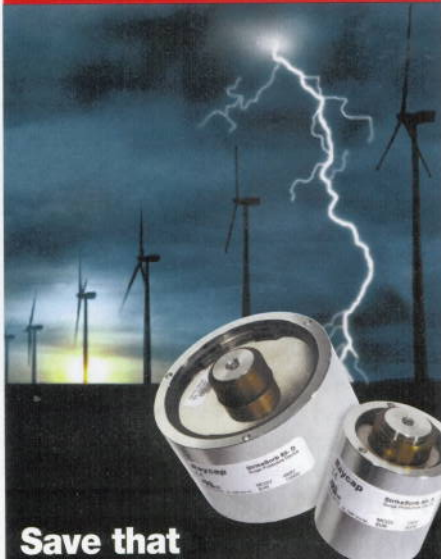


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Act (GEA), which was passed into law in May. As well as providing guaranteed tariffs for a range of renewable energy technologies – amounting to C\$0.135/kWh for large-scale onshore wind and C\$0.19/kWh for offshore projects – the GEA sets up a streamlined construction approval process for extending the province's transmission system to areas rich in wind and other renewable energy resources. "What it means is that, at the end of the day, you know that there will be a market for power from good projects, and you know that if you have a project that is environmentally suitable, then it should be able to get permitted within a predictable time frame," says Crawley.

### BC Hydro stalls contract awards

## Aboriginal rules delay progress

DIANE BAILEY  
*Windpower Monthly  
Canada*

Yet another twist in BC Hydro's already complicated request for clean power proposals has added further delay and uncertainty for renewable energy developers who have, so far, been waiting for almost a year to see if they will win a power purchase contract with the utility.

The renewables industry had expected the request for proposals (RFP) results to be announced in the spring. But the government-owned utility posted a notice on its website in late August that it was deferring the contract awards until later this year in order to satisfy itself that bidders conducted "adequate consultation" with aboriginal communities that could be affected by their projects.

The decision to now implement what BC Hydro calls "evolved requirements" for First Nations consultations stems from two decisions that were released earlier this year by the British Columbia (BC) Court of Appeal.

### STRUCK DOWN

In one case, the court struck down a licence that the BC Utilities Commission (BCUC) had granted to a major transmission project in the province because the Kwikwetlem First Nation was not consulted. In the second, it ruled there was "massive" infringement of the right of the Carrier Sekani Tribal Council to be consulted on a hydroelectric project on the Nechako River and said the BCUC erred by approving the electricity purchase agreement between BC Hydro and project developer.

There is a constitutionally recognised re-

sponsibility on the part of governments in Canada to ensure First Nations have a say when it comes to development within their traditional territories, says Andrew Lord of the law firm Davis LLP.

He explains: "For a long time it's been recognised that there is this duty to consult and that has been known to everybody who has been operating in the power industry, particularly in BC where so much of the land is subject to aboriginal claims."

"But what is new is saying that BCUC not only has the jurisdiction to consider the question, but has an obligation to consider it at an early stage in the process, even if there is some other regulatory step down the road that might also involve consultations with aboriginal communities," Lord says.

The problem facing the clean power call is that bids were submitted well before this new obligation was understood. BC Hydro unveiled its RFP in June 2008 and received proposals from 43 companies for 68 projects by its November deadline. The court decisions were not issued until February 2009.

The utility, says Lord, now has to go back over the bids to make sure any power purchase contracts that it ends up signing are not in danger of being rejected when they come before the BCUC for approval.

The impact will vary from developer to developer, says Lord. "Those developers who may have worked to a minimum standard will find they have a lot of work left to do," he says. "And those who understood that First Nations issues were going to be important through the life cycle of the project and decided to deal with them up front, recognising that it is a time-consuming process, will probably be less affected."

While First Nations consultation is "a real and live issue" for BC Hydro, Lord suspects it is not the only factor in the utility's decision to delay awarding contracts. The RFP has been beset by other problems, including the utility's indecision about how much power it would actually end up buying (WINDPOWER MONTHLY, February 2009), and a recent BCUC decision that refused to endorse the purchases as part of BC Hydro's long-term acquisition plan (LTAP), leaving lingering doubt as to whether it would approve any contracts that might be signed (WINDPOWER MONTHLY, September 2009).

"I think that the combination of that uncertainty about how much they need and the uncertainty created by the BCUC's rejection of the LTAP probably has BC Hydro wondering what exactly it should be doing with the clean power call," says Lord. "I would not be surprised if that informed its decision to delay." BC Hydro did not respond to a request for comment before deadline.