

625-26-02

ccm# 2007-

**Premier's Briefing Note
Cabinet Secretariat**

Title: Lower Churchill Environmental Assessment (EA)

Issue: To provide an update on progress with specific emphasis on the Environmental Impact Statement (EIS) Guidelines, Consultation Agreements with Aboriginal groups in Labrador, a Memorandum of Understanding with the federal government on a Joint Review process, [REDACTED]
[REDACTED]

Background:

- On December 1, 2006 the Lower Churchill generation project was registered for EA review with the provincial and federal governments. On January 23, 2007 then Environment and Conservation (ENVC) Minister Jackman decided that an EIS would be required. On June 5, 2007 federal Environment Minister John Baird announced that he had referred the proposed project for EA by a review panel.
- In response to a presentation in May 2007 on the Environmental Assessment process, Cabinet provided direction (MC 2007-0468) to:
 - negotiate a Memorandum of Understanding (MOU) with Canada on a joint EA review process by an independent panel;
 - negotiate separate Consultation Agreements with the Innu Nation and the Labrador Metis Nation (LMN). The agreement with the LMN would be at a higher level of consultation than other stakeholders, but less than that accorded to the Innu Nation; and,
 - inform the Nunatsiavut Government that the project may reasonably be expected to have adverse environmental effects in the Labrador Inuit Settlement Area and/or adverse effects on Inuit rights under the Labrador Inuit Land Claims Agreement, and the Departments of Environment and Conservation and Labrador and Aboriginal Affairs were directed to negotiate a Consultation Agreement with the Nunatsiavut Government in accordance with the provisions of the Labrador Inuit Land Claims Agreement.

Memorandum of Understanding with Canada - Joint Review Process

- Harmonization of the provincial *Environmental Protection Act* is permitted under section 72 Agreements, where the Minister with Lieutenant-Governor in Council approval may enter into an agreement with other governments with respect to environmental assessment of an undertaking. Similarly under the *Canadian Environmental Assessment Act* harmonization can occur via a Joint Review Panel. Harmonization allows the Province to influence what is frequently the more time consuming federal process. This process is similar to that adopted for the Voisey's Bay EA.

Environmental Impact Statement (EIS)

- An EIS is ordered where significant negative environmental effects are indicated or where there is significant public concern about a proposal. This requires a comprehensive environmental review of a complete project description including alternatives, original research on the existing environment, socio-economic impacts, identification and evaluation of potentially significant environmental effects, an evaluation of proposed mitigation measures to minimize harmful effects and monitoring programs. **Under the *Environmental Protection Act*, when an EIS is required, Government shall provide EIS Guidelines to the proponent identifying specific issues and concerns that must be addressed in the EIS.** The Guidelines are based on registration stage comments and meetings with the proponent, government agencies and public groups. EIS Guidelines are issued within 120 days of the

EIS decision and are subject to a minimum 40 day public review prior to approval by the Minister. Three hundred twenty one days (321) has passed since the decision on an EIS was taken due to the time taken by the federal government to decide upon a Joint Panel process and since June, the need to consult with Aboriginal groups. The delay has occurred with the concurrence of the proponent.

Consultation Agreements

- The Province has a longstanding policy of consulting only with Aboriginal groups that have land claims accepted for negotiation. [REDACTED]

- The project is in the Innu Nation's Land Claim Area, which explains the decision to consult the Innu at the highest level. [REDACTED]

The Nunatsiavut Government will be consulted based on the Labrador Inuit Land Claims Agreement. The Department of Fisheries and Oceans has indicated that the project "will likely" have downstream impacts on fish and fish habitat, there "could be" cumulative effects on Ringed Seals, and also with respect to access or travel for hunting purposes in the area.

Current Status:

MOU with the federal government

- The federal government has indicated that they prefer to settle negotiations with the Innu Nation on the Consultation Agreement prior to finalizing the federal-provincial MOU. The Canadian Environmental Assessment Agency (CEAA) and the provincial Department of Environment and Conservation have therefore been focusing on these negotiations. A draft of the MOU has been prepared and has been presented to CEAA. **The Province and the federal government are of the view that there are not any significant issues in finalizing this agreement.** Notwithstanding the

status of the MOU, the federal government has agreed to accept the Province's timelines and proceed with joint issuance of the Guidelines prior to the MOU being finalized. Negotiations on all aspects of the EA are being conducted with both the federal and provincial governments present.

EIS Guidelines

- **Innu Nation:** The draft EIS Guidelines were presented to the Innu Nation on October 19. Innu comments were provided on December 4; 46 days later. The proposed Innu Nation draft of the EIS Guidelines introduces additional text which adds approximately 22 pages to the original 42 pages. There are numerous references to Innu specific information requirements, the requirement for an Innu Issues report, along with specific references to an Innu Industrial Benefits Agreement. These represent items that would not appear in a generic EIS Guidelines document and the Province is of the view that most of the comments are inappropriate for inclusion in the Guidelines.
- The Innu Nation comments are currently being reviewed by federal and provincial officials and are not intended to be conveyed to the proponent until this analysis is complete. Comments acceptable to the federal and provincial governments will be incorporated while all comments will be considered along with other public feedback once the Guidelines are released.
- There has still been no indication that the Innu Nation is agreeable to releasing the EIS Guidelines for public review prior to reaching a Consultation Agreement.
- **Nunatsiavut Government and LMN:** The Guidelines were presented to the Nunatsiavut Government and LMN on September 18 and October 11 respectively. To date no comments have been received from either of these groups.
- **QC Innu:** As no decision has been taken to consult the QC Innu up to this point there has been no discussion with these groups on the Guidelines nor has a copy been provided.

Consultation Agreements

- **Innu Nation:** The Province met with the federal government and Innu Nation on December 3 in St. John's to discuss an Innu Nation redraft (received November 30) of the original federal-provincial draft of the Consultation Agreement. The Innu Nation had committed to revise the draft at a November 22 meeting in Ottawa.

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- **Nunatsiavut Government and Labrador Metis Nation:** The Province has not been contacted regarding a Consultation Agreement since the original meeting with representatives of the Nunatsiavut government. The LMN, however, have contacted the Province to seek information on timelines pertaining to the negotiation of a Consultation Agreement. The Province has not acted upon this request due to the need to finalize the Innu Nation agreement – i.e. this agreement, with the group

to be afforded the highest level of consultation, is fundamental to determining the scope of agreements with the other groups.

- **QC Innu:** No attempts have been made to pursue consultations with the QC Innu at this point in time.

Recommended Next Steps/Analysis:

MOU with the federal government

- The federal-provincial team will work to conclude this agreement as soon as reasonably possible following the public release of the draft EIS Guidelines. As stated earlier, it is not anticipated that there will be any substantive issues in completing the MOU.

EIS Guidelines

- It is recommended that the Province indicate to the Innu Nation: (i) that the Minister and/or Premier are concerned about the time being taken to conclude a Consultation Agreement and the resulting delay in the draft Guidelines being released; and, (ii) that the Minister is prepared to release the draft Guidelines but continue to work diligently with the Innu towards a Consultation Agreement.

• [REDACTED]

- NL Hydro is of the view that the current lack of progress on the EA has placed the project "within a hair" of deferral for the upcoming year. While there may be delays at the back end of the public review process, the draft Guidelines being released at this time would allow the proponent to begin to address concerns expressed by other groups and individuals notwithstanding any new comments brought forward from the Innu Nation.



Consultation Agreements

- **QC Innu:** [REDACTED]

[REDACTED] Preliminary feedback from CEAA on December 7 suggests that the federal government is considering contacting all the QC Innu groups in the near future but not before an agreed upon federal-provincial approach to these consultations is determined.

- Once a strategy for dealing with the QC Innu is agreed upon with the federal government, the negotiating team should make contact with the QC Innu to seek preliminary input on their views of the impacts of the generation project on them and what they feel is the appropriate level of consultation. Depending on the results of these discussions, consideration could also be given to providing a copy of the draft EIS Guidelines to some or all of the groups. Regardless of final format, it is imperative, given the start of such consultations, that the federal and provincial team members be directed to pursue these consultations vigorously.

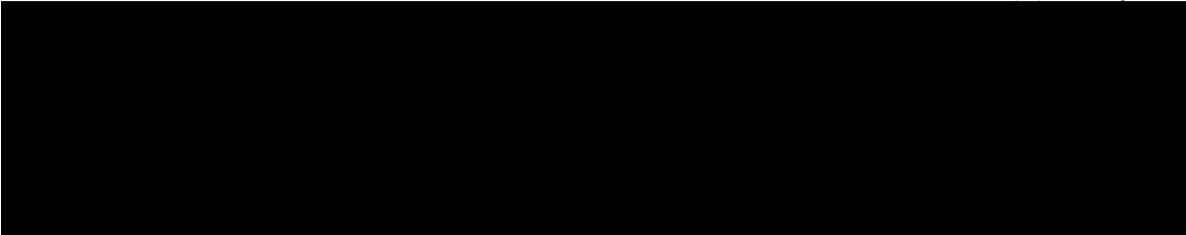
• [REDACTED]

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- **Innu Nation:** In the meantime, based on the unacceptable positions advanced by the Innu Nation in the latest draft of the Consultation Agreement it is recommended that the federal-provincial team finalize their current review, adjust the draft to reflect the governments' bottom-line position, and return the document to the Innu Nation with an indication of this being the federal-provincial teams' final offer. This should be done in advance of the face-to-face meeting scheduled for December 14 in Ottawa.
 - It may also be appropriate in this transmittal, or under separate cover, to indicate to the Innu Nation that the federal government and the Province are preparing to engage the QC Innu in consultations.
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Direction Requested:

- Your approval to proceed as follows is requested:
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- Complete a revised federal-provincial draft of the Consultation Agreement with the Innu Nation and convey that this draft is the final position of the federal and provincial governments in advance of the meeting scheduled this Friday in Ottawa (December 14); and,
- Proceed to release the draft Guidelines for public review once the Guidelines have been provided to the appropriate QC Innu bands.

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Drafted by: CS, in consultation with JUS, ENVC, IGA, NR, EDU, LAA, and NLH
Approved by: Gary Norris
December 10, 2007