

# Government Response Guidance Document for Joint Review Panel Report on Lower Churchill Hydroelectric Generation Project by Nalcor Energy

Registration No. 1305

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## PURPOSE

The purpose of this Guidance Document is to assist departments in writing the Government Response statements to the Lower Churchill Hydroelectric Generation Project Joint Review Panel's recommendations. The document provides background information on the format of the Government Response, guidance on the crafting of the response statements and the template for the responses.

## INTRODUCTION

The Government Response to the Joint Review Panel's report on the Lower Churchill Hydroelectric Generation Project is a requirement of the review panel process under the *Environmental Protection Act*. This format is to be followed when crafting responses to ensure that the information presented is consistent.

## OVERVIEW

**Terminology:** The following categories set out the Government of Newfoundland and Labrador's approach to preparing the Government Response and, in all cases, how either the specific recommendations or, where applicable, their spirit and intent will be addressed and implemented by the Government of Newfoundland and Labrador's actions.

- Where a response indicates that the Government of Newfoundland and Labrador **"accepts"** a Panel recommendation, this means that the Government of Newfoundland and Labrador accepts the recommendation in its entirety. The response indicates how the Government of Newfoundland and Labrador will implement the recommended action. See Example A.
- Where a response indicates that the Government of Newfoundland and Labrador **"does not accept"** (i.e. rejects) a Panel recommendation, this means that the Government of Newfoundland and Labrador does not agree with the Panel's recommendation and will not implement the recommendation. Responses can be worded so as not to specifically state that the Government of Newfoundland and Labrador does not accept the recommendation but rather indicates its non-acceptance through the wording of the response. See Example B.
- Where a response indicates that the Government of Newfoundland and Labrador **"accepts the intent"** of a Panel recommendation, this means that the Government of Newfoundland and Labrador understands and agrees with the spirit and underlying rationale of the recommendation, but does not necessarily agree fully

and literally with the specific recommended approach to implementation and instead has identified what it believes is a more efficient, effective, and pragmatic means of achieving the same ends. In these cases, the Government of Newfoundland and Labrador Response indicates what the Government of Newfoundland and Labrador will do to implement the objective and intent of the Panel recommendation. See Example C.

- Where the Government of Newfoundland and Labrador is not directly mandated to respond to a recommendation (e.g. recommendations directed to the proponent or other jurisdictions), but nevertheless accepts its intent, the Government of Newfoundland and Labrador Response indicates the Government of Newfoundland and Labrador accepts the intent and where appropriate, identifies the Government of Newfoundland and Labrador's commitment to continue working with the appropriate jurisdictions and authorities to help implement the recommended action. See Examples D and E.

## FORMAT OF THE RESPONSES

One of the following options should be used when writing a response. Where a recommendation includes more than one recommended measure or condition (goal plus suggested implementation), a combination of the following options may be used together when writing the response. Examples provided below were taken from recent federal Panels completed across the Country.

### **Example A: Accepts**

#### **Recommendation**

*Fisheries and Oceans Canada (DFO), Alberta ENV, the oil sands industry, and all other affected stakeholders dedicate the resources, staff, and funding to ensure that Phase II of the Water Management Framework for the Athabasca River is completed in a comprehensive manner and on time.*

#### **Response:**

The Government of Canada accepts this recommendation. DFO and Alberta ENV are committed to ensuring that Phase II of the Water Management Framework (WMF) for the lower Athabasca River is implemented in accordance with the terms of the WMF. Both AENV and DFO expect CEMA, or a similarly inclusive stakeholder process, will be instrumental in providing the input required for Phase II.

### **Example B: Does Not Accept**

#### **Recommendation:**

*That the Territorial Program managed by the Cree Human Resources Development agency be reinstated.*

#### **Response:**

The Government of Canada is involved in negotiations with the James Bay Cree to resolve past and future land claims implementation issues. It is recommended that the consideration of the re-establishment of this program be dealt with in that process.

**Example C: Accepts the Intent**

The Government of Canada accepts the intent of this recommendation, (restate what departments believe the intent of the recommendation is)...however...

**Recommendation:**

*Canada raise the issue of integrating all regional monitoring systems with the appropriate multistakeholder forums, having regard for existing priorities and resources; AENV should determine how integration could best be accomplished.*

**Response:**

The Government of Canada accepts the intent of this recommendation. The Government of Canada currently participates with Alberta, Industry, and other stakeholders, in the development and implementation of regional monitoring programs. The Government of Canada will continue to participate in regional monitoring programs and, where appropriate, raise the issue of an integrated approach to regional environmental monitoring to support adaptive management of cumulative effects in the Athabasca oil sands region.

**Example D:**

**Recommendation:**

*That the proponent integrate members of the Eastmain and Wemindji communities, notably the tallymen affected by the project or users appointed by them, into its fieldwork teams for monitoring and mapping the navigation corridors and snowmobile trails on the Opinaca Reservoir and Boyd and Sakami lakes. The traditional knowledge of users should be incorporated when developing and implementing the programs.*

**Response:**

The Government of Canada accepts the intent of the Panel's recommendation and notes that this recommendation has been directed to the proponent. The Government of Canada will cooperate where required with Hydro Quebec, Cree and provincial authorities to address the integration of traditional knowledge, particularly from trappers' areas affected by the project, when conducting follow-up and mapping programs.

**Example E:**

**Recommendation:**

*That the proponent submit to Fisheries and Oceans Canada a detailed monitoring program of lake sturgeon populations in the Boyd-Sakami system.*

**Response:**

The Federal Government is of the opinion that a follow-up of lake sturgeon populations is a fisheries management issue which is under the purview of the province of Québec. The Department of Fisheries and Oceans notes that this recommendation is a condition of the

provincial authorization certificate. DFO will work cooperatively, where required, with provincial authorities regarding the follow-up program on lake sturgeon.

### CRITERIA TO CONSIDER WHEN MODIFYING A RECOMMENDATION

When modifying or rejecting a recommendation from the Joint Review Panel, departments should ensure that the recommendation meets one of the following criteria:

- **Misdirected:** The recommendation is directed to the wrong party or regulator.
- **End Results:** End results are not measurable or not project-specific.
- **Unclear Mitigation:** The recommendation is ambiguous in intent (lack of clarity and meaning of measure) and/or application therefore could not be implemented by a subsequent regulator and/or proponent as worded.
- **Poor Terminology:** The meaning of the technical terms is ambiguous in the recommendation.
- **Fetters a Regulator and/or Minister:** The recommendation fetters a regulator's decision making or interferes with the exercise of Ministerial discretion or another administrative tribunal.
- **Legal Implications:** The recommendation is legally unacceptable and/or would require a proponent to contravene a statute or international convention or treaty or there is a *Constitution Act* Section 35 implication.
- **Scope:** The recommendation is outside the scope of the Joint Review Panel's Terms of Reference.
- **Feasibility:** The recommendation is not technically, economically or financially feasible for either the Proponent or for the Government (for example the Government would not fund nor reallocate).
- **New Information:** New information not before the Joint Review Panel renders the recommendation inappropriate as worded.
- **Significance:** The recommendation is not linked to significant adverse impacts or is a trivial concern or is most likely beyond the scope.

The criteria used to determine that the recommendation requires modification should be worked into the government response or the rationale (and preferably both). When writing the rationale, please note all the above modification criteria that apply and keep the following things in mind:

- Be short and concise but also precise.
- Focus on specific cause of difficulty – use the above criteria as a guide to identify the basis of the concern.
- Identify potential resolution options (if any).
- Check against the rationale in the Joint Review Panel report to see if the proposed modification addresses the issue the panel raised and therefore agrees with the intent of the recommendation (i.e. legal or technical definitions).
- Involve legal and experts in discussion as the wording may not mean the same thing to everyone.
- Focus on meeting the intent of the Joint Review Panel report and with minimal changes to the measure if possible.

- Consider Aboriginal rights implications. Consider the potential for whether acceptance, modification or non-acceptance of a recommendation would impact Aboriginal and treaty rights, and any applicable rights under the Labrador Inuit Land Claims Agreement and whether further consultation with potentially affected Aboriginal groups would be required. Identify if previous consultation has been undertaken.
- If not accepting a recommendation, do you disagree/reject the intent (or underlying subject matter) or do you disagree with the conditions attached to the recommendation.

## **OTHER CONSIDERATIONS**

- It is also acceptable for government departments to add qualifications to the response by clarifying the conditions under which the government accepts the recommendation and noting any additional requirements and/or details.
- Where there are factual errors in the Joint Review Panel recommendations, these should be corrected in the Government Response.
- In the case where departments agree with the recommendation but have concerns with the Panel's rationale, this should be noted in the "Rationale" for the response, though it may not form part of the annex to the Cabinet Paper submission. Departments should indicate if their concerns will affect the implementation of the recommendation.

## **GOVERNMENT RESPONSE TEMPLATE**

Departments are asked to use the Government Response template on the following page to assist them in preparing their responses to Joint Review Panel recommendations, for those related to your departmental mandate. The Government Response Template should be limited to one page and should include the response statement and the full rationale (strong justification for the position) in a clear and concise format. This will be an important template that can be used when preparing the final Government Response, as well as in the case of litigation, if required. The Deputy Minister's signature and date should be included at bottom of form.

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(This document was modified from Fisheries and Oceans Canada 2011-08-22 version received from Christine Stoneman, Andrew Stewart, Kelly Code. Address 200 Kent Street, Ottawa, Ontario, K1A 0E6)

**Government Response Template  
(One Page Maximum, not including Joint Review Panel Recommendation)**

<b>Panel Recommendation #</b>	<b>Department Name/Division</b>
<i>(Insert Text of Joint Review Panel Recommendation)</i>	

<b>Response Statement</b>
<p><b>Description:</b> This is the first line of the response and must use the standardized wording provided in this document. Either:</p> <ul style="list-style-type: none"> <li>A. The Government of Newfoundland and Labrador accepts this recommendation <i>(add rationale as applicable)</i></li> <li>B. The Government of Newfoundland and Labrador accepts the intent of this recommendation, <i>(restate what departments believe the intent of the recommendation is)</i>...however...</li> <li>C. The Government of Newfoundland and Labrador does not accept this recommendation <i>(add brief rationale)</i></li> </ul>
<i>(Insert Text Here)</i>

<b>Response Statement Rationale</b>
<p><b>Description:</b> Provide a brief explanation of why the Government of Newfoundland and Labrador has chosen the response stated above. The rationale should summarize the logic behind the decision. In the case of a modification, the rationale should clearly explain why the recommendation could not be accepted as written or why the department believes different mitigation measures are required.</p> <p>If the recommendation is not accepted, please explain why.</p>
<i>(Insert Text Here)</i>

Deputy Minister Signature: \_\_\_\_\_

Date: \_\_\_\_\_