

24 April 2015

Jeanette Radcliffe  
Committee Secretary  
Wind Turbines Select Committee

*By email: [windturbines.sen@aph.gov.au](mailto:windturbines.sen@aph.gov.au)*

Dear Jeanette

## **Response to Adverse Comments**

Thank you for the opportunity to respond to a number of adverse comments made about Pacific Hydro at the Senate Select Committee on Wind Turbines in Portland on Monday 30 March 2015.

Our response is in two parts. Firstly, on reviewing the Proof Committee Hansard it is our strong view that a number of inaccurate statements and accusations were made during the proceedings of 30 March by those giving evidence to the inquiry, and by some senators sitting on the inquiry.

Given a number of these issues have been widely reported and have caused harm to the reputation of Pacific Hydro; we request that our response to these issues be made publicly available.

Secondly, in the interests of providing a complete response to the claims by Mr Cooper that Pacific Hydro has 'gagged' him, we will provide a copy of the Consultant Services Agreement (CSA) between Pacific Hydro and the Acoustic group under which Mr Cooper prepared the Cape Bridgewater acoustic report of 21 January 2015 (Report). As the CSA represents a commercial arrangement between Pacific Hydro and the Acoustic Group, we ask that it remain confidential and is not made public.

Our response to the inaccurate statements and accusations made on 30 March is as follows.

### **Gag Clauses**

Pacific Hydro has never sought to suppress the Report or prevent Mr Cooper from using or discussing it. The complete Report has been publicly available since its release in January 2015 and Mr Cooper has spoken extensively about it.

Furthermore, there is nothing in the CSA between Pacific Hydro and the Acoustic Group that prohibits Mr Cooper from speaking about or reproducing the Report.

We have never claimed that any information set out in the Report is confidential aside from the personal information of the resident participants, which is protected under the Privacy Act and by the CSA. As such, Pacific Hydro sought and received consent from each of the six individuals to publicly release such personal information as part of the Report.

Mr Cooper was therefore only prevented from talking about the Report with respect to personal information before this consent from all participants was received, as was Pacific Hydro itself.



As indicated above, we will provide the CSA between Pacific Hydro and the Acoustic Group to the committee on a confidential basis. However, we feel it necessary to clearly state for the public record that the CSA, signed by Mr Cooper in April 2014, specifically grants The Acoustic Group a non-exclusive, perpetual, irrevocable, worldwide and royalty free licence to use and reproduce the Intellectual Property Rights in the Project IP (which is the Report). There is and never has been any limit on The Acoustic Group's contractual right to use and reproduce the Report.

It is important to note however that we freely made a significant amount of commercially sensitive data (including wind farm operating data) available to Mr Cooper for use in his study, and to be reproduced in his Report to the extent he felt it was relevant.

Clearly it was necessary for some of this data to be used by Mr Cooper to prepare the Report, including the many charts and graphs he included in the Report. This is what we consider to be Project IP which he is and always has been able to use and reproduce under the CSA.

However, we are not prepared to allow Mr Cooper to continue to use Pacific Hydro's commercially sensitive data for purposes outside the scope of his engagement under the CSA or for his own commercial or intellectual benefit. Under the CSA, that data was provided to Mr Cooper for the sole purpose of enabling him to prepare the Report, is commercially sensitive to Pacific Hydro, and is and remains confidential. Under the CSA, we are entitled to request the return or destruction of this data.

This type of arrangement is standard practice in any commercial arrangement, and therefore is not unreasonable to be part of the CSA between Pacific Hydro and The Acoustic Group. Mr Cooper presumably saw nothing untoward with these arrangements either, given that he signed the CSA of his own volition.

While we do not accept Mr Cooper's claim that he is prohibited from using and reproducing the Report, we recognise some confusion remained about some of the CSA terms, which is why we attempted to contact Mr Cooper for almost 2 weeks leading up to his appearance before the senate committee. Unfortunately, Mr Cooper did not respond to our numerous requests to resolve his issues, which would have avoided the situation where he has made claims against Pacific Hydro under parliamentary privilege that we believe to be untrue.

Consistent with the CSA, Mr Cooper has provided us the written correspondence that he has sent to the Senate inquiry that, in his view, supports his claim that he has been 'gagged'. We have reviewed this correspondence and are of the view that it provides no evidence or proof that Pacific Hydro has sought to 'gag' Mr Cooper.

We are also aware of recent claims made by Mr Cooper that we have directed him to destroy email correspondence within his possession or control. To clarify this misunderstanding, Pacific Hydro requested the return or deletion of our commercially sensitive wind farm data only. This is not unreasonable given the commercially sensitive nature of this data, the fact that we were entitled to make this request under the CSA, and is what would be expected of any professional consultant in possession of such data.

A number of claims made by Mr Cooper under parliamentary privilege on 30 March have been widely reported and have caused harm to the reputation of Pacific Hydro. Given we believe the supporting evidence provided to the inquiry by Mr Cooper does not demonstrate any wrong



doing on our part and that we have provided substantive proof that disproves his claims, we request that the committee move to correct the public record without delay.

### **Sustainable Community Fund**

The issue of gag clauses was also raised in relation to landowners and recipients of our Sustainable Communities Fund (SCF). These issues have been raised and addressed at previous wind farm inquiries. In response to this issue, Pacific Hydro wrote to all landowners confirming the agreements they had with us did not represent gag clauses, and that they were free to speak to whomever they wish. We have attached a copy of this letter for your reference.

The documents relating to our SCF referred to by Senator Canavan contain standard clauses that are in every funding agreement, including those of state and federal governments.

Pacific Hydro has never used such clauses to 'gag' individuals, nor is it our intention to ever do so. However, as Senators seems concerned by this we will review our SCF documents and ensure such clauses are removed.

### **Australian Medical Association**

It was claimed by Senator Back that the President of the Australian Medical Association (AMA) had "backed away" from previous statements regarding wind turbines and health. We can find no public record of this statement. However we can confirm that the AMA position is unchanged.

### **Compliance**

It was claimed by Senator Canavan that he was in possession of a report from Marshall Day Acoustics that showed the Cape Bridgewater wind farm was non-compliant. Senator Canavan later confirmed the report dated 21 July 2010 was the *Cape Bridgewater wind farm post-construction noise compliance assessment*.

This report is the post-construction compliance report for the Cape Bridgewater wind farm that, despite the claim made by Senator Canavan, clearly demonstrates that the wind farm is compliant. We can only assume that Senator Canavan does not understand the report or has been given poor advice.

We provide the following brief explanation of the compliance report for the information of Senators.

Because there are numerous sources of noise in the environment (both natural and man-made), compliance reports assess the impact of a wind farm on the overall acoustic environment based on a comparison of the average noise levels pre and post construction. Current noise standards require the average post-construction wind farm noise level to be no more than background (pre- construction) noise level plus 5 decibels, or no more than 40 decibels, whichever is the greatest.

With this basic understanding, it is clear the report to which Senator Canavan refers shows that the wind farm is compliant, as the average post-construction noise level is below the noise standards referred to above.

### **Peer Review**

During the course of discussion on peer review, Senator Canavan claimed that a review of the work completed by Mr Cooper being conducted by other acousticians engaged by Pacific Hydro is “a hatchet job.” While this was strongly refuted at the time, we believe our position on this issue needs to be re-stated.

Pacific Hydro engaged Mr Cooper to try and help us and the residents understand why a compliant wind farm could still give rise to the complaints being made. The Report is clear that no link or association could be established when standard acoustic assessments were used. It was only when Mr Cooper proposed a new hypothesis and set about using new methodologies to assess the overall environment that any relationship could be claimed.

Given Mr Cooper’s work and the findings in the Report represent something outside of existing acoustic assessment; it is entirely reasonable for Pacific Hydro to seek the views of acoustic experts. We would have expected that Senators would require a similar level of rigor before drawing what would be extremely premature conclusions based on a single report.

### **Scientific Rigor**

There has been substantial discussion about the scientific rigor of Mr Cooper’s Report. We would note that Mr Cooper confirmed in his evidence that the study was not scientific, and that it did not justify a change in regulations. Given this confirmation from the author of the Report, it was surprising that such a large amount of time was dedicated to this.

As stated on numerous occasions, Mr Cooper’s study was never intended to be scientific, nor was it a medical study, but an attempt to gain an understanding of what may be causing the issues claimed by residents. Unfortunately, others have attempted to portray the Report as providing conclusive proof that wind turbines are the cause of ill health, which has led to confusion.

We think it is important to make the distinction between the validity of the hypothesis and methodology (which still needs to be validated) and the scientific reliability of the results given small self-selected sample size, lack of a control etc.

Given the high level of uncertainty in the hypothesis and methodology presented in Mr Cooper’s Report, it is entirely reasonable that Pacific Hydro and others with an interest in these issues should seek expert opinions and additional input.

### **Indigenous People**

During the hearing of 30 March, our relationship with local indigenous groups was called into question.

The Gunditjmarra people are the traditional owners of the land on which the Portland Wind Energy Project (PWEPP) sits. Pacific Hydro’s relationship with the Gunditjmarra community commenced in 2003 and to this day remains strong. The relationship commenced with a Spiritual Walk over country to establish an understanding of the cultural landscape, and to provide an indication of appropriate locations for infrastructure.

We have continued to work with the Gunditjmarra community from the Spiritual Walk and early site surveys, through the design process of the cultural heritage management requirements,



and during the construction of each stage of the project. This includes Cape Bridgewater (PWEPII), Cape Nelson South (PWEPIII) and finally PWEPIV at Cape Nelson North and Cape Sir William Grant.

All stages of PWEPI have been designed, constructed and operated in accordance with the Victorian *Aboriginal Heritage Act 2006*, its predecessor the *Archaeological and Aboriginal Relics Preservation Act 1972*, and the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

Through each stage of PWEPI, Pacific Hydro has worked with the Gunditj Mirring Traditional Owners Aboriginal Corporation (GMTOAC) which is the Registered Aboriginal Party (RAP) under the Victorian *Aboriginal Heritage Act 2006* in respect of Aboriginal cultural heritage matters upon Gunditjmarra country. Cultural Heritage Management Plans were implemented at the Cape Bridgewater and Cape Nelson South sites across 2007-9 in accordance with the Act's transitional provisions and a service agreement between Pacific Hydro and the Gunditjmarra.

Most recently, Pacific Hydro worked closely with GMTOAC during the preparation and implementation of the Cultural Heritage Management Plan in relation to the construction of the PWEPIV project at Cape Nelson North and Cape Sir William Grant from 2013 to the project's recent construction completion in March 2015.

The Victorian Government has previously confirmed that Pacific Hydro has satisfied "good faith" criteria and all other obligations with respect to the Commonwealth *Native Title Act 1993*. The implementation of the cultural heritage management plans for each stage has been continually reported to the monthly Gunditj Mirring Full Group meetings.

Pacific Hydro is very grateful for the cooperation and good will extended by the Gunditjmarra community during the PWEPI design and construction phases, and looks forward to continuing this strong and positive relationship.

We hope this assists the committee in its deliberations.

Yours sincerely

Andrew Richards  
Executive Manager, External Affairs  
Pacific Hydro

For enquiries regarding this letter, please contact:  
Andrew Richards

27 November 2012

Dear Landholder,

You may be aware that there has been ongoing media commentary suggesting that 'gag clauses' are part of wind farm contracts which prevent landholders from speaking out about any concerns they may have, particularly in relation to alleged concerns about health impacts of wind farms.

We are writing to you today as we are of the firm belief that such clauses do not exist in our landholder contracts.

Our existing landholder contracts contain confidentiality clauses, typical of any commercial contract and are designed to protect the interests of both parties. We assess that the confidentiality clauses do not prohibit you from speaking out about any concerns you may have in relation to potential health impacts of wind farms.

If you are aware of any documents that, in your opinion, would prohibit you from raising such concerns we would ask that you contact us immediately so that we can rectify the situation.

We strive to provide open communication with our landholders and we hope that if you do have concerns about the wind farm's operation that you will raise these with us.

We will continue to keep abreast of scientific literature in relation to potential health impacts of wind farms and take advice from government health departments and other reputable health bodies. To date all peer reviewed studies on this issue have concluded that there are no direct health impacts from wind farms.

As always, Frances Thompson is your dedicated contact. She is available via phone [REDACTED] or email [REDACTED] should you have any concerns or questions.

Sincerely,

[REDACTED]

Lane Crockett

General Manager, Australia