

Information Note
Department of Natural Resources

Title: Aboriginal Consultation and Issues related to the Lower Churchill Development

Issue: To provide a summary of Aboriginal consultation and associated issues with respect to the Lower Churchill Development

Background and Current Status:

- Nalcor Energy has identified the following Aboriginal groups and communities that have been consulted regarding the Lower Churchill Project: the Innu Nation, NunatuKavut (formerly known as Labrador Metis Nation), and the Nunatsiavut Government in NL; and, the Innu communities in Quebec and the Naskapi Nation of Kawawachikamach.
- Nalcor has undertaken a variety of efforts to develop a clear understanding of Aboriginal interests, values, concerns, contemporary and historic activities, Aboriginal traditional knowledge, and important issues facing each Aboriginal group. Some of these efforts included: direct engagement whenever possible, offers of capacity funding to assist the communities in their participation, written requests for information, and review of the groups' participation in the environmental assessment (EA) process.
- The following outlines the consultation process and issues particular to each group:

Innu Nation

- Nalcor has engaged Innu Nation in consultation respecting the Project since 2000. Through a series of process agreements concluded between February 2000 and August 2008, Nalcor has provided funding to participate in community consultation, IBA negotiations and an environmental Task Force.
- In February 2010, representative of the Innu Nation, Innu Band Councils, the Government of Newfoundland and Labrador and Nalcor Energy initialed the following documents contemplated by the Tshash Petapen Agreement – or the New Dawn Agreement.
 - Bilateral NL-Innu Nation Land Claims Agreement in Principle (federal issues to be resolved)
 - Lower Churchill Project Impacts and Benefits Agreement (IBA)
 - Upper Churchill Redress Agreement
- The agreements are subject to ratification on a schedule to be determined by Innu Nation, and the Innu Land Claims Agreement is also subject to negotiations with the Government of Canada prior to finalization and presentation for ratification.

NunatuKavut Community Council (formerly Labrador Metis Nation)

- Nalcor's consultation efforts with NunatuKavut Community Council (NCC) regarding the Project have been ongoing since April 2007. In December 2009, Nalcor and entered into an agreement to conduct consultations with NCC members with respect to the Project. The agreement provided capacity funding to facilitate communication between NCC and Nalcor, to assist in the dissemination of information, and to provide feedback to Nalcor regarding NCC's concerns about the Project. The agreement expired in March 2010 and has not been renewed.

- The NCC and several Québec Aboriginal communities have asserted aboriginal rights and title to portions of Labrador proximate to or within the proposed Project Area. These claims have not been accepted for negotiation by the Province.
- While the NCC land claim has not been settled, recent developments appear to have strengthened its legal position. During the past three years, the federal government has provided approximately \$600,000 in funding to NCC to undertake research in support of its land claim and on September 2, 2010 the NCC submitted supplementary land claims documentation in a report entitled “Unveiling NunatuKavut” to the federal and provincial governments and the Joint Review Panel.
- Although NCC has refused to enter into a new agreement with Nalcor or otherwise engage in on-going Project-related consultation, Nalcor has conducted an evaluation of the impacts of the Project upon NCC members land and resource use in the Project Area based upon publicly available information. It is Nalcor’s conclusion that, absent any evidence to the contrary provided by NCC, the impacts of the Generation Project upon NCC’s interests are, at best, minimal and insignificant.

Nunatsiavut Government

- Nalcor has engaged Nunatsiavut Government (NG) regarding the Project since March 2008 and consultation has been on-going since that time. Information and documentation supplied by the Labrador Inuit in the course of land claims negotiations and as evidenced in the Labrador Inuit Land Claims Agreement does not illustrate any record of historical use and occupancy by the Labrador Inuit of the land and resources in the proposed Project Area.
- NG has maintained a position that Generation and Transmission Projects should be subject to a single EA Panel Review. NG has also stated that it believes the Lower Churchill development impacts the Labrador Inuit Settlement Area in eastern portion of Lake Melville, and as such the NG should receive a compensation agreement from Nalcor which might include a power line to the north coast.
- Following the November 18, 2010 Lower Churchill announcement, NG President Jim Lyall stated that the Nunatsiavut government will not endorse the proposed Muskrat Falls development until they are assured the Labrador Inuit will benefit from the project. He said that they need assurances that Labrador Inuit communities will see direct benefits, including lower electricity rates, and that there will not be any significant negative environmental impacts downstream.

Quebec Innu Communities and The Naskapi Nation of Kawawachikamach:

- Nalcor’s consultation efforts with the Quebec Innu Communities (Pakua Shipi, Unamen Shipu, Nutashkuan, Ekuanitshit, Uashat mak Mani-Utenam, and Matimekush-Lac John) and the Naskapi Nation of Kawawachikamach regarding the Project have been ongoing since May 2008.
- Nalcor has provided each community with comprehensive project information including the EIS Registration document, map book and fact sheets (May, 2008), the EIS Executive Summary and associated information (2009) and the Plain Language Summary (2010). Where appropriate, information has been provided in French and in either Innu-aimun or Naskapi.
- The six Québec Innu communities referenced in the Guidelines and the Naskapi Nation of Kawawachikamach have claimed aboriginal rights and title to lands and resources in Labrador, including to portions of the Churchill River valley. The Quebec-

based claims have not advanced very far, with only Nutashquan achieving as much as an Agreement-in-Principle of a General Nature, but have since broken off negotiations with Canada and Quebec.

- The unresolved land claims of the Québec Innu present a real risk to the Generation Project, although the strength of the risk is difficult to ascertain. Québec Innu groups may pursue legal action to suspend the environmental assessment process or to prevent the issuance of any Project-related permits, as previously, certain Québec Innu groups have threatened or initiated litigation to establish aboriginal rights and title in Labrador.
- In addition to possible legal action, Québec Innu groups have been engaged in a variety of extra-legal activities designed to bolster their assertion of aboriginal rights and title in and to Labrador including: organized protests before parliament in November 2009 and February 2010; and, approximately 150 Québec Innu held a caribou hunt in Labrador, north of the Churchill River in the Cache River area.
- In addition to assertion of land claims, each Québec Innu community has demanded the negotiation of an impacts and benefits agreement (IBA) with Nalcor as a precondition to the Generation Project proceeding. In response, Nalcor has made it clear that neither aboriginal consent nor an IBA are legally required and that the consultative efforts which have been undertaken are directed at fulfillment of the requirements of the EIS Guidelines only.

Action Being Taken:

- None, for information purposes only.

Prepared / Approved by: Susan Brewer / Rob McGrath, DNR

Approved by:

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