



## Workshop Backgrounder

### Indigenous Engagement in Energy Planning, Provision and Development

November 30 2015, 8:30 am to 3:30 pm

Lord Elgin Hotel, Macdonald Room, 100 Elgin Street

Organized by the University of Ottawa's Positive Energy Project

### About the Positive Energy Project and This Workshop

This workshop forms part of the University of Ottawa's Positive Energy project, a three-year initiative that uses the convening power of the university to bring together key energy stakeholders to investigate social acceptance and support in the energy sphere. Positive Energy, an initiative of the University's Collaboratory on Energy Research and Policy, focuses on four main areas – Indigenous engagement, federalism and inter-regional relations, environmental NGOs and communities, and energy literacy and public opinion – and is undertaking solution-oriented applied research projects in each of these streams.

This workshop brings together leaders from Indigenous organizations, government, industry, and the academy with a view to understanding the challenges and ways forward for inclusive and constructive Indigenous engagement in energy development, and identifying research priorities for the Indigenous engagement stream of Positive Energy. The workshop also aims to identify areas for collaboration with individual researchers and organizations so as to leverage our respective efforts and have the greatest collective impact.

### Overview of Issues

Historically in Canada, energy development involving Indigenous lands has been dominated by developer-driven objectives. It has been marked by inadequate engagement with local communities, and resulted in benefits typically flowing elsewhere as opposed to remaining in whole or in part in the territory where the development occurred. Indigenous populations have frequently experienced long-term negative consequences, including environmental degradation and loss of land, while deriving little benefit beyond the short-term jobs associated with projects. Constructive, respectful and mutually-beneficial energy relationships, rather than being the norm, have been restricted to isolated cases.

Today, there remains polarization in debates over energy development and provision in Canada. The engagement process between Indigenous organizations and energy proponents is still very much in a state of development, with progressive movement in some cases, and entrenched opposition in others. Recent Supreme Court of Canada rulings underline the insufficiency of prior consultation and accommodation in several cases where developers have tried to push through projects without due consideration for Indigenous communities whose land is involved. Consistent and inclusive energy engagement, which garners social support and attends to long term social, cultural and economic benefit, is still very much a work in progress.

Indigenous grid-connected communities are increasingly interested in developing and owning businesses to export power or feed electricity into the grid, while off-grid communities are interested in increased energy independence, energy security and local economic stimulation. Remote communities face the additional financial and environmental burden of dependence on imported fossil fuel, with 90 million litres of diesel burned annually in Canadian remote communities, and little associated social or economic benefit staying in the community (Pembina Institute, 2015). In addition, Natural Resources Canada estimates that some 700 billion dollars worth of natural resource development projects are

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underway or could be in the works in Canada in the next decade, with many of these in the energy sphere, and many adjacent to, on or crossing Indigenous lands (Natural Resources Canada, 2015). Here opportunities are many, but the challenges can be complex.

### Consent versus Consultation

To date, the Crown's legal duty to consult and accommodate does not include consent of Indigenous parties, except in cases where Indigenous land rights or title are proven. In the case of proven title rights, such as the 2014 Supreme Court decision that confirmed the Tsilhqot'in Nation title over 1,750 square kilometres of traditional territory, infringement by a project could not be justified if it deprives future generations of the benefit of the land. But even here, there remains uncertainty as to the precise meaning of this ruling. In addition, in unproven land title cases, failure to meaningfully consult and accommodate Indigenous populations could leave government and industry exposed to project cancellations and claims for damages if the title is later confirmed (Jacobs, 2015). This legal trend, added to the United Nations Declaration on the Rights of Indigenous Peoples, which calls for free, prior and informed consent, suggests that consent may be becoming the norm in energy development rather than mere consultation.

Projects developed with Indigenous consent and support stand a greater chance of success than those entrenched in litigation and political battles (Papillon, 2015). Legitimacy can be increased, productive partnerships are more likely to form, and costly conflicts can be reduced. A partnership approach can be applied to problem solving, and project risk can therefore be decreased. To this end, impact benefit agreements, revenue sharing and joint ventures with public and private partners are emerging as tools which embed Indigenous rights into development agreements. Some argue that the right to say "no", meaning true consent of Indigenous stakeholders, is essential to the viability and legitimacy of development relations moving forward (Papillon, 2015).

### Success Factors and Challenges

Existing research suggests that successful relationships in project development tend to have high levels of community participation, clear indicators of how community needs are being addressed, significant local capacity building and long-term respectful partnerships. Successful relationships also tend to exist where energy projects enhance the autonomy and energy security of a community, while stimulating local economic growth in a sustainable manner, beyond mere construction jobs and services. Positive engagement generally includes participatory development of natural resources, collaborative project development, and inclusive environmental decision making and reporting. Projects that tie in with enhanced skills development, career opportunities and well-being, while creating a long-term legacy impact, also tend to enjoy stronger and more lasting support from communities.

The business development potential for Indigenous communities to participate in these partnerships comes with challenges, however. These include lack of access to capital and to federal programs supporting businesses, absence of income linked to property ownership, inability to use land to access bank loans, and limited legal access to the natural resources of their territories (Sustainable Canada Dialogues, 2015). Added to this are the challenges in some communities of inefficient governance models, limited capacity and distrust for industry and government (Lebeau, 2014), which challenge not only communities but industry proponents and governments as well.

### Potential Ways Forward

Incorporation of Indigenous worldviews, and the use of traditional knowledge for key development stages such as environmental assessment, monitoring and mitigation measures, is one potential piece of a solution to these challenges. An interesting and important finding has been that Indigenous communities tend to favour policies and projects that promote independence over strict

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revenue (Cherniak et al, 2015; Moore et al, 2014). Along with enhanced autonomy, environmental and climate change considerations also rank higher among Indigenous populations in Canada than in the general population.

The fact that many Indigenous communities have mixed economies, with subsistence activities coexisting side by side with paid jobs, may also need to be taken into account in business development decisions.

Many Indigenous governments have developed their own consultation and accommodation protocol, including stipulations such as the following select points from the Walpole Island First Nation protocol:

- a. Recognition of outstanding claims against the Crown
- b. Definition of ongoing role of the community, and costs and benefits to the community
- c. Environmental standards that will apply to the project
- d. Definition of First Nations' advisory role
- e. Identification of monitoring threshold to trigger response action
- f. Development of Indigenous relations policy
- g. Joint position agreement for regulatory processes
- h. Payments in lieu of tax payments

Essentially, these protocols state that projects must be planned collaboratively, with due regard for Indigenous rights, the local environment, the economic, social and cultural aspirations of communities, and the equitable distribution of risk and reward. They also call for engagement that is proactive and transparent, with roles and business models clearly defined. Indigenous parties are at the table not only in an advisory capacity, but with true decision-making power (that includes the “right to say no”), policy input and key roles in project development, including involvement in the permitting,

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approval and licencing process. Some suggest that with joint Indigenous community involvement, energy development can become a restorative force for communities, aiding in both knowledge creation and socially desirable outcomes (Henderson, 2015; Krupa, Galbraith & Burch, 2015).

Examples of meaningful benefits that stem from energy projects beyond employment include management responsibilities, goods and services provision, capacity that remains in the community, and compensation or long-term revenue streams. These benefits apply not only to local energy development, but to the use of traditional territory for linear infrastructure (pipelines, transmission lines, etc.). In addition, benefits beyond revenues can include infrastructure growth for the population (Lebeau, 2014). In an increasing numbers of cases, energy partnership also includes full or part Indigenous ownership of a project.

In light of the above, it is clear that opportunities abound for industry, government, academic and Indigenous collaboration regarding energy provision and development.

### Questions for Discussion

Against the above backdrop, the University of Ottawa's Positive Energy project convened this workshop to encourage input from a diversity of voices, to share experiences, barriers, success stories and desired approaches, and to add to our mutual understanding of issues related to Indigenous engagement in energy planning, provision and development. The workshop will take place in a round table format, with whole-group discussion and break-out sessions, interspersed by three presentations from Indigenous and academic leaders. Questions we invite you to consider for discussion at the workshop include the following:

1. What has been your experience in the arena of Indigenous engagement in energy planning, provision and/or development?

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2. From your perspective, what have been the challenges regarding your involvement in the planning and execution of projects?
3. What has worked well regarding Indigenous involvement/engagement in energy? What does successful engagement look like to you?
4. What needs to be in place in order for an Indigenous community to feel it truly benefits from an energy project?
5. Based upon your reading of the backgrounder and your experience, what gaps exist re. Indigenous engagement in energy that might be addressed by the research to be undertaken by the Positive Energy team?
6. Can you see a role for your organization to collaborate with Positive Energy in its research initiative, and if so, what would that look like?

We are very much looking forward to discussing these issues with you, and to hearing your rich and varied perspectives in order to better inform our way forward. Thank you in advance for participating; we look forward to seeing you at the workshop!

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