

# The Political Barriers to Clean Energy: A Case Study of British Columbia's Site C Dam

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## Abstract

Addressing the climate crisis involves a rapid phase-out of carbon emitting fossil fuels and an accelerated adoption of clean energy technologies. Environmentalists and First Nations have focused much of their energy on resisting new fossil fuel infrastructure, under the banner of “keep it in the ground.” These conflicts have pitted the Government of Alberta and the oil sector, who seek expanded market access, against environmentalists and First Nations concerns about climate change, local and regional environmental impacts, and First Nations Rights and Title. This coalition has proven to be surprisingly formidable in halting or postponing new pipelines.

This paper explores the question of whether the success of this “blockadia” movement is, paradoxically, a major risk to the necessary clean energy transition. It will explore the case of a large “clean energy project,” the Site C dam – a \$9 billion, 1100 MW project -- in Northeastern British Columbia. This dam has been by opposed by virtually the same coalition that opposes new oil sands pipelines. This paper will use process tracing and a review of government documents, opinion polls, media content analysis, and personal interviews to document how this case reveals the larger politics of energy that have characterized the past decade. It is part of a larger book project on pipeline resistance and the clean energy transition.

## Overview

Addressing the climate crisis involves a rapid phase-out of carbon emitting fossil fuels and an accelerated adoption of clean energy technologies.<sup>1</sup> Environmentalists and First Nations have focused much of their energy on resisting new fossil fuel infrastructure, under the banner of “keep it in the ground.” These conflicts have pitted the Government of Alberta and the oil sector, who seek expanded market access, against environmentalists and First Nations concerns about climate change, local and regional environmental impacts, and First Nations Rights and Title. This coalition has proven to be surprisingly formidable in halting or postponing new pipelines.

This paper explores the question of whether the success of this “blockadia” movement is, paradoxically, a major risk to the necessary clean energy transition. It will explore the case of a large “clean energy project,” the Site C dam – a \$9 billion, 1100 MW project -- in Northeastern British Columbia. This dam has been by opposed by virtually the same coalition that opposes new oil sands pipelines. This paper will use process tracing and a review of government documents, opinion polls, media content analysis, and personal interviews to document how this case reveals the larger politics of energy that have characterized the past decade. It is part of a larger book project on pipeline resistance and the clean energy transition.

The political economy of this project is distinctive from many others because the proponent, BC Hydro, is a wholly-owned state-owned enterprise of the Government of British Columbia. This makes the government the primary proponent. In addition to the usual anti-mega-project critics in the environmental and aboriginal communities, the project has also been opposed by private-sector industrial interests as well. While the project developed enormous momentum during the Christy Clark’s premiership from 2013-2017, the stunning results of the May 2017 election have cast doubt on the future of the project. While the next governing coalition remains uncertain, the fact that the BC Green Party’s three seats give it the balance of power increase the likelihood that the project will either be postponed or cancelled.

The first section of this paper introduces the analytical framework of actors, ideas, and institutions. The second section provides a brief overview of the project and the issues underlying the controversy. Third, the paper provides an overview of the major actors in the controversy, followed by a discussion of public opinion and media framing of the dispute and then an overview of the institutional rules and conflicts underlying the controversy. The next section provides an analysis of how the review process dealt with the most important economic and environmental issues. After that, the evolution and status of the court cases against the project is examined. The paper then concludes by considering the implications of the BC

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<sup>1</sup> The paper benefitted immensely from the thorough research of Clair Allen.

election of 2017 and what this controversy reveals about the political challenges of the clean energy transition.

## **Analytical Framework**

The paper is inspired by actor-centred analytical frameworks. Strategic actors are the central agents of policy. Actors each have their own interests, as well as political resources. They adopt strategies designed to best pursue their interests given their resources. Strategic actors interact within a context of ideas and institutional rules, but also work to change ideas through reframing or institutional rules through venue shifting or other means (Hoberg 2001; Pralle 2006; Baumgartner and Jones 2010). This paper examines not only the strategic choices of environmentalists, but also the battle over ideas, through an analysis of issues covered by the media, and the conflict over the institutional rules of the game. Institutional design can be pivotal because when the location of authority changes, the balance of policy preferences could also change significantly.

In earlier work I developed a framework for political risk to major energy infrastructure projects, focusing on oil sands, which can be adapted to analyze the strategic resources of project proponent and opponents (Hoberg 2013). The relative power of project opponents is a function of four variables:

1. *Whether opposition groups have access to institutional veto points.* Veto points are locations of government authority that give a particular organization the ability to block approval of a project or policy (Immergut 1990; Tsebelis 2000). Examples would be the organization granted formal decision-making authority (e.g., a independent regulatory body or the cabinet), whether the decision is subject to judicial review, and whether the approval of different levels of government is required. In some cases, an organization can lack formal political authority but have sufficient power that they are equivalent to a veto point. These are referred to “political veto points.” The section on institutions below describes the particular rules in place for the Site C dam.
2. *Whether the project can take advantage of existing infrastructure.* Greenfield projects create more disruption to existing economic and residential patterns than projects that can take advantage of existing infrastructure.
3. *The salience of place-based, concentrated risks and benefits.* The ‘logic of collective action’ (Olson 1965) suggests that mobilization to new projects is easier to organize if there are concrete, focused, place-based values at risk. By this logic, local concerns about risks to precious bodies of water are much more likely to galvanize opposition than more diffuse concerns such as global warming. The economic benefits of a project can be examined through the same lens. Jobs created in facility construction and operation are concrete and place based, whereas tax revenues and corporate dividends are more diffuse.
4. *The geographical separation of risks and benefits.* All projects come with risks and benefits, and if they occur in the same general area, it is more straightforward for affected interests to consider both risk and benefits. The

greater the geographic distance between those who benefit economically from those that face environmental risks, the more challenging it is to weigh risks and benefits. This situation is common in energy systems where energy production is distant from its consumption. This challenge is much greater when risk and benefits are separated by jurisdictional boundaries that represent veto points.

While many aspects of a large dam like Site C are different from long, linear infrastructure of pipelines, this project is still characterized by salient, place-based risks and a significant geographic separation of risks and benefits. The adverse environmental impacts are focused in the Peace River region of northeastern British Columbia, while the benefits will be felt in distant load centres. Unlike many of the pipeline projects, however, both the risks and benefits are largely felt within one subnational jurisdiction. In comparison to other renewable energy projects, big dams have a distinctively large impact in one region.

### **Background on the Project and Controversy**

The Site C project would be the third dam in a system of hydro reservoirs on the Peace River in Northeastern British Columbia. The WAC Bennett Dam was completed in 1968 and provides 2,730 MW of power. Downstream, a second dam, the Peace Canyon Dam, was completed in 1980 and provides 700 MW of power. The Site C dam has been on and off the province's energy agenda several times since 1980, when BC Hydro first formally submitted an application to proceed with the project. But that effort was rebuffed with the project was rejected by the BC Utilities Commission in 1982 because BC Hydro had not provided " (1) an acceptable forecast that demonstrates that construction must begin immediately in order to avoid supply deficiencies and (2) a comparison of feasible alternative system plans demonstrates, from a social benefit-cost point of view, that Site C is the best project to meet the anticipated supply deficiency" (BC Utilities Commission 1983, 9-10).

Formal interest in the project was rejuvenated by Premier Gordon Campbell in the 2007 Energy Plan, which said the province "will enter into initial discussions with First Nations, the Province of Alberta and communities to discuss Site C (Government of BC 2007). In April 2010, Campbell announced the he was instructing BC Hydro to move forward with the project (Government of BC 2010). BC Hydro submitted its project description to the BC Environmental Assessment office in May, 2011, and in August 2011 both the BC EAO and the Canadian Environmental Assessment Office accepted the project for review.

Extensive hearings the Joint Review Panel revealed three significant sources of opposition. First, aboriginal groups in the region have long been strongly opposed to the project and have raised concerns in multiple venues about the whether or not the decision process is a violation of their treaty rights. Second, local and provincial environmental groups have opposed the project because it would flood regionally-valuable agricultural land and have significant impacts on to fish and wildlife habitat

in the region. Third, a variety of groups, including clean energy firms, major industrial consumers, environmental groups, opposition MLAs, and a variety of independent experts have raised concerns about the whether, given future electricity demand projections, is justified, and whether the project is excessively costly in comparison to the alternatives.

The Joint Review Panel issued its report May 1, 2014. Both the federal and the provincial government issued approvals for the project in October 2014, and the BC government approved the project for construction in December 2014 (Government of BC 2014). Despite a number of legal challenges, BC Hydro initiated construction in late July 2015, with an expected completion date of 2024. Premier Clark famously vowed to push the project “past the point of no return” (Palmer 2017). Two major obstacles stand in the way of project completion. A series of lawsuits by First Nations could still bring the project to a halt. And the May 2017 election in British Columbia put the Green Party, long opposed to the project, in the legislative driver’s seat.

## **Actors**

### ***Government***

The most important government actor in this case is the Government of British Columbia, both the cabinet as the authoritative decision-maker and its wholly-owned electric utility, BC Hydro. The core interest of the political branch of government is reelection. Affordable, reliable electricity supply is critical to the health of modern democratic governments. As the project proponent, the provincial government has a vital stake in the economic benefits flowing from the project and the avoidance of negative financial, environmental, or social impacts that could provoke voter backlash. In its modern incarnation, the project was proposed by Premier Gordon Campbell who had an ambitious agenda to be a recognized leader on climate change and clean energy. When Clark took over in 2013, she declined to advance the climate agenda but she enthusiastically embraced the Site C dam.

The government of Canada has jurisdiction over fisheries and navigable waters, so did share regulatory responsibility for project review and approval. Given its general pro-resource development ideology, the Harper government was generally supportive of the project and it never became a source of tension between the federal and provincial government. The government of Alberta has stakes in the project because of the potential of project impacts downstream to the spectacular Peace-Athabasca Delta. While it did register as an intervener, significant inter-provincial conflict never emerged. Local governments in the Peace Region have stakes in the project but have not emerged as antagonists to the project.

## ***Environmentalists***

The core interest of environmentalists is to minimize environmental effects of providing energy service. One might think that the Site C project would be a potentially divisive wedge within the BC environmental community. It's a large dam that inevitable alters river flow and a significant amount of habitat, so it's no surprise the many environmentalists would have significant concerns about the dam. But it also has the potential to generate significant quantities of low-carbon electricity, with the added benefit of being able to store electricity to help manage intermittent renewables. For that reason, it has the potential to attract support from climate activists and clean energy advocates that play a substantial role in the BC environmental movement (Shaw 2011).

Despite being a "clean energy" project, Site C has provoked widespread opposition from many of the same actors that oppose new "dirty energy" oil sands pipelines. The lead local group in opposition is the Peace Valley Environmental Association, which is strongly opposed, and they received strong support from the broader BC environmental community. The project is also opposed by the Wilderness Committee, Sierra Club of BC, LeadNow, the David Suzuki Foundation, and the BC Sustainable Energy Association. In an email to supporters, LeadNow denounced the project: "Government and industry are calling this dirty energy export strategy a "clean" energy plan. In reality, it's anything but clean. Their plan would use taxpayer dollars to flood critical wildlife habitat, destroy prime agricultural land, poison groundwater across BC and drive up our province's dangerous carbon pollution." Saying it's the "wrong decision for B.C.," the David Suzuki Foundation states that it "continues to support local farming and First Nations communities in their opposition to the Site C dam" (David Suzuki Foundation 2014). The Wilderness Committee statement of opposition reads as follows:

We can't let this happen. The Site C Dam would destroy critical ungulate habitat that has sustained wildlife that has supplied generations of First Nations people with food and cultural sustenance for thousands of years. It will destroy one of the largest and most important wildlife corridors on the continent, and submerge valuable carbon sinks instead of promoting food security and the need to adapt to climate change (Wilderness Committee n.d.).

Group name	Facebook likes	Twitter followers
Peace Valley Environmental Association	2,538	3,088
Sierra Club BC	9,813	7,705
David Suzuki Foundation	480,977	146,000
Wilderness Committee	7,924	9,519
BC Sustainable Energy Association	3,254	5,669
West Coast Environmental	6,493	13,200

Law		
Pembina Institute	5737	20,576
Dogwood BC	30,963	12,354

The BC environmental community is not opposed to new energy projects, clean or dirty, across the board.<sup>2</sup> Indeed, in 2009 a conflict erupted among BC environmentalists over small “run of river” hydro projects proposed by the private sector. Many groups opposed the new “independent power projects,” both because they threatened public control over the electricity system, and their risks to fish habitat and recreational resources. But when the 2009 provincial election campaign started, a coalition of three influential environmental groups, ForestEthics, the David Suzuki Foundation, and the Pembina Institute made statements supportive of the climate policies of Gordon Campbell. This came as a huge surprise to many other BC environmentalists who were launching campaigns to support the BC New Democratic Party because of Campbell’s support for independent power projects, and created a significant rift within the environmental community (Shaw 2011). Tzeporah Berman, then of ForestEthics, explicitly endorsed the need for some new energy projects to foster the clean energy transition (Berman 2012).

But Site C is different, for two reasons. It’s a large dam that concentrates environmental effects in one area. As a result, it magnifies place-based impacts more than smaller independent power projects did. Second, it’s strongly opposed by the local First Nations. In their pipeline resistance campaigns, environmentalists have regularly used the threat to First Nations rights and title as a critical argument against the projects. It would undermine their credibility, and their alliance with First Nations, if they turned a blind eye to the same concerns expressed about a clean energy project.

### ***Industry***

Industry interests in energy projects are divided in part of those who supply energy services and those who are large consumers. Suppliers in the energy industry have an interest in expanding revenues and profits. For major electricity consumers, the core interest is minimizing the cost and maximizing the reliability of energy services. The Site C dam comes with a different political economy than industry-led energy projects. In this case, the project proponent is Government of British Columbia, through BC Hydro, the electrical utility it wholly owns. Major industry groups, in contrast, have either generally been generally skeptical or explicitly opposed. The province’s construction industry has been understandably

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<sup>2</sup> The next two paragraphs borrow from Hoberg (2015).



enthusiastic about the project (Penner 2014). The project was a major blow to the clean energy industry that had benefited so strongly from Premier Gordon Campbell's promotion of independent power projects throughout the 2000s. The choice by the Clark government to privilege a government-led project over soliciting proposals from the private sector virtually eliminated the prospects for new independent power projects for the foreseeable future. This sector's trade association, Clean Energy BC, has been strongly opposed to the dam project from the outset. It commissioned and publicized several studies emphasizing the economic and social benefits of relying on dispersed renewables instead of a hydro mega-project (Palmer 2014; London Economics International 2014). The Association of Major Power Customers of BC, which represents "about 20 of the largest employers and industrial customers in the province" has strongly opposed the project out of concern that its high costs will put further pressure to increase electricity rates (Lavoie 2014).

### ***First Nations***

The Site C dam has been strongly opposed by area First Nations for some time. The affected region is covered by Treaty 8, established in 1899. Both the Tribal 8 Treaty Association and individual First Nations have undertaken legal action against the project. The two most active groups have been the Prophet River First Nation and the West Moberly First Nation. The treaty provides for the aboriginal right to hunt, trap, and fish throughout the territory, but also provides for land to be "taken up from time to time for settlement, mining, lumbering, trading or other purposes" by the Crown.

The Treaty 8 Tribal Association issued a declaration opposing Site C in 2010 (Treaty 8 Tribal Association 2010). Prophet River and West Moberly have challenged the approval decision in both provincial and federal courts, but thus far with no success (see discussion of court actions below). West Moberly has also been very concerned about the pace of natural gas development in the Fort St John region of the province as a result of the Clark government's aggressive push to establish an LNG industry. West Moberly's Chief, Roland Willson, has sought to leverage the Supreme Court's *Tsilhqot'in* decision to issue an ultimatum to the BC government. He explained that his people are not opposed to resource development, but that the province was pushing too many projects in his territory: "I've said you can't have both. If you want to push Site C, we're not going to be in favour of any LNG projects, any of the pipeline projects up there. We don't want to be there but if that's the case, we don't have any other choice." (O'Neil 2014).

The provincial and federal government did carry out an extensive consultation process with First Nations in the area, beginning before the environmental assessment process was triggered, and continuing up through the approval decisions of the two governments. A summary of the governments' efforts is contained in the joint Consultation and Accommodation report, released in

September 2014 (Government of Canada and Government of BC 2014). The report describes the Crown's obligation in these terms:

When intending to take up lands, the Crown must exercise its powers in accordance with the Crown obligations owed to the Treaty 8 First Nations, which includes being informed of the impact of the project on the exercise of the rights to hunt, trap and fish, communicate such findings to the First Nations, deal with the First Nations in good faith, and with the intention of substantially addressing their concerns. The extent or scope of the duty to consult and accommodate required with a Treaty 8 First Nation depends on the seriousness of potential impacts to that First Nation, as discussed in the following sections of this report (Government of Canada and Government of BC 2014).

The report concluded that "consultation has been carried out in good faith and that the process was appropriate and reasonable in the circumstances." It argues that accommodation has been provided through project modification and conditions, offers of impact-benefit agreement that include land transfers and multi-million dollar compensation payment. BC Hydro claims "these measures would offset the residual effects of the proposed Project if it is authorized by Governments to proceed" (p. 67).

Despite the extensive engagement with First Nations, there is no indication in the record that the government ever offered area First Nations leadership or equity in the project. It is not clear whether such efforts would have changed the position of the most affected First Nations. But a comparative study of contested energy infrastructure projects across Canada concluded that in one of the few projects to gain social acceptance, project acceptance occurred because the government proponent made local First Nations partners in the project. In developing the Wuskwatim hydroelectric project, the government of Manitoba was able to shift the position of the Nisichawayasihk Cree Nation from strongly opposed to accepting of the project by making them partners and co-owners in the project (Cleland et al, 2016).

In the case of the Site C dam, the West Moberly were not moved by the government's offers of compensation. Chief Roland Willson responded "we maintain our view that it is simply not possible to adequately compensate our community for the permanent destruction of the Peace River Valley" (p. 67). Some First Nations, however, have accepted compensation packages. In March 2017, BC Hydro announced it had entered agreements with the Doig River First Nation and Halfway River First Nation, both of whom had originally opposed the project. The agreements include "a lump sum cash payment, a payment stream over 70 years, procurement opportunities, the selection and transfer of provincial Crown lands and commitments respecting certain land management initiatives (BC Hydro 2017). Similar agreements have been signed with the McLeod Lake Indian Band, Sauleau First Nations, and Dene Tha' First Nations.

## **Academics**

As is increasingly common in the contested sphere of Canadian energy and environmental politics, groups of academics have also chosen to weigh in on the Site C controversy, with strong opposition to the project. The initiative was led by UBC Professor of Geography Karen Bakker, who chairs the Program on Water Governance. Working with several consultants and UBC law professor Gordon Christie, Bakker was able to assemble over 200 scientists to sign a letter opposing the project. The statement focused mostly on issues of aboriginal rights and the economic justification for the project. It called for the federal government to revisit its decision and make a determination on whether aboriginal treaty rights were infringed and, if so, whether that infringement was justified. It called on “Both governments to explain why the unprecedented imposition of numerous significant adverse environmental effects is justified by a Project whose electricity output is presently unnecessary and for which less expensive and less environmentally damaging alternatives exist.” It called on the BC government to refer the project for review to the BC Utilities Commission, and to both governments to suspend issuing any additional permits until the First Nations’ challenges have been resolved by courts (Site C: Statement by Concerned Scholars 2016).

In what seems to be an unusual and potential unprecedented move, the Royal Society of Canada added its weight to the letter. The supporting letter to Prime Minister Trudeau is authored by the President of the Royal Society, and states: “A group of Canadian scholars, including several members of the Royal Society of Canada, have raised serious concerns regarding the process used for approval.... As President of the Royal Society, I am in agreement with the key issues they raise” (Lassonde, 2016). While that letter suggests her support was as an individual in her capacity as Society president. But another page on the Society website suggests that it is an action of the Society as a whole: “A group of leading Canadian scholars has raised serious concerns regarding the process used to approve the mega dam called Site C. The Royal Society of Canada has taken the unusual step of issuing a separate supporting letter addressed to Prime Minister Justin Trudeau” (Royal Society of Canada n.d.).

While it is always a challenge to assess the influence of such letters, the statement was widely reported in the media, and has added weight to the environmental, First Nations, and local activists questioning the justification for the project.

## **Public Opinion**

While opposition to the Site C project among First Nations and environmentalists has been very strong, that opposition does not seem to have resonated with the BC public in the same way that the oil sands pipeline have. Unfortunately, there doesn’t seem to be any publicly available polling on Site C that is independent of the proponent or known critics. BC Hydro, the project proponent, has commissioned

surveys from Abucus from 2013-16. As Figure 1 shows, awareness for the project has been relatively high especially since the project was authorized in late 2014. Figure 2 shows levels of support. The project got 59% support in 2015, although it has dropped back down to 49% in 2016. Opposition was 18% in 2014 and 24% in 2016.

Figure 1

## AWARENESS OF SITE C PROJECT

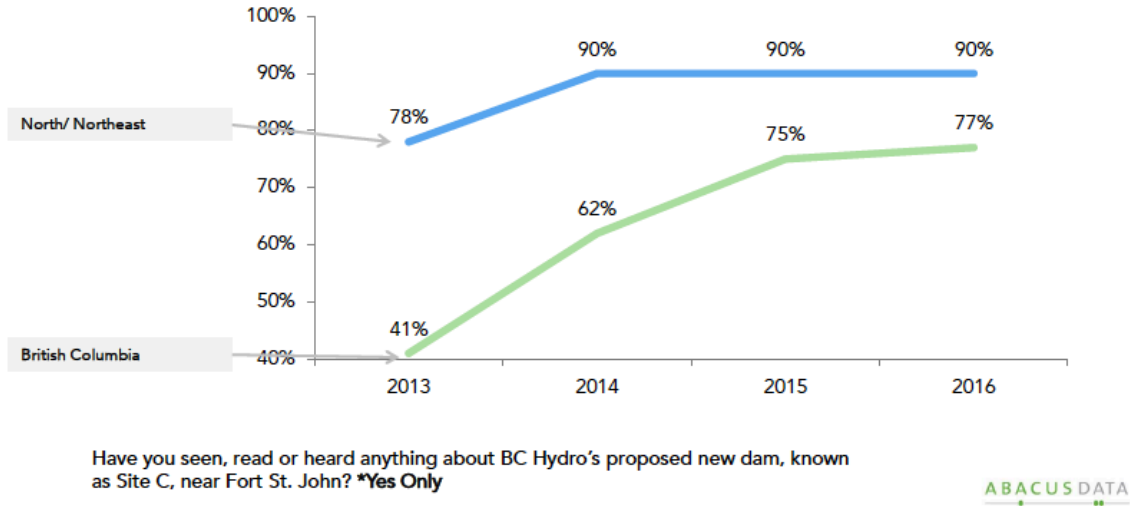
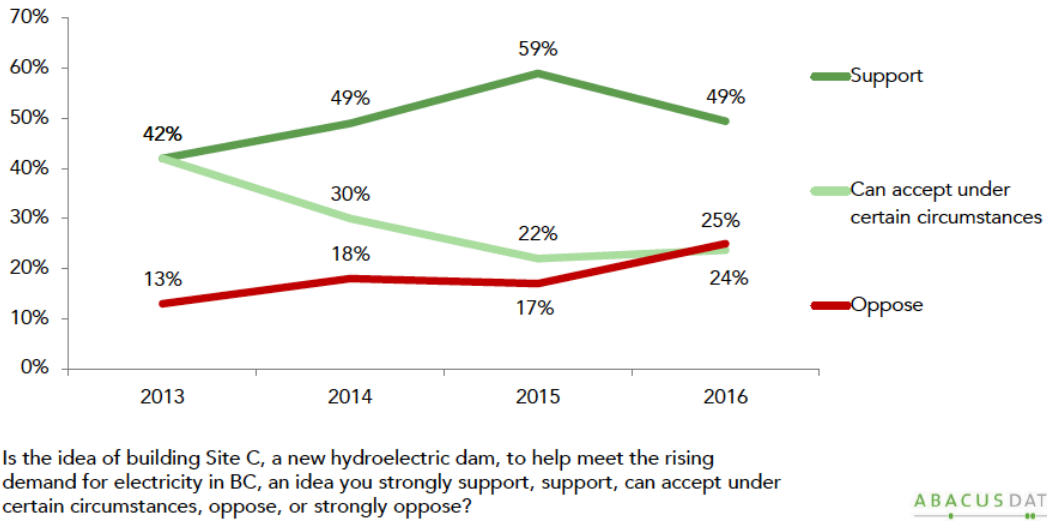


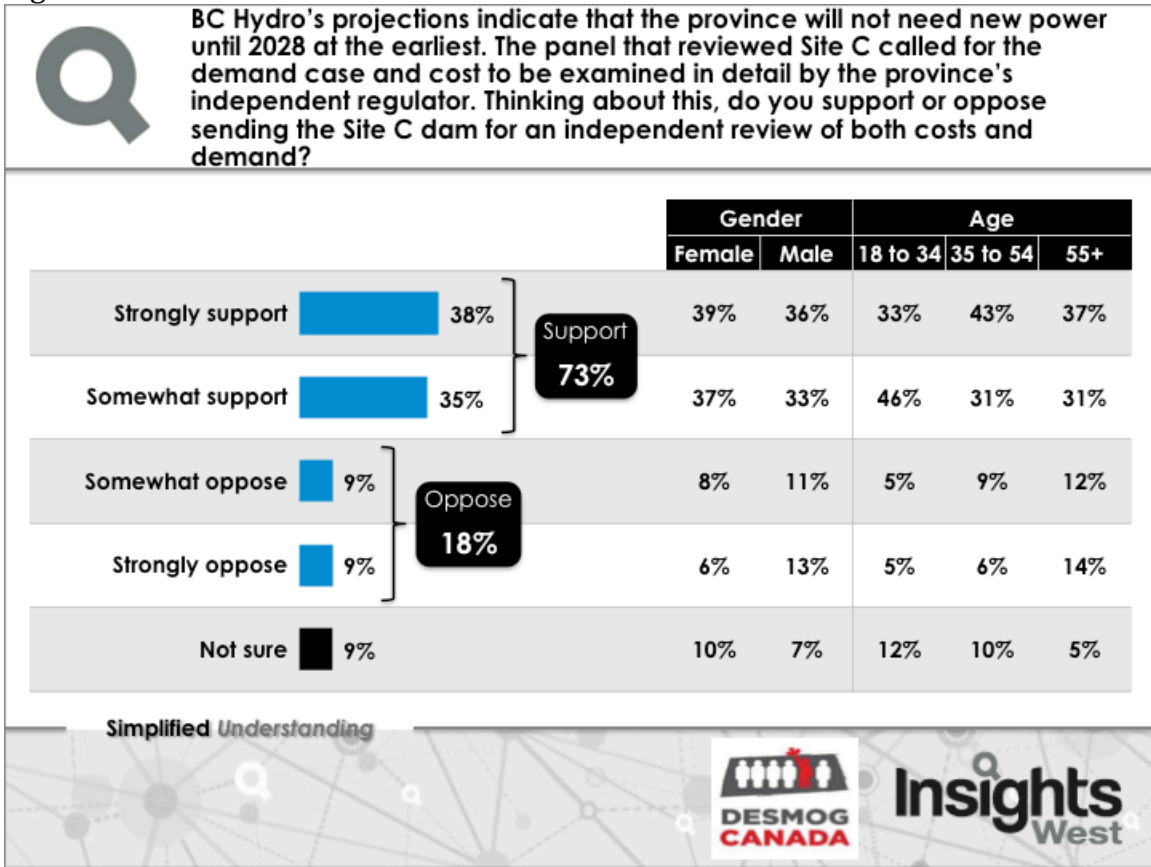
Figure 2

## SUPPORT FOR SITE C PROJECT - BC



The other public available poll is the one commissioned by DeSmog Canada, an environmentally-oriented online news magazine. Figure 3 shows its core result. When respondents are informed about changes in BC Hydro demand projections, support for referring the project to independent review is quite high. Province-wide, 73% support an independent review, while only 18% opposed (Abacus Data 2016).

Figure 3



The poll “found more British Columbians outright oppose the dam (44 per cent, 21 per cent strongly) than support it (39 per cent, 11 per cent strongly)” (Insights West 2016). BC Hydro issued a media release denouncing the poll for errors. In particular, it challenged the core framing of the question that new power would not be needed until 2028: “In fact, our load forecast indicates that without Site C, British Columbia would already have a capacity deficit of 8-per cent and an energy deficit of 2-per cent within 10 years” (BC Hydro 2016).

The duelling polls demonstrate the obvious: survey responses are highly dependent on how the questions are posed. When the support/oppose question is asked with the frame or meeting future electricity demand needs, support can be quite high. When the question is framed in a way that suggests the electricity will not be needed, support can be exceeded by opposition. In comparison to the pipeline cases, only the most critical framing can get opposition up to levels found in more “neutral” surveys about the pipelines. Opposition to the Kinder Morgan Trans Mountain Expansion project has vacillated from 43 to 57%.

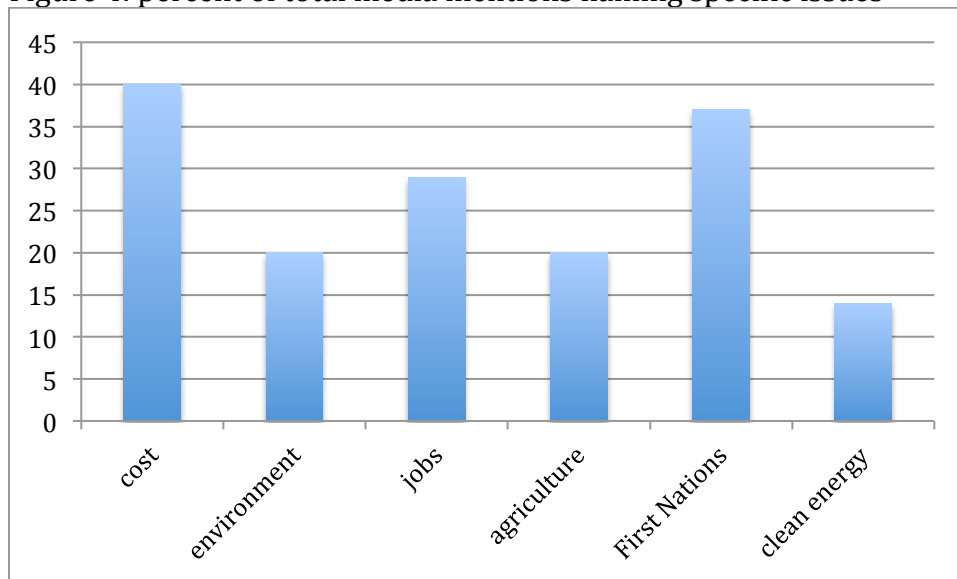
**Issue Framing**

Like the two oil sands pipelines, Site C has been a major issue in provincial politics and has received an enormous amount of media attention. The highest number of

mentions in a year in the Canadian Newsstream data base for Site C was 1166 in 2016. That's very close to how prominent the Trans Mountain Expansion Project has been in its peak year (1860 mentions in 2016), but not nearly as prominent as Northern Gateway was at its peak in 2012 at 6842.

Figure 4 analyzes what issues have been emphasized by the media in its reporting on Site C. The figure shows the percent of media stories in the Canadian Newsstream database mentioning Site C that also mention six categories of issues: "cost"; "environment" or "environmental"; "agriculture", "agricultural", or "farm"; "First Nations", and "clean energy". The results show that the two most prominent issues for the media have been project costs and issues with First Nations, with job benefits coming in third. Issues about environmental impact and loss of farm land were about half as prominent as the mentions of costs and First Nations.

Figure 4: percent of total media mentions naming specific issues



### **Institutions and the Politics of Structure**

Institutional arrangements are critical to the balance of power over public policy because they specify who has decision-making authority and the rules of decision-making and participation. Because of their importance, strategic actors frequently struggle to reshape institutions to advance their interests (Baumgartner and Jones 2010). In the case of Site C, this "politics of structure" (Moe and Wilson 1994) centered around three major institutional issues: the allocation of authority between the province and the federal government, whether or not the project would be subject to review by an independent regulator, and First Nations rights and title.

#### ***Interjurisdictional agreement***

The project was reviewed and approved in the Harper era. That government's emphasis on "responsible resource development" encouraged interjurisdictional cooperation in the regulatory review of major energy projects (Hoberg 2016). In the case of Site C, there was an agreement that the BC Environmental Assessment Office and the Canadian Environmental Assessment Agency would cooperate on the project's review. In February 2012, the two agencies signed an intergovernmental agreement to conduct a joint review of the project.

The Joint Review Panel agreement provided that the province appoint one member, the federal another, and the two governments would jointly agree on the chairperson. The terms of reference charged the panel with, among other things, assessing:

- the purpose of and need for the project;
- alternatives to the project;
- the environmental, economic, social, health and heritage effects of the project, including the cumulative effects.

The agreement required the panel to report on issues of Aboriginal concern but expressly forbade the panel from making any findings about the Aboriginal issues. Section 2.5 of the agreement states:

The Joint Review Panel will not make any conclusions or recommendations as to:

- a) the nature and scope of asserted Aboriginal rights or the strength of those asserted rights;
- b) the scope of the Crown's duty to consult Aboriginal Groups;
- c) whether the Crown has met its duty to consult Aboriginal Groups and, where appropriate, accommodate their interests in respect of the potential adverse effects of the Project on asserted or established Aboriginal rights or treaty rights;
- d) whether the Project is an infringement of Treaty No. 8; and
- e) any matter of treaty interpretation (Minister of the Environment, Canada and Minister of Environment, British Columbia 2012).

Because the risks and benefits of the project are largely contained within the Province of British Columbia, intergovernmental conflicts have not emerged as a significant issue on the project.

### ***Insulation from Independent Regulator***

In electricity regulation, the politics of structure is frequently fought over the respective roles of elected politicians and independent regulators in energy planning and regulation. BC has an independent regulatory agency charged with reviewing rates, long term plans, and project justification and financing, the BC Utilities Commission. As mentioned above, the BCUC reviewed and rejected the Site C dam in 1982. The agency became a thorn in the side of the government of Premier



Gordon Campbell in the late 2000s when it rejected the government Long Term Acquisition Plan (LTAP) in 2008. The BCUC ruled that several critical parts of the plan were not adequately supported by rigorous economic analysis (Hoberg 2010).

Campbell responded to this set back by stripping the BC Utilities Commission of much of its authority in the 2010 Clean Energy Act. The authority of the Commission to review electricity rates and long term plans was removed, as well as its authority to review several major project – among them the Site C dam. The advantage to the government is that they have more discretion to move ahead with desired projects even if they can't be justified on economic grounds. Understandably, since costs have been such a dominant issue for the project, project opponents have been highly critical of this decision and demanded that the project be submitted to the BCUC for review.

### ***Aboriginal Rights and Title***

As in most major energy infrastructure issues in Canada, the role of First Nations in project decision-making has been enormous controversial in the case of Site C. Several of the region's First Nations remain adamantly opposed to the project and are challenging it in court. The evolution and status of these cases is discussed below.

### **Project Decision-Making and Status**

The Joint Review Panel review process was highly formal and involves extensive documentation and detailed hearings. Recall that three major issues have dominated the Site C controversy: environmental impacts, including the loss of farm land, the economic justification for the project, and First Nations issues. This section reviews how environmental and economic issues were addressed throughout the project review process. First Nations issues are dealt with earlier in the section on actors and in the section on litigation below.

### ***Environmental Impacts***

Large dams flood valley bottoms and inevitably cause significant environmental impacts. There's no denying that fact and proponent BC Hydro did not deny that. Their environmental impact statement concludes: "The conclusion of the substantial work undertaken to date indicates that the effects of the Project can largely be mitigated through careful project planning, comprehensive mitigation programs and ongoing monitoring during construction and operations. As a result, the Project is unlikely to result in a significant adverse effect on most of the [valued components – VCs]. However, a determination of significance has been made for the following VCs." The EIA then lists the following significant adverse environmental effects:

- fish and fish habitat, particularly to three distinct sub-groups of species, “the migratory Arctic grayling in the Moberly River, the migratory bull trout that spawn in the Halfway River and mountain whitefish that rely on Peace River habitat.”
- Wildlife Resources Habitat for certain endangered migratory birds: Canada, Cape May and Bay-breasted Warblers, Yellow Rail and Nelson’s Sparrow
- Vegetation and Ecological Communities including a marl fen, tufa seeps, old and mature riparian and floodplain forests, and species at risk plants.
- Current Use of Lands and Resources for Traditional Purposes including “the loss of some important multi-use, cultural areas and valued landscapes, including sites at Attachie, Bear Flats and Farrell Creek” (BC Hydro 2013).

The JRP received a number of submissions that emphasized the severity of the environmental impacts of the dam. For the most part, the panel supported BC Hydro’s conclusions about effects either being significant or not. One exception was on wetlands. In that case the panel disagreed with the proponents claims that effects would not be significant (Joint Review Panel 2014, 64). The panel also concluded that the project was likely to pose significant risks to more sensitive and migratory species than BC Hydro. In no cases did the panel downgrade BC Hydro assessment of significance, and in several it upgraded it.

### ***Economic justification***

BC Hydro centered its argument for the project on a forecast that electricity demand is “expected to increase by about 40 per cent over the next 20 years” and that Site C was required to meet this demand, even taking into account the province’s ambitious requirement of meeting two-thirds of new demand with conservation and efficiency. BC Hydro’s environmental impact statement compared the Site C option with two other portfolios: a “clean generation” portfolio consisting of wind, biomass, and run-of-the-river power and a “clean + thermal generation” portfolio that would build new natural gas plants. Its cost analysis concluded that the “Site C portfolio provided material ratepayer savings” compared to the other two options. Adjusted unit energy costs for Site C were \$110 per MWh (2013 dollars) compared to the “clean generation portfolio costs of \$181 per MWh and “clean + thermal generation” costs of 156 per MWh.

BC Hydro summarizes the economic benefits in this paragraph:

As a clean, renewable resource, the Project would deliver electricity with very low GHG emissions per unit of energy produced. Emissions would be comparable to other renewable sources such as wind and run-of river hydro. As such, the Project will support both provincial and federal GHG reduction strategies. In addition, the dependable capacity provided by the Project will facilitate the integration of additional renewables into BC Hydro’s system, supporting the Province’s clean energy strategy (BC Hydro 2013, 37).

The utility made the case for the net benefits of the project as follows:

BC Hydro concludes that while the Project has the potential to result in some significant residual effects, they are justified by (1) the public interest served by delivering long term, reliable electricity to meet growing demand (2) the employment, economic development, ratepayer, taxpayer, and community benefits that would result (3) the ability of the Project to meet this need for electricity with lower GHG impact than other resource options and (4) because the Project would take advantage of water already stored in the upstream reservoirs to generate over 35 per cent of the energy generated by BC Hydro's largest facility with only 5 per cent of the reservoir area (BC Hydro 2013, 37).

It's important to note that neither of these concluding statement emphasizes the potential for Site C to add to BC's capacity to support the integration of renewables in neighbouring jurisdictions. The JRP, however, did not these benefits at one point in describing BC Hydro's case for the dam's benefits (Joint Review Panel 2014, 273).<sup>3</sup>

The JRP summarized the participants' views of the justification for the project, many of them critical. In a stunning assertion, the JRP concluded: "The Panel cannot conclude on the likely accuracy of Project cost estimates because it does not have the information, time, or resources. This affects all further calculations of unit costs, revenue requirements, and rates." It seems like it was the JRP's job to perform this analysis, but they clearly felt the capacity to do so was limited. This conclusion was used as a justification for their recommendation 46: "If it is decided that the Project should proceed, a first step should be the referral of Project costs and hence unit energy costs and revenue requirements to the BC Utilities Commission for detailed examination" (Joint Review Panel 2014, 280).

The panel viewed BC Hydro's load forecasting as "sound", but was critical of the fact that it was not accompanied by a "long-term pricing scenario for electricity and its substitutes" (Joint Review Panel 2014, 287). Reminiscent of the BC Utilities Commission critique of the 2008 LTAP, the panel also concluded that "demand management does not appear to command the same degree of analytic effort as does new supply" (Joint Review Panel 2014, 291). On balance, the panel did raise

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<sup>3</sup> "While the Project is not being proposed for exporting energy, the energy surplus in its early years would allow BC Hydro to assist other jurisdictions, such as California, in managing an increasing level of intermittent resources such as solar or wind. This assistance could be provided irrespective of the net import/export position of BC Hydro compared to external jurisdictions. The dynamic capacity and storage would allow these external jurisdictions to integrate additional wind, solar, and run-of-river hydro, in turn lowering their GHG emissions and footprint of supply resources. BC Hydro's ratepayers would further benefit from the revenues associated with providing such a service" (Joint Review Panel 2014, 273).

questions about the methodology used to compare alternatives but seemed satisfied in the end with the strength of the economic argument for the project: “in the long term, Site C would produce less expensive power than any alternative” (Joint Review Panel 2014, 298).

The panel’s final conclusions were, depending on your perspective, either contradictory or nuanced. On the one hand, they emphasized the economic need and benefit for the project: “The Panel concludes that B.C. will need new energy and new capacity at some point. Site C would be the least expensive of the alternatives, and its cost advantages would increase with the passing decades as inflation makes alternatives more costly.” On the other hand, they questioned the timing of the decision: “The Panel concludes that the Proponent has not fully demonstrated the need for the Project on the timetable set forth” (Joint Review Panel 2014, 305-6).

### ***Government Response***

Despite the mixed blessing of the Joint Review Panel, both the federal and the provincial government issued approvals for the project. The BC government issued an Environmental Assessment Certificate in October, 2014, and approved the project for construction in December 2014 (Government of BC 2014). It did so despite the Joint Review Panel’s acknowledgment that it did not have the capacity to scrutinize the economic justification for the project and its recommendation to refer it to the BC Utilities Commission. The Government of Canada approved the project (with 80 conditions) in October 2014 (Canadian Environmental Assessment Agency 2014). As is now customary in federal government decisions on major projects where the assessment concludes there are significant environmental impacts, the decision statement simply asserts that the adverse effects are “justified in the circumstances.” Despite a number of legal challenges, BC Hydro initiated construction in late July 2015, with an expected completion date of 2024.

### **The Ongoing Battle in the Courts**

Site C opponents have filed multiple lawsuits against the approval decisions by the Governments of British Columbia and Canada, but thus far Canadian courts have been decidedly unfriendly to project opponents. Table 1 provides an overview of the litigation and its status. Thus far, all lawsuits, whether by First Nations or environmental groups, challenging the approval decisions have been dismissed. The only case decided for the plaintiff was when BC Hydro applied to have an injunction enforced to remove protesters from disrupting construction.

Table 1 – Status of Site C Litigation

Case	Court and citation	Subject	Most recent action
<a href="#">Prophet River First Nation &amp; West Moberly First</a>	BC Court of Appeal (on <a href="#">appeal from BC Supreme</a> )	Lack of an unjustified infringement	Dismissed Feb 2, 2017, plaintiffs have applied for

<a href="#">Nation v. BC Hydro</a>	<a href="#">Court</a> 2017 BCCA 58	determination and adequacy of consultation	leave to appeal to the Supreme Court of Canada
<a href="#">West Moberly First Nation &amp; Prophet River First Nation v. BC FLNRO</a>	BC Supreme Court 2016 BCSC 2007	Adequacy of consultation	Dismissed Oct 13, 2016
<a href="#">Prophet River First Nation v. Canada</a>	Federal Court of Appeal (on <a href="#">appeal of Federal Court decision</a> ) 2017 FCA 15	Whether the federal cabinet was required to consider whether environment effects constitute infringement	Dismissed Jan 23, 2017, plaintiffs have applied for leave to appeal to the Supreme Court of Canada
<a href="#">BC Hydro v Ken Boon et al</a>	BC Supreme Court 2016 BCSC 355	Injunction against protesters blocking construction	Injunction granted Feb 29, 2016
<a href="#">Peace Valley Landowner Association v. BC Min. of Environment</a>	BC Court of Appeal 2016 BCCA 377 (on <a href="#">appeal from the BC Supreme Court</a> )	Whether the Government of BC could choose not to consider JRP recommendations for future government regulation of BC Hydro	Dismissed Sep 15, 2016
<a href="#">Peace Valley Landowner Association v. Canada (Attorney General)</a>	Federal Court 2015 FC 1027	Whether the federal cabinet sufficient justified the significant adverse effects	Dismissed Aug 28, 2015

The Peace Valley Landowner Association challenged the BC government's decision not to, among other things, refer the project to the BC Utilities Commission. But the BC Supreme Court and Court of Appeal ruled it was within the cabinet's prerogative to do so. The group also challenged the federal government's decision for not sufficiently justifying its finding that the "significant adverse environmental effects were justified in the circumstances." But as in other cases that have sought to challenge terse federal cabinet decisions under the Canadian Environmental Assessment Act, the Federal Court ruled that the cabinet's justification was sufficient.

The Prophet River First Nation and West Moberly First Nation challenged the BC and federal decisions on the grounds that the environmental effects of the dam infringed on their treaty rights and that the government's did not consult

sufficiently. Four decisions, two in BC courts, two in federal courts, completely rejected the First Nations' arguments. On the question of infringement, the courts, ruled that the cabinet, in making its approval determined that the cabinet (in the federal case) and ministers (in the provincial case) were under no obligation to make such a determination. While at first glance this appears to be a retreat from recent doctrine, on closer reading the courts based their findings on their reading that the Supreme's *Haida* and *Mikisew* decisions shifted the test away from justifying infringement to the adequacy of consultation and accommodation.

Several of the decisions did carefully scrutinize the record on consultation and ruled that it was sufficient, rejecting what they saw as the First Nations effort to transform the duty to consult into a veto on the project. The BC Court of Appeal decision ruling is worth quoting at some length:

"...The duty to consult and accommodate does not afford First Nations a 'veto' over the proposed activity: *Mikisew* at para. 66. Here, the appellants have not been open to any accommodation short of selecting an alternative to the project; such a position amounts to seeking a 'veto'. They rightly contend that a meaningful process of consultation requires working collaboratively to find a compromise that balances the conflicting interests at issue, in a manner that minimally impairs the exercise of treaty rights. But that becomes unworkable when, as here, the only compromise acceptable to them as to abandon the entire project" (*Prophet River First Nation v. British Columbia (Environment)*, 2017 BCCA 58).

The two First Nations have applied for leave to appeal to the Supreme Court of Canada – as of May, 2017, a decision on whether to hear the appeal is pending. For the First Nations to be successful, the Supreme Court would either have to shift its doctrine closer to a requirement for consent or take quite a different view on the adequacy of the BC government's efforts at consultation and accommodation.

## **Conclusion**

Keeping global warming within manageable limits requires a massive and rapid transformation of the energy system to virtually eliminate greenhouse gas emissions. Yet the Canadian energy project planning and approval processes are stymied to conflict and delay. This paper has examined the case of a large "clean energy project," the Site C dam – a \$9 billion, 1100 MW project -- in Northeastern British Columbia. Despite the potentially enormous benefit of producing low carbon power for generations, the project has been vehemently opposed by a broad coalition of environmental groups, First Nations, and academics. Even if some environmentalists might have been inclined to support the project because of its contribution to the clean energy transition, their ideological and strategic commitment to honoring First Nations' demands for consent on major project decision-making prevented them from doing so.

While BC Hydro unquestionably engaged in extensive discussions with First Nations, there is no evidence that their engagement efforts went deep enough to be successful with the most directly affected First Nations. While it may be that no offer could have overcome the opposition of the West Moberly and Prophet River First Nations, it is telling that there is no indication in the record of discussions about providing First Nations partnership or equity in the project, a strategy that has been demonstrated to be successful in other highly contentious resource projects. First Nations litigation has not been successful yet in BC or federal courts. For the Supreme Court to reverse the position of the lower courts, it would either have to find flaws in BC Hydro's consultation not evident to lower courts, or shift the Canadian legal doctrine closer to a requirement for consent.

While Site C would unquestionably result in significant environmental impacts in the Peace River region, it is striking how little recognition there has been of the project's contribution to the broader decarbonization agenda. What's missing in much of the opposition critiques, especially with respect to economic justification, is the broader continental view. The fact that power may not be needed in BC at the time of project completion misses the point about the project's broader potential contribution to decarbonization. BC is part of the Western Electricity Coordinating Council that includes Alberta and the Western United States. Site C's most valuable contribution might well be to providing storage to "firm up" intermittent renewables as their penetration increases to replace polluting fossil fuel power plants. While passingly mentioned in the Joint Review Panel report, this benefit was barely mentioned in BC Hydro's submissions and completely ignored by environmental critics of the project.

While the Site C project appears to have enormous momentum, the May 2017 election in BC has raised new doubts about its future. The pro-dam BC Liberals were unable to win a majority, and the Green Party's three seats give them the balance of power. Green Party Andrew Weaver, a world-renowned climate scientist, originally favoured the project, and, prior to entering politics, even travelled with Premier Gordon Campbell to the site when the project was given the initial green light in 2010. But over time he has turned into a vigorous opponent, largely based on economic grounds. The BC NDP has pledged to refer the project to the BC Utilities Commission. While the governance situation is currently volatile, it is conceivable that the project may now be delayed for further review or cancelled outright.

## References

Abacus Data. 2016. Public Opinion about Site C. Spring. [http://abacusdata.ca/wp-content/uploads/2016/06/Abacus-Site-C-Public-Opinion-Survey-June-2016\\_FINAL.pdf](http://abacusdata.ca/wp-content/uploads/2016/06/Abacus-Site-C-Public-Opinion-Survey-June-2016_FINAL.pdf)

Baumgartner, Frank and Bryan Jones. 2010. *Agendas and instability in American politics*. University of Chicago Press.

BC Hydro. 2013. *Site C Clean Energy Project – Environmental Impact Statement Executive Summary*. [http://www.ceaa-acee.gc.ca/050/documents\\_staticpost/63919/85328/Executive\\_Summary.pdf](http://www.ceaa-acee.gc.ca/050/documents_staticpost/63919/85328/Executive_Summary.pdf)

BC Hydro. 2016. “BC Hydro responds to public opinion poll by Insights West.” November 16. <https://www.sitecproject.com/bc-hydro-responds-to-public-opinion-poll-by-insights-west>

BC Hydro. 2017. “BC Hydro and Halfway River First Nation reach agreements on Site C.” Info Bulletin. March 27. [https://www.bchydro.com/news/press\\_centre/news\\_releases/2017/agreement-halfway-river-first-nation.html](https://www.bchydro.com/news/press_centre/news_releases/2017/agreement-halfway-river-first-nation.html)

British Columbia Utilities Commission. 1983. *Site C Report: Report & Recommendations to the Lieutenant Governor-in-Council*.

Canadian Environmental Assessment Agency. 2014. *Decision Statement Issued under Section 54 of the Canadian Environmental Assessment Act, 2012 to British Columbia Hydro and Power Authority for the Site C Clean Energy Project*. October 14. <http://www.ceaa-acee.gc.ca/050/documents/p63919/100567E.pdf>

Cleland, Michael et al. 2016. *A Matter of Trust: The Role of Communities in Energy Decision-Making*. Canada West Foundation and the University of Ottawa. November. [https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca/positive-energy/files/secondversion\\_mattertrust\\_report\\_24nov2016-1\\_web.pdf](https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca/positive-energy/files/secondversion_mattertrust_report_24nov2016-1_web.pdf)

Government of Canada and Government of British Columbia. 2014. *Federal/Provincial Consultation and Accommodation Report – Site C Clean Energy Project*. September 7. <https://projects.eao.gov.bc.ca/api/document/58868f49e036fb010576803a/fetch>

Government of BC. 2007. *Energy Plan*.

Government of BC. 2010. “Province Announced Site C Clean Energy Project.” April 19. [https://archive.news.gov.bc.ca/releases/news\\_releases\\_2009-2013/2010prem0083-000436.htm](https://archive.news.gov.bc.ca/releases/news_releases_2009-2013/2010prem0083-000436.htm)



Government of BC. 2014. "Site C to Provide More than 100 Years of Affordable, Reliable Clean Power." December 16. <https://news.gov.bc.ca/stories/site-c-to-provide-more-than-100-years-of-affordable-reliable-clean-power>

Hoberg, George. 2001. "Policy Cycles and Policy Regimes: A Framework for Studying Public Policy." In *In Search of Sustainability: British Columbia Forest Policy in the 1990s*, Cashore, B., Hoberg, G., Howlett, M., Rayner, J., Wilson, J.: UBC Press, Vancouver.

Hoberg, George. 2010. "Bringing the Market Back In: BC Natural Resource Policies During the Campbell Years," in *British Columbia Politics and Government*, Micheal Howlett, Dennis Pilon, and Tracy Sommerville, eds. Toronto: Edmond Montgomery. pp. 331-51.

Hoberg, George. 2014. The Site C Panel Report and the Crisis of Credibility for BC Electricity Policy. *GreenPolicyProf*. <http://greenpolicyprof.org/wordpress/?p=961>

Hoberg, George. 2016. "Unsustainable Development: Energy and Environment in the Harper Decade." In *The Harper Factor; Assessing a PM's Policy Legacy*, edited by Jennifer Ditchburn and Graham Fox. McGill-Queen's University Press, October 2016.

Insights West. 2016. "Seventy per cent of British Columbians Support Pausing Site C Construction to Investigate Alternatives." November 16. <http://www.insightswest.com/news/seventy-per-cent-of-british-columbians-support-pausing-site-c-construction-to-investigate-alternatives/>

Joint Review Panel. 2014. Report of the Joint Review Panel, Site C Clean Energy Project. May 1. <https://www.ceaa-acee.gc.ca/050/documents/p63919/99173E.pdf>

Lassonde, Maryse. 2016. "The Right Honourable Justin Trudeau from the President of the Royal Society of Canada." May 19. [https://rsc-src.ca/sites/default/files/pdf/PM\\_Trudeau\\_19.05.2016.pdf](https://rsc-src.ca/sites/default/files/pdf/PM_Trudeau_19.05.2016.pdf)

Lavoie, Judith. 2014. B.C. Business Community Slams 'Astronomical' Cost of Building Site C Dam. *Desmog Canada*. June 10, 2014 <https://www.desmog.ca/2014/06/10/b-c-business-community-slams-astronomical-cost-building-site-c-dam>

London Economics International. 2014. *Cost-effectiveness evaluation of clean energy projects in the context of Site C*. Prepared for the Clean Energy Association of British Columbia. September 16. [https://www.cleanenergybc.org/wp-content/uploads/2015/12/LondonEI\\_20141016.pdf](https://www.cleanenergybc.org/wp-content/uploads/2015/12/LondonEI_20141016.pdf)

Minister of the Environment, Canada and Minister of Environment, British Columbia. 2012. Agreement To Conduct a Cooperative Environmental Assessment, Including the Establishment of a Joint Review Panel of the Site C Clean Energy.

Moe, Terry, and Scott Wilson. 1994. Presidents and the Politics of Structure. *Law and Contemporary Problems* 57: 1-44.

Palmer, Vaughn. 2014. Clean energy report becomes a political football. *Vancouver Sun*. November 20.  
<http://www.vancouversun.com/technology/Vaughn+Palmer+Clean+energy+report+becomes+political+football/10396576/story.html>

Palmer, Vaughn. 2017. "Getting Site C to point of no return a damning progress report, so far." January 5. <http://vancouversun.com/opinion/columnists/vaughn-palmer-getting-site-c-to-point-of-no-return-a-damning-progress-report-so-far>

Penner, Derrick. 2014. "Site C mega-project a welcome boost for construction industry." *Vancouver Sun*. December 18.  
[http://www.vancouversun.com/business/energy/Site+mega+project+welcome+boost+construction+industry/10661544/story.html?\\_lsa=daaa-345d](http://www.vancouversun.com/business/energy/Site+mega+project+welcome+boost+construction+industry/10661544/story.html?_lsa=daaa-345d)

Royal Society of Canada. n.d. "Over 200 leading scholars call on government to suspend Site C dam." <http://www.rsc.ca/en/about-us/our-people/our-priorities/over-200-leading-scholars-call-government-to-suspend-site-c-dam>

Site C: Statement by Concerned Scholars. 2016. Statement of Concerned Scholars on the Site C dam project, Peace River, British Columbia. <https://sitecstatement.org/>

Pralle, Sarah. 2006. *Branching Out, Digging In: Environmental Advocacy and Agenda Setting*. Washington, D.C.: Georgetown University Press.

Shaw, Karena. 2011. "Climate deadlocks: the environmental politics of energy systems." *Environmental Politics* 20 (5): 743-763.

Treat 8 Tribal Association. 2010. Treaty 8 First Nations Declaration on the Site C Dam Proposal. September 17.  
<https://fathertheo.wordpress.com/2011/03/09/treaty-8-first-nations-declaration-on-the-site-c-dam-proposal/>