

**Tom A. Loski**

Chief Regulatory Officer

Phone: 604-623-4046

Fax: 604-623-4407

[bchydroregulatorygroup@bchydro.com](mailto:bchydroregulatorygroup@bchydro.com)

April 19, 2016

Ms. Laurel Ross  
Acting Commission Secretary  
British Columbia Utilities Commission  
Sixth Floor – 900 Howe Street  
Vancouver, BC V6Z 2N3

Dear Ms. Ross:

**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 (the Project)****Compliance with Exhibit A-13****Reply to Saulteau First Nation Exhibit C5-9**

BC Hydro writes further to the Commission's letter of April 15, 2016 (Exhibit A-13) requesting that BC Hydro provide a response to Saulteau First Nations' (**SFN**) April 13, 2016 submission. In its April 13 submission, SFN indicates their issues would best be addressed through a process that includes an oral hearing and written submissions, but also indicates that a written hearing could represent a reasonable compromise between SFN's interests in receiving a fair hearing, and BC Hydro's concerns regarding the Project Schedule. SFN also requests that the proposed Information Request (**IR**) No. 3 not be limited in scope. Below is BC Hydro's response.

**Written Process**

BC Hydro notes that the decision on whether to proceed by way of an oral hearing, written hearing or a combination of both is a matter of Commission discretion.<sup>1</sup> In this matter, the factors the Commission normally considers support a written process for the remainder of the hearing. BC Hydro and all of the Intervenors that replied to the Commission's request for comments on the process (Exhibit A-12) prefer a written process. SFN states that the issues are more effectively addressed in writing. The cost of preparing for and holding an oral hearing would be an unnecessary burden to stakeholders and ratepayers. Finally, the written process does not restrict fairness as it does not restrict any party's right to be effectively heard. In sum, BC Hydro agrees that a

<sup>1</sup> Factors to consider include the preference of all of the parties, efficiency in the process, effectiveness at addressing the issues, fairness, and cost. Refer to Commission Order Nos. G-21-13, Appendix A (February 7, 2003) and G-94-11, Appendix A (May 20, 2011).

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written hearing is a reasonable compromise between SFN's interests in receiving a fair hearing and BC Hydro's concerns regarding the Project schedule.

### Scope of Information Request No. 3

SFN raises concerns regarding the fairness of a procedure that limits the scope of IR No. 3 to BC Hydro's April 22 evidentiary update (the **Evidentiary Update**). Specifically, SFN submits that limiting the scope to the newly filed evidence could a) unreasonably limit or exclude SFN's ability to submit IRs pertaining to mitigation measures, and b) deny SFN the opportunity to request further information about the Application, supporting materials, and other documents on the record that are further informed by the TUS and FNITR.

BC Hydro respectfully disagrees with the concern that limiting the scope of IR No. 3 to the Evidentiary Update would result in an incomplete record as to the consultation on mitigation measures. BC Hydro notes that consultation on mitigations from the TUS and FNITR post-dates the filing of the Application. Preliminary FNITR results were first shared with BC Hydro on December 3, 2015, followed by a letter from SFN dated February 16, 2016 requesting specific mitigation measures. BC Hydro confirms that its Evidentiary Update will provide a complete record of consultation that has occurred with SFN and other First Nations since the Application was filed in November 2015. That record will include any communications on the TUS, the FNITR, and mitigation measures. IR No. 3 provides SFN the opportunity to challenge that evidence on the record and address any alleged gaps and deficiencies before the Commission.

With respect to the second concern, BC Hydro submits that limiting the scope of IR No. 3 to the Evidentiary Update would not deprive SFN the opportunity to have any identified gaps or deficiencies in the Application materials addressed, or limit SFN's ability to request further information from BC Hydro about the potential impacts of the Project.

The FNITR, which evaluates the Project and Application materials, has been filed with the Commission, and any alleged gaps or deficiencies identified in it are now part of the record.<sup>2</sup> Further, any questions that SFN has in respect of alleged gaps, deficiencies, and potential impacts that arise from the FNITR and TUS should be raised directly with BC Hydro as part of the consultation process. Discussions on potential impacts are the purpose and role of consultation, whereas the role of the Commission is to assess whether that consultation has been adequate. Provided SFN raises any such issues in its April 21 meeting with BC Hydro, those discussions will be in the Evidentiary Update before the Commission. As noted, SFN will have the opportunity to challenge the Evidentiary Update during the IR No. 3. Moreover, BC Hydro is not opposed to the Commission including in its regulatory timeline the option for SFN to file its minutes from

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<sup>2</sup> Exhibit C5-10, FNITR, at page 9.

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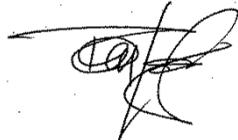
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its April 21 meeting with BC Hydro. That filing should occur on April 22, the same date that BC Hydro files its Evidentiary Update.

Finally, underlying SFN's submission is the assumption that it lacked sufficient information to inform a critical evaluation of the Application materials until the FNITR and TUS were final. However, the evidentiary record does not support that position. At the time of IR Nos. 1 and 2, there was information available from the FNITR and the appropriate expertise was available to inform a critical evaluation of the Application. The preliminary results of the FNITR were available as early as December 3, 2015, two weeks before interveners filed IR No. 1. Further, the joint SFN and McLeod Lake Indian Band IR No. 1 submissions were prepared and filed by LGL, the expert that prepared the FNITR evaluating the Application.<sup>3</sup> BC Hydro notes that although SFN did not file IRs in round one on its own behalf, it had the opportunity to do so, and there was information and expertise available to inform that stage of the process. To allow a repeat of IR No. 1 now would jeopardize a fair and just regulatory process.

For further information, please contact Geoff Higgins at 604-623-4121 or by email at [bchydroregulatorygroup@bchydro.com](mailto:bchydroregulatorygroup@bchydro.com).

Yours sincerely,



Tom Loski  
Chief Regulatory Officer

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

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<sup>3</sup> Exhibit C4-2.