



Government of Newfoundland and Labrador
Department of Environment and Conservation
Environmental Assessment Division

May 16, 2014

Mr. David Schulze
Dionne Schulze - Attorneys
507 Place d'Armes #1100
Montreal, Quebec H2Y 2W8

Dear Mr. Schulze:

Re: Reply to your April 17, 2014 letter concerning the *Species at Risk Impacts, Mitigation and Monitoring Plan* for Labrador-Island Transmission Link Project (Transmission Project): Your File 7550-005

I am writing in response to your letter of April 17, 2014 and your email of April 22, 2014 regarding the *Species at Risk Impacts, Mitigation and Monitoring Plan* (the "Plan").

For purposes of this response I have enumerated the issues you have noted, and I will address them in order.

1. *"We demand that you immediately state your position on extending the deadline in anticipation of the upcoming release of your Mitigation and Monitoring Plan for Endangered Species. We will interpret the lack of a positive response on your part within the next 30 days as your denial of our client's request."*

Response #1: Timelines for the post-EA consultation with Aboriginal organizations are not arbitrary. All post-EA regulatory authorizations required for the Transmission Project are in accordance with the Transmission Project Aboriginal Consultation Guidelines (Guidelines). The Guidelines which were transmitted to the Conseil des Innus de Ekuanitshit via e-mail on July 2, 2013. It is unfortunate that the Innu of Ekuanitshit believe that 30 days is inadequate for reviewing post-EA documents. However, as indicated in previous correspondence, the Province is prepared at any time during the 30-day period to consider a request for additional time to review any monitoring and mitigation Plan circulated for review by the Proponent. Requests will be considered on a case by case basis. Also, as indicated in our March 24, 2014 correspondence, the section of the Plan that concerns caribou in Labrador will be translated and provided for your convenience.

2. *We demand that you immediately state your position on the question of whether the province will require that Nalcor Energy fund our client's participation.*

Response #2: The views of NL on post-EA funding for the Generation Project are well known by the Ekuanitshit. Similar considerations apply with respect to the Link Project. The

Environmental Impact Statement (EIS) for the Transmission Project noted that available information on the land use by the Innu of Ekuanitshit showed that land and resource use and occupation was well to the south and/or west of the project area, and that travel to the interior of Labrador, particularly North West River by the Ekuanitshit Innu is not a significant contemporary practice. I note that the Conseil des Innus de Ekuanitshit was consulted and fully participated in the environmental assessment of the Project, and tendered no evidence to the contrary. I also note that the Innu of Ekuanitshit were provided with \$10,000 in capacity funding during that EA. The funding was in addition to funding provided for the Generation Project. I would also note the more than \$85,000 offered to the Conseil des Innus de Ekuanitshit by Nalcor for a land and resource use study to encompass both this project and the Generation Project.

As well, the EA process produced information that can inform subsequent consultations on permit applications.

Additionally, provincial technical staff and regulatory officials are available to respond to any inquiries and requests during the Aboriginal consultation process.

As you know, at the conclusion of the EA, the Province and the federal government accepted the EIS and released the project from further assessment on certain conditions.

The objective of post-EA consultation is to identify particular potential adverse impacts on specific asserted Aboriginal rights to ensure the regulatory authority can develop, where appropriate, mitigation measures to address any such impacts. The Innu of Ekuanitshit have yet to clearly demonstrate how their asserted Aboriginal rights are adversely impacted by the Transmission Project, beyond expressing general concern for the Red Wine Mountain (RWM) and the Mealy Mountains protected caribou herds.

The Province's Aboriginal Consultation Policy clearly states that consultation support or capacity funding is "the responsibility of the proponent". Given the conclusions of the EIS, combined with the other factors noted above, the Province does not consider it necessary to either provide funding to the Innu of Ekuanitshit or to require Nalcor do so.

3. *The absence of any such communication on your part will be taken as confirmation that you mention the Round Table solely to avoid providing a serious response to our client's concerns about the Red Wine Mountain herd.*

Response #3: As the Province indicated in its July 26, 2013 letter, "ENVC shares your concern for the sustainability of the RWMH." In that letter the Province explained the measures it is following to ensure that negative effects on the RWMH are minimized to the extent possible. For example, during the Transmission Project's EA, Nalcor Energy rerouted the transmission line to a location adjacent to the Trans-Labrador Highway in an effort to reduce the impact of the Transmission Project on caribou herds.

4. *The practical and legal differences between the IMMP and the EEMs.*

Response #4: In its July 26, 2013 letter, the Province indicated that as a condition of the Transmission Project's EA release, Nalcor must obtain a permit under s.19 of the provincial *Endangered Species Act*. This permit directs the Proponent to ensure appropriate avoidance and mitigation measures are in place to protect species at risk to the greatest extent possible. To that end, the Province has been working closely with Nalcor Energy in the development of a Species at Risk Impacts Mitigation and Monitoring Plan (IMMP). Commitments made by Nalcor in the EIS and EIS Addendum to mitigate effects on the RWMH will be specifically addressed in the IMMP. In addition, the IMMP will include the development of a specific long-term monitoring plan in collaboration with wildlife biologists from the Wildlife Division. In brief, the development of an acceptable IMMP is a condition that the Proponent must fulfill prior to the issuance of a s.19 permit for work on the Transmission Project. The EEM documents are not specific to provincially listed species and are requirements under the provincial *Environmental Protection Act*. As such, the EEM for caribou circulated to Aboriginal organizations on April 23, 2014 refers only to caribou on the Island portion of the Province.

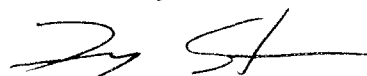
5. *The provisions we have requested for the endangered species mitigation and monitoring plan also apply to the plan for caribou sent today; you may address both in the answer you are preparing to our letter of April 17, 2014.*

Response#5: The EEM for caribou circulated by Nalcor on April 23, 2014 pertains to caribou on the Island portion of the province. It was circulated as a part of the package of EEMs required as a condition of release for the LITL Project. However, given the Aboriginal rights asserted by the Conseil des Innus de Ekuanitshit do not encompass the Island portion of the Province, we do not expect this EEM to be of high significance to the Innu of Ekuanitshit.

Throughout your letter you indicate that in the absence of communication your client will draw certain inferences regarding issues over which the Province has not articulated a position. I wish to caution you over this practice. In cases where the Province has not stated a position, your client should draw neither a positive nor a negative inference. Any reliance on such inferences is at your client's own risk.

Once again, thank you for bringing your concerns to our attention.

Sincerely,



Ivy Stone

Environmental Assessment Division

Cc. Chief Jean-Charles Piétacho, Conseil des Innus de Ekuanitshit (BY FAX: 418-949-2085)
Brian Harvey, Labrador and Aboriginal Affairs Office
Kirsten Miller, Wildlife Division, Department of Environment & Conservation