

VIA eFILING

May 2, 2016

**BC HYDRO W.A.C. BENNETT  
RIPRAP UPGRADE PROJECT EXHIBIT A-16**

Mr. Tom A. Loski  
Chief Regulatory Officer  
BC Hydro and Power Authority  
333 Dunsmuir Street  
Vancouver, BC V6B 5R3

Dear Mr. Loski:

Re: British Columbia Hydro and Power Authority  
W.A.C. Bennett Dam Riprap Upgrade Project

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Further to your November 13, 2015 filing of the above noted application and the Regulatory Timetable revised in British Columbia Utilities Commission Order G-54-16, enclosed please find Commission Information Request No. 3. In accordance with the Regulatory Timetable, please file your response no later than Friday, May 6, 2016.

Yours truly,

*Original signed by:*

Laurel Ross

AT/dg  
Enclosure

**British Columbia Hydro and Power Authority  
W.A.C. Bennett Dam Riprap Upgrade Project**

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**29.0 Reference: FIRST NATIONS CONSULTATION  
Exhibit B-14, pp. 7, 9; Exhibit B-3, BCUC IR 1.23.4  
Environmental Management and Protection Plans (EMP and EPPs)**

On page 7 of Exhibit B-14, British Columbia Hydro and Power Authority (BC Hydro) states:

Many of the mitigation measures requested in the FNITR were already scheduled to be included in the Project as part of BC Hydro's Environmental Management Plan (EMP) or through the Project Contractor's Environmental Protection Plan (EPP) and specific mitigation plans.

On page 9 of Exhibit B-14, BC Hydro states:

The EPP will contain a number of specific mitigation plans. In the meantime, BC Hydro has provided the FNITR and the table referred to above to the Project Contractor so that it is aware of the mitigations that BC Hydro has committed to and will make the necessary inclusions into its EPP and relevant mitigation plans. BC Hydro has committed to consulting with First Nations on these before they are finalized.

In response to BCUC Information Request (IR) 1.23.4, BC Hydro states:

BC Hydro will share the EMP with First Nations and will consider any feedback received by First Nations to modify the EMP. The EMP then establishes the content of the Contractor's EPP. BC Hydro will share any requested EPPs with First Nations.

29.1 Will First Nations have to request the EPPs in order to review them as suggested by the IR response?

29.1.1 Will First Nations' feedback be considered to modify the EPPs? If not, why not?

29.1.2 What are the consequences, if any, for the Project Contractor if specific measures in the EPPs are not implemented?

29.1.2.1 What contractual provisions are in place with the Project Contractor to ensure that they implement all measures in the EPPs and comply with these measures throughout the lifespan of the Project?

29.1.3 It appears that BC Hydro is delegating much of the project impact mitigation to the Project Contractor through the EPPs that may or may not be reviewed by First Nations. Please discuss any risks or concerns associated with this given that the Project Contractor does not have a duty to consult that is grounded in the honour of the Crown.

**30.0 Reference: FIRST NATIONS CONSULTATION  
Exhibit B-14, pp. 9–10; Exhibit C5-10, p. ii of the FNITR Final Report  
Assessment of impacts and consultation process**

On pages 9-10 of Exhibit B-14, BC Hydro states:

Overall, BC Hydro disagrees that its EA and permit application materials are inadequate. The level of the assessment in the EA was guided by the size and scope of the Project. The Project does not trigger an environmental assessment under either the provincial or federal regime. Many of the gaps or deficiencies identified in the FNITR are based on standards that would apply if an environmental assessment was required.

Page ii of the First Nations Independent Technical Review (FNITR) Final Report states:

BC Hydro's impact assessment methodology is questionable as it fails to account for all Valued Ecosystem components (VECs) that are important to First Nations, and consequently fails to accurately identify and interpret potential adverse effects on those VECs. Importantly, this report identifies how BC Hydro's mitigation and environmental management plans either are not available, or how they fail to adopt adequate impact avoidance, mitigation, and compensation measures.

30.1 Please address the issue raised in the FNITR that BC Hydro's methodology is questionable as it fails to account for all VECs that are important to First Nations. Is the identification of VECs that are relevant to First Nations, in consultation with First Nations, a requirement of the EA?

30.1.1 Would the consultation process have been more meaningful and responsive if BC Hydro identified VECs with First Nations prior to commissioning the environmental study(ies) required for the Project?

**31.0 Reference: FIRST NATIONS CONSULTATION  
Exhibit B-14, pp. 15–18  
Assessment of impacts**

On page 12 of Exhibit B-14, BC Hydro states: The notable change to the existing landscape from the Project is to the SFQ [Sand Flat Quarry].

On pages 15 and 16 of Exhibit B-14, BC Hydro states:

BC Hydro has concluded that the seriousness of the potential impacts of the Project are low having regard to the historical context of past impacts in the vicinity of the Project and the larger Treaty 8 territory as set out in the FNITR and TUSs...

While in certain circumstances the historical context in which the Project arises may deepen the severity of the potential Project impacts, the temporary and limited nature of the Project in this case does not give rise to such an outcome.

On page 17 of Exhibit B-14, BC Hydro states:

In *Mikisew*, the Supreme Court of Canada found that the construction of a winter road occupying 23 square kilometres in part adjacent to the Mikisew's reserve lands, through a national park and on surrendered lands triggered a duty to consult at the lower end of the Spectrum...

On page 18 of Exhibit B-14, BC Hydro states:

As in the case of *Mikisew*, the rights in question in this case are established Treaty 8 rights. The Project is temporary, on previously disturbed lands, with no new permanent taking up of lands, and a significant distance from First Nations' main communities.

- 31.1 Given that the *Mikisew* decision was based on evidence from a number of years ago, does the cumulative impact on the Treaty 8 territory, which has continued since the time of *Mikisew*, contribute to a higher assessment of impacts than low?
- 31.2 Could a permanent change to landscape, such as will occur at the Sand Flat Quarry, be considered a permanent "taking up of lands" under Treaty 8? How is BC Hydro sure that the land will be suitable for First Nations to potentially exercise their treaty rights after the Project is complete?

**32.0 Reference: FIRST NATIONS CONSULTATION  
Exhibit B-14, Appendix A, p. 18; Exhibit C5-10, p. 26 of SFN Knowledge and Use Study  
Mitigation of impacts**

On page 18 of Appendix A in Exhibit B-14, BC Hydro states:

In regards to the requested chance find procedures [for previously unidentified heritage resources] BC Hydro agrees with the requests with the exception of the following. The buffer applied to the stop work order will be determined by the nature of the chance find. BC Hydro will notify Chief and Council of the chance find and will consult on how to move forward. Should there be a chance find, BC Hydro hopes to gain First Nations support through its efforts to address any concerns, but ultimately the decision on how to proceed is BC Hydro's. BC Hydro decision must be consistent with regulatory requirements.

On page 26 of the *Saulteau First Nations' (SFN) Knowledge and Use Study* states that the Regional Study Area includes burial places of Saulteau ancestors.

- 32.1 Given that chance finds could include burial sites, is it appropriate for BC Hydro to maintain the position that the ultimate decision on how to proceed is BC Hydro's? Would there be a different protocol for a chance find of a site with great cultural significance or with the significance of a burial site?