUC or Commission)
British Columbia Hydro and Power Authority (BC Hydro)
W.A.C Bennett Riprap Upgrade Project
Response to Exhibit C5-3**

BC Hydro writes in response to the Saluteau First Nations' letter of January 20, 2016 (Exhibit C5-3) requesting that the Commission process be delayed pending the completion and filing of Saalteaau First Nations' Traditional Use Study (**TUS**) and the First Nations Independent Technical Review (**FNITR**). BC Hydro has received and reviewed the Commission's letter of January 22, 2016¹ and will be responding to the questions specified therein at the Procedural Conference scheduled for January 27, 2016. In the interim, BC Hydro would like to take the opportunity to address omissions in Exhibit C5-3 which states:

On September 18, 2015, BC Hydro stated that it was prepared to accept SFN's TUS proposal, subject to some revisions. In SFN's view, those revisions significantly changed the scope and focus of the proposed TUS and further discussion was required.²

The letter is silent as to whether an agreement as to the scope of the TUS was ever reached, and may leave the impression that no such agreement was made and that the responsibility for the lack of agreement rests with BC Hydro.³

BC Hydro agrees with the Saalteaau First Nations' description of the engagement that occurred on September 18, 2015, but believes that a significant omission has been made. In particular, as stated in BC Hydro's application for the Project:

¹ Exhibit A-6.

² Exhibit C5-3, at page 2.

³ Exhibit C5-3, at page 3.

On October 9, 2015 BC Hydro approved the scope of Saulteau's TUS.⁴

BC Hydro did not provide further details in its application about the process through which the agreement was reached because at the time, there was nothing to suggest Saulteau had any concerns with the TUS. In light of Saulteau's January 20, 2016 letter, BC Hydro believes that the Commission would be best served by having the relevant documents before it as they tell the complete story with clarity and accuracy. BC Hydro has attached all of the relevant primary documents (emails, letters and meeting minutes) for the period of time between September 18, 2015 and January 7, 2016 (Attachment A).⁵

In short, between September 18 and October 9, 2015, BC Hydro and Saulteau First Nations both worked diligently to understand one another's concerns with the TUS proposal. Ultimately, the parties came to a meeting of the minds resulting in a mutually acceptable TUS proposal. The final TUS proposal included an agreement as to the scope and cost of the study. Of particular importance to this issue are:

- Saulteau First Nations' email of October 7, 2015 to BC Hydro attaching version 2.0 of the TUS Proposal;⁶ and
- BC Hydro's email of October 9, 2015 advising "We agree to the scope of the review" and concluding "I think we are ready to start the work".⁷

As to the Capacity Funding Agreement (**CFA**), the mutually agreed upon TUS proposal includes an agreement as to cost of the study.⁸ The draft CFA sent by BC Hydro to Saulteau First Nations on October 29, 2015 was the process through which the agreed to costs as set out in the TUS proposal would be formalized. The draft CFA in no way changed the scope, schedule or costs of the TUS as previously agreed to between the parties. In fact, Appendix C of the draft CFA sent to Saulteau First Nations on October 29, 2015 directly incorporated the previously agreed to TUS proposal including the costs.⁹

The response that BC Hydro received from Saulteau First Nations on the draft CFA did not advise of any major points of disagreement. As per Saulteau First Nations' email of October 29, 2015:

⁴ Exhibit B-1, Appendix F, at page 35 of 93, line 16.

⁵ Attachments are being filed confidentially due to limited time. The attachments may be released publicly upon further review.

⁶ Attachment A, at pages 38 to 47.

⁷ Attachment A, at page 48.

⁸ Attachment A, at pages 51 to 65.

⁹ Attachment A, at page 65.

“The Agreement looks straightforward, the agreement has MLIB [McLeod Lake Indian Band] instead of SFN as a recipient of funds.”¹⁰

Furthermore, BC Hydro understood from its December 3, 2015 meeting with Sauteau First Nations that the CFA had passed legal review.¹¹

Legal counsel for Sauteau First Nations raised several issues with the draft CFA in his letter of January 20, 2016. With the exception of the typographical error (i.e., reference to MLIB), this is the first time BC Hydro has heard any of these concerns. BC Hydro was surprised by these concerns, but will work diligently with Sauteau First Nations to address them.

In addition, the January 20, 2016 letter to the Commission is the first time that BC Hydro learned that Sauteau First Nations believes the Commission process cannot proceed in the absence of the TUS results. In a meeting with BC Hydro, Sauteau, McLeod Lake and their consultant LGL on December 3, 2015, Sauteau raised the possibility that their TUS would not be completed in time to share with the Commission, but did not advise that they believed the Commission process could not proceed without it.¹² Sauteau First Nations did not indicate otherwise until their January 20, 2016 letter.

As evidenced in the documents attached, BC Hydro encouraged Sauteau First Nations to commence the TUS and the FNITR so it could inform the Commission process. However, at no time did BC Hydro commit that the regulatory process would be delayed pending the results of these studies because the Project addresses an important dam safety issue.

BC Hydro continues to consult with Sauteau First Nations and will work with them to finalize the CFA to confirm the scope, schedule and cost of the TUS. BC Hydro also awaits the results of the FNITR. We are pleased to hear that Sauteau will complete their TUS by April 15, 2016 and we welcome a discussion on what if anything further they need to support this effort. BC Hydro's approach remains the same among all First Nations. BC Hydro will use the results of the TUS studies and the FNITR to inform the stage of the Project in which they are received. In the meantime BC Hydro will be requesting that the Commission process proceed without delay so that BC Hydro can address this important dam safety issue.

¹⁰ Attachment A, at pages 49 to 50.

¹¹ Attachment A, at pages 67 to 69.

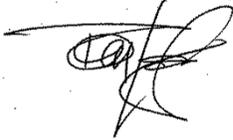
¹² Attachment A, at pages 67 to 69.

January 26, 2016
Ms. Erica Hamilton
Commission Secretary
British Columbia Utilities Commission
W.A.C Bennett Riprap Upgrade Project
Response to Exhibit C5-3

Page 4 of 4

For further information, please contact Geoff Higgins at 604-623-4121 or by email at bchydroregulatorygroup@bchydro.com.

Yours sincerely,



Tom Loski
Chief Regulatory Officer

gh/ma

Copy to: BCUC Project No. 3698854 (W.A.C Bennett Riprap Upgrade Project) Registered Intervener Distribution List.