

Date : 7/16/2012 6:26:10 PM

CIMFP Exhibit P-01674

Page 1

From : "Bown, Charles W."

To : "Maclean, Heather" , "Scott, Paul G."

Subject : Fw: Information Note for Tomorrow's Meeting With NunatuKavut

Attachment : IN - NCC ACP LCP and LITL 2.doc;COR-2012-000812-01 ~ Nunatukavut Community Council regarding Lower Churchill Hydroelectric Generation Project.pdf;Letter from Todd Russell ~ Lower Churchill Project and other concerns of the NunatuKavut Community Council.pdf;COR-2012-000947-01 Letter - Response to Provincial Consultation Policy and Nunatukavut Community Council(2).pdf;Aboriginal Consultation Guidelines - Reply to NCC Letter of May 4, 2012 Requesting Capacity Funding for Implementation of the Generation Guidelines.DOC;

Fyi

Sent Via BlackBerry

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**From:** Gover, Aubrey

**To:** Dalton, Diana (Natural Resources); Bown, Charles W.; Scott, Paul G.; Bowles, Ron

**Cc:** English, Tracy

**Sent:** Mon Jul 16 18:25:16 2012

**Subject:** Information Note for Tomorrow's Meeting With NunatuKavut

Please find a note I will be transmitting to Minister McGrath for his approval. Also attached are the four letters cited in the note.

**Information Note**  
**Intergovernmental and Aboriginal Affairs Secretariat**

**Title:** NunatuKavut Community Council and the Province's proposed Aboriginal Consultation Policy (ACP), the Lower Churchill Generation Project, and the Labrador-Island Transmission Link.

**Issue:** To provide an update of NunatuKavut Community Council's (NCC) correspondence in relation to the Aboriginal Consultation Policy and post-EA consultation Guidelines for the Generation Project and to advise on the status of the Aboriginal Consultation Policy and the Labrador-Island Transmission Link Environmental Assessment.

**Background:**

- In his letter dated 27 April 2012, attached, NCC's President, Todd Russell requested a meeting with Premier Kathy Dunderdale to discuss issues around jurisdiction, consultation obligations, Aboriginal policy, harvesting and resource development, and to explore common interests in matters of education, health, fisheries, and infrastructure. In this letter, President Russell specifically references the need for resolution of concerns regarding the Generation Project and the Labrador-Island Transmission Link. The Premier requested that Minister McGrath hold the meeting. Mr. Russell asked that Minister Kennedy also attend.
- The meeting will likely focus on two issues: the Environmental Assessment processes for the Lower Churchill Project, and the Aboriginal Consultation Policy.

Environmental Assessment (EA) Processes for Generation Project and Labrador-Island Transmission Link

- The Generation EA Joint Review Panel (JRP) released its report, including its recommendations, on 25 August, 2011. Prior to this, the NCC sought to unsuccessfully enjoin the JRP hearings.
- On 15 March, 2012, the Governments of Canada and Newfoundland and Labrador released the Project from EA, while committing to ensure the implementation of mitigation measures to reduce the adverse environmental impacts identified by the JRP.
- The Province issued post-EA permitting guidelines to consult the NCC and others on permits sought by the proponent of the Generation Project.
- On 20 December, 2012, the Grand Riverkeepers (Labrador), Sierra Club of Canada, and the NCC filed a Notice of Application to Federal Court against the Federal Government claiming that the EA undertaken by the JRP failed to comply with the *Canadian Environmental Assessment Act (CEAA)* and the *Agreement Concerning the Establishment of a Joint Review Panel for the Environmental Assessment of the Lower Churchill Hydroelectric Generation Project*, and therefore, future Federal statutory measures and issuance of permits, authorizations, or financial assistance should be prohibited. Specifically, the claimants argue that the JRP failed to satisfy its mandatory duties by not completing an assessment of the alternatives to the Generation Project and, as a result, failed to provide an informed rationale or conclusion on whether the adverse environmental effects would be justified. It is unclear at this time how this Application will affect the many key decisions to be made regarding the Generation Project.
- Nalcor registered the Labrador-Island Transmission Link EA on 2 February, 2009, and that EA process is ongoing. The Environmental Impact Statement (EIS) Guidelines were issued in May 2011 and in April 2012, Nalcor submitted its EIS. A joint Federal-Provincial Consultation Plan is in place for this project, which includes the NCC.

Aboriginal Consultation Policy

- President Russell sent a letter to Minister McGrath on May 4, 2012, in which he raised concerns with the provincial consultation Guidelines for the Lower Churchill Generation Project.

- The Aboriginal Consultation Policy was issued May 25, 2012 for comment by the NCC and others.
- On 29 May 2012, Mr. Aubrey T. Gover (ADM – Aboriginal Affairs) sent a letter (attached) to NCC's President Todd Russell in response to President Russell's letter of 4 May 2012 that addressed the following issues:
  - Consultation of the major impacts of the Generation Project has already been carried out through the harmonized federal-provincial EA process, from which it was released, subject to conditions, on 15 March, 2012. The NCC, by its own estimation, received in excess of \$100,000 in capacity funding during the Project EA.
  - The consultation process and funding provided to NCC during the Project EA was considered reasonable in *NunatuKavut Community Council Inc. v. Nalcor Energy*.
  - The JRP concluded that the Project's impact on NCC's contemporary land and resource use would be adverse but not significant, following mitigation measures proposed by Nalcor Energy and those recommended by the Joint Review Panel.
  - The NCC should have extensive information on potential adverse impacts of the Project on asserted Aboriginal rights, as other sources of information gathering have been available to the NCC, including the preparation of *Unveiling NunatuKavut* and other provincial agreements, such as those in the provincial forestry sector. NunatuKavut received more than \$2,000,000 to research and write *Unveiling NunatuKavut*.
  - The obligations the duty to consult places on Aboriginal organizations to identify asserted rights and any potential adverse impacts on those rights. The letter reiterates the objective of consultation on provincial regulatory approval applications post-EA is not to identify general assertions of rights, but rather to identify specific impacts of discrete project-related activities on specific asserted Aboriginal rights, and where appropriate, develop mitigation measures to address any such impacts which could be implemented via the terms and conditions of a regulatory approval.
  - The Province sees no need to provide capacity funding to the NCC to participate in the consultation process set out in post-EA provincial regulatory approval consultation Guidelines, given the vast information available to the NCC, the information on the Project provided by the proponent on an ongoing basis, the quantity of land claim documentation filed by the NCC, the discrete activities associated with regulatory approval being consulted upon, and the objective of that consultation.
- President Russell sent another letter on June 25, 2012 (attached) to Minister McGrath regarding the Province's proposed Aboriginal Consultation Policy, however the letter was focused on the Lower Churchill Generation Permitting Consultations. President Russell provided detailed comments on the current consultation process for mineral exploration and regulatory approval permits required for the Generation Project, as follows.
  - President Russell states that NCC does not have the capacity to adequately respond to the more than sixty provincial permit approval applications the NCC had received for mineral exploration and quarry development, and the Muskrat Falls Project. President Russell pinpoints areas where his organization lacks capacity by outlining seven steps the NCC considers reasonable for processing any one application:

Step 1: Receive and file application -President Russell notes the NCC lack office staff dedicated to this procedure;  
Step 2: Locate coordinates of proposed permitting activity on topographic map;  
Step 3: Organize a site visit for inspection and report. Russell notes that since most sites are remote, a helicopter would be needed to sufficiently assess potential impacts; President Russell notes the NCC lack dedicated field personnel.  
Step 4: Search existing data for records of land-use and cultural significance of site  
President Russell notes the NCC lack sufficient data on land use in all areas of Land Claim and lack research staff.  
Step 5: Ensure data is complete by consulting in nearest communities to site;  
Step 6: Generate a report on rights infringements; and  
Step 7: Conduct internal NCC discussion of rights infringements and provide notification to the Province.

- President Russell stated the steps outlined are both lengthy and costly. He notes that NCC may be able to adequately respond to permits within the 30-day timeline if they received capacity funding from the Province. President Russell closes the letter by requesting a meeting with Minister McGrath.

**Current Status:**

- The Province encourages the NCC to submit its concerns regarding specific permit applications for the Generation Project pursuant to the post-EA permitting Guidelines that have been sent to the NCC.
- Canada and the Province are currently assessing comments submitted by the NCC on the Labrador-Island Transmission Link Environmental Impact Statement in accordance with the Consultation Plan for this project. The NCC is eligible for participant funding under this EA.
- Submitted comments on the Province's Aboriginal Consultation Policy are currently being reviewed by Aboriginal Affairs. All comments are being considered in the next phase of the development of the Policy.

Prepared / Reviewed by: G. Montevecchi / A. Gover/T English/IGAA

Approved by:

July 16, 2012



P. O. Box 460, Station C  
Happy Valley-Goose Bay, NL  
A0P 1C0

The Honourable Nick McGrath  
Minister, Aboriginal Affairs  
Intergovernmental and Aboriginal Affairs Secretariat  
Government of Newfoundland and Labrador  
P.O. Box 8700  
Confederation Building  
St. John's, NL A1B 4J6

May 4<sup>th</sup>, 2012

Dear Minister McGrath:

**Re: Consultation with Nunatukavut Community Council regarding Lower Churchill Hydroelectric Generation Project**

I am writing to you regarding Crown consultation by the Government of Newfoundland and Labrador with the Nunatukavut Community Council regarding the Lower Churchill Hydroelectric Generation Project.

We are in receipt of an e-mail dated March 21, 2012, from Sean Dutton as Deputy Minister for Aboriginal Affairs (copy enclosed) attaching your Department's proposed Aboriginal Consultation Guidelines for the Project. At a minimum, in our view, meaningful consultation also includes the following:

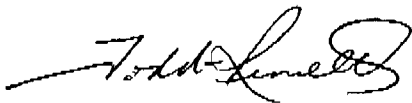
- Consultation must be in good faith and in an environment of respect
- Consultation should take place on our territory, so that discussions and decisions are placed in their appropriate social, cultural and environmental context
- The Government of Newfoundland and Labrador should provide the Nunatukavut Community Council with funding and resources to participate in the consultation process: this would include funding for research on cultural and environmental impacts of the project, as well as funding for relevant scientific, technical, and legal advice if needed
- Consultation will occur to completion before final decisions on permitting are made or Letters of Advice are issued
- Consultation should be guided by the principles of the UN Declaration on the Rights of Indigenous Peoples, ratified by the Canadian Government

To date, the Nunatukavut Community Council has received a number of referrals from various provincial government departments for permit applications relating to the project. Based on the requests to date, it appears that the project will have a significant impact on our Aboriginal Rights and Title, including:

- Flooding of lands subject to Aboriginal title;
- Destruction, damage or pollution of watercourses and bodies of water;
- Impacts on fish and other aquatic species on which we rely for food, ceremonial and other purposes;
- Impacts on land-based species on which we rely for food, ceremonial and other purposes; and
- Impacts on migratory species, including birds and caribou, on which we rely for food, ceremonial and other purposes.

However, the Nunatukavut Community Council Inc. lacks adequate resources to identify the impacts on our Aboriginal Rights and Title, properly deal with these requests for consultation, and to participate in the consultation process in a meaningful way. We look forward to discussing with you what resources your department intends to provide in order to support and facilitate our involvement in the consultation process, and to ensure that your constitutional duty to consult is properly fulfilled.

Ekingootigac,



Todd Russell, President  
Nunatukavut Community Council Inc.

Encl.

**From:** Dutton, Sean

**Sent:** Wednesday, March 21, 2012 4:32 PM

**To:** 'tom\_sheldon@nunatsiavut.com'; 'cmontague@labradormetis.ca'; 'jpetahu@ekuanitshit.qc.ca';

'reception@pakuashipu.net'; 'bacgeo@'; 'realmck@';

'conseil.de.bande@'; 'ken.rock@'; 'kawawa@naskapi.ca'; 'preid@innu.ca'

**Cc:** 'stevepellerin@nalcenergy.com'; Harvey, Brian; 'nadir.andre@bcf.ca'; 'marie'; 'linnes@oktlaw.com'; 'rjnuna@innu.ca'; 'Carl McLean'

**Subject:** Lower Churchill Generation Project - Aboriginal Consultation Guidelines

To: representatives of the Innu Nation, Nunatsiavut Government, NunatuKavut Community Council, Naskapi Nation of Kawawachikamach, Innu Nation of Matimekush-Lac John, Uashat mak Mani-Utenam First Nation, Council of the Innu of Ekuanitshit, Innu of Nutashkuan, Council of the Innu of Unamen Shipu, Council of the Innu of Pakua Shipu

The Governments of Newfoundland and Labrador and Canada have released the Lower Churchill Generation Project from Environmental Assessment (EA). Provincial and Federal responses to the Joint Review Panel Report are available online at:

[http://www.env.gov.nl.ca/env/Response\\_to\\_Panel\\_Report.pdf](http://www.env.gov.nl.ca/env/Response_to_Panel_Report.pdf)

<http://www.ceaa.gc.ca/050/documents/54772/54772E.pdf>

The Government of Newfoundland and Labrador is now preparing for the receipt of permit applications related to this development. Attached for your information are Aboriginal Consultation Guidelines which have been prepared to outline how Aboriginal organizations will be engaged by provincial regulatory entities in the review of these applications. The Proponent, Nalcor Energy, is also being provided with these Guidelines.

You have been listed as the point of contact for your organization. If someone else should be designated as the appropriate point of contact, please advise the name and e-mail address of that individual.

If you have any questions, please contact Mr. Brian Harvey at the address identified in the Guidelines.

Sincerely,

SEAN DUTTON

Deputy Minister

Intergovernmental and Aboriginal Affairs Secretariat

Government of Newfoundland and Labrador

cc. Mr. Steve Pellerin, Nalcor Energy



## NUNATUKAVUT

P. O. Box 460, Station C  
Happy Valley-Goose Bay, NL  
A0P 1C0

Phone: 1-709-896-0592, Ext. 2222

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Website: [www.nunatukavut.ca](http://www.nunatukavut.ca)

April 27, 2012

Premier Kathy Dunderdale  
East Block, Confederation Building  
P.O. Box 8700  
St. John's,  
Newfoundland and Labrador  
A1B 4J6

via facsimile (709) 729 5875

Dear Premier Dunderdale:

I write today in my capacity as newly elected President of the NunatuKavut Community Council (NCC).

The relationship between NCC and the Province of Newfoundland and Labrador is a very important one. There are fundamental issues which include jurisdiction, consultation obligation, aboriginal policy, harvesting and resource development which need to be addressed. In addition, we have a common interest in matters of education, health, fisheries, infrastructure and the like.

There are also concerns specific to the Lower Churchill generation and transmission project which require immediate attention. Resolution of those concerns does require clear direction from your government.

Given the above I am requesting a meeting with you to discuss the matters outlined. As timing is a factor I suggest we meet in the very near future.

We can and we must move forward to strengthen our relationship, one that is mutually respectful and beneficial. I look forward to your cooperation.

Regards,

Todd Russell,  
President, NunatuKavut Community Council

cc. NunatuKavut Council

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Office of the President



**P. O. Box 460, Station C  
Happy Valley-Goose Bay, NL  
A0P 1C0**

The Honourable Nick McGrath  
Minister, Aboriginal Affairs  
Intergovernmental and Aboriginal Affairs Secretariat  
Government of Newfoundland and Labrador  
P.O. Box 8700  
Confederation Building  
St. John's, NL A1B 4J6

June 25th, 2012

Dear Minister McGrath:

**Re: Provincial Consultation Policy and Nunatukavut Community Council**

Thank you for your letter of May 25<sup>th</sup>, outlining a draft consultation policy process.

I will answer your letter by way of an example; NCC has recently been inundated with permit approval applications from both the mining sector and the recently proposed hydroelectric developments. Since March 21<sup>st</sup>, we have received eighteen permit applications from the various departments on the hydro-electric project. In the past six months, our office has received forty three permit applications for quarry development and mining exploration.

To adequately respond to just one of these permit applications we would have to ensure the following steps were put in place;

- (1) Receive and file the permit application. We have no office staff dedicated to this procedure.
- (2) Physically locate the co-ordinates of the proposed permitting activity on topographic maps,
- (3) Organize a site visit; (a) if the site is near one of the communities and near a road then we would have to dispatch some person from our offices to do an inspection and write a report, (b) if the site is remote, which most Labrador sites just happen to be, then the use of a helicopter, or other conveyance, would be necessary and a report would have to be generated. We do not have dedicated field personnel.
- (4) To ascertain whether the activity may impact/infringe our site specific aboriginal or treaty rights, we would review our extant database to see if we have any records in our

limited database of members who are active at the permit specific site, or whether we have records of culturally important items, or activities at the site. We have no staff to carry on this function. To be clear, we do not have on file data about every member's land use (current and historic), of every kind and in every place. Every permit review will require active research and inquiry.

(5) We would also have to make inquiries in the nearest communities to ensure that our data was complete, in order to make any reasonable determinations.

(6) Following all these activities, we would then generate a report which would be indicative of the possibility of rights infringements,

(7) If infringements were indicated, this would lead to a discussion with the NunatuKavut Community Council, following which NCC would notify the Province.

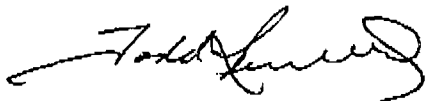
It might be possible for a properly resourced consultation department, as has been funded by other provinces for their Aboriginal communities, to meet a 30 day deadline. However, we have no capacity to do this in an office which has no dedicated staff to such matters, or any budgets for logistic support.

As you may understand, such a process, as outlined above, which we consider to be very reasonable, may be both lengthy and costly. It is my understanding that these types of sentiments were expressed to Mr. Greg Clarke of your office by my staff in a meeting with your officials on May 8<sup>th</sup>, 2012. In the very recent past, as I noted above, we have had more than sixty of these permit applications and we do not have enough staff to adequately read and file them, let alone examine the highly probable rights infringements.

Without some accommodation for resources at our end, NCC considers many aspects of your proposed policy to be little more than a paper chase and of minimum value to either us or yourselves in meeting your duty of honour.

The above comments are our initial response only to the draft consultation policy provided on May 25<sup>th</sup>. I would like to reserve the opportunity to further explore the draft policy directly with you. In that regard, I am requesting a meeting with you at your convenience to discuss these important issues.

Ekingootigac,



Todd Russell, President

cc. NunatuKavut Council

May 29, 2012

Todd Russell, President  
NunatuKavut Community Council, Inc.  
P.O. Box 460, Station C  
Happy Valley-Goose Bay, NL AOP 1C0  
Fax: (709) 896-0594

Dear President Russell,

Thank you for your letter of May 4, 2012, in which you address the provincial consultation Guidelines regarding the provincial permits required by the Lower Churchill Hydroelectric Generation Project (the "Project"). I have been asked to reply to your letter. This letter also responds to your identical letter to the Deputy Minister of Intergovernmental and Aboriginal Affairs.

The NunatuKavut Community Council (NCC) which was invited to provide or confirm an appropriate point of contact for consultation pursuant to the Guidelines. An email from the NCC of May 4, 2012 indicated Mr. George Russell, Jr. was to be the primary contact for purposes of the Guidelines.

Since, as you know, the Province released the Project from environmental assessment (EA), subject to conditions, on March 15, 2012; the objective of consultation pursuant to the Guidelines is not to identify environmental effects in general, but rather to identify specific impacts of discrete project-related activities on specific asserted Aboriginal rights and, where appropriate, develop mitigation measures to address any such impacts which could be implemented via the terms and conditions of a regulatory approval.

Consultation on the major impacts of the Project has already been carried out through the harmonized federal-provincial EA process for the Project. In this context, the Department of Environment and Conservation wrote to then-NCC President Chris Montague on February 1, 2008, to lay out the many opportunities available to the NCC to be consulted during the Project EA. It is also my understanding that the proponent began its own efforts to engage the NCC in 2007 and entered into funded community engagement agreements with the NCC in 2009 and 2011 in an attempt to solicit information on specific potential adverse impacts of Project-related activities on the NCC's asserted Aboriginal rights.

The consultation process and funding provided for in the harmonized federal-provincial EA of the Project was found to be reasonable, as you are aware, in *NunatuKavut Community Council Inc. v. Nalcor Energy*.

I note that the NCC, which by its own estimation received in excess of \$100,000 in capacity funding during the Project EA, made several submissions to the Joint Review Panel, including the submission of *Unveiling NunatuKavut*, and yet the Joint Review Panel Report concluded that the Project's impact on the NCC's contemporary land and resource uses, after implementation of the mitigation measures proposed by Nalcor Energy and those recommended by the Joint Review Panel, would be adverse but not significant.

The Province's replies to the Joint Review Panel recommendations will very likely allow the NCC avenues of input into the post-EA regulatory approval phase of the Project other than the Guidelines. For example, the following is the Province's reply to recommendation 15.5 of the Joint Review Panel:

The Government of Newfoundland and Labrador accepts the intent of this recommendation to establish an Environmental Monitoring and Community Liaison Committee. As identified in the Governments' response to recommendation 15.1, a committee will be established by Nalcor to provide feedback and advice to the Proponent and Government on the effects of the Project. The Government is committed to ensuring consultation with affected Aboriginal groups, communities, and relevant stakeholders to address public concerns and communicate monitoring results.

The Joint Review Panel is not, of course the only source of information gathering that has been available to the NCC as a means of determining potential adverse impacts of Project activities on asserted Aboriginal rights. Such information may have also been gathered during preparation of *Unveiling NunatuKavut* and as a result of other provincial agreements such as those in the provincial forestry sector. The trial judge in *NunatuKavut Community Council Inc. v. Nalcor Energy* noted "that Nunatukavut received more than \$2,000,000 to research and write "Unveiling Nunatukavut", its land claim document, which it did present to the JRP." In light of this information gathering and consultation activity, the NCC should already have extensive information on potential adverse impacts.

As you are aware, the Province has a separate and distinct process for consulting the NCC on the George River Caribou herd. That process has provided additional information to the NCC on that herd.

I understand that the proponent will offer the NCC access to its technical and scientific experts to answer questions the NCC may have regarding the applications. I would encourage the NCC to consider availing itself of this offer, particularly if it believes it might assist the NCC in identifying any specific potential adverse impacts on the NCC's asserted Aboriginal rights arising from the activities applied for under the permit.

The duty to consult also places obligations on an Aboriginal organization being consulted to identify asserted rights and any potential adverse impacts on those asserted rights. What is being asked of the NCC during the post-EA regulatory approval stage is not provision of general assertions of rights, but rather identification of specific adverse impacts on specific asserted rights. Given the vast amount of information that is already available to the NCC, the information on the Project provided by the proponent on an ongoing basis, the quantity of land claim documentation filed by the NCC, the discrete

activities associated with each regulatory approval being consulted upon, the objective of that consultation, and the other considerations set out in this letter the Province sees no need to provide capacity funding to the NCC to participate in the consultation process set out in the Guidelines.

The Province agrees that consultation should be conducted respectfully and in good faith by all parties to the consultation, and allow for input before permit decisions are made, and the Guidelines provide for those matters.

There is no requirement that consultation occur in your organization's asserted claim area. There was no such finding in *NunatuKavut Community Council Inc. v. Nalcor Energy* and this was not argued by the NCC in that case.

Furthermore, as you note, the federal government endorsed the United Nations Declaration on the Rights of Indigenous Peoples, but that endorsement was qualified. The federal government stated "the Declaration is a non-legally binding document that does not reflect customary international law *nor change Canadian law*" (emphasis added). The Guidelines meet the standard of a reasonable consultation process under Canadian law.

Thank you for your correspondence bringing your concerns to the Province's attention.

Sincerely,

Aubrey Gover  
Assistant Deputy Minister (Aboriginal Affairs)

cc. The Honourable Nick McGrath, Minister of Intergovernmental and Aboriginal Affairs  
William Parrott, Deputy Minister, Environment and Conservation  
Diana Dalton, Deputy Minister, Natural Resources  
Tracy English, Deputy Minister, Intergovernmental and Aboriginal Affairs  
Don Burrage, QC, Deputy Minister of Justice  
Charles Bown, Associate Deputy Minister, Natural Resources  
Mr. Steve Pellerin, Nalcor Energy