

Update on Government's Response to the Lower Churchill River Hydroelectric Generation Project Joint Review Panel Report

July 11, 2019

Purpose

On June 20, 2019, the Commissioner requested additional detail on the status of the provincial government's progress in fulfilling the commitments made in the Joint Review Panel response and a detailed explanatory note regarding the process for compiling the documents. The below information details the processes to prepare the response to the Joint Review Panel response and to track government's fulfillment of the commitments made in the response.

Commencement of Environmental Assessment

The proposal by Nalcor Energy to construct and operate two hydroelectric power generating facilities on the lower section of the Churchill River at Gull Island and Muskrat Falls in Labrador began the provincial environmental assessment when the undertaking was registered for on December 1, 2006. The Minister required the project proceed to an Environmental Impact Statement (EIS) on January 26, 2007.

The Lower Churchill River Hydroelectric Generation Project also required a federal environmental assessment under the *Canadian Environmental Assessment Act*. To facilitate both the provincial and federal legislated requirements, the governments agreed to a joint environmental assessment of the proposed project, including the establishment of a joint review panel.

Purpose of Joint Review Panel

On June 6, 2008, the Minister released a draft Joint Review Panel Agreement and Terms of Reference. The Agreement was between the Government of Canada, as represented by the Minister of Environment, and the Government of Newfoundland and Labrador, as represented by the Minister of Environment and Conservation and the Minister of Intergovernmental Affairs (Annex A). The Joint Review Panel Agreement included procedures for appointing independent panel members to conduct public hearings, the proposed terms of reference for the panel, and procedures for conducting the review process. On January 8, 2009 the five member Joint Review Panel was established to:

- Conduct an examination of the environmental effects of the proposed project and the significance of those effects;
- Consider measures that are technically and economically feasible to mitigate any adverse environmental effects, the need for and the requirements of any follow-up programs with respect to the project; and
- Consider comments from the public that are received during the review.

To complete this process the Joint Review Panel completed public hearings, reviewed technical information submitted by the proponent, requested and received responses to information requests, and prepared a written report containing the recommendations of the panel. The recommendations of a joint review panel are considered advice to government. The legally binding decision to release a project from environmental assessment, including required terms and conditions, is made by the provincial and federal government.

Joint Review Panel Response Preparation

On August 25, 2011, the Joint Review Panel released a report on the acceptability of the project, including 83 recommendations to Nalcor, the provincial government, and the federal government that, if the project is approved, should be considered. One of these recommendations (15.11) was that the provincial government prepare a publically available, written response to the Joint Review Panel report.

The Department of Environment Conservation (now the Department of Municipal Affairs and Environment) coordinated a response from all government departments to the Joint Review Panel Report. The Department's Environmental Assessment Division prepared templates for each recommendation and a guidance document on how to respond (Annex B). This guidance document was modified from a Fisheries and Oceans Canada version.

Preparation of the response across government departments continued for the months leading up to the project release. For example, on November 9, 2011, the Deputy Minister of the Department of Environment and Conservation wrote all his deputy minister colleagues requesting review of the draft provincial responses to the panel report recommendations (Annex C). The Deputy Minister noted that responses had been drafted by the Department or Agency that had the provincial mandate related to the recommendation. The departments that were involved as lead agencies in developing those responses are now represented by:

- Natural Resources
- Fisheries and Labrador Resources
- Municipal Affairs and Environment
- Intergovernmental and Indigenous Affairs Secretariat
- ServiceNL
- Tourism, Culture, Industry, and Innovation
- Health and Community Services
- Advanced Education and Skills
- Children, Seniors, and Social Development
- Justice and Public Safety

Deputy Ministers for each lead department signed off on the revisions of the response relevant to their Department (e.g. Annex D). A Deputy-level interdepartmental committee was established to review all the department's submissions and reach a consensus on the Government's final response, prior to submission to Cabinet for approval (e.g. P-00988).

Joint Review Panel Recommendations Tracking Table

Government responded to the Joint Review Panel Recommendations' on March 15, 2012 (P-00051). The same day, the Minister announced that the project was released from environmental assessment.

The above listed government departments that prepared the response to Joint Review Panel Report were also responsible for collectively fulfilling the commitments made in the response. A tracking table was created and updated at various periods following the release of the project. This was a subsequent version of a tracking table used to prepare the response (e.g. P-01601), and consisted of the same or similar table headings and information. The Labrador Affairs Secretariat was directed by Cabinet Secretariat to coordinate updates to this table in 2012 and 2014. The updated information was provided through departmental executive.

In June 2019, the Department of Municipal Affairs and Environment was asked to prepare an update on the provincial government's progress in fulfilling the commitments made in the Joint Review Panel response. The Department circulated the tracking table to the above listed departments, requesting an update on progress and subsequently submitted the update to the Muskrat Falls Commission (P-04229).

On June 20, 2019, the Commissioner requested additional detail on the status of the provincial government's progress in fulfilling the commitments made in the Joint Review Panel response. The Department circulated the tracking table to the above listed departments, as well as to Nalcor, requesting departments and Nalcor provide additional detail to the tracking table, such as:

- Milestones between 2014 and 2019;
- Brief explanation of how the status links to provincial government's response to the recommendation and to any environmental assessment terms and conditions of release; and,
- Brief explanation of reason why a commitment in the provincial government's response to the recommendation has not yet been met, if that is in fact the case.

The updated tracking table details the provincial government's progress in fulfilling the commitments (Annex E). The 83 recommendations are complete or ongoing.

Conditions of Release & Permitting

The release of the project from environmental assessment was subject, as permitted under the *Environmental Protection Act*, to eleven legislated terms and conditions. Conditions are legal constraints the provincial government places on a project, in this case informed in part on the advice received from the Joint Review Panel's recommendations, to ensure it proceeds in an environmentally acceptable manner. The release decision, including the conditions, are the final outcome of the environmental assessment process.

The Environmental Assessment Division kept track of the status of each of the eleven conditions, many of which have direct links to the Joint Review Panel recommendations. The conditions cover a broad scope of issues, including the requirement to complete Environmental Protection Plans (EPPs), emergency preparedness and response plans, occupational health and safety plans, Environmental Effects Monitoring Plans (EEMPs), annual and compliance reports, and a Womens' Employment Plan, and to establish an Environmental Monitoring and Community Liaison Committee. All conditions of release, except part of two – wetland and riparian compensation plan and environmental effects monitoring plan - have been met (Annex F). Nalcor Energy has been working on these plans since 2014 and submitted the most recent draft in May 2019. This draft is currently under review.

The Environmental Assessment Division coordinated the review of each condition outcome to produce a plan or report and provided a recommendation to the Minister as to its acceptability. Most directly relate to a recommendation of the Joint Review Panel. Nalcor Energy was responsible for submitting the required plans for review by Government for regulatory compliance and to ensure the required plans were adequate. The Environmental Assessment Division sent, as it continues to do today, the documentation to various government departments for review and feedback.

Some conditions have been met, but also ongoing. For example, Nalcor Energy shall abide by all commitments made during the environmental assessment process. Nalcor Energy provided a

recent summary of their commitments made during the environmental assessment process and their current status to the Department on July 2, 2019 and it was provided to the Muskrat Falls Inquiry (P-04331). Another condition required Nalcor Energy to obtain and abide by all required licenses, permits, and approvals. The above listed government departments are also responsible for collectively meeting the required approvals and permits. In 2012, the Labrador Affairs Secretariat was directed to track permits for the Project; the most recent version of which was updated in October 2018 (Annex G). The Labrador Affairs Secretariat worked with Nalcor Energy and relevant Government departments to track the number of permits that were being processed by Government departments. Due to the advanced stage of the Project, permit activity has slowed significantly in the past year. As such, there have been few requirements with tracking permits at this stage.

Attachments:

- Annex A – Joint Review Panel Terms of Reference
 - Annex B – Joint Review Panel Response Guidance Document
 - Annex C – Deputy Minister letter to all departments regarding response review
 - Annex D – Deputy Minister sign off on draft responses to Joint Review Panel response
 - Annex E – Updated Joint Review Panel response tracking table
 - Annex F – Lower Churchill Generation Project conditions of release tracking table
 - Annex G – Permitting tracking spreadsheet
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- P-00051 – Provincial Government's response to the Joint Review Panel recommendations
 - P-00988 – Email from Deputy Minister to colleagues
 - P-01601 – Responsibility matrix for response to Joint Review Panel recommendations
 - P-04229 – Responsibility matrix and status of recommendations of the Joint Review Panel
 - P-04331 – Nalcor Energy's environmental assessment commitments tracking table