

Federal Authority Advice Record (FAAR)

FAAR Response must be submitted by August 14, 2024

Black Bear Power Plant Project – Kiwetinohk Energy Corp.

Registry File: 88747

Department/Agency	Transport Canada
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1. a) Is it probable that your department or agency may be required to exercise a power or perform a duty or function related to the project to enable it to proceed?

If yes, specify the Act of Parliament and that power, duty or function.

- b) Please describe any Indigenous or public consultation that will be undertaken in relation to the exercise of that power, duty or function, including when it would take place.

Canadian Navigable Waters Act (CNWA)

Crossings

It is not probable the proposed works crossing waterways (i.e. pipeline and transmission line crossings) on waterways associated with Black Bear Power Plant (BBPP) would require approvals from Transport Canada (TC) under the *Canadian Navigable Waters Act (CNWA)*.

Section 21.2.5, Use of Navigable Waters in the Initial Project Description (IPD) states that there are no navigable waters within the BBPP area. TC's Navigation Protection Program (NPP) has reviewed and affirms this determination.

Waterways that are not navigable are not regulated by the CNWA. As such, any works, such as watercourse crossings, in, on, over, under, through or across these waterways do not require a CNWA approval.

Intake

It is possible, though not probable, that an intake on the Freeman River would require approval under the CNWA.

If there is not sufficient groundwater, the proponent may withdraw water from the Freeman River. The Freeman River is navigable. However, given the size of the waterbody, the intake would likely meet the applicable requirements of the CNWA Minor Works Order and would not require

approval under the CNWA. Works listed in the Minor Works Order are considered likely to only slightly interfere with navigation.

Works that meet the requirements of the Minor Works Order do not require approval from Transport Canada and in turn do not require public and/or Indigenous consultation by Transport Canada. Notices of minor works are required to be published on the Common Project Search site (<https://common-project-search.canada.ca/>.) However, the publication is informative only, and the public cannot comment on such projects.

Airport Zoning Regulations (AZR)

Transport Canada (TC) is responsible for reviewing construction plans for aviation impacts but does not approve them. TC will determine if an obstacle needs to be marked and/or lit. An Airport Zoning Regulations (AZR) assessment may also preclude building if an obstruction is assessed to be unsafe.

TC requires an Aeronautical Assessment Form to be submitted for planned construction, along with a legal land survey, if it is within the boundaries of an AZR. Per the IPD's consultation process table, the proponent is aware of this requirement and will pursue it in 2024.

Indigenous or public consultation

If Transport Canada is a federal authority for the Project, then the Department would participate in the "whole of government" Indigenous consultation led by the IAAC. Transport Canada would use the results of the "whole of government" consultation to fulfil its own consultation responsibilities associated with the later review of an application for a CNWA approval, should one be required for the project.

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2. Is your department or agency in possession of specialist or expert information or knowledge in its area of expertise that may be relevant to the conduct of an impact assessment of the project?

Specify the specialist or expert information or knowledge.

There is not enough information in the IPD for TC to answer this question.

3. Has your department or agency considered the project; exercised a power or performed a duty or function under any Act of Parliament in relation to the project; or taken any course of action that would allow the project to proceed in whole or in part?

Specify.

No.

4. Has your department or agency had previous contact or involvement with the proponent or other party in relation to the project? (for example: an enquiry about methodology, guidance, or data; introduction to the project)

Provide an overview of the information or advice exchanged.

No.

5. Does your department or agency have additional information or knowledge on the project not specified above, including information on the geographic, environmental, economic or social context of the project? (e.g. location of protected or sensitive areas, previous history between local communities and proponent or similar projects, local or regional social or economic concerns)?

Specify as appropriate.

No.

6. Based on the mandate and area(s) of expertise of your department or agency, what are the key issues related to the project?

For each key issue:

- Describe the potential effect or the nature of the issue, including any relevant context;
- Provide the rationale and/or evidence for why it is a key issue;
- Provide advice on how to address the issue, including any information or studies that should be required in the Tailored Impact Statement Guidelines, potential mitigation measures, and/or regulatory requirements relevant to the issue;
- Provide a concise, plain-language summary of the issue for inclusion in the Summary of Issues.

The information provided will be considered by the Impact Assessment Agency of Canada (IAAC) and may be used to inform its decision on whether an impact assessment is required and, where appropriate, for next steps in the impact assessment process including to develop project-specific draft Tailored Impact Statement Guidelines.

Please use Table 1 to respond to this question.

7. Where possible, identify any additional information the proponent could include in the response to the Summary of Issues and, if IAAC requires it, in their Detailed Project Description, that would:
- Give confidence that minor issues or effects could be addressed and managed by clear measures, existing guidelines, other regulatory processes or other existing tools;
 - Inform the decision as to whether an impact assessment is required; or
 - Aid in tailoring the Tailored Impact Statement Guidelines, if IAAC decides an impact assessment is required.

These clarifications and additional information will be included as specific questions in the Summary of Issues provided to the proponent.

Please use Table 2 to respond to this question.

Transport Canada
Name of Departmental / Agency
Responder

Holly Poklitar
Title of Responder

August 8, 2024
Date

Table 1: Key Issues to inform the impact assessment process

The IAAC asks that federal authorities align expert advice with IAAC’s approach to tailoring by project, which focuses on key project issues, clearly focused on the prevention of adverse effects within federal jurisdiction. In identifying key issues, federal authorities should be mindful of the project’s context (size, scope, location), Indigenous Knowledge and perspectives, and public concerns. Key issues that may be relevant to the decision include:

- adverse effects within federal jurisdiction and direct or incidental adverse effects that may be to some extent significant, based on federal experts’ knowledge and experience with past projects;
- potential impacts on Indigenous Peoples and their rights, based on Indigenous Knowledge and perspectives or experience with past projects;
- effects on key species or habitats (e.g. at risk, important to Indigenous communities, commercial importance, provide important ecosystem function);
- issues or effects that may result from novel project activities, components or technology;
- effects with large uncertainties, including in the effectiveness of mitigation measures;
- adverse effects within federal jurisdiction or direct or incidental adverse effects where mitigation measures are limited;
- positive effects, including where project may support other governmental priorities, including reconciliation with Indigenous Peoples; and
- key concerns raised by Indigenous groups or local communities.

Effects that are anticipated to be minor or which can be managed using well understood mitigation, existing guidance, and/or other regulatory processes may have simplified information requirements or may be removed entirely. Measured advice from federal authorities on key issues and solutions—and on the scope and detail of any required information and studies—will enable IAAC to focus assessments on issues that are important to participants and to decision-makers.

Comment ID	Relevant section of the Initial Project Description	Valued Component or Factor to Consider	Description of Key Issue (Context and Rationale)	Advice	Plain language summary for inclusion in Summary of Issues
<p>Please identify comments by organization and comment number.</p> <p>e.g.: IAAC-01</p>	<p>If the comment is related to a specific section of the Initial Project Description, please include that reference.</p>	<p>Identify valued component(s) or factor to consider—within the mandate of your department or agency—to which the potential effect or issue applies.</p>	<p>Provide a brief description of the issue and rationale for being a key issue.</p> <p>Include, where relevant,:</p> <ul style="list-style-type: none"> • the pathway of effects; • relevant context on why it is a key issue; • key uncertainties that should be addressed in the impact assessment; • Indigenous or public concerns or perspective; • potential for differential effects among diverse subgroups; • scientific evidence or Indigenous Knowledge, including from past project experience, which supports inclusion as a key issue. 	<p>Where applicable, briefly provide solutions on how to address the potential issue or effects including:</p> <ul style="list-style-type: none"> • Information or studies required to describe and characterize the potential effect; including any guidance for data collection and/or analysis or existing data sources to inform the assessment; • Any means, including any powers, duties or functions, that your department or agency has that may mitigate, manage, or set conditions related to the issue or effect; • Guidance or policies for mitigating effects or any standard and well-understood mitigation measures that would address the effect, including follow-up monitoring activities; and/or • Commitments the proponent could make to respond to the issue. <p>Where available, please refer to existing text in the Tailored Impact Statement Guidelines template.</p>	<p>For issues to be included in the Summary of Issues, provide a concise, plain language synopsis of the key issue and any questions or directions for the proponent.</p>
TC-01	p. 57 (section 9.1.3 Water supply)	Navigation on navigable waterways.	<p>It is unclear whether the intake on the Freeman River will meet the <i>Canadian Navigable Waters Act</i> (CNWA) Minor Works Order.</p> <p>Navigation on navigable waterways is a public right. Indigenous peoples also use navigable waterways to exercise Indigenous and treaty rights. Watercourse crossings, such as by pipelines and transmission lines, that are not constructed and operated in accordance with the <i>Canadian Navigable Waters Act</i> can potentially unreasonably interfere with navigation.</p>	<p>The proponent should use the Project Review Tool on the Navigation Protection Program (NPP)’s External Submission Site (https://npp-submissions-demandes-ppn.tc.canada.ca/projectreview-outildexamenduprojet). This tool is designed to help a proponent understand their requirements under the CNWA.</p>	<p>The proponent should use the Project Review Tool on the Navigation Protection Program (NPP)’s Website (https://npp-submissions-demandes-ppn.tc.canada.ca/projectreview-outildexamenduprojet) to determine the regulatory requirements for an intake on the Freeman River, a navigable waterway.</p>

Please insert additional rows as necessary.

Table 2. Clarifications or additional information the Proponent could include in the response to Summary of Issues

Comment ID	Relevant section of the Initial Project Description	Description of Issue, Concern or Uncertainty	Clarification or additional information	Plain language summary for inclusion in Summary of Issues
<p>Please identify comments by organization and comment number.</p> <p>e.g.: IAAC-01</p>	<p>If the comment is related to a specific section of the Initial Project Description, please provide a reference.</p> <p>You may also choose to copy the relevant text here.</p>	<p>Provide a description of the issue, concern or uncertainty the proponent could address in their response to Summary of Issues and, if IAAC requires it, in their Detailed Project Description that would give confidence that the issue will be addressed and managed, by clear measures, existing guidelines, regulatory processes or other existing tools, and thus be the subject of simplified information requests in the guidelines, or simply be removed.</p>	<p>Provide recommended clarification or additional information to be included in their response to the Summary of Issues and, if IAAC requires it, in their Detailed Project Description to address the issue, concern or uncertainty, for example:</p> <ul style="list-style-type: none"> • Clarifications to elements of the project description (e.g. components, activities, locations or alternatives); • Proposed project design changes that could avoid effects; • Evidence that could be presented to demonstrate there is no effect, pathway of effect or that effects would be negligible; • Evidence that standard mitigations will address potential effects • Commitments the proponent could make to respond to the issue, including the implementation of federal operational policies or guidance documents. 	<p>For issues to be included in the Summary of Issues, provide a concise, plain language synopsis of the issue and of the question or direction for the proponent.</p>
TC-02	P. 57 (section 9.1.3 Water supply)	It is unclear whether the intake on the Freeman River will meet the <i>Canadian Navigable Waters Act</i> (CNWA) Minor Works Order.	The proponent should use the Project Review Tool on the Navigation Protection Program (NPP)'s External Submission Site (https://npp-submissions-demandes-ppn.tc.canada.ca/projectreview-outildexamenduprojet). This tool is designed to help a proponent understand their requirements under the CNWA.	The proponent should use the Project Review Tool on the Navigation Protection Program (NPP)'s Website (https://npp-submissions-demandes-ppn.tc.canada.ca/projectreview-outildexamenduprojet) to determine the regulatory requirements for an intake on the Freeman River, a navigable waterway.

Please insert additional rows as necessary.