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**CONSEIL DES INNU DE EKUANITSHIT
APPLICATION FOR STANDING BEFORE THE COMMISSION OF INQUIRY
RESPECTING THE MUSKRAT FALLS PROJECT**

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1. Summary

The Conseil des Innu de Ekuanitshit hereby applies for standing before the Commission of Inquiry Respecting the Muskrat Falls Project (the “Commission” or the “Inquiry”) on the grounds that its participation would further the conduct of the Inquiry and would contribute to the openness and fairness of the Inquiry, particularly with respect to the following questions:

- what consultation occurred between the established leadership of Indigenous people and Nalcor as well as the Government prior to the Project’s sanction;
- what risk assessments and reports were done regarding the concerns of Indigenous people;
- whether these assessments were appropriately and reasonably considered by Nalcor and the Government; and
- whether appropriate measures were taken to mitigate against reasonably potential adverse effects to the settled or asserted rights of the Indigenous people, both at the time of and post sanction.

2. The Conseil des Innu de Ekuanitshit

The Innu of Ekuanitshit are part of the Innu Nation, one of the aboriginal peoples of Canada whose rights are recognized and affirmed by section 35 of the *Constitution Act, 1982*.

The Innu of Ekuanitshit are also a band within the meaning of section 2 of the *Indian Act*, RSC 1985, c I-5. The applicant, Conseil des Innu de Ekuanitshit (the “Council”), is the elected governing body of the band.

The Ekuanitshit reserve, also called Mingan, is located at the confluence of the Mingan River and the St. Lawrence River, across from Mingan Island and, somewhat further, Anticosti Island.

The Innu Nation, which has more than 16,000 members, is the largest First Nation in terms of population, among the Aboriginal nations whose reserves are located in Quebec and Newfoundland and Labrador. Nine Innu communities occupy reserves located in Quebec, while two other communities occupy reserves located in Labrador.

Despite many of their reserves being situated on the shores of the St. Lawrence River, the Innu have occupied and lived off the territory now known as Labrador since time immemorial, travelling great distances to engage in a variety of harvesting activities. In winter especially, they typically travelled inland and upriver, often portaging over to the Churchill River basin to harvest big and small game including caribou, moose, deer and fish.

In 1979, the Government of Canada agreed to negotiate a comprehensive claim filed by the Atikamekw and Montagnais Council, of which the community of Ekuanitshit was a member. Canada's agreement was based, among other things, on the occupation and use of the territory in Labrador by the Innu whose reserves are located in Quebec and the studies produced in support of the claim establish that the traditional territory of the Innu of Ekuanitshit overlaps with the territory of the Muskrat Falls Project.

3. Ekuanitshit's Engagement with respect to the Muskrat Falls Project

In July 2008, the federal and provincial governments issued their guidelines for the environmental impact assessment process for the generating facilities on the Lower Churchill. These facilities consisted of the Muskrat Falls hydroelectric plant that was actually built on the Lower Churchill River in Labrador, as well as the hydroelectric plant at Gull Island on the Lower Churchill that was authorized but never built. The *Environmental Impact Statement Guidelines* required Nalcor to consider the interests, values and concerns of the Innu of Ekuanitshit, as well

as their contemporary and historic activities, while it planned and carried out the project.¹ In particular, the Guidelines required Nalcor to consult with the Innu of Ekuanitshit regarding the potential environmental effects of the project and appropriate actions to accommodate their interests.

In January 2009, the provincial minister and the Canadian Environmental Assessment Agency entered into the Agreement for the Establishment of a Joint Review Panel for the Environmental Assessment of the Lower Churchill Hydroelectric Generation Project. Under the agreement, the Joint Review Panel was required to invite Aboriginal groups to make submissions on their rights in the Project region and possible negative impacts.

From 2009 to April 2011, the Conseil des Innu de Ekuanitshit made several submissions to the Joint Review Panel regarding Nalcor's environmental impact study and it also participated at a public hearing held in Sept-Îles, Québec in April 2011. Copies of these submissions are attached as document E-1.

In May 2011, the federal and provincial governments again issued guidelines for the environmental impact assessment process, this time for the transmission lines between Labrador and the island of Newfoundland, the so-called "Labrador-Island Transmission Link Project".² These *Environmental Impact Statement Guidelines* again required Nalcor to consider the interests, values and concerns of the Innu of Ekuanitshit, as well as their contemporary and historic activities, while planning and carrying out the project.³ As with the previous guidelines, Nalcor was required to consult with the Innu of Ekuanitshit regarding the potential environmental effects of the project and appropriate actions to accommodate their interests.

¹ Section 4.8 of the *Environmental Impact Statement Guidelines: Lower Churchill Hydroelectric Generation Project*, issued by the Government of Canada and the Government of Newfoundland and Labrador (July 2008): http://www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/lower_churchill_final_guidelines_en.pdf

² *Environmental Impact Statement Guidelines: Labrador-Island Transmission Link*, issued by the Government of Canada and the Government of Newfoundland and Labrador (May 2011): http://www.mae.gov.nl.ca/env_assessment/projects/Y2010/1407/1407_final_eis_guidelines.pdf

³ Section 4.8.

As Nalcor began to produce and release component studies as part of the environmental assessment process for the transmission lines in 2011 and 2012, the Conseil des Innu de Ekuanitshit wrote to federal and provincial government representatives on numerous occasions to provide comments on the studies themselves as well as on the consultation framework being employed.

For example, in June 2011 the Council provided preliminary comments on the Historic and Heritage Resources Component Study, noting that Ekuanitshit had not been consulted and requesting that the governments find the study incomplete and direct Nalcor to engage the community regarding its historic and contemporary use of the project area. In September 2011, the Council provided preliminary comments on the Aboriginal Communities and Land Use Component Study, noting again that the study had been released before any meetings with the community had taken place and raising concerns about the impact of the project on salmon migratory routes. In January 2012, in order to address some of the issues raised in its previous correspondence, the Council proposed a consultation plan by which government scientists would be invited to make presentations on two issues of particular importance to the community, namely the impacts on fish and caribou. Copies of the above correspondence are attached as document E-2.

In April 2012, following the environmental assessment and the federal decisions authorizing construction of the two hydroelectric plants on the Churchill River, the Conseil des Innu de Ekuanitshit applied for judicial review alleging, among other things, that it had not been sufficiently consulted. The Federal Court of Appeal, ruling on Ekuanitshit's application, made the following comment that is of equal application to the provincial government:

There is no doubt that the Joint Review Panel, and as a consequence the respondents in this matter [the Government of Canada and Nalcor Energy], examined... the circumstances under which the appellant [the Conseil des Innu de Ekuanitshit] could continue to participate in the process so as to ensure that its concerns were taken into

consideration and, if required, accommodated. It is therefore expected that at each stage (permits, licences and other authorizations) as well as during the assessment of the adequacy of corrective measures taken by Nalcor and the relevant government authorities to address any adverse consequences of the Project, particularly on the caribou which is of interest to the appellant, the Crown will continue to honourably fulfill its duty to consult the appellant and, if indicated, to accommodate its legitimate concerns (see in this regard *Taku River* at para. 46).⁴

In May 2012, the province's Intergovernmental and Aboriginal Affairs Secretariat did in fact issue "Aboriginal Consultation Guidelines" meant to assist Nalcor Energy and provincial regulatory departments and agencies to "discharge any duty to consult that the Province may owe" to identified Aboriginal governments and organizations, including the Innu of Ekuanitshit, before issuing "regulatory approvals" for the "Lower Churchill Hydroelectric Generation Project." A copy of these guidelines is attached as part of the document E-3.

In July 2013, the province issued virtually identical guidelines for the "Labrador-Island Transmission Link Project," the lines that ultimately connected the Muskrat Falls plant to the Island of Newfoundland. The Transmission Link Project was defined in these guidelines to exclude any other project and the guidelines were not to "apply to permits issued for components of the Project on the Island of Newfoundland." A copy of these guidelines is attached as part of the document E-3.

Each set of guidelines included a list of "Possible Project Regulatory Approval Applications," which ranged from the most elementary, such as building permits for temporary on-site structures, to the very complex, such as alterations of bodies of water or the protection of endangered wildlife. Each set of guidelines applied a 30-day timeframe to all applications identified in Nalcor Energy's Environmental Impact Statements.

⁴ *Council of the Innu of Ekuanitshit v. Canada (Attorney General)*, 2014 FCA 189, para. 109 (emphasis added).

As appears from the attached document E-4, an email of April 25, 2014, from Peter Madden, the Regulatory Compliance Lead for the Lower Churchill Project at Nalcor Energy, in a period of less than two years Ekuanitshit received 18 different environmental effects monitoring plans, addressing issues ranging from ice formation to species at risk protection. Provincial departments and agencies ultimately approved no less than 1,969 different permits for the construction of Muskrat Falls, the Labrador Island Link, and the Maritime Link from 2012 till June 30, 2016.⁵

4. Decision on the Role of Indigenous Peoples

In his March 14, 2018 decision on the interpretation of the terms of reference for the Inquiry, as contained in the *Commission of Inquiry Respecting the Muskrat Falls Project Order* (the “Order in Council”),⁶ the honourable Commissioner Richard LeBlanc specifically addressed the role of Indigenous people before the Commission, stating:

[47] Having said this, it is obvious to me that the Lieutenant Governor-in-Council intended that the established leadership of the Indigenous people would have a part to play in this Inquiry. If that is so, the part that they should play would be in areas of concern or of interest to those Indigenous people. I note that paragraph 4(b)(v)(a) refers, as regards the issue of the cost escalation of the construction of the Project, to any risk assessments, financial or otherwise, conducted in respect to the Muskrat Falls Project. At present, while I do not have full information, I am aware that certain assessments likely were conducted, specifically risk assessments concerning environmental issues prior to, as well as subsequent to, sanction. I have decided here that a contextual and purposive review of the Order in Council permits me to investigate into what consultation occurred between the established leadership of the Indigenous people and Nalcor as well as the Government prior to sanction, what risk assessments and reports were done as regards the concerns of the Indigenous people, whether these assessments were appropriately and reasonably considered by Nalcor and the Government and whether appropriate measures were taken to mitigate against reasonably potential adverse effects to the settled or asserted rights of the

⁵ https://www.gov.nl.ca/ola/wp-content/uploads/laa_permit_approvals.pdf

⁶ *Commission of Inquiry Respecting the Muskrat Falls Project Order*, NLR 101/17.

Indigenous people both at the time of and post sanction. In investigating these matters, I will not be determining any claims or treaty rights for any of the Indigenous people as this clearly does not fall within the Commission's mandate.⁷

5. Conseil des Innu de Ekuanitshit Contributions to the Inquiry

The Conseil des Innu de Ekuanitshit submits that its participation as a party with standing would further the conduct of the Inquiry and would contribute to the openness and fairness of the Inquiry with respect to a number of issues identified by the honourable Commissioner LeBlanc.

In particular, with respect to the role of Indigenous peoples before the Commission, the honourable Commissioner LeBlanc concluded that the Inquiry's terms of reference permit him to inquire into the following questions of concern to Indigenous peoples:

- what consultation occurred between the established leadership of Indigenous people and Nalcor as well as the Government prior to the Project's sanction;
- what risk assessments and reports were done regarding the concerns of Indigenous people;
- whether these assessments were appropriately and reasonably considered by Nalcor and the Government; and
- whether appropriate measures were taken to mitigate against reasonably potential adverse effects to the settled or asserted rights of the Indigenous people, both at the time of and post sanction.

The Conseil des Innu de Ekuanitshit is particularly well-placed to further the conduct of the Inquiry into each of these questions of concern to Indigenous people identified by Commissioner LeBlanc. As outlined above, the Conseil des Innu de Ekuanitshit has

⁷ Commission of Inquiry Respecting the Muskrat Falls Project, *Interpretation of the Terms of Reference for the Muskrat Falls Inquiry*, March 14th, 2018: <https://www.muskratfallsinquiry.ca/files/20180314-Interpretation-of-The-Terms-of-Reference-Final.docx.pdf>

demonstrated an ongoing interest in the Muskrat Falls Project and has been an active participant throughout the entire history of the project. More specifically:

- Ekuanitshit participated in the environmental assessment of the hydroelectric facilities on the Lower Churchill;
- Ekuanitshit participated in the environmental assessment of the transmission lines from Labrador to the island of Newfoundland;
- Following the environmental assessment process, Ekuanitshit was involved in litigation before the Federal Court and Federal Court of Appeal dealing with, among other things, the adequacy of consultation prior to the authorization of the construction of the hydroelectric facilities;
- Ekuanitshit has participated in the consultations that have continued to occur subsequent to the project's authorization.

As a result of this long history of involvement, the Conseil des Innu de Ekuanitshit would further the conduct of the Inquiry with respect to the nature of the consultations and risk assessments that were conducted, as well as any measures that were implemented to mitigate the possible adverse effects of the project on aboriginal peoples and their rights. For example, the Council would assist the Inquiry with respect to any consultations, risk assessments and mitigation measures regarding the protection of their cultural heritage (e.g. archaeology) and the protection of the wildlife that they harvest, such as caribou.

Furthermore, the participation of the Conseil des Innu de Ekuanitshit as a party with standing would contribute to the openness and fairness of the Inquiry. In his interpretation of the Order in Council, the honourable Commissioner LeBlanc concluded that the Lieutenant Governor-in-Council clearly intended that the established leadership of Indigenous peoples would participate in the Inquiry. While Indigenous peoples may have particular areas of concern or interest, allowing for their full participation in the Inquiry will help to assure Indigenous

peoples that their concerns have been considered fully and fairly. In the case of the Innu of Ekuanitshit, their leadership has participated in consultations and environmental assessments since the project was announced, raising the community's concerns about the impact of the project on their Aboriginal rights and appropriate mitigation measures, specifically measures to protect their cultural heritage and the environment, including endangered species and other wildlife. By participating as a party with standing, the Conseil des Innu de Ekuanitshit would help to ensure that Indigenous peoples affected by the project are fairly represented and that their concerns are fairly addressed.

6. Hearing of application

In light of the costs to the Council that would be associated with a hearing in either Happy Valley-Goose Bay or St. John's, the Council requests that it be granted standing on the basis of these written submissions alone. If the honourable Commissioner does not grant standing to the Conseil des Innu de Ekuanitshit based on these written submissions alone, then the Council requests an opportunity to appear before the Commissioner to explain their reasons for requesting standing at the hearing date on April 6, 2018 in St. John's, Newfoundland and Labrador.

7. Application for funding

An application for funding is attached to the present application for standing.

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**Preliminary Review of the Environmental Impact Statement and Methodologies Used for
Woodland Caribou and Waterfowl Studies Prepared by Nalcor Energy in the Context of
the Lower Churchill Hydroelectric Generation Project in Labrador**

Preliminary report submitted to:

Corporation Nishipiminan

Represented by: Dionne Schulze, Attorneys at Law

June 2009

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1.0 CONTEXT

In order to obtain the necessary authorization for the construction and subsequent operation of the hydroelectric generating facilities of the Lower Churchill Complex in Labrador, Nalcor Energy submitted an Environmental Impact Statement (EIS) (Nalcor Energy, 2009) to the Canadian Environmental Assessment Agency in February 2009. In view of the value and cultural importance of woodland caribou and waterfowl, the Ekuanitshit (Mingan) Innu hired consulting biologist Natalie D'Astous to conduct a review of the chapters dealing with these issues.

This review focuses on the chapters of the EIS submitted by Nalcor Energy dealing with woodland caribou and waterfowl and on the component studies used for the impact assessment. The primary objective is to verify the quality of these studies, to determine whether the conclusions of the impact assessment are realistic and objective, and suggest corrective methods if necessary; and to determine whether these studies comply with the EIS Guidelines issued by the Government of Canada and the Government of Newfoundland and Labrador.

Owing to budget and time constraints, this report is a preliminary analysis aimed at identifying the weaknesses of the component studies and EIS. Suggestions for subsequent analysis approaches and methods will be made where applicable.

2.0 GENERAL COMMENTS ON THE ENVIRONMENTAL IMPACT STATEMENT

2.1 Woodland caribou

The data used to produce the impact study on the woodland caribou (*Rangifer tarandus caribou*) were obtained from a report prepared by Minaskuat Inc. (Jacques Whitford) (Minaskuat Inc., 2009) on the Red Wine Mountains herd and the George River herd. The George River herd will not be dealt with in this report. The caribou belonging to the Lac Joseph herd are not considered to be users of the study area.

The impact study is essentially a review of the literature on all existing data for the Red Wine Mountains woodland caribou herd. More detailed analyses were conducted using existing telemetry data in order to determine caribou habitat selection, movement patterns and corridors used for crossing the Churchill River.

In the author's opinion, the study by Minaskuat Inc. (2009) was carried out in accordance with recognized methodologies. The literature review is exhaustive and appears to be complete. Considerable attention was given to the assessment of habitat use, the annual distribution of caribou and corridor use (to cross the Churchill River). The main conclusions drawn from these analyses are that the availability of habitats for caribou calving, travel routes and foraging is not a limiting factor in the study area either before or after Nalcor Energy's hydroelectric development project.

Generally speaking, the carrying capacity of the environment is seldom a limiting factor for woodland caribou, with gestation rates of approximately 100% among adult females (Courtois, 2003; Courtois et al., 2002). Calf mortality is high in the first few weeks of life, often due to predation (Crête et al., 1990). Caribou are quite sensitive to human disturbance (Dyer et al., 2001; 2002) and highly vulnerable to predation and hunting mortality (Seip, 1991, 1992; Cumming and Beange, 1993; Dyer et al., 2001). Disturbance is therefore more a more significant limiting factor on the growth of a population than habitat availability. **The issue in the case of this Project is not habitat loss but rather the disturbance caused by the type of land use.**

In my opinion, it would therefore have been advisable to conduct a complete inventory of the watershed in the winter or spring (provided that the George River herd is not in the area), as Hydro-Québec did for the Romaine Complex in the winter of 2008 (at the request of Ekuanitshit). An inventory would have made it possible to determine whether caribou from the Lac Joseph herd (LJH) use the study area. According to Schmelzer et al., 2004 (page 14), the range of this herd extends to a large degree into the study site. Although the Lac Joseph herd is considered the only woodland caribou herd in Canada that may be growing in number (Thomas and Gray, 2002), given its federal status as a threatened species (COSEWIC), it would have been appropriate to conduct at least one inventory to determine this herd's use of the study area.

The precarious status of the Red Wine Mountains herd (RWMH) is obvious. The most recent estimate for this herd was 87 individuals in 2003 (Schmelzer et al., 2004). However, the last inventory was cut short due to the presence of the George River herd in the RWMH's range. Furthermore, in 2003, the government was not yet using the more accurate woodland caribou inventory method developed by Courtois et al., 2001. It is known that woodland caribou live in small groups, distributed contiguously (Crête, 1991; Courtois et al., 2001; Courtois, 2003). Caribou trail systems are not extensive. Caribou groups vary considerably in size and have a highly heterogeneous distribution. In order to obtain a more accurate population estimate, all caribou groups must be counted. To this end, an inventory using flight lines spaced 2 km apart (combining fixed wing aircraft and helicopters) must be carried out (Courtois et al., 2001).

According to Rebecca Jefferey (pers. comm., wildlife biologist, Government of Newfoundland and Labrador, Goose Bay, November 2008), the animals tagged with ARGOS collars are not very representative of those herd members that live in the western part of the range. Additional tagging appears to be necessary in order to improve the representativeness of the locations for this herd. Given the precarious status of the RWMH and the obvious project pressures on the herd, and in order to improve the representativeness of the herd's locations, an inventory, with captures, of the Churchill River watershed should have been carried out.

In the Environmental Impact Study (Nalcor Energy, 2009), habitat loss caused by implementation of the Project is considered negligible. Given that habitat is not a limiting factor for woodland caribou, but that the issue rather is the opening up of the area and increased disturbance, we essentially agree with the study's projections. However, significant cumulative effects are anticipated by Nalcor Energy (page 5-112), owing to the construction of additional transmission lines, the opening up of the

area by the construction of additional roads, the return of low-level military overflights from Goose Bay, and logging, which is normally accompanied by the construction of new roads. For a population whose viability is far from assured, the cumulative effects might prove fatal for this herd.

Nalcor Energy is already participating in the work of the RWMH recovery committee (Labrador Woodland Caribou Recovery Team). Although this participation is laudable, it seems clearly inadequate. For a project of this magnitude, it is surprising that the Labrador government did not require an additional inventory, as it did in the case of mining companies (New Millennium Capital Corp. and Labrador Iron Mines) that had a mining project in the Schefferville area for a herd considered extinct. To ensure the survival of the RWMH, the proposed mitigation measures, such as non-harassment policies, road speed limits, awareness sessions for personnel, and hunting bans, are all worthwhile measures, but incomplete. It would be particularly important to exhaustively monitor this herd during the work (which requires conducting inventories regularly and adding telemetry collars).

Unlike the EIS prepared by Hydro-Québec in 2008 for the Romaine Complex, the Nalcor Energy EIS examines the impact of building a transmission line, which is a very positive initiative. However, last April, the author of this review was contacted by a firm from St. John's, Newfoundland, to participate in an impact study with a view to the construction of an additional transmission line. The route of this transmission line would be along the Quebec border in the direction of the Blanc-Sablon area. If this Project is being seriously considered, it should have been included in the impact assessment. This Project could further contribute to the opening up of the territory in the woodland caribou habitat and affect other herds, such as the Joir River herd.

2.2 Waterfowl

The data used to prepare the impact study on waterfowl, including the Canada goose, were obtained from a study conducted by LGL Ltd. (LGL Ltd., 2008). This technical study is generally complete, and the effort made to inventory clutches and early and late breeders is more than adequate. However, backdating (determination of egg-laying dates) lacks precision, particularly for the American black duck and the mallard. This backdating was determined on the basis of stage 2A to 3 clutches. The variability in staging can easily cause errors of one to two weeks in the backdating estimate. The same applies for the surf scoter. In concrete terms, however, this has little significance for estimating

impacts due to the interannual variability in the egg-laying phenology of waterfowl based on the advancement of spring.

One negative point that should be mentioned is that the estimate of waterfowl use of the study area during the spring migration period was clearly underestimated. This estimate is based on a single inventory. At least three inventories would be required to obtain a more accurate idea of peak abundance (François Morneau, pers. comm., June 2008). In fact, migration occurs in waves; in order to characterize this migration, an inventory must be conducted every two days for approximately eight days. It is therefore likely that the population of Canada goose that uses the study area during the spring migration is underestimated. This is consistent with the Aboriginal traditional knowledge reported in the EIS.

The estimation of impacts and the mitigation measures are supported by a large quantity of data on habitat, breeding pairs and clutches. However, the Project's impact on migrating waterfowl populations is probably underestimated.

3.0 CONCLUSION

Owing to time constraints, this is a preliminary assessment only. The sections of the EIS submitted by Nalcor Energy dealing with woodland caribou and waterfowl, and the component studies were reviewed. Compared to the EIS prepared by Hydro-Québec for the Romaine Complex Project, the EIS prepared by Nalcor Energy for the Lower Churchill Project is clearly superior and more complete. The inclusion of Aboriginal traditional knowledge in the various sections is an excellent example for future EISs.

To raise another point, use of the study area by woodland caribou from the Lac Joseph herd was not determined, even though the range of this herd partially overlaps the project study area. This would require conducting inventories, with an additional marking program to identify their use of this area. According to the EIS Guidelines issued by the Government of Canada and the Government of Newfoundland and Labrador, all “valued environmental components” or VECs must be studied and the woodland caribou is recognized as a VEC (Anonymous, 2008). Failure to consider this herd contravenes these guidelines.

The most recent estimate of the Red Wine Mountains caribou herd dates to 2003 and the inventory had to be cut short due to the presence of migratory caribou in the area. At the time, the population was estimated at only 87 individuals. In light of the precarious status of the RWMH, the obvious project pressures on the herd, the opening up of the area (facilitating logging and mining) and the return of low-level military flights, and in order to improve the representativeness of herd locations, an inventory, with captures, of the Churchill River watershed should be carried out using the method developed by Courtois et al., 2001 before construction commences. The very survival of this herd is at stake.

Although the data used in drafting the impact study on waterfowl are generally of high quality, in my judgement waterfowl populations during spring migration were clearly underestimated due to the methodology used.

Finally, the monitoring and mitigation program for woodland caribou is not very detailed. According to the EIS Guidelines issued by the Government of Canada and the Government of Newfoundland and Labrador (pages 39 and 40), monitoring and follow-up programs must be described in greater

detail (see the requirements reproduced in the appendix). The current description of the monitoring and follow-up program for the woodland caribou in the EIS is clearly inadequate.

Based on this initial analysis of Nalcor Energy's EIS, it is clear that the sections dealing with woodland caribou are not in compliance with the EIS Guidelines. Given the importance of the Lac Joseph herd for the Ekuanitshit Innu and the precarious status of the Red Wine Mountains herd, the author believes that there is a strong case to be made in calling on the Newfoundland and Labrador Hydro authorities to correct these deficiencies.

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5.0 APPENDIX 1 (from Anonymous, 2008, pages 39-40)

The proposed approach for monitoring shall be described and shall include:

- (a) The objectives of the monitoring program and a schedule for collection of the monitoring data required to meet these objectives;
- (b) The sampling design, methodology, selection of the subjects and indicators to be monitored, and their selection criteria;
- (c) The frequency, duration and geographic extent of monitoring, and justification for the extent;
- (d) The application of the principles of Adaptive Environmental Management;
- (e) The reporting and response mechanisms, including criteria for initiating a response and procedures;
- (f) The approaches and methods for monitoring the cumulative effects of the Project with existing and future developments in the Project area;
- (g) The integration of monitoring results with other aspects of the Project including adjustments to operating procedures and refinement of mitigation measures;
- (h) The experience gained from previous and existing monitoring programs;
- (i) The advisory roles of independent experts, government agencies, communities, holders of Aboriginal traditional and community knowledge and renewable resource users;
- (j) The procedures to assess the effectiveness of monitoring and follow-up programs, mitigation measures and recovery programs for areas disturbed by the Project; and
- (k) A communications plan to describe the results of monitoring to interested parties.

**Lower Churchill Hydroelectric Generation Project
Public Consultation on the Environmental Impact Statement**

**SCIENTIFIC COMMENTS ON THE ADEQUACY OF THE
ENVIRONMENTAL IMPACT STATEMENT ON THE LOWER
CHURCHILL HYDROELECTRIC GENERATION PROJECT**

CEAR 07-05-26178

**Corporation Nishipiminan
for the Ekuanitshit Innu**

Based on comments submitted by:

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1. INTRODUCTION

1.1 Context

The Lower Churchill Development Project, which includes two hydroelectric generating stations, was announced to the responsible authorities in November 2006. This Project is subject to the environmental assessment process of the Province of Newfoundland and Labrador and of the Government of Canada, which issued joint guidelines in July 2008. In January 2009, they also announced that the Project would be assessed by a joint review panel.

The proponent, Nalcor Energy, filed its environmental impact study in February 2009 and the Review Panel asked stakeholders to submit their comments and opinions on the adequacy of this EIS, as measured against the guidelines that the proponent is required to follow.

This EIS, which includes an executive summary and three volumes (in six documents), as well as the 69 component studies supporting the EIS and the guidelines, are available on the Web at:
http://www.ceaa.gc.ca/050/05/documents-eng.cfm?CEAR_ID=26178&categoryID=9.

1.2 Concerns of the Ekuanitshit Innu

The traditional territory of the Innu of the Lower North Shore includes the land located between the Churchill River and the St. Lawrence River, as well as the large plateaus at the head of these watersheds. The major rivers of the Lower North Shore and the Churchill River are the main transportation and communication routes.

The Ekuanitshit Innu are particularly concerned about the aspects of the Project that may have significant adverse impacts on the components that they use and value in this vast territory, namely:

- fish species;
- large ungulates, waterfowl and other wildlife species that they trap and hunt;
- quality and diversity of natural environments;
- transportation and navigation routes and corridors; and
- conservation of and respect for their cultural heritage.

1.3 Consultants

In view of the cultural and other importance of these components, the Ekuanitshit (Mingan) Innu hired consulting biologist Natalie D'Astous and the environmental consulting firm Biofilia Inc. (Pierre Dumas and Vincent Clément) to conduct a review of the Environmental Impact Statement (EIS) and the documents relating to these subjects, and to submit their comments.

The objective at this stage is to verify whether the EIS and the supporting documents adequately meet the EIS Guidelines, and whether should be judged acceptable and thus allowed to proceed to the next stage, namely public consultations on their content.

Owing to budget and time constraints, only the potentially major impacts on the above-mentioned resources were analyzed. This does not mean that there might not have been any concerns and reservations had the analysis been conducted concerning other aspects, including the impacts associated with construction activities and the filling of the reservoirs.

1.4 Project

The main project components are:

Gull Island generating station

- Located 225 km downstream of Churchill Falls;
- Powerhouse containing five Francis turbines, for a total capacity of 2250 MW;
- Closing of the river by a concrete-faced, rock-filled dam, 99 m high and 1315 m long; and
- Construction of a reservoir 125 m above sea level, 232 km long with an area of 200 km², inundating an area of 85 km².

Muskrat Falls generating station

- Located 60 km downstream of Gull Island;
- Powerhouse containing four Kaplan turbines, for a total capacity of 824 MW;
- Closing of the river by two concrete dams;
 - Southern section: 29 m high and 325 m long;
 - Northern section: 32 m high and 432 m long; and
- Construction of a reservoir 39 m above sea level, 59 km long with an area of 107 km², inundating an area of 41 km².

Transmission lines

- A 735-kV line, 203 km long, between Gull Island and Churchill Falls
- A double-circuit 230 kV line, 60 km long, between Muskrat Falls and Gull Island.

Tree clearing for construction of the reservoirs

Where feasible, it is planned to clear all trees from elevations of 3 m below the low supply level (as well as all the tree tops above this elevation) to 3 m above the full supply level.

Virtually all the trees would therefore be cleared from the Muskrat Falls reservoir and from the upstream section of the Gull Island reservoir; only a ring of trees would be cleared in the downstream section of the Gull Island reservoir.

In total, approximately 70% of the inundated forest area would be cleared.

2. GENERAL COMMENTS

2.1 Operating regimes

2.1.1 Guidelines

The Guidelines require (4.3.5a) a description of the following elements:

- Turbine flows, ecological flows, operating levels for different hydrological conditions (low and high flows including flows lower than the ecological flows);
- The time of year, frequency and amplitude of water level fluctuation ranges in all the reservoirs; and
- Flow rates (maximum, minimum and average) and velocities in all the sections of the river affected, as well as seasonal and daily variations in water levels.

Scientific Comments on the Adequacy of the EIS

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2.1.2 EIS

The only data provided in the EIS on this subject (Volume 1A, 4.5.1.1: *Operating Regime*) are:

	<i>Gull Island</i>	<i>Muskrat Falls</i>
Elevation	125 m	39 m
Type of operation	base/intermediate	base
Daily fluctuations	a few centimetres	a few centimetres
Weekly fluctuations	could be up to 1 m	maximum 0.5 m
Annual variation	variations possible at certain times of the year	
Possible drawdown before the spring flood	3 m	
Possible rise during the spring flood	2 m	5 m

2.1.3 Comments

This terse description clearly does not comply with the requirements of the EIS Guidelines and does not permit a detailed analysis of the Project's environmental impacts, particularly on the aquatic environment. This is a very serious deficiency in the EIS which, in this respect, clearly does not comply with universally accepted and respected standards.

2.1.4 Conclusion

It is imperative that the EIS be corrected by adding a very detailed section providing the elements required by the Guidelines. The standard in this regard is to present all the results based on a simulation of the daily flow rate, water level and velocity conditions in all the affected areas over a minimum period of 25 years.

Before conducting this simulation, the proponent will have to very clearly define, as required, the rule it plans to apply for managing flows and levels during project operations, based on technical, economic and environmental constraints.

Following the detailed analysis of the environmental impacts, particularly on the aquatic environment as discussed below, it may be necessary for the proponent to identify and test other management rules capable of mitigating the impacts on the environment and maximizing the development of aquatic resources.

2.2 *Impacts on the Churchill Falls regime*

2.2.1 Guidelines

The EIS Guidelines (4.3.5a vii) require that the proponent provide a detailed description of the changes in management of lakes or reservoirs upstream and downstream of the project area.

2.2.2 EIS

The EIS does not provide any data on changes in the operating rules of the Churchill Falls facility, following the commissioning of the two generating stations downstream.

Consequently, there is no analysis of the environmental impacts of these changes in the management of the components comprising the Churchill Falls Complex.

2.2.3 Comments

The Complex generates 65% of the energy potential of the Churchill River basin. Once commissioned, the two new generating stations will generate the other 35%.

There is every reason to believe that this change in the plant and equipment with the addition of two large generating stations primarily operating as run-of-river plants will cause changes to these rules. In fact, with this new configuration, a different and more efficient approach can be taken to manage exceptional flows, long-term management of energy reserves and medium-term management of the three generating stations in order to meet weekly (higher during weekdays) and daily (higher during daytime) demand patterns.

Indeed, the proponent implicitly acknowledges, for instance (Volume 1A, 4.5.1.1), that there will be daily and weekly fluctuations in levels in the two impoundments, which would necessarily result in contrary effects in the Churchill Falls reservoirs, in order to meet the same demand pattern.

2.2.4 Conclusion

The proponent must therefore:

- Clearly state and define the current and future management rules for the Churchill Falls generating station;
- Indicate, on the basis of simulations, the impacts of these regime changes in the Project's components: reservoir levels, flow downstream of the facilities, etc.; and
- Discuss the environmental impacts of these changes, particularly on the aquatic environment.

2.3 Consultation

2.3.1 Guidelines

The Guidelines clearly state (2.2) that the proponent must inform and consult Aboriginal populations. Section 4.8 indicates that the consultation must make it possible to gain an understanding of the interests, values, concerns, contemporary and historic activities, Aboriginal traditional knowledge, and important issues facing these communities. The proponent must also explain how these aspects will be considered in planning and carrying out the Project. The communities to be considered included the Innu communities whose reserves are located on Quebec's Lower North Shore.

This consultation must include:

- **Informing** the community of the Project and its potential environmental effects;
- Identifying any **issues of concern** regarding potential environmental effects of the Project; and
- Identifying what **actions** the proponent is proposing to take to address each issue identified, as appropriate.

2.3.2 EIS

In the Executive Summary (4.1), the proponent states that it informed and consulted the local communities, in keeping with its consultation commitment set out in its internal policy. Concerning the Innu of the Lower North Shore (4.2.4), the proponent notes that it offered to meet with the communities to provide them with information and an opportunity to express their concerns and interests: "A number of these meetings have been held and the information shared is intended to enable the Quebec Innu to participate more effectively in the environmental assessment process."

In Volume 1A, the proponent lists the numerous consultation sessions held in various Labrador communities and notes the concerns and interests expressed. With respect to the Innu of the Lower North Shore (8.3.4 and 8.3.5.2), the proponent states that:

- They provided comments on the draft EIS Guidelines;
- Discussions were initiated in May 2008 with six communities; and
- Nalcor Energy will continue its efforts to fulfill consultation requirements for these communities in compliance with the Guidelines and its internal policy on this matter.

Appendix I of Volume 1 provides details concerning the information and consultation sessions with all the stakeholders, as well as conferences and presentations on the Project. There is no mention of any meetings with the Quebec Innu, let alone any comments, concerns and interests expressed by these communities.

2.3.3 Comments

In May 2008, the proponent initiated the **information** component of the consultations with the Innu of the Lower North Shore. The proponent does not provide any information on the dates, nature, participants or outcomes of the meetings.

The **concerns** and **actions** components of the consultations are never addressed and there is no indication as to why they were not conducted.

2.3.4 Conclusion

These deficiencies constitute an obvious failure on the part of the proponent to comply with the EIS Guidelines, and the EIS should not be considered adequate unless:

- The program of consultation with the Innu of the Lower North Shore is properly carried out, in accordance with the Guideline indications;
- The proponent clearly reports on the Innu's concerns about the Project; and
- The proponent clearly states its commitments to the concrete measures that it is proposing in order to consider these concerns, particularly regarding the anticipated impacts on the area's wildlife resources, communication and transportation routes, and Innu cultural heritage.

2.4 *Mitigation measures*

2.4.1 Guidelines

The Guidelines (4.6.1) require that the EIS describe the mitigation measures proposed to mitigate the significant adverse effects of the Project and the proposed compensation measures concerning aquatic wildlife.

2.4.2 EIS

Section 4.8 (Environmental Management) of the EIS states that:

- The environmental protection measures and mitigations will be managed and controlled through the proponent's Environmental Management System (EMS), which monitors environmental performance and integrates environmental management into a company's daily operations, long-term planning and other quality management systems;
- An Environmental Protection Plan (EPP) will be developed for the Project to help achieve a high level of environmental protection throughout the work areas and activities associated with the Project. The EPP is a working document for use in the field for project personnel and contractors;
- The EPP will be updated and modified as required according to the project phase and as determined by site-specific conditions and monitoring results;
- A table of contents of the EPP is provided in Appendix G;
- Site-specific environmental protection plans will be developed for key project components; they will address, for example, access roads, reservoir preparation and transmission line construction;
- A thorough analysis of all planned activities will be conducted prior to the start of construction to identify the activities that will require a specific EPP. Each plan will identify potential effects, appropriate mitigation measures, adaptive management measures, contingency measures, and responsibilities for implementation and compliance monitoring.

2.4.3 Comments

At several points in its EIS, the proponent mentions various measures that may be considered in order to mitigate the Project's impacts. However, nowhere in the EIS does the proponent propose adopting specific measures, nor does it even make any formal commitment to apply these measures.

However, the Newfoundland and Labrador *Environmental Protection Act* (s. 57) clearly provides that an EIS must include:

(e) a description of:

- (i) the effects that would be caused, or that might reasonably be expected to be caused, to the environment by the undertaking with respect to the descriptions provided under paragraph (d), and*
- (ii) the actions necessary, or that may reasonably be expected to be necessary, to prevent, change, mitigate or remedy the effects upon or the effects that might reasonably be expected upon the environment by the undertaking;*

(g) a proposed set of control or remedial measures designed to minimize any or all significant harmful effects identified under paragraph (e).

The proponent's proposal to identify the appropriate mitigation measures later in EPPs is contrary to this Act and to universally recognized practice in this regard.

Notwithstanding the foregoing, there is some doubt as to whether the proponent will be able to subsequently identify the mitigation measures on the basis of a "thorough analysis" given that it does not appear to have been able to do so at this stage in the process.

2.4.4 Conclusion

In order for the proponent's EIS to be considered adequate, it is therefore absolutely essential that:

- The mitigation measures proposed by the proponent be clearly identified in its EIS;
- The proponent make a formal commitment to implement these measures;
- The mitigation measures be subject to public review; and
- The mitigation measures be included in the conditions attached to government authorizations to carry out the Project.

2.5 *Monitoring program*

Likewise, the proponent must include in its EIS details about the environmental monitoring program that it plans to conduct, which it has not done.

3. COMMENTS ON THE COMPONENT STUDIES

3.1 *Fish and fish habitat*

3.1.1 Guidelines

Concerning the description of the aquatic environment, the EIS Guidelines specify the following requirement:

(4.4.4.2): The proponent shall describe the relevant components of the aquatic environment within the study area, including biological diversity, composition, abundance, distribution, population dynamics and habitat utilization of aquatic species, including fish.

3.1.2 EIS

Section 2.3 of Volume 2A states that 17 fish species can be found between Muskrat Falls and Churchill Falls. The ecology of these species is amply described in reference to the available scientific literature. The component studies indicate that fish inventories were carried out in 1998 using gillnets and electrofishing (CS Fish #8), and in 2006 using gillnets, fyke nets and angling (CS Fish #4). No data were provided on spawning activities or on the location of spawning grounds.

The analysis of the impacts on fish and fish habitat is essentially based on a complex methodology that can be summarized as follows:

- For each fish species, an attempt is made to establish a Habitat Utilization Index (HUI), which is expressed in Habitat Equivalent Units (HEUs), under current conditions and with the Project;
- Future indexes are established based on the nature of future banks (which depends on substrate, slope and wave exposure), water depth and current velocity, as well as the requirements of each species at each life cycle stage;
- The pre- and post-project comparison is used for the determination, for a given species, of harmful alteration, disruption or destruction (HADD) of fish habitat, which is prohibited by the federal *Fisheries Act*, unless authorized by the Minister, contingent upon acceptable HADD compensation.

In its component studies, the proponent outlines several limitations and deficiencies concerning its method for analyzing the impacts on fish and fish habitat:

- The paucity of studies within the province on utilization of the various types of fish habitat, which has made it necessary to rely on information from other areas of Canada and the United States (CS Fish #5, 2.2);
- HUIs cannot be used to characterize the reproductive potential of fish, since few mature fish were captured during their spawning season and, in any case, were probably not captured on their spawning substrate;
- Since the ideal water depth and velocity conditions cited in the literature for the spawning of the various fish species are only very rarely encountered, for future conditions, substrate alone was used as the quality criteria to identify potentially usable spawning habitat (CS Fish #5, 3.2.4.2); the proponent acknowledges the fact that not considering water depth and velocity for characterizing spawning potential results in limitations to the method used;
- Due to the variable conditions of the study area and the requirement for additional study, the calculated values for bank erosion of the future reservoirs are subject to some degree of uncertainty and only graphical representations of the erosion potential classifications were produced (CS Hydrology #1, 6.2); and
- “The current assumption regarding post-project conditions is that the habitat classifications and utilization values used are valid for a future stable condition. ... It is expected that the nearshore zone will establish a relatively stable shoreline over a 10 to 15 year time scale after inundation although it is acknowledged that certain aspects of the reservoir evolution may take a longer period.” (CS Fish #3, 5.0: *Predicted Future Reservoir Conditions*).

The proponent also mentions several sources of impacts that could not be analyzed in its studies (CS Fish #3, 4.3: *Potential Effects of Operation*):

- “The effects of the managed flow regimes (both within a reservoir and downstream) can be varied and widespread on the species inhabiting both the reservoir and downstream.”
- “One of the concerns related to hydroelectric development is the operation regime and the potential effect of reservoir drawdown on the biological productivity and stability of a new system. The extent, timing and duration of drawdowns can affect habitat quality and biological productivity by:
 - exposing incubating fish eggs in littoral spawning areas to desiccation and freezing, thereby reducing egg to fry survival;
 - exposing littoral zone benthos to desiccation and freezing thereby reducing production;
 - reducing biological production at lower trophic levels (bacteria, periphyton, phytoplankton); and
 - reducing availability (volume, surface area) of thermally optimal habitat for growth and feeding during the period of maximum growth for fish (summer-fall).”

3.1.3 Comments

The proponent based its environmental analysis of fish in the reservoirs solely on a pre- and post-project comparison of Habitat Utilization Indexes. The results generated by this method are clearly not very reliable:

- The potentials are not based on local requirements of species, but rather on data from outside the province;
- According to the proponent, failure to consider water depth or current velocity in characterizing spawning potential poses limitations on the interpretation of the study results. Indeed, these are essential factors for characterizing the suitability of these habitats;

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- The future spawning substrates thus generated are found only on the banks of the reservoirs and never at depth; a number of species do not spawn on banks; and
- During the shoreline erosion process, a high percentage of fine material normally accompanies coarser material (gravel, pebbles); since the survival of the eggs of a number of lotic fish species is directly related to the absence of fine material in the spawning substrate, the reproductive success of these species is compromised for several years after filling of the reservoir.

Moreover, even if this method generated more reliable results, it is not suitable for analyzing the impacts of a hydroelectric project on the aquatic environment:

- This method provides an assessment of what conditions would be like 15 or 20 years after filling of the reservoirs, whereas it is imperative to know the conditions that will be immediately accessible to the various species upon filling of the reservoirs;
- Among other issues, the proponent acknowledges that erosion in the large Gull Island reservoir will be low because of the coarse and generally homogenous nature of the overburden soil and low wave energy; there will therefore be few available spawning grounds in this reservoir, even in the long term; and
- The species that do not immediately find the conditions that they require may have disappeared by the time these conditions become available.

Finally, the study completely fails to take into account the actual operating conditions of the facilities or fluctuations in water level and velocity regimes in the reservoirs. The proponent itself acknowledges that these factors cause significant impacts (see above). In addition, the variation in current velocities caused by a change in turbined flows during egg incubation periods can have significant impacts on egg survival.

3.1.4 Conclusion

In order for its EIS to be considered adequate, the proponent will have to:

- Determine the area of spawning grounds required for each fish species in each section of the reservoirs, at locations where substrate, depth and velocity conditions are suitable for the species;
- Clearly indicate the locations and surface areas of these spawning grounds after filling of the reservoirs;
- Identify the locations, in each section of the reservoirs, where spawning grounds could be developed in order to compensate for the deficits in area between the required spawning grounds and those that will be available;
- Determine the surface area of habitats essential to the other phases of the life cycle (nursery, feeding, and migration habitats) of the species present and ensure that these habitats are available;
- Conduct an analysis (which was not done in the proponent's EIS) of forage fish dynamics and habitats and ensure the abundance of these fish so as not to affect the entire fish food chain;
- Conduct a fine analysis of the impacts of water level and velocity regimes in the reservoirs for the various fish species, on the basis of a multi-year production simulation; and
- Clearly define the rules for managing reservoir levels that will help avoid significant impacts on fish populations and promote their development.

3.2 Caribou

3.2.1 Guidelines

The EIS Guidelines (4.4.4.3) require that the proponent describe the composition, distribution, abundance, and habitat utilization of terrestrial fauna. A description must also be provided of caribou population dynamics, migratory patterns and river crossings.

3.2.2 EIS

The component study on caribou (Large Mammals #4, by Minaskuat Inc.) deals with the sedentary woodland ecotype (Red Wine Mountains herds) and the migratory ecotype (George River herds) and provides an exhaustive review and synthesis of the available literature on these herds and their habitats. For the woodland ecotype, the study concludes that the availability of habitats for calving, travel routes and foraging is not considered a limiting factor in the study area either before or after the Project.

However, the EIS (Volume 2B, 5.15.4.2) concludes that the cumulative impacts on the Red Wine Mountains herd could reduce the numbers and viability of this herd. To mitigate these impacts, the proponent is considering conventional measures, such as a no-harassment policy, road speed limits, hunting bans and awareness sessions for personnel.

3.2.3 Comments

For the woodland ecotype, the Minaskuat impact study appears to have been carried out in accordance with accepted methods and the study conclusions seem to be plausible.

However, these woodland caribou are in fact known to be much more sensitive to human disturbance than to limitations associated with the environment's carrying capacity. As the proponent notes, in the case of this Project, the disturbance caused by the opening up, human occupation and use of the area is a much greater concern than habitat loss. The proponent will therefore have to propose much more effective measures to address this issue, such as real-time monitoring of the Red Wine Mountains herd and their demographics during the Project and pro-active steps in certain areas when caribou wearing collars approach the areas where workers are present.

In addition, in its EIS, the proponent did not deal with the Lac Joseph herd, which is also present in this watershed and which uses part of the study area. The proponent did not conduct any inventories or additional observations of this herd in the context of its Project, as Hydro-Québec did on the territory of the Romaine Complex, at the request of the Ekuanitshit Innu.

Interested readers may find it useful to read the more detailed analysis provided by Natalie D'Astous in her expert report (see references at the end).

3.2.4 Conclusion

The fact that the proponent did not conduct a recent winter or spring inventory of the Lac Joseph herd is a serious deficiency of the EIS. Because of the precarious situation of the Red Wine Mountains herd and the status of this species, more accurate and more recent information on its use of the area must also be obtained. Nalcor Energy's contribution to the Labrador Woodland Caribou Recovery Team is laudable, but clearly insufficient.

These inventories of the two herds must be carried out. The EIS should include formal commitments by the proponent concerning the control measures planned in order to minimize disturbance of the herds during construction.

Furthermore, as is true for the EIS as a whole, the mitigation measures and the monitoring program for woodland caribou are not sufficiently detailed and should, at a minimum, comply with federal and provincial guidelines in this regard.

3.3 Waterfowl

3.3.1 EIS

The data that were used to produce the impact study for waterfowl, including the Canada goose, were taken from the component study Avifauna #2 (LGL Ltd., 2008).

3.3.2 Comments

Generally, the LGL study appears to be complete and the effort made to conduct the inventory of clutches and early and late breeders is more than adequate. There are certain methodological deficiencies, but they do not have any significant consequences on the impact analysis.

However, the analysis of impacts during the spring migration period is based on a single inventory, when there should have been at least three, in order to more effectively determine peak abundance. As a result, the impacts during the spring migration were probably substantially underestimated.

3.3.3 Conclusion

The waterfowl study should be supplemented by more detailed inventories during the migratory periods.

3.4 Resource use

The EIS Guidelines (4.4.4.4) require that the proponent describe the current use of resources within the study area (including aquatic resources) by Aboriginal persons for traditional purposes, specifying the location of camps, harvested species and transportation routes used.

This obligation was clearly not met with respect to the Innu of the Lower North Shore, and the proponent must remedy this deficiency in order for its EIS to be considered adequate.

4. CONCLUSIONS

The analysis of the content of the EIS submitted by the proponent clearly shows that the treatment of several essential aspects required by the EIS Guidelines is totally inadequate. In many respects, the quality of this EIS is far below provincial, national and international environmental assessment and management standards.

Based on the analyses presented above, it may be concluded that the proponent has only a very theoretical, academic and speculative view of the ecological mechanisms that accompany the construction and operation of large hydroelectric facilities and does not have a clear, detailed and accurate understanding of the impact on the resources affected by its Project or the measures that will be required to mitigate the Project's adverse effects.

The Ekuanitshit Innu are very concerned about this situation, which creates great concern and uncertainty about the fate of their valued resources. They would be seriously concerned if the proponent's EIS were accepted without these serious deficiencies being corrected. The Ekuanitshit Innu want to know precisely how this Project may affect these resources and would like to evaluate the measures that the proponent formally undertakes to implement to address these issues.

These issues include the following, as detailed above:

- The project description must be completed by a detailed presentation of the water level, velocity and flow regimes during the operating period;
- A detailed presentation of the changes in the operating regime of the Churchill Falls facilities must be provided and a detailed analysis of its environmental impacts must be conducted;
- The program for consultation of the Innu of the Lower North Shore must be carried out in accordance with the EIS Guidelines and the results presented in the EIS;
- The proposed mitigation measures and monitoring program must be clearly described in the EIS, as required by legislation, so that it can be included in the public consultation and in the authorization to implement the Project;
- The analysis and treatment of all aspects concerning fish and fish habitat in the reservoirs must be supplemented by a fine analysis of water level, velocity and flow regimes and their ecological impacts upon filling and start of operation of the reservoirs;
- Woodland caribou inventories as well as a capture program must be carried out in the winter or spring. Appropriate and effective monitoring and mitigation measures must be proposed in order to ensure that woodland caribou are not affected during the construction period;
- The waterfowl study must be supplemented by additional inventories during the migratory periods; and
- The EIS must be completed by a description of use of the study area by the Innu of the Lower North Shore.

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**LEGAL COMMENTS ON THE ADEQUACY OF THE ENVIRONMENTAL IMPACT
STATEMENT ON THE LOWER CHURCHILL HYDROELECTRIC GENERATION PROJECT**

CEAR 07-05-26178

**Corporation Nishipiminan
for the Ekuanitshit Innu**

Based on comments submitted by
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June 22, 2009

I. Introduction

A. Ekuanitshit Innu

For thousands of years, the Ekuanitshit (Mingan) Innu have continuously occupied a vast territory extending from the Romaine River north to the Churchill River and west to the Manitou River.

The Government of Canada has recognized this fact by accepting the results of research on land use and occupation conducted in the early 1980s by the Atikamekw and Montagnais Council as the basis for negotiations aimed at signing a modern treaty.

The Newfoundland government and the proponent also recognize that the Mingan Innu claim Aboriginal rights in Labrador: *Lower Churchill Hydro Resource: Request for Expressions of Interest and Proposals* (January 2005), p. 23.

For the purposes of this environmental assessment, the Ekuanitshit Innu are represented by Corporation Nishipiminan, an organization recognized by the Funding Review Committee as eligible for funding under the Aboriginal Funding Envelope.

B. Scope of the present comments

The comments provided herein on the adequacy of the information contained in the Environmental Impact Statement (EIS) submitted by the proponent, Nalcor Energy, are made subject to the right of the Ekuanitshit Innu to make further comments on any issue they may consider relevant during the course of the environmental assessment.

On another note, the Ekuanitshit Innu have learned of the letter from the federal Environment Minister dated May 15, 2009, concerning the extension of the EIS consultation period to June 22 for the participants from the Nunatsiavut Government and the Innu Nation and Labrador Metis Nation organizations.

The Ekuanitshit Innu wrote to the Minister to inform him that they would not presume that it was his intention to discriminate among Aboriginal participants, and that since their rights and territory would be affected by this project in the same way as the other groups to whom his letter was addressed, the Ekuanitshit Innu would also take advantage of the extended deadline.

C. The Environmental Impact Statement is deficient

For the reasons set out below, the EIS does not meet the requirements of the guidelines issued for this environmental assessment and the proponent will have to provide additional information before the Review Panel holds public hearings.

Specifically, the proponent failed to conduct any consultations with the Ekuanitshit Innu, except for a single letter proposing a meeting, nothing more.

Furthermore, the scientific comments submitted concurrently with the comments contained herein demonstrate that the EIS also fails to meet the guideline requirements, specifically with respect to wildlife and hydrology.

II. Legal requirements of the environmental assessment

The *Canadian Environmental Assessment Act* expressly provides that a federal authority must consider, among other things, “any change that the project may cause in the environment ... and any effect of any change ... on the current use of lands and resources for traditional purposes by aboriginal persons”: subsection 2(1).

The Act also states in section 16.1 that “community knowledge and aboriginal traditional knowledge may be considered in conducting an environmental assessment.”

Finally, one of the purposes of the CEAA is “to promote communication and cooperation between responsible authorities and Aboriginal peoples with respect to environmental assessment”: paragraph 4(1)(b.3).

III. Requirements imposed by the guidelines

The *Environmental Impact Statement Guidelines* issued by the Government of Canada and the Government of Newfoundland and Labrador in July 2008 attach some importance to Aboriginal issues.

The guidelines specify that the Innu community of Ekuanitshit is one of the Aboriginal groups to be considered: §4.8.

Concerning the Aboriginal groups to be considered, “The EIS shall demonstrate the proponent’s understanding of the interests, values, concerns, contemporary and historic activities, Aboriginal traditional knowledge and important issues facing Aboriginal groups, and indicate how these will be considered in planning and carrying out the Project.”: §4.8.

The guidelines stipulate in particular:

- Aboriginal participation in the environmental assessment process: §2.2;
- The consideration of Aboriginal traditional knowledge in the environmental assessment: §2.3, 3.1;
- In the section on the identification of issues and selection of valued environmental components (VECs), that Aboriginal concerns related to the component shall be considered: §4.4.1;
- Contemporary and historic Aboriginal land use shall be taken into consideration in the delineation of study areas specific to each VEC: §4.4.2;
- Aboriginal traditional knowledge shall be considered in the description of the existing environment of the study area: §4.4.4;
- In the description of relevant land and resource use within the study area of the VECs, the proponent shall include “current use of land and resources (including aquatic resources) by Aboriginal persons for traditional purposes, including location of camps, harvested species and transportation routes”: §4.4.4.4;
- The assessment of the beneficial and adverse effects of the Project on the socio-economic environment shall consider how the Project may affect Aboriginal groups: §4.5.1;
- Mitigation measures to ensure continued access and passage on land by Aboriginals “for harvesting and travel ... and the alternatives to be provided in the event of disruption”: §4.6.1 (f);
- Mitigation measures “to maximize labour market opportunities” for Aboriginals: §4.6.1 (l).

Obviously, if the proponent does not consult the Ekuanitshit Innu, it will be unable to consider their interests, values and concerns or their contemporary and historic activities, as the guidelines require: §4.8.

Without specific and planned consultation, the EIS cannot adequately describe the Project's effects on this Aboriginal community or the planned mitigation measures.

IV. Preferential treatment reserved for Innu Nation

A. Newfoundland and the proponent's refusal to consider the Quebec Innu

Nalcor is a Newfoundland Crown corporation and until the EIS Guidelines were issued in July 2008 requiring Nalcor to consult the Ekuanitshit Innu, the proponent blindly followed the exclusion policy of its owner, the Government of Newfoundland.

In 2006, the Newfoundland Minister of Natural Resources informed the province's legislative assembly that the Quebec government would deal with the Aboriginal peoples in Quebec for the transmission lines in that province. For the rest, he stated that Newfoundland was obligated only to deal with the Innu in Labrador.¹

Indeed, the ongoing policy of the Newfoundland government has been to exclude the Innu whose reserves are located in Quebec. For decades, the position of the Newfoundland government concerning Aboriginal land claims has been that cross-boundary claims shall be addressed only after settlement of all claims to the same area by Aboriginals residing in Labrador.²

Since 1987, the province has sought to create divisions between the Labrador Innu and the Quebec Innu and has succeeded in doing so. First, it was only by agreeing to exclude the Quebec Innu that the Labrador Innu were able to come to the negotiating table with Newfoundland. Second, the Labrador Innu no longer have any interest in considering the Quebec Innu since they know that the Quebec Innu will never have access to negotiations until the Labrador Innu have settled all their claims.

B. Ten-year advance granted to Innu Nation

The proponent acknowledges that the Aboriginal consultations organized by it between 1998 and 2008 involved only Innu Nation, i.e. an organization of the two communities in Labrador, Sheshatshiu and Natuashish: §8.3.1., 9.1.2. These two communities have received funding from the proponent for consultation purposes since 2000, even before the Project was defined: §8.3.1.5.

According to the proponent, throughout its planning since 1998, Innu Nation was the only source consulted to obtain information as a basis for compiling a description of the existing environment: §9.4.

Innu Nation also benefited from direct participation in planning and conducting the environmental assessment through a joint Environmental and Engineering Task Force: §8.3.1.3. Innu Nation was also the only Aboriginal member of the Innu Traditional Knowledge Committee: §8.3.1.4.

In addition, the proponent negotiated process agreements with Innu Nation covering not only consultation, but also the negotiation of an Impacts and Benefits Agreement (IBA): §8.3.2.

¹ Newfoundland and Labrador, House of Assembly, *Proceedings*, Vol. 45, No. 2 (May 18, 2006): "We have the responsibility, the obligation and the duty, to deal with the Aboriginal Innu, or the Innu people, in Labrador."

² Government of Newfoundland and Labrador, Intergovernmental Affairs Secretariat, "Policy Regarding Aboriginal Land Claims" (December 1987), p. 11: "Crossboundary claims by native groups that are not residents of Labrador may be addressed only after the settlement of all claims to that specific areas [sic] by the resident Labrador natives."

In fact, in September 2008, Innu Nation, the province and the proponent signed an agreement in principle for an IBA to be called Tshash Petapen (New Dawn Agreement) that provided for:

- Royalty payments and the participation of Labrador Innu in project development;
- Processes for ongoing project-related discussion and cooperation during its construction and operation phases;
- Mechanisms for job creation and business opportunities related to training, commercial participation and environmental protection.

The proponent describes the content of this IBA in terms of benefits stemming from the Project for the Innu: §8.3.1.6.

C. The proponent has preferred to consult a community that will not be affected

The proponent has preferred to consult an organization half of whose communities it represents will not even be affected by the Project.

The proponent's preferred partner for discussions and negotiations is Innu Nation, an organization that reflects the provincial boundaries and includes the two communities in Labrador, Sheshatshiu and Natuashish. However, the proponent admits in its EIS that the community of Natuashish will not even be affected by the project unless its residents are flying in to work on the Project: Vol. III, p. 4-25.

In fact, the word "Natuashish" appears only once in the volume describing the biophysical assessment (Volume II, Part A, "Biophysical Assessment"). It should be noted that the Innu Traditional Knowledge Committee was established in November 2006 and is composed of ten residents from Sheshatshiu but only one resident from Natuashish: Appendix IB H, Report of the Work of the Innu Traditional Knowledge Committee, p. 4.

The Innu community closest to the project site, Sheshatshiu, is a community whose members traditionally spend part of the year in Quebec, according to the proponent itself: Vol. III, p. 2-31. Sheshatshiu has established and continues to maintain ties with several Innu communities now established on reserves on Quebec's Lower North Shore: Appendix IB H, Report of the Work of the Innu Traditional Knowledge Committee, p. 18.

V. Situation of the Ekuanitshit Innu

A. Ties with the territory affected by the Project

As mentioned above, the traditional territory of the Ekuanitshit Innu extends from the Romaine River north as far as the Churchill River.

In another environmental assessment, Hydro-Québec had no problem recognizing that "[translation] essentially, the territory used by the Ekuanitshit Innu in the 20th century ... extends as far as the Churchill River in Labrador": *Complexe de La Romaine; Étude d'impact sur l'environnement* (December 2006), Vol. 6, p. 38-8.

Moreover, this use is described in detail in the memoirs of Mathieu Mestokosho, an Ekuanitshit Innu born around 1887 who, for most of his life, headed to the Labrador interior in August, returning to Mingan only in late spring: Serge Bouchard, *Récits de Mathieu Mestokosho, chasseur innu [Caribou Hunter: A Song of a Vanished Life]* (Montreal, Boreal, 2004).

The interviews conducted for the proponent as part of the research on historic and archeological resources also showed recent use of Gull Lake by the Ekuanitshit Innu (“people from Mingan”): Cultural Heritage Resources, Report 5, Historic Resources (Labrador Study), p. 78. The same report mentions heavy use of the area by the Mingan Innu in the 19th century, associated with the Winokapau trading post: p. 33; Cultural Heritage Resources, Report 4, Historic Resources Overview Assessment 1998-2000, Volume 1, p. 27.

In a recent study on Innu traditional knowledge concerning the Romaine River, two Ekuanitshit Innu provided information about ice, but based on their experience in the Churchill River area and in the réservoir created by the first phase: Daniel Clément, *Le savoir innu relatif à la Unaman-shipu*, report submitted to Hydro-Québec Équipement (September 2007), p. 147-48.³

B. Late contact by Nalcor

In 2005, when the Government of Newfoundland and the proponent issued a Request for Expressions of Interest and Proposals for the development of this project, they openly stated that the Mingan Innu are claiming Aboriginal rights in Labrador and that it may be necessary for a third party to consult them: *Lower Churchill Hydro Resource: Request for Expressions of Interest and Proposals*, p. 23.

Unfortunately, the proponent was slow to follow its own advice: in the project registration/project description submitted in 2006, it recognized the traditional occupation of the affected area by the Labrador Innu, but made no mention of the Innu whose reserves are located in Quebec.

The first contacts with the Ekuanitshit Innu were made in the form of a letter to the Chief dated May 20, 2008, from the proponent's Vice-President. The letter was therefore sent two weeks after the Ekuanitshit Innu were recognized as eligible for funding by the Funding Review Committee and less than two months before the guidelines requiring the proponent to engage in these consultations with the Ekuanitshit Innu were issued.

The letter did not suggest any practical means for holding consultations, except a meeting “as soon as practicable,” and did not offer any support for the capacity of the community to respond to this invitation.

In any event, during 2008, the Ekuanitshit Innu were busy participating in the environmental assessment of the Romaine Hydroelectric Complex Project (CEAR Reference No. 04-05-2613), a major project proposed in the heart of their territory.

In the absence of technical and financial capacity prior to the allocation of funding by the Funding Review Committee, the Ekuanitshit Innu were unable to respond simultaneously to two such major projects. In terms of action taken by the proponent, it was only in a letter to the Chief dated May, 13, 2009 that the proponent proposed an agreement which would include concrete support through the funding of a consultation officer position.

A discussion on consultation methods was initiated during an initial exploratory meeting between representatives of the proponent and members of the Ekuanitshit Innu Council, held in the community on June 1, 2009.

³ This information concerned “Uipitatshishikuau [‘an expanse of flat ice’]” when there is “a hole that forms under the ice” and “Kainipaishikuau [‘an expanse of sloping ice’]”, i.e. “ice that gives way, that cracks.”

In addition, in the EIS, the proponent undertakes to hire employees by means of “engagement and benefits strategies” that it plans to offer to Innu communities in Quebec: §3.6.5.2. If this is truly the proponent’s intention, then it is strange, to say the least, that it never informed the Ekuanitshit Innu of its plans.

C. Place of the Ekuanitshit Innu in a study area delineated based on cultural and geographic realities

The proponent’s decision to consult the Innu for a decade based on their settlement site – i.e. by consulting only the communities of Sheshatshiu and Natuashish because their reserves are located within the province’s boundaries – fails to study the real “current use of land and resources for traditional purposes by aboriginal persons.” which must be considered in an environmental assessment pursuant to subsection 2(1) of the *Canadian Environmental Assessment Act*.

The report on historic and archeological resources notes that even from the perspective of the Labrador Innu, the Project will be implemented in an area that can only be studied in the context of transboundary use and occupation involving the communities from Matimekosh-Lake John (Schefferville) to Pakua-Shipi (St. Augustin).

In fact, this is an area of overlap that is directly linked to the permanent community established at Ekuanitshit:

Innu senior informants made reference to a number of other areas that were used not only for subsistence purposes but also to consolidate social ties with other Innu groups, including those from the St. Lawrence River north shore (e.g., Sept-Iles and St. Augustin) and the Quebec-Labrador deep interior (Schefferville and Kaniapiscau) where Innu and also Cree “territories” overlap.

Significant statements regarding places, travel routes and portage trails include: ...

- from “Two Rivers” and Shoal River (OF) to Mathieu André’s store near Mecatina River and Mingan, year after year;

Cultural Heritage Resources, Report 5, Historic Resources (Labrador Study), §5.5.2.2.

In another environmental assessment, Hydro-Québec had no problem recognizing that the communities whose reserves are located on Quebec’s Lower North Shore “[translation] each occupy and exploit the portion of the interior that is most easily accessible to them by water.” For the Ekuanitshit Innu, among others, “[translation] their hunting territories are vast, contiguous from west to east and extend at least as far as the English-speaking village of St. Paul’s River, on Quebec’s Lower North Shore, and north as far as the Churchill River”: Hydro-Québec, *Complexe de La Romaine; Étude d'impact sur l'environnement* (December 2006), Vol. 6, p. 38-7.

Aboriginal use necessarily reflects the occupation of the territory by wildlife, which does not follow provincial boundaries.

When developing a recovery strategy for woodland caribou in Labrador, for example, the recommendation of the Newfoundland Department of Environment was to coordinate efforts with both the Government of Quebec and the Innu of the Lower North Shore: Newfoundland and Labrador Department of Environment and Conservation, *Recovery strategy for three woodland caribou herds (Rangifer tarandus caribou; boreal population) in Labrador* (2004), Table 1.

The Environmental Impact Statement also acknowledges that the range of the George River Caribou Herd encompasses the territory of Quebec and Labrador, including the Lower Churchill area. This herd is therefore of great importance for many Aboriginal peoples: §2.4.3.

VI. Conclusion

In its EIS, the proponent included Table 8.1 entitled “Innu Concerns,” but this table reflects only the concerns of Innu Nation.

A comparison with the situation of the Ekuanitshit Innu has been inserted in the table and the results are provided below.

Innu Concerns	Project Team Comment	Comparison with the Ekuanitshit Innu
Consultation		
<ul style="list-style-type: none"> • There was no consultation with Innu regarding the construction of the Churchill Falls Project • Consultation should be meaningful • Project information must be available to all Innu 	<ul style="list-style-type: none"> • A variety of means were used to consult with Innu in Sheshatshiu and Natuashish • ITK has been respected and used in the EIS • Special efforts were made to consult with Elders • Consultation with Innu has been ongoing since 2005 	<ul style="list-style-type: none"> • <i>There was no attempt to consult prior to 2008</i> • <i>The knowledge of the Ekuanitshit Innu was not taken into consideration</i> • <i>No financial support was offered prior to 2009 and this offer of support is limited to a consultation officer position</i>
Culture		
<ul style="list-style-type: none"> • Concerns that the Project will affect the Innu spiritual connection to the land • Wage employment will conflict with traditional values • Concern that country foods will not be available (e.g., loss of access, contamination) 	<ul style="list-style-type: none"> • Project Team has attended community meetings in Sheshatshiu and Natuashish • There have been extensive discussions with Innu and advisors to Innu Nation • Cultural sensitivity training has been provided • Provisions for cultural leave and country food at the work site are being discussed with Innu Nation 	<ul style="list-style-type: none"> • <i>The Ekuanitshit Innu have the same concerns, but there was no consultation</i>
Benefits		
<ul style="list-style-type: none"> • There should be long-term benefits for all Innu, including elders • Must include training and employment 	<ul style="list-style-type: none"> • The Project environmental and engineering work to date has employed Innu and used Innu companies • There are ongoing efforts to assist Innu to build a training and employment database • Hiring policies will include specific efforts to train and hire Innu • Efforts will be made to create a comfortable and supportive workplace for Innu • Nalcor Energy and Innu Nation are negotiating a Lower Churchill Project IBA. Key elements of the commercial terms of the IBA include a structured royalty regime under which Innu will be entitled to receive an annual royalty payment based upon a percentage of net proceeds from the generation component of the Project 	<ul style="list-style-type: none"> • <i>No royalty payments, no commercial involvement and no participation in the work were offered to the Ekuanitshit Innu</i>

If the proponent does not consult the Ekuanitshit Innu, it will be unable to consider their interests, values and concerns, or their contemporary and historic activities, as the guidelines require: §4.8. Without any specific and planned consultation, the EIS will not be able to effectively describe the Project's effects on the Ekuanitshit Innu, or the planned mitigation measures.

Before the EIS was filed in February 2009, the proponent failed to undertake any consultations with the Ekuanitshit Innu, except for a single letter in May 2008. This letter proposed only a meeting and did not offer, for example, any technical support, whereas Innu Nation has already benefited from funding and close involvement in the environmental assessment process for a decade now.

The Ekuanitshit Innu agreed to discuss the format for future consultations with the proponent. However, their systematic exclusion to date is not consistent with the guidelines, nor with the social, historic and scientific reality of the study area. This exclusion stems solely from the arbitrary and discriminatory policy to exclude Quebec Innu, adopted by the Government of Newfoundland, which owns the proponent.

The Environmental Impact Statement cannot be considered adequate until consultations with the Ekuanitshit Innu have been completed.

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**COMMENTS OF THE INNU OF EKUANITSHIT
ON THE CONSULTATION ASSESSMENT REPORT
SUBMITTED AS SUPPLEMENTAL INFORMATION
TO IR JRP.151**

**Lower Churchill Hydroelectric Generation Project
CEAR 07-05-26178**

David Schulze
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October 2010

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I. Summary of the position of the Innu of Ekuanitshit

The Environmental Impact Statement Guidelines (the Guidelines) issued by the federal and provincial governments require that the proponent prepare a study of the project's environmental impacts, including its impacts on the Innu of Ekuanitshit.

However, the Environmental Impact Statement (EIS) submitted by the proponent—even with the additional information—does not take into account the interests, values, concerns, contemporary and historic activities, and traditional knowledge of the Innu of Ekuanitshit, as the Guidelines require. The only Aboriginal party to which Nalcor has offered serious consultation is Innu Nation, despite the fact that the proponent has stated that Natuashish is not affected by the project.

The experience of the Innu of Pakua Shipi demonstrates that the agreement proposed by Nalcor to Ekuanitshit was inadequate, from the standpoint of both budget and timetable. Furthermore, even when its superficial study demonstrated contemporary occupation of the territory in the vicinity of the project, the proponent was not willing to change its timetable to discuss the necessary accommodations.

The Innu of Ekuanitshit nonetheless remain willing to collaborate with Nalcor so that the proponent can provide the Panel with the necessary studies, despite the failures of the past.

More specifically, the Innu of Ekuanitshit are calling on the Panel to exercise its authority to convene a meeting of the Aboriginal party and the proponent in order to “clarify” the supplemental information submitted by the proponent concerning them, and to determine whether cooperation to obtain the necessary information would be possible.

II. Criteria for determining the sufficiency of the Environmental Impact Statement

A. Introduction

Before commenting on the facts alleged by the proponent in its Supplemental Information to the Information Request (IR) JRP.151, we would like to describe the framework established for this environmental assessment by the *Canadian Environmental Assessment Act* (the CEA Act), the Guidelines, the Panel's terms of reference and the directives issued concerning its work.

In law, the effects of a project “on the current use of lands and resources for traditional purposes by aboriginal persons” do not constitute a sociocultural fact, but rather an environmental effect that, according to the CEA Act, must be considered.

The position of the Innu of Ekuanitshit is that the EIS submitted by the proponent, as completed by the Supplemental Information, is insufficient if it does not meet the requirements imposed by the federal and provincial governments concerning Aboriginal peoples, including their community.

The Panel could not hold hearings without contravening its terms of reference if the required information were not made available to the public. Indeed, the purpose of the public hearings is not to complete a deficient environmental impact statement, but rather to allow the interested parties to provide their observations and to ask questions concerning the information that the government has deemed necessary to the assessment of the project.

B. The role anticipated for Aboriginals in the environmental assessment of the project

1. According to the *Canadian Environmental Assessment Act*

The primary purpose of the CEA Act is “to ensure that projects are considered in a careful and precautionary manner before federal authorities take action in connection with them, in order to ensure that such projects do not cause significant adverse environmental effects”: paragraph 4(1)(a).

The definition of “environmental effect” provided in subsection 2(1) of the CEA Act includes, in particular:

- “any change that the project may cause in the environment;” and
- “any effect of any change [...] on the current use of lands and resources for traditional purposes by aboriginal persons.”

One of the other purposes of the CEA Act is “to promote communication and cooperation between responsible authorities and Aboriginal peoples with respect to environmental assessment”: paragraph 4(1)(b.3).

Also, the CEA Act provides in section 16.1 that “community knowledge and aboriginal traditional knowledge may be considered in conducting an environmental assessment.”

2. According to the Panel's terms of reference

The terms of reference for the Panel set out in Schedule 1 to the *Agreement Concerning the Establishment of a Joint Review Panel*¹ between the federal and provincial Ministers of the Environment state that:

In performing its responsibilities, the Panel shall promote and facilitate public participation and ensure that the process takes into account the concerns and traditional knowledge of Aboriginal persons or groups and the concerns and community knowledge of the public.

The Panel is also required to hear the views of Aboriginals on “traditional uses and strength of claim as it relates to the potential environmental effects of the project on recognized and asserted Aboriginal rights and title.” The Panel must report on “any concerns raised by Aboriginal persons [...] related to potential impacts on asserted or established Aboriginal rights or title.”

The Panel will not have a mandate to make any determinations or interpretations of “the validity or the strength of any Aboriginal group’s claim to aboriginal rights and title,” or of “the scope or nature of the Crown’s duty to consult Aboriginal persons” or “whether Canada or Newfoundland and Labrador has met its respective duty to consult and accommodate in respect of potential rights recognized and affirmed by s. 35 of the *Constitution Act, 1982*.”

3. According to the Guidelines

a) The key role of Aboriginals

Indeed, the *Environmental Impact Statement Guidelines*² issued for this project assign a key role to Aboriginals.

¹ *Agreement Concerning the Establishment of a Joint Review Panel for the Environmental Assessment of the Lower Churchill Hydroelectric Generation Project*, Issued by the Government of Canada and the Government of Newfoundland and Labrador, 2008, on-line: <<http://www.ceaa.gc.ca/050/documents/31023/31023E.pdf>>.

² *Environmental Impact Statement Guidelines: Lower Churchill Hydroelectric Generation Project; Newfoundland and Labrador Hydro*, Issued by the Government of Canada and the Government of Newfoundland and Labrador, July 2008, on-line: <<http://www.ceaa.gc.ca/050/documents/28050/28050E.pdf>>.

2.2 ABORIGINAL AND PUBLIC PARTICIPATION

Aboriginal and public participation is a central objective of an environmental assessment process and a means to ensure that a proponent considers and responds to Aboriginal and public concerns. In preparing the EIS, the proponent shall inform and consult with the affected Aboriginal and local communities, interested regional and national organizations and resource users.

b) The proponent's primary obligation to Aboriginals

Among other things, the proponent is obligated to demonstrate in the EIS that it has studied the issues that are important for the Innu of Ekuanitshit.

4.8 CONSULTATION WITH ABORIGINAL GROUPS AND COMMUNITIES

The EIS shall demonstrate the proponent's understanding of the interests, values, concerns, contemporary and historic activities, Aboriginal traditional knowledge and important issues facing Aboriginal groups, and indicate how these will be considered in planning and carrying out the project. The Aboriginal groups and communities to be considered include, in Newfoundland and Labrador, the Innu Nation, the Labrador Métis Nation and the Nunatsiavut Government, and in Quebec, the Innu communities of Uashat Mak Mani-Utenam, Ekuanitshit, Nutaskuan, Unamen Shipu, Pakua Shipi and Matimekush-Lake John.

To assist in ensuring that the EIS provides the necessary information to address issues of potential concern to these groups, the proponent shall consult with each group for the purpose of:

- (a) Familiarizing the group with the project and its potential environmental effects;
- (b) Identifying any issues of concern regarding potential environmental effects of the project; and
- (c) Identifying what actions the proponent is proposing to take to address each issue identified, as appropriate.

If the proponent is not able to or should not address any particular issue(s), the EIS should include supporting reasons.

The Guidelines also stipulate:

- In the section on the identification of issues and selection of valued environmental components (VECs), that Aboriginal concerns related to the component shall be considered: §4.4.1;
- Contemporary and historic Aboriginal land use shall be taken into consideration in the delineation of study areas specific to each VEC: §4.4.2;
- Aboriginal traditional knowledge shall be considered in the description of the existing environment of the study area: §4.4.4;
- In the description of relevant land and resource use within the study area of the VECs, the proponent shall include “current use of land and resources (including aquatic resources) by Aboriginal persons for traditional purposes, including location of camps, harvested species and transportation routes”: §4.4.4.4;
- The assessment of the beneficial and adverse effects of the project on the socio-economic environment shall consider how the project may affect Aboriginal groups: §4.5.1;
- Mitigation measures shall be considered to ensure continued access and passage on land by Aboriginals “for harvesting and travel [...] and the alternatives to be provided in the event of disruption”: §4.6.1 (f); and
- Mitigation measures shall be considered “to maximize labour market opportunities” for Aboriginals: §4.6.1 (l).

c) According to Agency policy and guidance

The Guidelines stipulate that Aboriginal traditional knowledge must be considered in the assessment: §2.3 and §3.1. According to Canadian Environmental Assessment Agency (the Agency) policy³, Aboriginal Traditional Knowledge (ATK) “is a body of knowledge built up by a group of people through generations of living in close contact with nature.”

³ CEAA, *Considering Aboriginal traditional knowledge in environmental assessments conducted under the Canadian Environmental Assessment Act – Interim Principles*, on-line: <http://www.ceaa.gc.ca/default.asp?lang=In&n=4A795E76-/1>.

The Agency has set out general principles to guide the collection of data on traditional knowledge, including the following:

WORK WITH THE COMMUNITY

ATK research should be planned and conducted with the ATK holders: work with the communities.

The ATK held by each Aboriginal group is unique to that group, so consideration of ATK in a particular EA will need to be developed with the holders of the ATK. It is suggested that:

- communities be contacted early in the EA process and informed that their input is being sought;
- communities be provided with the opportunity to determine whether or not they wish to provide ATK to the EA;
- community members be provided with clear and accurate information about the project, the EA, the EA process, which kinds of ATK may be sought, and how any ATK provided may be incorporated into the EA process;
- practitioners be prepared for unforeseen delays and make extra efforts to maintain ongoing and extensive communications with communities;
- practitioners place their ATK collection efforts in the context of broader long-term relationship-building. Thus, the establishment of a relationship of trust with the community, its leaders, and ATK holders is crucial; and
- where language may be an issue, translation may be necessary.

C. The role of the Environmental Impact Statement in the environmental assessment process

1. The purpose of an assessment

The basic purpose of an environmental assessment is “early identification and evaluation of all potential environmental consequences of a proposed undertaking.” This is the “information-gathering [...] component [...] which provide[s] the decision maker with an objective basis for granting or denying approval for a proposed development”: *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3.

For a project of the scope of the project under study, the *Canadian Environmental Assessment Act* delegates to the Review Panel the role of conducting, to borrow the expression of the Supreme Court, the “information-gathering” that will provide the responsible authorities with an “objective basis” for their decisions.

2. The Panel's information-gathering requirements

The first task assigned by the CEA Act to the Panel is to “ensure that the information required for an assessment by a review panel is obtained and made available to the public”: paragraph 34(a). It is only after this step has been completed that the Panel will “hold hearings in a manner that offers the public an opportunity to participate in the assessment”: paragraph 34(b).

The federal and provincial governments agreed in the Guidelines with respect to the Environmental Impact Statement prepared by the proponent that “the purpose of the EIS is to identify alternatives to the project, alternative methods for carrying it out, the environment that will be affected, the important environmental effects associated with the project, measures that are required to mitigate against any adverse effects and the significance of residual environmental effects”: Preface.

A deficient EIS cannot, by definition, be considered sufficient or be the subject of hearings since neither the public nor the Panel would have the “information required” for an assessment of the project.

The Panel cannot proceed to public hearings without an adequate study since its terms of reference stipulate that it is only “once the Panel is satisfied that all the relevant information is available, [that] it will make a determination on the sufficiency of the EIS for the purpose of proceeding to public hearings”: *Agreement Concerning the Establishment of a Joint Review Panel*, Schedule I, Part III, Step 6.

The information required by the federal and provincial governments in the Guidelines must be presumed to be relevant to the assessment of the project; the Panel could dispense with information only if the proponent could demonstrate that this information is not available.

3. The role of the Environmental Impact Statement for the purposes of the Panel's terms of reference

Not only do the rules established by the federal Minister of the Environment⁴ limit the Panel's right to initiate hearings without the required information, they also limit the Panel's ability to obtain information subsequently.

⁴ *Procedures for an Assessment by a Review Panel: A Guideline Issued by the Honourable Christine S. Stewart, Minister of the Environment, Pursuant to s. 58(1)(a) of the Canadian Environmental Assessment Act*, November 1997, on-line: <http://www.ceaa.gc.ca/88942DED-33D2-4B2C-8F8C2460284033BF/Procedures_for_an_Assessment_by_a_Review_Panel.pdf>.

The guidelines on the *Procedures for an Assessment by a Review Panel* require the Panel to “announce the hearings” “if after reviewing the additional information and written submissions from interested parties the review panel concludes that it has adequate information to proceed to hearings”: section 4.16.2.

However, the corollary of this obligation is the requirement that the Panel have “adequate information to proceed to hearings” before holding hearings. Indeed, section 4.11.1 states that these hearings will be “information assessment meetings,” i.e. meetings to assess the information available “at the time of distribution of the EIS” and that the Panel “request interested parties to submit written comments on the EIS.”

The public hearings are therefore intended mainly to allow the public to ask questions and make comments on the project and are not intended to extend the information-gathering process.

It is important that the EIS—as completed by the additional information—contain the information required before hearings are held, since it will not be possible for the proponent to complete the information afterwards. The guidelines in the *Procedures for an Assessment* stipulate that “the review panel shall not receive any new information after the hearings have ended”: section 4.17.28.

III. Comments on the additional information

A. Description of the process required

We will deal here only with the steps taken by the proponent to meet the requirements of the Guidelines. Such an exercise requires, on the one hand, studying the contemporary occupation and traditional uses of the territory and, on the other, an exchange between the proponent and Aboriginals that will make it possible to determine the anticipated effects of the project. We call this process “consultation” simply because that is the term used in section 4.8 of the Guidelines.

However, the consultation we are referring to here is not the same as the consultation undertaken by the Crown as the responsible authority in the context of its constitutional obligations, which will be required by the ancestral rights and claims of the Innu. As the Supreme Court of Canada explained, “[third parties] cannot be held liable for failing to discharge the Crown’s duty to consult and accommodate”: *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, para. 56.

B. Nalcor's approach to the Innu whose reserves are in Quebec: favourable treatment accorded to the Innu of Labrador

Nalcor is not just a proponent like any other, but an agent of the provincial Crown; *Hydro Corporation Act, 2007*, S.N.L. 2007, c. H-17, subsection 3(4). In 2006, the Minister of Natural Resources informed the legislative assembly that the provincial government was obligated only to deal with the Innu in Labrador.⁵

We have already pointed out the favourable treatment granted to Innu Nation and the failure by the proponent and its shareholder to take into account the Innu whose reserves are in Quebec.

For at least a decade, the proponent has been consulting Innu Nation, an organization that reflects the provincial borders and includes the two Innu communities in Labrador, Sheshatshiu and Natuashish: Response to IR JRP.151, p. 5.

While the impact of the project on the Innu of Sheshatshiu is not disputed, the description of the contemporary occupation of the territory covered by the project does not mention the Innu of Natuashish even once: Supplemental Information, pp. 3-8 to 3-10. This appears to confirm the proponent's statement in its EIS that the community of Natuashish will not be affected by the project unless its residents are flying in to work on the project: Vol. III, p. 4-25.

Nonetheless, Nalcor preferred to consult Natuashish rather than the Innu communities whose reserves are located in Quebec, up to May 2008, i.e. only a few weeks before the issuing of the Guidelines which required the proponent to consult them: Response to IR JRP.151, p. 5.

Between 2000 and 2008, Sheshatshiu and Natuashish benefitted from a special and confidential consultation. These two communities received information on the project even before it was submitted for environmental assessment, and a study was conducted on their occupation of the territory and their traditional knowledge: Response to IR JRP.151, p. 5.

Innu Nation has received funding for the consultation process from the proponent since 2000, even before the project was defined: EIS, §8.3.1.5. Innu Nation also participated directly in the planning and implementation of the environmental assessment through a joint working group on the environment and engineering: EIS, §8.3.1.3.

⁵ Newfoundland and Labrador, House of Assembly, *Proceedings*, Vol. 45, No. 2 (18 May 2006): "We have the responsibility, the obligation and the duty, to deal with the Aboriginal Innu, or the Innu people, in Labrador."

Finally, on February 16, 2010, the proponent, Innu Nation and the Government of Newfoundland and Labrador signed an Impacts and Benefits Agreement, called Tshash Petapen (“New Dawn Agreement”), pertaining to the project, as well as an agreement in principle on its implementation. On the same day, the same parties signed the Churchill Falls Hydroelectric Development Redress Agreement: Response to IR JRP.151, p. 6.

Note that only a few weeks later, Nalcor proposed a new agreement to the other Aboriginal parties, intended to be completed before submission of its report on the consultation, which was now scheduled for September 30, 2010: Response to IR JRP.151, pp. 7 to 10.

While the Innu of Quebec were offered studies to be completed over a four-month period, the studies involving Innu Nation have already been going on for a decade and are not yet finished. In fact, an “Innu of Labrador Contemporary Land Use and Harvesting Study Agreement” was reportedly agreed to by the proponent on July 22, 2010, but the results were not yet available as of September 30: Supplemental Information, pp. 3-14, 3-17, 3-32, 3-35 to 3-37.

A document⁶ published by the Newfoundland and Labrador Department of Finance clearly indicates that, for the provincial government, the agreements signed in February 2010 with Innu Nation were the only ones required to carry out this project. The analysts described the agreements with Innu Nation as offering “the certainty needed to move forward with project planning and further investment.” No other Aboriginal party is mentioned in this document.

It is difficult to escape the conclusion that Innu Nation was the only Aboriginal party with which the provincial government was interested in dealing and therefore the only one to which Nalcor was willing to offer genuine consultation, notwithstanding the clear terms of the Guidelines.

⁶ Department of Finance, Economic Research and Analysis Division, *The Economy 2010*, p. 41, on-line: <<http://www.economics.gov.nl.ca/E2010/LowerChurchillProject.pdf>>.

C. The lack of a genuine consultation effort

1. The previous experience of the Innu of Ekuanitshit

As we have already pointed out, the project under study is the second major project proposed in the heart of the territory of the Innu of Ekuanitshit in two years. During 2008, the Innu of Ekuanitshit were busy participating in the environmental assessment of the Romaine Hydroelectric Complex Project proposed by Hydro-Québec (CEAR Reference No. 04-05-2613).

This experience, although mixed, has created certain legitimate expectations among the Innu of Ekuanitshit concerning the conduct of a Crown corporation that is required to submit an environmental impact statement to a joint review panel for a hydroelectric project of this scope.

Unfortunately, the level of commitment, professionalism and expediency demonstrated by Nalcor in this situation fell significantly short of Hydro-Québec's conduct in a similar situation in the relatively recent past.

For the Romaine Hydroelectric Complex Project, even the socio-economic profile of Ekuanitshit was based in part on a field survey conducted on the reserve between February and April 2007 in the form of 18 semi-directed individual interviews, six collective interviews and a survey by questionnaire of 76 individuals. Subsequently, the data collected were validated in the three communities concerned in July and August 2007.⁷

For the same project, the information concerning the types of occupation and use of the territory by the Innu was derived from the following sources:

- A series of interviews conducted between January 16 and April 13, 2007;
- Some 20 users who conducted overflights of the territory by helicopter, between August 13 and 17, 2007, in order to validate certain information;
- Semi-directed interviews conducted of users in the community who practice Innu Aitun on the territory – and in particular who spend the most time in the study area for this purpose – as well as of elders who practise Innu Aitun or who have spent time in the territory in the study area;

⁷ Hydro-Québec, *Complexe de la Romaine – Étude d'impact sur l'environnement*, Volume 9: *Méthodes*, December 2007, p. M25-5, on-line: <http://www.ceaa.gc.ca/050/documents_staticpost/cearref_2613/ei_volume09.pdf>.

- A few meetings with managers of the Ekuanitshit band council (Council of the Innu of Ekuanitshit) which also made it possible to gain a better understanding of the role of the council in its support of Innu Aitun on community territory as well as in the development of the outfitting operations owned by the council.

Subsequently, the data collected were validated with Innu informants during trips to Ekuanitshit and Nutashkuan, from May to August 2007, during which workshops and overflights were organized.⁸

In addition, a study was conducted to document the traditional ecological knowledge of the Innu in relation to the physical and biological components of the Environmental Impact Statement. It should be noted that this sectoral study was carried out under contract with Hydro-Québec, in accordance with a work plan agreed between the four Innu communities concerned and Hydro-Québec, by an expert chosen jointly.⁹

Consequently, interviews took place with members of Ekuanitshit from December 1 to 22, 2006, using an initial interview guide in order to gather toponymic data, and a second interview guide in order to gather information on the frequency of visits to the study area, use of the territory (hunting, fishing and trapping), the plants and wildlife, the vegetation, modifications to the territory, and the river (current, depth and ice conditions).

Finally, a separate study on salmon fishing in the Romaine River and its tributaries by the Innu was based mainly on a field survey carried out in Ekuanitshit between February 18 and 24, 2007, which included:

- Semi-directed individual interviews that were conducted with four experienced Innu fishermen who regularly fish in the Romaine River and its tributaries, particularly the Puyjalon River;
- In addition, a semi-directed interview that was conducted with a manager of the Ekuanitshit band council in order to document the management and oversight of Innu fishing in this particular river;

⁸ Hydro-Québec, *Complexe de la Romaine – Étude d'impact sur l'environnement*, Volume 6 : *Milieu humain – Communautés innues et archéologie*, December 2007, pp. 39-1 to 39-4, on-line:
<http://www.ceaa.gc.ca/050/documents_staticpost/cearef_2613/ei_volume06.pdf>

⁹ *Idem*. Vol. 6, p. 44-1.

- A group interview on the topic of salmon fishing in the Romaine River that was carried out with seven elders of the community.¹⁰

In all cases, a joint working group established by Corporation Nishipiminan on behalf of the Innu of Ekuanitshit and Hydro-Québec had validated an interview checklist prior to the interviews with the members.

We have described in detail the methodology used for the studies on Ekuanitshit prepared for the Romaine Hydroelectric Complex Project in order to demonstrate the glaring differences between an adequate approach and the approach proposed by Nalcor for the project under study.

2. The approach adopted by the proponent

a) Unilateral “consultation”

In the initial responses to information requests, the proponent still agreed that it should at the very least ensure the participation of each Innu community named whose reserve is located in Quebec, as well as the collection of reliable and complete data on the impacts of the project on each community’s contemporary use of the lands and resources: Response to IR JRP.2, p. 3.

However, once the proponent had set the arbitrary deadline of September 30, 2010, to complete its consultation of Aboriginals, Nalcor provided a new interpretation of its obligations, which reduced them substantially: Letter from Osler, Hoskin & Harcourt LLP to the Panel, June 17, 2010.

In this letter, legal counsel for the proponent claimed that Nalcor’s obligation would only be to provide information as well as the opportunity to be consulted. It would be sufficient to send information, offer meetings and offer agreements if the proponent decided that this was warranted.

Such a unilateral approach is totally contrary to the Guidelines, which stipulate, for example, that Aboriginal traditional knowledge must be considered in the assessment: §2.3, 3.1. The Canadian Environmental Assessment Agency’s policy clearly states that “consideration of ATK in a particular EA will need to be developed with the holders of the ATK.”

¹⁰ *Idem*, Vol. 9, pp. M25-8 to 25-9.

In addition, the arbitrary timetable set by Nalcor was contrary to the Canadian Environmental Assessment Agency's guideline that "communities be contacted early in the EA process" and that "practitioners be prepared for unforeseen delays and make extra efforts for ongoing and extensive communications with communities."

The experience of the Innu of Pakua Shipi, described below, demonstrates that, in this case, it was the timetable set by Nalcor and not the needs of the community that determined the quality of the data collection and analysis by the proponent and of the consultation that it conducted.

b) The unrealistic proposed agreement

The agreement proposed by Nalcor to the Council of the Innu of Ekuanitshit on April 15, 2010, essentially involved the payment of \$87,500, which the community was supposed to use to conduct its own study of the topics listed in section 4.8 of the Guidelines, all within a four-month period. A few weeks later, Nalcor announced that this study would not be followed by any other phase of work unless the proponent deemed it necessary.

The draft consultation agreement proposed by the proponent to Ekuanitshit and to the other communities whose reserves are located in Quebec provided that the community hire a project coordinator for the purposes of a process that would make it possible to attain the following objectives:

- To enable Nalcor to respond to any questions, issues and concerns raised by the Innu of _____ about the project;
- To enable Nalcor to determine what Innu of _____ think about the project and its impacts upon their values, interests and concerns;
- To communicate the findings of the community consultation process to both Parties;
- To identify _____ traditional knowledge and current use of land and resources in the project area;
- To enable Nalcor to comply with the *Environmental Impact Statement Guidelines* for the environmental assessment of the Lower Churchill Hydroelectric Generation Project with respect to the Innu of _____;
- To identify what actions Nalcor proposes to take to address any issues and concerns identified by the Innu of _____ with respect to the project;
- To identify issues in relation to accommodation and mitigation, if any, for future discussion by the Parties.

Response to IR JRP.151, Attachment 1, "Community Consultation Agreement Template", May 2010.

The Innu of Ekuanitshit did not accept the offer since they considered this proposal unrealistic given the magnitude of the work to be done in the time allotted and with the proposed budget. In addition, they had doubts about the proponent's commitment to objective data collection.

Subsequent events confirmed their concerns. A few weeks later, Nalcor announced that it had already concluded, even before having met with the Innu of Ekuanitshit, that there was no evidence of their historical or contemporary use of the project territory: Panel Update on Consultation Activities and Negotiation of Agreements, May 2010.

c) The manifestly inadequate study of Pakua Shipi

(1) Inadequacy of the work carried out by Nalcor

The community of Pakua Shipi signed a similar agreement on April 26, 2010. This action did not prevent the proponent from declaring after the signing, but even before having commenced the study, that Nalcor had already concluded that there was "no record of historic or current land and resources use and occupancy by the community in the project area": Response to IR JRP.151, p. 7.

In fact, Nalcor devoted only two weeks to field research, having conducted only 11 interviews with 22 participants between June 29 and July 14, 2010: "Land and Resource Use Interviews Report – Pakua Shipi", Appendix 4 to the Supplement, p. 4.

But even such a perfunctory study was sufficient to refute Nalcor's conclusion that there was no relevant occupancy of the territory. The proponent admitted having identified contemporary use of the land and resources by the Innu of Pakua Shipi in the vicinity of the project: p. 12.

However, this consultation of the Innu of Pakua Shipi remained incomplete at the end of the period stipulated in the agreement. In fact, as of the end of August 2010, the data on land and resource use had not been validated with the persons interviewed. In addition, Nalcor had not presented either its responses or its proposed mitigation measures to address the questions and concerns raised by the community: p. 7 and 12.

Nonetheless, Nalcor took the liberty of submitting a table of concerns expressed by the Innu of Pakua Shipi and proposed responses. According to the proponent, all the concerns expressed by Pakua Shipi would be resolved, except one, deemed not relevant or outside its mandate.

But while the proponent deemed that the concern that language barriers would prevent community members from benefitting from the employment opportunities created by the project was justified, Nalcor did not propose any solution: Supplement, Table 7-5, p. 7-18.

(2) Comparison with the study of the same community for the Romaine Hydroelectric Complex Project

It is useful to compare the superficial exercise conducted by Nalcor at the last minute to the study of the same community submitted by Hydro-Québec for the environmental assessment of the Romaine Hydroelectric Complex Project several months before the public hearings.

For a community 350 km from the mouth of the Romaine River and for which its research concluded that there was no use of the territory in question, Hydro-Québec nonetheless:

- Conducted six group interviews with 35 members of the community;
- Conducted a survey by questionnaire with 72 members;
- Established a joint committee composed of representatives appointed by Hydro-Québec and the Pakua Shipi band council to validate the interview checklists and the survey;
- Hired a person from the community as a local coordinator;
- Organized three information workshops in Pakua Shipi dealing with the main characteristics of the project, jobs on the complex work sites, as well as the impacts and mitigation measures related to terrestrial wildlife and fish (including increased mercury levels in the flesh of fish in the planned reservoirs), vegetation and wildlife habitats.¹¹

Even though the conclusion was that the Innu of Pakua Shipi do not use the area affected by the project,¹² Hydro-Québec nonetheless signed with this community (jointly with Unamen Shipu) a project Impacts and Benefits Agreement that provided in particular for “significant funding in support of economic and social development initiatives and training programs.”¹³

¹¹ *Complexe de la Romaine – Complément de l'étude d'impact sur l'environnement Information complémentaire relative à la communauté de Pakua-shipi*, April 2008, pp. 1, 3, 29, on-line:

<<http://www.ceaa.gc.ca/050/documents/27311/27311E.pdf>>

¹² *Idem.*, p. 31.

¹³ Joint Review Panel, *Romaine River Hydroelectric Complex Development Project: Investigation and Public Hearing Report*, February 2009, p. 37, on-line: <<http://www.ceaa.gc.ca/050/documents/34664/34664E.pdf>>

D. The inadequate collection of data concerning Ekuanitshit

1. No field work

Nalcor never sent staff to the community of Ekuanitshit to conduct a study on the contemporary and historical use of the project territory by the community. To date, its presence in the community has been limited to two information sessions given by individuals who were not experts in biology, anthropology or other relevant fields. In fact, no experts were consulted who could substantiate that the information contained in the proponent's study accurately reflects the traditional knowledge of the community on the contemporary and historical use of the site affected by the project.

Nalcor announced its "2010 Consultation Program" in its preliminary Response to IR JRP.151. According to Nalcor, the 2010 Program would correct the deficiencies in its consultation efforts which have already been pointed out by the Joint Review Panel. Nalcor also took advantage of the opportunity to emphasize two new elements of its program: "conducting community interviews" and "collecting current land and resource use information."¹⁴

With the exception of a visit organized in the context of the oral presentation of the Plain Language Summary of the Environmental Impact Statement, no Nalcor consultant or employee visited the community during the 2010 Consultation Program.

However, in preparation for the visit for the purposes of the presentation, legal counsel for Ekuanitshit had proposed that the experts of the two parties meet to discuss any data in Nalcor's possession.¹⁵ Nalcor did not accept this invitation.

Nalcor emphasized the steps that it claimed to be taking to visit the community this summer,¹⁶ but it would appear that even by mid-September, the proponent no longer had any genuine interest in proceeding with the consultation. Nonetheless, Nalcor had chosen the worst possible time to engage the community and conduct its information-gathering on land and resource use, since many Innu leave the community during the summer period.¹⁷

¹⁴ Nalcor, IR# JRP.151, Aboriginal Consultation and Traditional Land and Resource Use, p. 4.

¹⁵ Letter from David Schulze to Todd Burlingame dated August 17, 2010.

¹⁶ See Nalcor's letter to Chief Jean-Charles Piétacho dated June 4, July 28, July 16 and August 2, 2010.

¹⁷ Letter from David Schulze to Todd Burlingame dated August 17, 2010.

2. An approach that is inadequate to ensure a genuine understanding of the interests and concerns of the Innu of Ekuanitshit

Rather than engaging the community directly, Nalcor chose to rely entirely on secondary sources to compile the profile of Ekuanitshit in the Consultation Assessment Report.

In fact, the corporation relied mainly on the documents produced by Hydro-Québec in the context of the environmental assessment of the Romaine Hydroelectric Complex Project and to a lesser extent on the documentation produced by the Innu of Ekuanitshit and submitted to the Joint Review Panel of the same project.

This choice of documentation is somewhat misleading, for the following reasons.

First of all, the Romaine Hydroelectric Complex Project is a separate project that is not linked in any way to the Lower Churchill Hydroelectric Generation Project. The genuine concerns the Innu of Ekuanitshit had about the Romaine Hydroelectric Complex Project are different from their concerns about the Lower Churchill Hydroelectric Generation Project. For example, one of the main concerns with the Romaine Hydroelectric Complex Project related to the opening up of the territory by roads, but in the case of the project under study, the Trans Labrador Highway already exists in the vicinity. For this project, the Innu are more concerned about the project's potential negative effects on game.

On numerous occasions during the negotiations with Nalcor with the goal of drafting a consultation agreement, the Innu of Ekuanitshit proposed adopting a consultation approach similar to that taken by Hydro-Québec in the context of the Romaine Hydroelectric Complex Project. Although Nalcor recognized the usefulness of this approach, the corporation preferred not to adopt this approach.¹⁸

It is therefore somewhat surprising to note that, in order to meet its own obligations, Nalcor has included in its report on Ekuanitshit the data collected using this consultation model. In fact, the section on the Innu of Ekuanitshit produced by Nalcor is based almost exclusively on the documents prepared by Hydro-Québec.

Apart from these documents, Nalcor relied on the reports of two anthropologists, from Statistics Canada and Indian and Northern Affairs Canada, to learn about the reality of the Innu of Ekuanitshit. Furthermore, Nalcor misrepresented the content of the above-mentioned anthropological reports, a subject that we will discuss in greater detail later.

¹⁸ E-mails from Mary Hatherly to David Schulze dated April 15 and May 30, 2010.

Although we do not question the importance of consulting these secondary sources, the study of these documents can in no way replace the direct contact that the corporation could have had with the community. To date, Nalcor has not given evidence of any serious intent to meet with the members of the community of Ekuanitshit.

3. The table of concerns is misleading and is not the result of a consultation process

Nalcor's table entitled "Ekuanitshit: Issues of Concern and Proposed Actions" claims to represent the community's concerns regarding the Lower Churchill Hydroelectric Generation Project: Table 10-6. This table is not the result of consultations with the community and relies on dubious sources.

Most of the documents cited come from environmental studies conducted in the context of Hydro-Québec's Romaine Hydroelectric Complex Project.

As we have already pointed out, simply reading these documents cannot be considered consultation since:

- They dealt with a different project, located in a different area of the community's territory quite far from the area affected by the Lower Churchill Hydroelectric Generation Project; and
- They were drafted after a long and complex consultation process between the proponent and the Innu of Ekuanitshit, detailed above.

In addition, in several places, Nalcor refers to the meetings held between the community's political team and the company as sources of its "understanding" of the concerns of Ekuanitshit.¹⁹ However, these meetings were undertaken following an explicit agreement which stipulated that these meetings did not constitute consultation.

In fact, these meetings were initiated with the goal of arriving at an agreement that would permit the holding of a consultation process. In citing these meetings as evidence of its understanding of the community's concerns, Nalcor has perverted the community's efforts to establish a relationship of confidence and respect with the company and has turned the community against it.

¹⁹ On pp. 10-15, 10-17, 10-20, 10-21, 10-23 to 10-25 and 10-27.

Nalcor also cited in its table the submissions of the Innu of Ekuanitshit to the Public Utilities Board of Newfoundland and Labrador (PUB).²⁰ The PUB had received a request from Nalcor to draw up a water management agreement between it and the Churchill Falls Labrador Corporation.

The Innu of Ekuanitshit intervened because the community had concerns about the nature of this agreement and its potential effects on their interests in Labrador. As is attested by the PUB records summarizing this process,²¹ Nalcor opposed the intervention of the Innu of Ekuanitshit and refused to recognize their right to intervene in this process. However, the PUB granted the Innu of Ekuanitshit intervenor status.

Even though Nalcor sought to prevent the participation of Ekuanitshit in the process before the PUB, it now cites the documents resulting from this process as an aspect of its consultation with the community.

It should be pointed out that during the process before the PUB, Nalcor admitted that the Innu of Ekuanitshit “have asserted a potentially credible claim of an Aboriginal interest in relation to land and resource usage” in the area affected by the project.²²

It would appear that Nalcor now no longer holds this view. However, this change in position has not prevented it from presenting the debate before the PUB as a “consultation,” despite the fact that the proponent never held any discussions with a single member of the community during this process.

E. The historical and contemporary activities of the Innu of Ekuanitshit

1. Omission of the historical evidence

The study entitled *Occupation et l'utilisation du territoire par les Montagnais de Mingan* written by Robert Comtois in 1983 contains clear evidence concerning the historical activities of the Innu of Ekuanitshit in the area affected by the project. This study was prepared for the purposes of negotiation between the Attikamek-Montagnais Council, a group composed of three Atikamekw bands, and most of the Montagnais bands (Innu), including the Innu of Ekuanitshit, and the Government of Canada.

²⁰ On pp. 10-15, 10-16, 10-18 to 10-23, 10-25 and 10-27

²¹ Available on line at the PUB website: <<http://n225h099.pub.nf.ca/applications/Nalcor2009Water/index.htm>>.

²² Nalcor, “Written Submissions on Behalf of Nalcor Energy,” February 19, 2010, on-line: <<http://n225h099.pub.nf.ca/applications/Nalcor2009Water/files/submissions/Nalcor-FinalSubmission-Feb-19-10.pdf>>.

In his study, Comtois describes the traditional territory of the Innu of Ekuanitshit as including Winokapau Lake,²³ which is part of the Churchill River and is clearly located in the area affected by the project. He also describes how the Innu of Ekuanitshit travelled to Melville Lake and to Winokapau Lake to trade after the fall hunt.²⁴ These expeditions included trips to “Tsheshatshit.”²⁵

Comtois drew more than a dozen maps showing the various aspects of the occupation of the territory by the Innu of Ekuanitshit. Several of these maps, including the one that we have attached, demonstrate that the Innu of Ekuanitshit travelled from the coast as far as Winokapau Lake, on the Churchill River. From there, they followed the Churchill River toward the North West River.

However, this route via Winokapau Lake is not shown on Nalcor’s map illustrating historical and contemporary use by the Innu of Ekuanitshit, despite the fact that this map is based on Comtois’ report: Table 10-4. The comparison between Nalcor’s map and Comtois’ map, attached to this document, is striking: the evidence of the historical occupation of the project area by Ekuanitshit was deleted from the proponent’s map.

In addition, Comtois describes this route of the Innu of Ekuanitshit in these terms:

[Translation] In the case of TSHEHATSIU ITISTAN [the Innu word for the route to Winokapau Lake], UINAUKAPAU [Winokapau] is the major lake of the area in which it is located. Also, apart from the various destinations that it makes accessible along its length for the harvesting of resources, TSHEHATSHIHT (North West River) constitutes the other end of this route. However, the groups often stop at EKUANITSHIT MINISTUK, one of the first two main islands located downstream of the falls called “Muskrat Falls”, on the Hamilton River. Hence, this is the name that the TSHEHATSIU INNUAT gave to this island, which became a main camping site of the EKUANITSHI INNUAT during their visits to Goose Bay [emphasis added].²⁶

The map that we have attached to our submission and Comtois’ description of the route demonstrate the historical use by the Innu of Ekuanitshit of the area affected by the project. The historical use is so significant that the Innu of Sheshatshiu gave the name “Ekuanatshiu Ministuk” to one of the islands of Muskrat Falls.

²³ Robert Comtois, *Occupation et utilisation du territoire par les Montagnais de Mingan* (Attikamek-Montagnais Council, 1983), p. 44.

²⁴ *Ibid.*, p. 120.

²⁵ *Ibid.*, p. 124.

²⁶ *Ibid.*, p. 53.

Despite this, Nalcor claims that it found no evidence of the historical activities in the area.²⁷ Moreover, Nalcor wrote: “Like the locations and routes for the historical period, the contemporary locations do not reveal sites or courses in the Winokapau Lake area. In fact, the routes do not go beyond the head of the Natashquan River”: p. 10-11. However, the paragraph from the Comtois report cited above contradicts this claim.

We fail to understand why Nalcor chose not to mention these aspects of the Comtois report. Nonetheless, there is a solution to these deficiencies: Nalcor can initiate discussions with the community in order to understand its historical and contemporary activities.

Furthermore, we note that the Government of Newfoundland and Labrador, in its submissions to the Joint Review Panel dealing with the Romaine Hydroelectric Complex Project, made the following comments:

The potential for flooding to affect potential archaeological sites should also be detailed. Romaine River was a well documented Innu travel route into the interior of Labrador. It was also used to get to the north coast of Labrador – these are well known Innu land use facts.²⁸

The Innu of Ekuanitshit obviously agree with this statement by the Government of Newfoundland and Labrador.

Finally, the Government of Newfoundland and Labrador has published all the documentation collected during the arbitration of the Labrador border. This documentation includes the following statement made in 1921 by the manager of the Hudson Bay Company trading post at North West River:

Mingan and Seven Island Indians’ hunting grounds extend from Mingan and Seven Islands respectively to Lake Michikamau and the Grand or Hamilton River [now the Churchill River]. Over these hunting grounds they claim their fathers and forefathers have always hunted and trapped.²⁹

²⁷ Nalcor, IR# JRP.151 “Aboriginal Consultation and Traditional Land and Resource Use,” p. 8

²⁸ Government of Newfoundland and Labrador, “Submission to the Joint Review Panel assessing the Romaine Complex Hydroelectric Project” (November 27, 2008).

²⁹ Voluntary Statement of ERNEST F. EWING, of North West River, Lake Melville”, 22 July 1921, in Privy Council, *In The Matter Of The Boundary Between The Dominion Of Canada And The Colony Of Newfoundland On The Labrador Coast*, p. 3737, on-line: <http://www.heritage.nf.ca/law/lab8/labvol8_3736.html>.

2. Contemporary activities

The Supplement refers to a caribou hunting expedition to Cache River organized in February 2010 in which 150 members of the Innu Strategic Alliance participated, including Ekuanitshit. However, the proponent describes this expedition as an exceptional event, organized for political purposes and not indicating a contemporary occupation: p. 10-11.

However, the documents published by the Government of Newfoundland and Labrador in fact confirm sustained contemporary occupation, motivated by hunting, in a region overlapping with or adjoining the project area.

In a report on the Trans Labrador Highway, the consultants hired by the province explain that, since the opening of the highway and over its entire route, "Innu from Sept-Iles/Maliotenam, Betsiamites, and the Quebec Côte-Nord use the TLH to harvest caribou, porcupine, beaver, ptarmigan and other species that may be encountered opportunistically in the vicinity of the road."³⁰

Curiously, while Nalcor describes caribou hunting as an exceptional event in 2010, the same year, the Minister of the Environment and Conservation was so concerned by their hunting activities that he wrote to the Innu chiefs of Quebec to offer "to sit down and discuss conservation issues related to the caribou."³¹

IV. The path to genuine collaboration

A. Willingness to acknowledge the facts

Despite the unfortunate context described below, the Innu of Ekuanitshit remain willing to cooperate with Nalcor so that it can meet the requirements of the Guidelines and submit an Environmental Impact Statement that is considered sufficient.

In response to a request made by Nalcor on July 16, 2010, the Innu of Ekuanitshit received representatives of the proponent in the community on September 13 for a presentation on the

³⁰ Peter Armitage and Marianne Stopp, "Labrador Innu Land Use in Relation to the Proposed Trans Labrador Highway, Cartwright Junction to Happy Valley-Goose Bay, and Assessment of Highway Effects on Innu Land Use," submitted by Innu Environmental Limited Partnership to Department of Works, Services and Transportation, 29 January 2003, p. 62, on-line:

<http://www.envgov.nl.ca/env/env_assessment/projects/Y2004/1012/innulandusereport.pdf>

³¹ Statement by Don Burrage, Deputy Minister of Justice, Minutes of Social Services Committee, April 27, 2010, on-line: <<http://www.assembly.nl.ca/business/committees/ga46session3/2010-04-27%20%28SSC-Justice%29.htm>>

project to the elected leaders in a private meeting and to the members during a community assembly.

Nalcor's representatives told the elected leaders on September 13 that, even though the meeting was only for the purposes of providing information, they hoped to initiate a process that would make it possible to prepare studies on the actual occupation and use of the project area.

Also, the representatives of the Innu of Ekuanitshit have learned informally about the approach adopted with the Innu of Pakua Shipi once the consultation agreement was signed based on Nalcor's proposal. In fact, the budget provided by the proponent was allocated to local personnel, who gathered the data and forwarded the information, while Nalcor prepared the report. It appears from the "Land and Resource Use Interviews Report—Pakua Shipi" that Nalcor employees or consultants also participated in the interviews.

The report on Pakua Shipi submitted in the Supplemental Information also reveals that the proponent did not adhere to the proposed four-month timetable, since the agreement was signed on April 26, 2010, and as of September, part of the work had not yet been completed.

Nalcor's willingness to assume the cost of the interviews and of preparing the resulting report represents a change in the approach proposed in its "Draft—Community Engagement Agreement," since the budget offered to the communities is augmented by the value of the time that Nalcor's employees and consultants devoted to it.

Having said that, the Innu of Ekuanitshit could not entrust Nalcor's employees with the responsibility for compiling the information provided by community members or for conducting the analysis for the purposes of identifying traditional knowledge or contemporary occupation, as stipulated in the proposed agreement. Since the proponent had adopted the position that there is no occupation—even before having completed its own study—it was not possible to create the required climate of confidence.

B. The proposal of the Innu of Ekuanitshit

As stated in the Panel's terms of reference, "should deficiencies be identified as a result of the review of the EIS [...] clarification, explanation or additional technical analyses may be required from the proponent by the Panel": *Agreement Concerning the Establishment of a Joint Review Panel*, Schedule I, Part III, Step 6.

However, the Supplement to IR JRP.151 did not correct the deficiencies, since the requirements of the Guidelines concerning the Innu of Ekuanitshit were not met.

Nonetheless, the community remains open to finding a solution and formally requests that the Panel exercise the authority granted in its terms of reference (Part III, Step 6) to call “meetings required for the clarification of additional and/or technical information.”

Concretely, the Innu of Ekuanitshit propose the following solution: the parties could agree on the mandate of an outside expert who would prepare the report required by the Guidelines. Such an expert could, as stipulated in the agreement proposed by Nalcor, be assisted by a local coordinator to gather data and transmit information. The cost of this proposal would be essentially the same as for the agreement with Pakua Shipi, since the work of the outside expert would replace the tasks that Nalcor’s consultants or employees would have performed.

V. Conclusion: Nalcor’s failure to respect the context of the assessment

A. The applicable rules

The primary purpose of the *Canadian Environmental Assessment Act* (the CEA Act) is “to ensure that projects are considered in a careful and precautionary manner ... in order to ensure that such projects do not cause significant adverse environmental effects”: paragraph 4(1)(a).

The environmental effects of a project include any effect of any change that the project may cause in the environment on “the current use of lands and resources for traditional purposes by aboriginal persons”: subsection 2(1).

To this end, the federal and provincial governments decided that “the EIS shall demonstrate the proponent’s understanding of the interests, values, concerns, contemporary and historic activities, Aboriginal traditional knowledge and important issues facing Aboriginal groups,” including Ekuanitshit, “and indicate how these will be considered in planning and carrying out the project.”: Guidelines, section 4.8.

Indeed, with respect to the Environmental Impact Statement prepared by the proponent: “the purpose of the EIS is to identify [...] the environment that will be affected, the important environmental effects associated with the project, measures that are required to mitigate against any adverse effects and the significance of residual environmental effects”: Preface.

The hearings will be mainly “information assessment meetings,” i.e. meetings to assess the information available “at the time of distribution of the EIS” and “request interested parties to submit written comments on the EIS.”: *Procedures for an Assessment*, section 4.11.1.

The terms of reference of the Joint Review Panel provide that it is only “once the Panel is satisfied that all the relevant information is available, [that] it will make a determination on the sufficiency of the EIS for the purpose of proceeding to public hearings”: Step 6. This is the information required by the federal and provincial governments in the Guidelines which must be presumed to be relevant to the assessment of the project.

A deficient EIS cannot, by definition, be considered sufficient or be the subject of hearings, since neither the public nor the Panel would have the “information required” for an assessment of the project.

B. Nalcor’s conduct

Nalcor is an agent of the Government of Newfoundland and Labrador, which has long adopted the position that, with respect to this project, it will deal only with the Innu whose reserves are located in Labrador.

Consequently, since 2000, the proponent has consulted the organization Innu Nation, which includes the two Innu communities in Labrador, Sheshatshiu and Natuashish. However, the proponent states in its EIS that the community of Natuashish would not even be affected by the project.

Nalcor did not offer to consult any of the Innu communities whose reserves are located in Quebec before May 2008, i.e. only a few weeks before the issuing of the Guidelines which forced it to consult them.

Nalcor sought the approval of these same communities for a new proposed consultation agreement intended to be completed in only a few months, once the proponent and the province had signed a project Impacts and Benefits Agreement with Innu Nation in February 2010 (Tshash Petapen).

However, the Innu of Ekuanitshit already had the experience of the environmental assessment of another major project proposed on their territory: the Romaine River Hydroelectric Complex Project proposed by Hydro-Québec in 2008.

What Nalcor proposed was in no way comparable to the level of commitment, professionalism and expediency demonstrated by Hydro-Québec when this other Crown corporation was required to submit an environmental impact statement to a joint review panel for a hydroelectric project of similar scope.

More specifically, the studies for the Romaine Hydroelectric Complex Project were the result of individual interviews and surveys conducted over periods of several months, using checklists drafted in advance by a joint working group, the results of which were subsequently validated by workshops and even by helicopter overflights. The study of traditional ecological knowledge was conducted under contract with Hydro-Québec, but according to an agreed-upon work plan and by an expert chosen jointly.

For the project under study, Nalcor proposed instead to the Innu of Ekuanitshit to fulfil its obligations for the preparation of a study according to the requirements of the Guidelines by giving them \$87,500 to conduct the study themselves within a four-month period.

The unilateral approach adopted by the proponent particularly contradicted the Canadian Environmental Assessment Agency's guidelines on Aboriginal traditional knowledge, which advocate a collaborative approach, initiated as soon as possible at the beginning of the process and making allowance for "unforeseen delays and [...] ongoing and extensive communications with communities."

The Innu of Ekuanitshit rejected the agreement offered by Nalcor because they considered the budget and the timetable unrealistic. A few weeks later, Nalcor announced that it had, in any event, already concluded that there was no evidence of their historical or contemporary use of the project territory.

The community of Pakua Shipi signed a similar agreement, which did not prevent Nalcor from also denying their use of the territory. Only 11 interviews in two weeks at Pakua Shipi forced Nalcor to admit having nonetheless identified a contemporary use of the lands and resources in the vicinity of the project.

However, at the end of the period stipulated in the agreement, this consultation of the Innu of Pakua Shipi remained incomplete: the data on the use of lands and resources had not been validated and the responses to the concerns and the proposed mitigation measures had not been presented.

C. The hearings cannot be held

It is not the Innu of Ekuanitshit who prevented the proponent from completing its Environmental Impact Statement, since the record shows that the only consultation agreement offered was not serious. When such an agreement was accepted by Pakua Shipi, it could not be completed on time or within the allotted budget.

In addition, even when the results of the research at Pakua Shipi contradicted the proponent's preconceived ideas and indicated occupation by the Innu of the territory in the vicinity of the project, Nalcor chose to submit its Supplemental Information and to declare all the issues resolved before having validated the results with the community.

Everything indicates that, following the signing of its Impacts and Benefits Agreement in February 2010 with Innu Nation and the province, the proponent was no longer interested in consulting any other Aboriginal party.

Nalcor has therefore not demonstrated through its Environmental Impact Statement "the proponent's understanding of the interests, values, concerns, contemporary and historic activities, Aboriginal traditional knowledge and important issues facing" the Innu of Ekuanitshit, nor has it indicated "how these will be considered in planning and carrying out the project." : Guidelines, section 4.8.

Without such a statement, "all the relevant information" is not available and the Environmental Impact Statement cannot be considered sufficient by the Panel "for the purpose of proceeding to public hearings": Terms of Reference, Part III, Step 6.



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**MÉMOIRE DES INNUS DE EKUANITSHIT
SOUMIS À LA COMMISSION D'EXAMEN CONJOINT LORS DES AUDIENCES
PUBLIQUES**

**Projet de centrale de production d'énergie hydroélectrique
dans la partie inférieure du fleuve Churchill
RCEE 07-05-26178**

Dionne Schulze
avocats

Avril 2011

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I. Introduction

Le présent mémoire est un complément aux soumissions déjà faites à la Commission d'examen conjoint et à l'Agence canadienne d'évaluation environnementale (ACÉE) par les Innus d'Ekuanitshit dans le présent dossier et déposées au registre.

Les positions principales adoptées jusqu'alors sont les suivantes :

- L'étude d'impact environnemental (ÉIE) ne saurait être jugée recevable tant que la consultation des Innus de Ekuanitshit exigée du promoteur par les *Lignes directrices* ne sera pas terminée¹.
- De plus, en l'absence d'une étude des effets directs et indirects sur le troupeau du lac Joseph, l'ÉIE ne respecte pas les exigences des *Lignes directrices* concernant les grands mammifères en général, le caribou en particulier, ainsi que les effets cumulatifs².
- Le Conseil des Innus de Ekuanitshit n'a ni les ressources techniques, ni les moyens financiers requis pour fournir à la Commission une étude de l'utilisation, par les Innus, des terres et ressources affectées par le projet et des effets négatifs potentiels du projet sur ces activités³.
- C'est plutôt au promoteur qu'appartient l'obligation, en vertu de la partie 4.8 des *Lignes directrices*, de montrer sa compréhension des intérêts, valeurs, préoccupations, activités contemporaines et historiques, le savoir traditionnel et les questions importantes pour les Innus de Ekuanitshit « et indiquer comment ces facteurs seront pris en compte dans la planification et l'exécution du projet »⁴.
- L'absence d'une étude des Innus de Ekuanitshit est due aux moyens inadéquats offerts par le promoteur pour la réaliser, une offre qui suivait sa déclaration que, de toute façon, il n'existait aucun indice de leur utilisation historique ou contemporaine du territoire du projet⁵.
- Dans un autre ordre d'idées, la véritable portée du projet n'est pas celle énoncée par le promoteur car dans les faits, le projet est maintenant constitué de la centrale de Muskrat

¹ RCEA 07-05-26178, document 413.

² Document 290.

³ Documents 273, 332, 542.

⁴ Documents 290, 560.

⁵ Document 517.

Falls et de la ligne de transport à l'île de Terre-Neuve, dont la centrale dépendra entièrement.

- L'évaluation en cours viole ainsi l'article 15 de la *Loi canadienne sur l'évaluation environnementale* (LCÉE) qui exige l'évaluation de toute opération constituant un projet lié à un ouvrage si l'opération est « susceptible d'être réalisée en liaison avec l'ouvrage »⁶.

II. L'intérêt des Innus de Ekuanitshit dans le projet

L'intérêt des Innus de Ekuanitshit dans ce projet n'a pas à être démontré, car dans les *Lignes directrices relatives à l'étude d'impact environnemental* qu'ils ont émises, les gouvernements fédéral et provincial ont exigé du promoteur qu'il tienne compte des intérêts, valeurs et préoccupations de la communauté, ainsi que des activités contemporaines et historiques de ses membres.

Néanmoins, il est utile de rappeler certains faits incontestables concernant l'occupation, par les Innus de Ekuanitshit, du territoire touché par le projet.

- Les recherches du promoteur sur les ressources historiques et archéologiques ont fait état d'une utilisation intense de la région par les Innus de Mingan au XIX^e siècle⁷.
- Hydro-Québec a reconnu, lors d'une autre évaluation environnementale, que le « territoire utilisé par les Innus de Ekuanitshit au XX^e siècle... en profondeur, ...rejoint le fleuve Churchill au Labrador »⁸.
- Cette utilisation au XX^e siècle est documentée dans l'autobiographie de Mathieu Mestokosho, un Innu de Ekuanitshit né vers 1885 et décédé en 1980, qui raconte comment, pendant la plus grande partie de sa vie, lui et un grand nombre d'autres membres de la communauté partaient au mois d'août vers l'intérieur des terres du Labrador pour aller jusqu'à Northwest-River et ne revenir à Mingan qu'à la fin du printemps⁹.

⁶ Documents 560, 688.

⁷ *Cultural Heritage Resources, Report 4, Historic Resources Overview Assessment 1998-2000*, Volume 1, p. 27.

⁸ Hydro-Québec, *Complexe de La Romaine; Étude d'impact sur l'environnement* (décembre 2006), vol. 6, p. 38-8.

⁹ Voir l'annexe B pour des extraits de : Serge Bouchard, *Récits de Mathieu Mestokosho, chasseur innu* (Montréal, Boréal, 2004). Publié en anglais : *Caribou Hunter: A Song of a Vanished Innu Life* (Vancouver, Greystone Books, 2006).

- En 1979, le gouvernement du Canada a accepté l'occupation et l'utilisation du territoire au Labrador, revendiquées par les Innus de Ekuanitshit, comme base aux négociations visant la conclusion d'un traité, lorsqu'il a accepté de négocier avec le Conseil des Atikamekw et des Montagnais. (En 1994, le CAM a cessé ses activités et l'Assemblée Mamu Pakatatau Mamit a repris le dossier au nom des communautés de la Basse Côte-Nord, dont Ekuanitshit.)
- Depuis 2000, le même gouvernement de Terre-Neuve-et-Labrador, qui refuse de négocier la revendication globale des « Innus du Québec » – sous prétexte qu'il faut d'abord régler la situation avec Innu Nation¹⁰ –, a déclaré que les Innus du Québec étaient ou devaient être impliqués dans ses efforts de conservation du caribou¹¹ et plus particulièrement dans son programme de rétablissement du caribou des bois¹².
- Depuis 2009, la poursuite des activités de chasse au caribou au Labrador par les Innus d'Ekuanitshit est financée par le Fonds Innu Aitun, constitué par l'*Entente sur les répercussions et avantages* (ÉRA) avec Hydro-Québec, dans le cadre du projet du complexe de la rivière Romaine¹³.

Lors de l'audience, les membres de la communauté, aînés et élus, viendront témoigner de leur occupation contemporaine et traditionnelle du territoire touché par le projet.

III. La « consultation » des Innus de Ekuanitshit exigée du promoteur

A. L'obligation légale du promoteur

C'est le promoteur qui est obligé de démontrer dans l'ÉIE qu'il a étudié les questions importantes pour les Innus de Ekuanitshit, entre autres communautés autochtones.

Un tel exercice exige, d'une part, l'étude de l'occupation contemporaine et des utilisations traditionnelles du territoire et, d'autre part, un échange entre le promoteur et les Innus permettant

¹⁰ « Ministerial Statement - Coastal link road », 29 avril 1999, www.releases.gov.nl.ca/releases/1999/wst/0429n03.htm (« Our priority has been, and will continue to be, land claims settlement with resident Aboriginal groups in the province, namely the Labrador Innu Nation and the Labrador Inuit Association »).

¹¹ « Statement issued by Ed Byrne, Minister of Natural Resources » 10 avril 2006, <http://www.releases.gov.nl.ca/releases/2006/nr/0410n02.htm>

¹² Newfoundland and Labrador Department of Environment and Conservation, *Recovery strategy for three woodland caribou herds (Rangifer tarandus caribou; boreal population) in Labrador* (2004), table 1; « Newfoundland and Labrador Government Calls on Quebec Innu to Respect Conservation Principles », 21 février 2010, <http://www.releases.gov.nl.ca/releases/2010/nr/0221n01.htm>

¹³ Annexe B au mémoire : Société Ishpitenitamun, « Gestion du Fonds Innu Aitun : ERA Ekuanitshit, Comité Innu Aitun Ekuanitshit », 8 juillet 2010.

d'établir les effets anticipés du projet. Ce processus est qualifié de « consultation » dans la partie 4.8 des *Lignes directrices*.

B. L'offre de consultation faite par le promoteur était manifestement inadéquate

Les Innus de Ekuanitshit ont refusé l'offre du promoteur de commanditer une étude au rabais, vite faite. Ils pouvaient constater son caractère inadéquat, notamment à cause de leur expérience antérieure avec un promoteur et un projet similaires : le complexe de La Romaine proposé par Hydro-Québec.

Tel qu'exposé en plus grand détails dans une autre soumission, l'ÉIE déposée par Hydro-Québec, pour le projet de La Romaine, comprenait plusieurs études sur l'occupation et l'utilisation du territoire par les Innus de Ekuanitshit. Ces études avaient été préparées par des consultants engagés par Hydro-Québec, mais dont le mandat avait l'approbation de la communauté et dont le travail bénéficiait de sa collaboration¹⁴. Par ailleurs, d'autres études avaient encore été faites par Hydro-Québec pour faire état des impacts du projet sur cette occupation du territoire par les Innus, ce qui constituait un travail distinct des études communautaires.

Pour le présent projet, le promoteur prétend qu'il aurait rempli ses obligations envers les Innus de Ekuanitshit en offrant au Conseil un montant de 87 500 \$, avec lequel la communauté devait elle-même compléter une étude dans un délai de quatre mois¹⁵.

De plus, l'étude devait traiter de tous les sujets énoncés à la partie 4.8 des *Lignes directrices*, c'est-à-dire, non seulement « les intérêts, les valeurs, les préoccupations, les activités contemporaines et historiques, le savoir traditionnel autochtone et les questions importantes » pour eux, mais aussi « indiquer comment ces facteurs seront pris en compte dans la planification et l'exécution du projet ».

Par contre, le promoteur a été contraint d'admettre en mars 2011 que Innu Nation a reçu, quant à elle, quelques 12 millions \$ de sa part pour les études du projet et de ses impacts sur Sheshatshiu et Natuashish¹⁶. Or, le financement de la consultation dans ces deux communautés remonte à

¹⁴ Document 517, « Commentaires des Innus de Ekuanitshit sur le Consultation Assessment Report déposé comme supplément d'information à la demande d'information No 151 », 25 octobre 2010.

¹⁵ Réponse à la demande d'informations n° CEC.151, Attachment 1, « Community Consultation Agreement Template », mai 2010.

¹⁶ « Court begins hearing arguments into aboriginal objection to Lower Churchill », Canadian Press, 16 mars 2011, <http://www.thestar.com/news/canada/article/954723--court-begins-hearing-arguments-into-aboriginal-objection-to-lower-churchill>

1998, avant même que le projet ne soit défini¹⁷, et les études ont continué au moins jusqu'en juillet 2010¹⁸.

Si le promoteur est libre de faire des offres différentes à différentes communautés autochtones selon son évaluation de leurs besoins, la disproportion entre les 12 millions \$ sur 12 ans accordés à Innu Nation et les 87 500 \$ sur quatre mois offerts aux Innus de Ekuanitshit est si grande qu'ils sont en droit de douter de la bonne foi du promoteur¹⁹.

C. Le rôle des Innus de Ekuanitshit

L'obligation première appartient au promoteur de préparer les études exigées par les *Lignes directrices* et, à cette fin, il doit proposer à une communauté autochtone les moyens appropriés.

Une communauté autochtone telle que Ekuanitshit n'est pas obligée de cautionner une étude d'impact inadéquate, en acceptant tout processus de consultation que le promoteur veuille bien lui proposer. C'est pourquoi les Innus n'ont pas accepté l'offre que le promoteur leur a faite.

Lorsque la Commission a décidé de procéder aux audiences malgré les manquements de l'ÉIE soulevés par plusieurs communautés autochtones, dont les Innus de Ekuanitshit, elle a présumé que les lacunes de l'ÉIE pouvaient être corrigées par les communautés elles-mêmes lors de leurs présentations²⁰.

Malheureusement, le Conseil des Innus de Ekuanitshit n'a ni les ressources techniques, ni les moyens financiers requis, pour pallier à l'absence d'étude à leur sujet faite par le promoteur. Le Chef Jean-Charles Piétacho viendra témoigner à ce sujet lors de l'audience.

Mentionnons que la dernière étude scientifique de l'occupation du territoire concerné remonte à 1983, lorsque le rapport intitulé « Occupation et utilisation du territoire par les Montagnais de Mingan » fut préparé par Robert Comtois pour le Conseil Attikamek-Montagnais²¹.

Par ailleurs, c'est le refus par le gouvernement de Terre-Neuve de négocier avec eux sur leur revendication au Labrador, qui a obligé les Innus de Ekuanitshit à concentrer leurs efforts sur le territoire revendiqué au Québec, d'où l'absence d'autres études.

¹⁷ ÉIE, §8.3.1.5

¹⁸ Supplément à la demande d'information CEC.151, pp. 3-14, 3-17, 3-32, 3-35 à 3-37.

¹⁹ Réponse à la demande d'informations n° CEC.151, p. 6.

²⁰ Nous faisons référence aux lettres de la Commission au Chef Jean-Charles Piétacho datées le 3 décembre 2010 et le 11 février 2011

²¹ Voir l'annexe A au présent mémoire.

Enfin, la description même de l'utilisation du territoire ne serait que la première partie de l'analyse prévue par les *Lignes directrices* à l'égard des Innus de Ekuanitshit, car encore faut-il savoir quels seraient les effets du projet sur eux. L'évaluation des effets positifs et négatifs du projet sur la communauté (exigée par la partie 4.5.1 des *Lignes directrices*) requiert une expertise scientifique et technique en génie civile, hydrologie ou en biologie dont ne dispose pas le personnel du Conseil des Innus de Ekuanitshit et qu'il n'a pas les moyens d'engager.

IV. La Commission n'a pas devant elle la portée réelle du projet

A. Le problème

La portée du projet telle que définie dans l'évaluation soumise à la Commission n'est pas conforme à l'article 15 de la *LCÉE*, qui exige que la portée comprenne l'entièreté du projet.

Le promoteur n'a pas inclus la ligne de transport du Labrador à l'île de Terre-Neuve dans la description du projet, qui est limitée au « Projet de centrale de production d'énergie hydroélectrique dans la partie inférieure du fleuve Churchill ». Le promoteur a soumis la description d'un « Projet de ligne de transport d'énergie entre le Labrador et l'île de Terre-Neuve » (« Labrador – Island Transmission Link ») de façon distincte le 29 janvier 2009.

Mais considéré dans son entièreté, le projet devant la Commission comprend la ligne de transport du Labrador à l'île de Terre-Neuve que le promoteur a définie comme un projet distinct. Pour les raisons qui suivent, le fractionnement d'un seul projet, entre centrales et ligne, est illégal.

B. Les exigences de la loi

Dans un jugement récent, la Cour suprême du Canada a expliqué comment il faut comprendre le schéma de détermination de la portée d'un projet en vertu de l'article 15 de la *LCÉE* :

[39] Quelle que soit la voie à suivre dans le cadre de l'évaluation, le pouvoir discrétionnaire de l'AR [autorité responsable] ou du ministre de déterminer la portée du projet et de définir l'évaluation environnementale est décrit à l'art. 15. Le paragraphe 15(1) accorde le pouvoir discrétionnaire de déterminer la portée du projet soit au ministre, dans le cas où le projet est renvoyé à la médiation ou à l'examen par une commission, soit à l'AR. Toutefois, l'exercice de ce pouvoir est limité par le par. 15(3). Ce paragraphe prévoit l'évaluation environnementale obligatoire « de toute opération — construction, exploitation, modification, désaffectation, fermeture ou autre — constituant un projet lié à un ouvrage ». Selon l'opinion que le « projet tel

qu'il est proposé par le promoteur » s'applique en l'absence de texte ou contexte à l'effet contraire, la détermination de la portée du projet par l'AR ou le ministre en vertu du par. 15(1) est assujettie au par. 15(3). En d'autres termes, la portée minimale du projet est celle du projet tel qu'il est proposé par le promoteur, et l'AR ou le ministre a le pouvoir de l'élargir lorsque les faits et circonstances du projet le justifient. Ils ont aussi le pouvoir discrétionnaire, en vertu du par. 15(2), de combiner des projets connexes en un seul projet pour l'évaluation. En somme, bien que la portée présumée du projet à évaluer soit la portée du projet tel qu'il est proposé par le promoteur, l'AR ou le ministre peut, en vertu des par. 15(2) et (3), l'élargir si les circonstances le justifient.

[40] Ainsi, le pouvoir discrétionnaire de déterminer la portée du projet en vertu des par. 15(2) et (3) constitue une exception à la thèse générale que le niveau d'évaluation est déterminé uniquement en fonction du projet tel qu'il est proposé par le promoteur. La Loi présume que le promoteur représentera la totalité du projet proposé lié à un ouvrage. Or, comme l'a souligné le gouvernement, un promoteur pourrait vouloir « fractionner le projet » en en présentant une partie au lieu de la totalité, ou en présentant plusieurs parties d'un projet à titre de projets indépendants de façon à contourner des obligations additionnelles en matière d'évaluation (voir le mémoire du gouvernement, par. 73). [...] ²²

C. Le fractionnement du projet par le promoteur

1. L'histoire du projet démontre la connexité entre la ligne et les centrales

Dans l'ÉIE, le promoteur mentionne que le projet « Bas-Churchill » a déjà subi une évaluation environnementale complète dans les années 1979-80²³. Ce qu'il omet de mentionner est que dans l'examen mené par la Commission d'évaluation environnementale de l'époque, la ligne de transport de Labrador à Terre-Neuve et les centrales à Gull Island et Muskrat Falls ont été étudiées ensemble comme un seul projet.

Selon le rapport de la Commission, déposé en décembre 1980, le projet consistait en ce qui suit :

²² *Mines Alerte Canada c. Canada (Pêches et Océans)*, [2010] 1 R.C.S. 6.

²³ ÉIE, p. 1-17.

1.1 Introduction

Le projet hydro-électrique du bas Churchill consiste à construire des centrales sur le cours inférieur du fleuve Churchill et des lignes à haute tension, reliant Churchill Falls à Saint-Jean (Terre-Neuve), via le détroit de Belle Isle²⁴.

De plus, le projet avait d'abord été divisé en deux parties aux fins de l'évaluation : un projet de centrale à Gull Island et un projet de lignes de transport du Labrador à l'île de Terre-Neuve.

Cependant, lorsque la Lower Churchill Development Corporation a décidé de construire aussi une centrale à Muskrat Falls, le gouvernement de l'époque a décidé de fusionner les deux processus :

Lors de la création de la LCDC, le projet a été modifié de façon à inclure une centrale à Muskrat Falls. Lorsqu'un examen à cet égard en vertu du PEEE [Processus fédéral d'évaluation et d'examen en matière d'environnement] a été demandé, les commissions établies précédemment ont été fondues en une seule commission chargée de l'examen de l'ensemble du projet d'aménagement du cours inférieur du Churchill²⁵.

Si en vertu du *Décret sur les lignes directrices visant le processus d'évaluation et d'examen en matière d'environnement*, DORS/84-467, les deux centrales et la ligne de transport ne formaient qu'un projet, il n'existe pas de raison pour laquelle le même projet devrait pouvoir être fractionné lors d'une évaluation en vertu de la *LCÉE*.

De plus, la décision de 1980 de fusionner les deux processus, même quelques années après leurs débuts, devrait servir de précédent pour la présente évaluation et permettre à la Commission d'évaluer les deux composantes de ce qui est un seul projet.

2. Les objectifs du gouvernement provincial démontrent la connexité entre la ligne et les centrales

Le *Plan énergétique* (« *Energy Plan* ») de Terre-Neuve-et-Labrador, émis en 2007, décrit le projet du « Bas-Churchill » dans les termes suivants :

²⁴ Annexe F au présent mémoire : Projet hydro-électrique cours inférieur du fleuve Churchill, Rapport de la Commission d'évaluation environnementale (Ottawa, Ministre des Approvisionnements et Services Canada, 1980), p. 7.

²⁵ *Id.*, p. 9.

[...] Currently, about 85 per cent of our electricity capacity comes from clean, stable and competitively priced hydro power. On the Island, however, approximately 65 per cent of electricity capacity comes from hydro power, while 35 per cent comes from thermal-fired generation that is subject to price volatility and emits GHGs and other pollutants. In Labrador, most electricity is hydroelectric, with the exception of a small amount of isolated diesel and gas turbine generating capacity.

Both electrical systems in the province have adequate generation to meet the demand of existing customers. This demand is forecast to grow at a fairly steady, moderate pace over the next several years. This would result in a need for new sources of supply on the Island prior to 2015, and later in Labrador. As a result, we plan to develop the Lower Churchill project, which will include a transmission link between Labrador and the Island. This major initiative is discussed in detail in the following section²⁶.

Le but premier du projet, selon le gouvernement de Terre-Neuve-et-Labrador qui est le propriétaire du promoteur, est de transporter l'hydro-électricité générée au Labrador jusqu'à l'île de Terre-Neuve. Depuis le début de cette évaluation environnementale, le gouvernement définit donc le projet comme deux centrales et une ligne de transport du Labrador à l'île de Terre-Neuve.

3. Les récents changements démontrent la connexité entre la ligne et les centrale

a) La décision du gouvernement provincial en octobre 2010

La description du rôle du projet « Bas-Churchill », dans le plan énergétique du gouvernement de la province, devrait suffire, en elle-même, à démontrer qu'il n'existe pas deux projets distincts, tel que soumis par le promoteur pour évaluation, mais bien un seul.

Mais de plus, les changements au projet annoncés par le gouvernement de Terre-Neuve-et-Labrador à l'automne 2010 ont éliminé tout doute à ce sujet.

Le 18 octobre 2010, le gouvernement de Terre-Neuve-et-Labrador a fait la déclaration suivante :

²⁶ Gouvernement de Terre-Neuve et Labrador, *Energy Plan : Focusing our energy* (2007), pp. 31, 32 <http://www.nr.gov.nl.ca/energyplan/energyreport.pdf>

Signalling the commencement of the long-awaited Lower Churchill River hydroelectric development, the Government of Newfoundland and Labrador today announced a partnership between Nalcor Energy and Emera Inc. This arrangement complements the partnership already in place between Nalcor and the Innu Nation. The Nalcor/Emera deal will result in the development of Muskrat Falls, with power being transmitted from Labrador across the Strait of Belle Isle for use on the Island of Newfoundland. Power will be available for recall use for industrial development in Labrador. Nalcor will then transmit surplus power from the Island to Nova Scotia Power, a subsidiary of Emera, across the Cabot Strait into Lingan, Nova Scotia.

[...]

Newfoundland and Labrador Hydro, a subsidiary of Nalcor Energy, is mandated to forecast electricity requirements in the province and bring forward the least cost, long-term option for meeting these requirements. As a result of growing provincial demand for electricity, Hydro evaluated alternatives to develop new generation sources. Hydro assessed alternatives and found the Muskrat Falls project with a transmission link to the Island to be the least cost alternative. The Muskrat Falls option is also more environmentally acceptable than maintaining an "isolated" island power system, which would retain Holyrood in operation as a major source of greenhouse gas emissions. Once the Muskrat Falls development is operational, the energy price structure in the province will be stable and lower cost for consumers over the long term and the province will avoid the volatility associated with the price of oil²⁷.

Notons en premier lieu que le gouvernement a tenu à annoncer « le commencement » du projet, et ce, même si le promoteur a déposé la description du projet auprès des autorités il y a presque quatre ans.

Deuxièmement, le gouvernement a souligné que ce projet aura pour effet de réunir le Labrador avec l'île de Terre-Neuve et de fournir l'île de Terre-Neuve en énergie renouvelable.

Troisièmement, le gouvernement a ajouté un nouvel élément à la description du projet : une ligne de transport maritime de l'île de Terre-Neuve à la province de la Nouvelle-Écosse.

²⁷ Gouvernement de Terre-Neuve et Labrador, « News Release : Lower Churchill Project to Become a Reality; Province Signs Partnership with Emera Inc. for Development of Muskrat Falls » (18 novembre 2010), disponible en ligne : <http://www.gov.nl.ca/lowerchurchillproject/release.htm>

L'accord entre le gouvernement de Terre-Neuve-et-Labrador et le gouvernement de la Nouvelle-Écosse signale un changement d'approche du projet. Depuis la signature de cette entente, à tout le moins, la ligne de transport est une « construction liée » aux centrales au sens du paragraphe 15(3) de la *LCÉE*.

b) Toute l'électricité produite par Muskrat Falls passera par la ligne du Labrador à l'île de Terre-Neuve

Le promoteur a récemment admis que toute l'électricité produite par Muskrat Falls passera par la ligne du Labrador à l'île de Terre-Neuve, soit, après avoir changé son approche à la mise en œuvre du projet.

Dans son ÉIE, le promoteur avait énoncé trois options pour que l'électricité générée par son projet puisse être exportée :

The proponent has three approaches to access export electricity markets:

- transmission services offered by transmission providers via the interconnection with Churchill Falls, in accordance with open access transmission tariffs (OATTs), including the services of Hydro-Québec TransÉnergie, as well as the development of upgraded interconnection capacity into the Québec system.
- development of a HVdc transmission link from Labrador to the Island of Newfoundland (the Labrador – Island Transmission Link)
- an extension of the Labrador – Island Transmission Link to the Maritime Provinces²⁸

Or, le 11 mai 2010, la Régie de l'énergie du Québec²⁹ avait rejeté certaines plaintes déposées par le promoteur contre Hydro-Québec TransÉnergie³⁰ (HQT). Le promoteur alléguait que HQT avait sous-évalué de 450 MW la capacité de transport disponible sur les lignes de Churchill Falls³¹ et qu'elle convoitait pour exporter l'électricité à être produite par une éventuelle centrale dans la partie inférieure du fleuve Churchill. La capacité serait de 1 120 MW en hiver et de 1 339 MW en été³².

²⁸ Demande d'informations n° CEC.5 (3 juillet 2009), p. 8.

²⁹ *Newfoundland and Labrador Hydro v. Hydro-Québec*, Régie de l'énergie, décision no. D-2010-053 (11 mai 2010)

³⁰ Hydro-Québec TransÉnergie est la division de Hydro-Québec responsable du transport de l'électricité au Québec.

³¹ Décision de la Régie, *supra* note 16 au par. 33.

³² *Id.* au par. 109.

La Régie de l'énergie a néanmoins donné raison à HQT sur son calcul de la capacité des lignes de Churchill Falls. Puisque la centrale de Muskrat Falls aura une capacité, selon le promoteur, de 824 MW³³, si HQT a correctement déterminé que la capacité des lignes de Churchill Falls est de 670 MW en été et de 889 MW en hiver, le promoteur aura besoin d'un autre chemin pour exporter l'électricité.

Voilà pourquoi, quelques mois après la décision de la Régie de l'énergie, le gouvernement de Terre-Neuve-et-Labrador a annoncé sa nouvelle approche au transport de l'énergie produite par les centrales : par le biais de la ligne du Labrador à Terre-Neuve et d'une ligne maritime de Terre-Neuve à la Nouvelle-Écosse.

Avec le changement d'approche au projet, le promoteur ne s'attend plus à utiliser les lignes de Churchill Falls pour exporter l'électricité de Muskrat Falls. Dans une lettre qu'il a récemment envoyée à la Commission, le promoteur a précisé que seule la centrale de Gull Island utilisera les lignes de transport de HQT.

Quant à la seule centrale que le promoteur entend construire dans un proche avenir, l'accès aux marchés pour l'énergie à être produite à Muskrat Falls dépendra des lignes de transport à l'île de Terre-Neuve et d'un éventuel câble sous-marin à la Nouvelle-Écosse.

Muskrat Falls

Capital Cost:	As per latest available cost estimate (\$2.5 billion 2010\$)
Schedule:	In service in 2017 (construction start late 2011)
Debt/Equity:	59/41
Interest Rate:	7.3%
Revenue:	Newfoundland and Labrador domestic market, Nova Scotia, New Brunswick and New England markets Weighted average market price shown in Figure 2
Market Access:	<u>via Labrador – Island Transmission Link, Maritime Transmission Link, NSPI/Emera transmission system and rights</u>
Energy Sold:	Average production from Muskrat Falls accounted for (4.9 TWh/yr) ³⁴ .

La ligne de transport du Labrador à l'île de Terre-Neuve est dorénavant la condition essentielle

³³ ÉIE, p. 1-8.

³⁴ Document 1148, Nalcor, lettre à la Commission d'examen conjoint datée du 1 avril 2011, pp. 4 à 5, disponible en ligne : <http://www.ceaa-acee.gc.ca/050/documents/49310/49310F.pdf>

pour la réalisation des objectifs principaux du projet de centrale : la fourniture de l'électricité à la province et l'exportation de l'électricité aux tiers. La ligne de transport est donc une « construction liée » qui doit faire partie de tout examen du projet en vertu du paragraphe 15(3) de la *LCÉE*.

Pour exprimer l'argument autrement, si pour une raison quelconque la ligne de transport du Labrador à l'île de Terre-Neuve n'était pas approuvée, l'électricité produite par Muskrat Falls ne serait d'aucune utilité.

c) Les changements à la description du projet de la ligne de transport depuis la décision du gouvernement provincial

Le 29 novembre 2010, le ministère de l'Environnement et de la Conservation de Terre-Neuve-et-Labrador a annoncé que le promoteur avait révisé la description du projet de ligne de transport :

Nalcor Energy has identified refinements to their project development concept and additional design options. Those changes include the use of “shore electrodes” at locations along the Labrador shore of the Strait of Belle Isle area and Conception Bay South. The option of placing sea electrodes in Lake Melville or Holyrood Bay is no longer proposed. In addition, as a result of recent decisions and announcements regarding the sequencing of the various components of the Lower Churchill Hydroelectric Generation Project (i.e. developing Muskrat Falls first), Nalcor Energy is exploring the option of locating the Labrador converter station at or near the Muskrat Falls site³⁵.

Or, la première version de la description du projet prévoyait que la ligne de transport commence à la centrale de Gull Island³⁶.

Ce changement effectué au projet de la ligne témoigne, encore une fois, du fait que le projet de la ligne de transport et celui de la centrale à Muskrat Falls n'existent pas l'un sans l'autre.

³⁵ Newfoundland and Labrador Environment and Conservation, *Environmental Assessment Bulletin* (November 29, 2010)

³⁶ Nalcor, *Labrador-Island Transmission Link : Environmental Assessment Registration and Project Description* (January 2009, revised September 2009), p. 16.

d) Les centrales n'ont aucune raison d'être sans la ligne à Terre-Neuve

Dans la première version de son étude d'impact, déposée en février 2009, le promoteur avait décrit la nécessité du projet comme suit :

2.2 Need for the Project

The Project is needed to:

- 1) address the future demand for hydroelectric generation in the Province;
- 2) provide an electric energy supply for sale to third parties; and
- 3) develop the Province's natural resource assets for the benefit of the Province and its people³⁷.

Quant aux raisons d'être du projet, le promoteur avait précisé que la satisfaction des besoins présents et futurs de la province était la priorité principale du projet :

2.4.2.1 Provincial Needs

Meeting the current and future energy needs of the Province is the first priority for the power from the lower Churchill River. The Proponent will meet these needs with renewable hydroelectric power from the lower Churchill River³⁸.

Le promoteur admet toutefois que la plus grande partie de la demande en électricité (73 %) dans la province provient de l'île de Terre-Neuve³⁹. De plus, presque toute la demande au Labrador est déjà remplie par Churchill Falls⁴⁰ : la centrale existante pourra rencontrer la demande au moins jusqu'en 2025⁴¹.

Les besoins de la province auxquels le projet répondra seront donc ceux de l'île de Terre-Neuve, alors que la portée du projet dont la Commission est saisie ne comprend aucun moyen d'y transporter l'énergie.

³⁷ ÉIE, volume I, partie A (février 2009), p. 2-1.

³⁸ *Id.*, à p. 2-3.

³⁹ *Id.*, à p. 2-11.

⁴⁰ *Id.*

⁴¹ *Id.*, à p. 2-12.

Le promoteur a aussi affirmé à plusieurs reprises que le remplacement de la centrale thermique de Holyrood fait également partie de la raison d'être du projet⁴². Lorsque la Commission a demandé au promoteur de justifier ses prétentions quant à la réduction des gaz à effet de serre (GES) que le projet entraînerait, il a expliqué:

Since the Government of Newfoundland and Labrador has committed in the *Energy Plan* to retire Holyrood in the event that the Project is sanctioned, the displacement of these GHGs is very likely⁴³.

Le lien entre le projet et la ligne de transport est évident car la centrale Holyrood se trouve sur l'île de Terre-Neuve.

En résumé, si le promoteur justifie les centrales de Muskrat Falls et Gull Island par la demande future de la province qui est leur raison d'être, il est évident que les centrales ne pourront rencontrer cette demande sans la ligne de transport qui fera partie intégrante du véritable projet.

4. Application des faits du projet aux critères établis par l'ACÉE

En vertu de l'article 16 de la *LCÉE*, une évaluation environnementale qui fait l'objet d'un examen par une commission doit se pencher sur la nécessité et sur les raisons d'être du projet.

L'Agence canadienne d'évaluation environnementale (ACÉE) définit ces termes comme suit :

La « nécessité » du projet se définit comme étant le problème ou l'opportunité que le projet a pour objectif de résoudre ou de satisfaire. Ainsi, la « nécessité » établit la justification nécessaire au projet.

Les « raisons d'être » du projet se définissent comme étant ce qu'on désire réaliser en mettant en œuvre le projet⁴⁴.

Rappelons les critères, établis par l'ACÉE, pour la détermination de la portée d'un projet dans son *Énoncé de politique opérationnelle* :

En déterminant si la portée du projet devrait être étendue au-delà du projet tel que proposé par le promoteur, l'autorité responsable devrait tenir compte de la

⁴² ÉIE, volume I, partie A, p. 2-12; Réponse à la demande d'informations n° CEC.7S/85S.

⁴³ Réponse à la demande d'informations n° CEC.146, p. 22.

⁴⁴ Agence canadienne d'évaluation environnementale, *Énoncé de politique opérationnelle : Questions liées à la « nécessité du projet », aux « raisons d'être », aux « solutions de rechange » et aux « autres moyens » de réaliser un projet en vertu de la Loi canadienne sur l'évaluation environnementale* (novembre 2007), à p. 2.

façon dont les composantes supplémentaires sont liées au projet tel que proposé par le promoteur. Dans les cas où il s'agit de composantes reliées entre elles, par exemple

- dans les cas où une composante est automatiquement déclenchée par une autre;
- dans les cas où une composante ne peut aller de l'avant sans l'autre;
- dans les cas où les deux font partie d'un plus grand ensemble et n'ont, si on en tient compte séparément, aucune utilité indépendante

la portée du projet devrait généralement être étendue afin d'inclure toutes ces composantes supplémentaires⁴⁵.

Les centrales proposées par le promoteur dans le cadre de la présente évaluation, ainsi que le projet de la ligne qu'il a proposé pour une évaluation distincte « font partie d'un plus grand ensemble », et les centrales « n'ont, si on en tient compte séparément, aucune utilité indépendante ».

Premièrement :

- selon le promoteur, l'utilité principale des centrales est de combler les besoins présents et futurs de la Province;
- toutefois, la grande majorité de ces besoins se trouvent sur l'île de Terre-Neuve;
- et de plus, les besoins de Labrador seront comblés par la centrale Churchill Falls au moins jusqu'en 2025;

Dès lors, le projet ne peut servir à combler les besoins de la Province; il n'a donc aucune utilité indépendante de la ligne de transport.

Deuxièmement :

⁴⁵ Agence canadienne d'évaluation environnementale, *Énoncé de politique opérationnelle : Établissement de la portée du projet et du type d'évaluation en vertu de la Loi canadienne sur l'évaluation environnementale* (2010), p. 3.

- le promoteur et son propriétaire réclament le déplacement de la centrale thermique Holyrood, le déclarant une des principales « raisons d'être » du projet;
- toutefois, la centrale Holyrood est, elle aussi, située sur l'île de Terre-Neuve;

Les centrales n'auront donc aucune utilité indépendante pour réduire les émissions de Holyrood sans la ligne de transport.

Troisièmement :

- selon le promoteur, l'utilité secondaire des centrales est de vendre l'électricité aux tiers;
- toutefois, la seule voie disponible au promoteur pour vendre l'électricité de la centrale Muskrat Falls est la ligne de Labrador à Terre-Neuve.

Ainsi, la centrale de Muskrat Falls n'aura aucune utilité indépendante comme source de revenu pour le promoteur et son propriétaire, le gouvernement provincial, sans la ligne de transport du Labrador à l'île de Terre-Neuve.

L'article 15 de la *LCÉE* exige que la portée du projet comprenne tant les centrales que la ligne de transport car il s'agit de composantes reliées entre elles.

D. Procédure suggérée à la Commission

1. La demande d'une modification de son mandat

Les Innus de Ekuanitshit estiment que puisque la Commission n'est pas saisie de la véritable portée du projet, elle doit exercer le pouvoir qu'elle possède en vertu de l'article 4.4.8 de la directive *Procédures d'examen par une commission* de demander une modification de son mandat :

4.4.8 Une commission peut demander que son mandat soit modifié. Dans le cas de modifications secondaires, le président de l'Agence, en consultation avec l'autorité responsable, a le pouvoir de modifier un mandat. Pour demander une modification secondaire du mandat, le président de la commission écrit au président de l'Agence à ce sujet. Si des modifications secondaires sont demandées, le président de l'Agence veillera à répondre à la commission dans les 14 jours suivant la réception de la lettre. Afin de respecter les délais qui sont fixés dans le mandat initial, la commission continuera d'exercer ses activités dans la mesure du possible en attendant la

réponse. La commission avisera les participants de tout changement apporté au mandat. Pour demander une modification de fond du mandat, la commission doit s'adresser au ministre qui, en retour, fera tous les efforts pour répondre à la demande dans les 14 jours suivant la réception de la lettre.

La Commission doit demander, sans délai, au ministre d'Environnement Canada une modification de son mandat pour inclure la ligne du Labrador à l'île de Terre-Neuve dans la portée du projet à être évalué.

2. Les conséquences d'une mauvaise définition de la portée du projet sur un éventuel rapport

Si le Ministre refusait d'élargir la portée de son mandat, la Commission serait dans l'impossibilité d'évaluer les effets environnementaux du projet et la signification de ces effets.

Dans son évaluation du projet, la Commission est obligée de tenir compte des éléments énumérés à l'article 16 de la *LCÉE*, dont notamment :

- a) les effets environnementaux du projet, y compris ceux causés par les accidents ou défaillances pouvant en résulter, et les effets cumulatifs que sa réalisation, combinée à l'existence d'autres ouvrages ou à la réalisation d'autres projets ou activités, est susceptible de causer à l'environnement;
- b) l'importance des effets visés à l'alinéa a);

En vertu de la partie II de son mandat, la Commission doit également tenir compte des éléments suivants, entre autres :

- 9. les effets environnementaux du Projet, y compris les effets environnementaux découlant de défaillances, d'accidents ou d'événements fortuits qui pourraient se produire en rapport avec le Projet;
- 10. les effets cumulatifs que sa réalisation, combinée à l'existence d'autres ouvrages ou à la réalisation d'autres projets ou activités, est susceptible de causer à l'environnement;
- 11. la signification des effets environnementaux, tels que décrits aux points 9 et 10;

L'évaluation exacte des effets environnementaux d'un projet exige que sa portée soit définie de façon correcte. Si la portée du projet omet des composantes importantes et essentielles, comme c'est le cas pour la présente évaluation, il sera impossible pour la Commission de rencontrer les exigences de l'article 16, *LCÉE*, et de son mandat.

Cette interprétation de l'article 16 et du mandat est, par ailleurs, la seule qui permettra à la Commission de rencontrer l'objectif véritable de la *LCÉE* que l'alinéa 4(1)a) définit comme étant « de veiller à ce que les projets soient étudiés avec soin et prudence avant que les autorités fédérales prennent des mesures à leur égard, afin qu'ils n'entraînent pas d'effets environnementaux négatifs importants ».

Selon la Cour fédérale, « l'omission de la commission conjointe de satisfaire à une exigence de l'article 16 de la *LCEE* peut constituer une erreur de droit⁴⁶ ».

De plus, lorsque la Cour suprême du Canada a décidé dans l'affaire *Mines Alerte*, que le but recherché par les paragraphes 15(2) et 15(3) est de prévenir le fractionnement des projets par les promoteurs, sa décision liait autant la Commission que le ministre de l'Environnement ou la ACÉE.

Comme l'a expliqué la plus haute Cour dans un autre jugement récent :

[33] Toutefois, dans le cadre d'un État fondé sur la primauté du droit et d'une société régie par des principes de légalité, pouvoir discrétionnaire ne saurait être assimilé à arbitraire. Certes, ce pouvoir discrétionnaire existe, mais il s'exerce à l'intérieur d'un cadre juridique déterminé. L'acte discrétionnaire se situe dans une hiérarchie normative. Dans les présents dossiers, l'autorité administrative applique un règlement lui-même pris en vertu d'une loi habilitante. La loi et les règlements délimitent l'étendue du pouvoir discrétionnaire ainsi que les principes qui gouverneront son exercice et permettront d'apprécier le caractère raisonnable de celui-ci⁴⁷.

Il n'est pas loisible à la Commission de sanctionner une violation de la *LCÉE* en déposant, néanmoins, un rapport complet, si le ministre d'Environnement Canada refuse de modifier son mandat.

La Commission ne pourra soumettre au ministre un rapport tenant compte de « la nature et l'importance des effets environnementaux que pourrait avoir le Projet », sans que la portée du projet ne soit modifiée pour inclure la ligne de transport. La Commission devra donc refuser de

⁴⁶ *Alberta Wilderness Assn. c. Cardinal River Coals Ltd.*, [1999] 3 C.F. 425, citant le jugement dans *Alberta Wilderness Assn. c. Express Pipelines Ltd.*, (1996), 137 D.L.R. (4th) 177 (C.A.F.) au soutien de ce principe.

⁴⁷ *Montréal (Ville) c. Administration portuaire de Montréal*, [2010] 1 R.C.S. 427, par. 33.

faire rapport sur les effets environnementaux, avant qu'elle n'ait la possibilité d'évaluer le projet selon sa portée réelle.

E - 2

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COURTESY TRANSLATION

June 23, 2011

BY FAX TO 902-550 AND BY EMAIL
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BY FAX TO 709-518 AND BY EMAIL TO
<pmarrie@>

Monsieur Bill Coulter, P. Eng.
Project Manager

Pat Marrie
Environmental Assessment Chair

Re: Labrador Island Transmission Link Project
CEAR no. 10-03-51746; our file #7550/005

Dear Mr. Coulter and Mr. Marrie,

The present letter is in response to your letter received June 3, 2011, in which you notified us that the first series of component studies produced by Nalcor as part of the environmental assessment of the above-mentioned project were available for study and comment.

I. Introduction

The following comments are made on behalf of the Conseil des Innus de Ekuanitshit (the Council). They address only the Historic and Heritage Resources Component Study. As explained in our letter of December 16, 2010, the 35-day comment period for component studies established by Newfoundland and Labrador's *Environmental Assessment Regulations*, 2003, NLR 54/03, does not allow enough time for the Council to retain, instruct, and receive a response from the experts whose input would be required to adequately assess the quality and completeness of the studies prepared by Nalcor. For further details on this issue, please refer to our letter of December 16, 2010.

While expert advice would also be necessary to make a complete analysis of the Historic and Heritage Resources Component Study, the Council offers herein a limited response to this study, based on a first reading by individuals familiar with some of the historic literature but not experts in the field of archaeology or history.

II. Nalcor's Historic and Heritage Resources Component Study does not fulfill the requirements of the *Environmental Impact Statement Guidelines*

a. The requirements of the *Guidelines*

Section 4.8 of the *Environmental Impact Statement Guidelines* requires that the Environmental Impact Statement demonstrate "the Proponent's understanding of the interests, values, concerns, contemporary and historic activities, Aboriginal traditional knowledge and important issues facing Aboriginal groups, and indicate how these will be considered in planning and carrying out the Project" with respect to several Aboriginal groups, including Ekuanitshit.

According to the Preface to the *Guidelines*, component studies "shall address baseline data requirements to support the evaluation of environmental effects and/or the development of mitigation measures as well as monitoring and follow up programs."

Based on the foregoing, it is our understanding that the component studies establish the basic conditions from which the potential environment effects of the project will be evaluated. A flawed or incomplete component study would therefore prevent the potential environmental effects of the project from being appropriately assessed. A flawed component study would also hinder the development of appropriate mitigation and follow up programs.

b. The lack of data underpinning the Historic and Heritage Resources Component Study

The Historic and Heritage Resources Component Study does not adequately address the historic use of the project area by members of Ekuanitshit and other lower north shore Innu communities.

Nalcor has not conducted any direct research into the historic use of the project area by the Innu of Ekuanitshit. Nor has Nalcor reviewed any secondary material that describes the historic use of the territory by this community.

There is at least one study that describes this use: Robert Comtois, *Occupation et Utilisation du Territoire par les Montagnais de Mingan*, Conseil Attikamek-Montagnais, 1983. Nalcor has access to this study, yet has chosen not to review it when preparing its component study. For this reason alone, the component study is inadequate as the basis for the environmental impact statement.

The Council has provided a great deal of information to Nalcor regarding the historic use of the project area by its members.¹ In fact, at the hearings of the Joint Review Panel for the hydroelectric dams, several elders from the community testified regarding their historic use of the project area.² This information is clearly available, should Nalcor wish to take the time to engage with the community.

Please note that all of the historical information provided as part of the environmental assessment of the dams was provided under reserve of the need for Nalcor to conduct a study of the community's historic and contemporary land use to fulfill its obligations under the *Guidelines*.

Finally, we note that neither of the documents cited by Nalcor in its component study as a source of information regarding the Quebec Innu provides any information on historic use by the Innu of Ekuanitshit. Nalcor often makes reference to a study authored by J.G. Deschênes. Mr. Deschênes' study, however, refers only to the community of Pakua Shipi (Saint Augustine) and not to Quebec Innu generally. The other document which Nalcor draws upon in this regard, that of Paul F. Wilkinson & Associates Inc., is merely a review of the pre-existing literature and is not a study of the historic use of the project area by the Innu of Ekuanitshit.

c. Nalcor's failure to engage and consult the Innu of Ekuanitshit

Nalcor's failure to conduct a single study of the Innu of Ekuanitshit stands in sharp contrast to its interactions with Innu Nation. Nalcor and its predecessors have been working with Innu Nation regarding this project since at least 1998. This engagement has involved providing Innu Nation with approximately \$12 million³ to fund studies of the community and facilitate the consultation process regarding the project.

While the Council does not necessarily expect treatment identical to that received by Innu Nation, the Council does believe that, as the project is clearly situated in its traditional territory as well, Nalcor is obliged to study and consult the community. This obligation is affirmed by s. 4.8 of the *Guidelines*, which, notably, does not provide any basis for preferencing one Aboriginal group over another.

¹ *Submission from the Innu of Ekuanitshit to the Joint Review Panel Public Hearings*, April 2011, available on the CEAA registry as document #1225 at: <http://www.ceaa.gc.ca/050/05/documents-eng.cfm?evaluation=26178>

² A transcript of this testimony is available on the CEAA registry as document #1220

³ "Court begins hearing arguments into aboriginal objection to Lower Churchill", Canadian Press, March 16, 2011, available online at: <http://www.thestar.com/news/canada/article/954723--court-begins-hearing-arguments-into-aboriginal-objection-to-lower-churchill>

III. Conclusion

The Conseil des Innus de Ekuanitshit submits that Nalcor's Historic and Heritage Resources Component Study is incomplete as it does not contain adequate information regarding the historic use of the project area by the Innu of Ekuanitshit. As component studies form the baseline from which the potential environmental effects of the project are assessed, this gap in the component study will prevent an adequate environmental impact statement from being produced.

The Conseil des Innus de Ekuanitshit asks the governments to find that the component study is incomplete and direct Nalcor to engage with the community regarding a study of its historic and contemporary use of the project area.

Regards,

DIONNE SCHULZE



Nicholas Dodd

cc : Chef Jean-Charles Piétacho
Conseil des Innus de Ekuanitshit
PAR TÉLÉCOPIEUR AU 418-██████085

Monsieur Yves Bernier
Corporation Nishipiminan
PAR TÉLÉCOPIEUR AU 418-██████177

Simon Laverdière
Agence canadienne d'évaluation environnementale
PAR TÉLÉCOPIEUR AU 418-██████443

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September 13, 2011

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Project Manager

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AND BY EMAIL TO <pmarrie@[REDACTED]>

Pat Marrie
Environmental Assessment Chair

Re: Labrador Island Transmission Link Project
CEAR no. 10-03-51746; our file #7550/005

Dear Sirs,

The present letter is in response to the notice received August 19, 2011 regarding the latest component study produced by Nalcor entitled "Socioeconomic Environment: Aboriginal Communities and Land Use Component Study" ("Aboriginal CS") produced as part of the environmental assessment of the above-mentioned project.

I. Introduction

The following comments are made on behalf of the Conseil des Innus de Ekuanitshit (the Council). While additional time and funding for expert advice would be necessary to make a complete analysis of the impact the proposed transmission link could have on the Innu of Ekuanitshit, the Council offers herein a limited response to this study. The following demonstrates a need for additional research and meaningful consultation to assist in establishing a more complete baseline study.

II. Nalcor's Aboriginal Component Study is Incomplete

It is our understanding that the component studies establish the basic conditions from which the potential environmental and socioeconomic effects of the project will be evaluated. In reviewing the Aboriginal CS, we deem it to be wholly inadequate as well as dismissive of the impact the project threatens to have on the ancestral and contemporary uses of resources by the Innu of Ekuanitshit. Despite Nalcor's insistence of its willingness to "consult" with the Council, albeit in a limited manner, in truth Nalcor has unjustly deemed Ekuanitshit irrelevant to the EA. This sentiment is found time and again in its correspondence with the Council and now in its Aboriginal CS.

The Aboriginal CS makes mention of the Council's invitation "to inform the community about the Labrador-Island Transmission Link and to hear and record any associated questions and concerns"; that the proponent saw fit to release its Aboriginal baseline study before the meeting with Ekuanitshit alone reveals its failure to engage meaningfully with the community and the incompleteness of the Aboriginal CS.

In the most recent correspondence with the Council, dated July 20, 2011, Nalcor suggests that if "Ekuanitshit possède des éléments de preuve permettant de démontrer un plus haut niveau d'utilisation du territoire et des ressources dans cette zone que ce que la documentation disponible démontre, Nalcor encourage Ekuanitshit à la présenter afin que celle-ci soit sérieusement considérée" (emphasis added) [translation: *if "Ekuanitshit is in possession of proof demonstrating a higher level of use of the territory and resources in this zone than what is demonstrated in the available documentation, Nalcor encourages Ekuanitshit to present it in order that it be considered seriously"*]. Being listed as a community with whom Nalcor must consult under s.4.8 of the *Environmental Impact Statement Guidelines* is apparently insufficient; Ekuanitshit is now being required to prove it has a right to be consulted.

The Aboriginal CS provides only a cursory overview of Ekuanitshit and its Innu residents. The superficial review of Ekuanitshit in the study is justified on the basis that "[a]vailable data does [sic] not indicate contemporary land use by the Innu of Ekuanitshit in or near the proposed transmission corridors". If such a determination is to be made by relying on secondary sources of information, the collection of these sources should be as complete as possible. Notably absent from the proponent's review of Ekuanitshit is the extensive report conducted in collaboration with the community by Hydro-Québec for the La Romaine hydroelectric project.¹

Nalcor further bolsters its rationale for excluding Ekuanitshit, amongst other Québec Innu communities, by stating at s.1.2 of the CS that the "asserted claims have not been accepted for negotiation by the Government of Newfoundland and Labrador". Failure to mention the federal government's acceptance for negotiation cannot be considered an innocent omission.

¹ Hydro-Québec, *Complexe de la Romaine: Étude d'impact sur l'environnement*, Volume 6: Milieu humain, Décembre 2007, part 39.1.4 <http://www.acee-ceaa.gc.ca/050/documents_staticpost/cearref_2613/ei_volume06.pdf>

The scope of the Aboriginal CS is described as a review of “contemporary land use activities in Central and Southeastern Labrador as socioeconomic baseline info for use in the Project’s EA”. This geographic delineation does not respect the realities of the natural environment or the ecosystem approach. It has the potential, moreover, to undermine Ekuanitshit’s Aboriginal fishing rights if the stocks are negatively affected by the project as a result of a failure to consult.

III. Salmon Migratory Routes

In its discussion of Ekuanitshit’s contemporary land use, Nalcor states: “up to 1982, salmon fishing began towards the end of May and continued to be a common activity throughout the summer”. This single, dated sentence making reference to salmon fishing fails to capture the importance of the Atlantic salmon runs in Innu life. Hydro-Québec notes in its La Romaine report that the fishing of Atlantic salmon is not only an integral part of ancestral practices, but also continues to be an important resource for the Innu of Ekuanitshit valued equally with the caribou and the beaver.²

During Nalcor’s presentation on June 20, 2011, members of Council expressed their concern regarding the potentially negative impacts the transmission link might have on the Atlantic salmon stocks upon which they rely. In a letter sent a month later, Nalcor explicitly refused to provide Council with the financial capacity to retain its own expert to advise on the component study on fish habitat.

According to s.3.3.2.4 of its report entitled “Marine Fish and Fish Habitat in the Strait of Belle Isle: Information Review and Compilation”, Nalcor is aware that the Atlantic salmon migratory route includes passage through the Strait of Belle Isle en route to the spawning rivers along the St. Lawrence, such Rivière Saint-Jean (Côte-Nord). Despite this recognition, the proponent focuses its consultations and research regarding fisheries almost exclusively on the delineated area around the cables through the Strait of Belle Isle within its “Marine Fisheries in the Strait of Belle Isle Component Study”.

The *Guidelines* specifically mention at s.4.5.1 the need to consider the effects on fish and fish habitat “including migration patterns and fish mortality”. The migratory route of Atlantic salmon indicates the need to consult with the Council as the transmission link has the potential to impact the food supplies and economic wellbeing of the Innu of Ekuanitshit. Valuable Aboriginal traditional knowledge that could be assisting in establishment of baselines regarding an understanding ecosystem function, resource abundance, distribution and quality is, moreover, not being incorporated into these studies.

² *Id.* at p. 39-95.

III. Conclusion

The Conseil des Innus de Ekuanitshit submits that Nalcor's Aboriginal CS is incomplete, as it does not contain adequate information regarding the contemporary use of resources that may be impacted by this project. As component studies form the baseline from which the potential environmental effects of the project are assessed, this gap will prevent an adequate environmental impact statement from being produced.

The Conseil des Innus de Ekuanitshit asks that the Canadian Environmental Assessment Agency and the Department of Environment and Conservation hold that the component study is incomplete and direct Nalcor to engage with the community regarding a study of the contemporary use of the project area and potentially affected resources.

Yours,

DIONNE SCHULZE

*

ORIGINAL SIGNED BY

*

David Schulze

cc : Chief Jean-Charles Piétacho
Conseil des Innus de Ekuanitshit
BY FAX TO 418-██████085

Mr. Yves Bernier
Corporation Nishipiminan
BY FAX TO 418-██████177

Mr. Simon Laverdière
Canadian Environmental Assessment Agency
BY EMAIL TO <Simon.Laverdiere@████████████████████>

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January 23, 2012

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AND BY EMAIL TO <pmarrie@[REDACTED]>

Bill Coulter, P. Eng.
Project Manager
[REDACTED]

Pat Marrie
Environmental Assessment Chair
[REDACTED]

Re: Labrador Island Transmission Link Project
CEAR no. 10-03-51746; our file #7550/005

Dear Sirs,

Introduction

This is in response to your letter dated December 22, 2011 regarding our client's comments on Nalcor's "Socioeconomic Environment: Aboriginal Communities and Land Use Component Study" in the above-mentioned assessment. In fact, your letter only acknowledges our first letter on the subject, dated August 5, 2011 and not our second, dated September 13, 2011. This omission is surprising, especially given the significant delay in your reply.

Capacity and Comment Periods

Our first letter outlined the ongoing concerns of our client, the Conseil des Innus de Ekuanitshit (the Council), regarding both the lack of capacity to participate in the environmental assessment (EA) process and the insufficiency of the periods for commenting on the Component Studies. Your response to these concerns fails to recognize or address the challenges faced by

our client in this process. Rather than acknowledging the potentially serious impact this project may have on the Innu of Ekuanitshit, you describe the need to keep this EA process moving forward in a timely manner. Had the Council been granted adequate funding at the beginning, it would have been better positioned to keep pace with your desired progress.

You sought, moreover, to undermine the sincerity of our client's concerns by suggesting that though we state the 35-day comment period is insufficient, we have made "aucune demande" [translation: "no request"] for an extension. Your comment entirely misses our point. No amount of additional time will enable our client to participate without increased capacity: the two are intrinsically linked. Until the Council has access to the scientific expertise necessary to interpret the Component Studies, additional time will not cure the problem.

Comments on Component Study

Despite your assertion to the contrary, if you had read our second letter responding to the Aboriginal Component Study you would have noted that we did indeed provide comments. We stated that the Study is incomplete, as it does not contain sufficient information regarding the historic and contemporary use of resources that may be affected by this project. Specifically, Nalcor has almost entirely excluded the Innu of Ekuanitshit from this EA process and as a result their interests are not being considered. By definition, baseline studies must be as complete as possible, otherwise the environmental assessment built upon them will be inaccurate.

We also discussed our client's concerns regarding the impact the transmission link may have on the Atlantic salmon migratory routes. The proposed cable crossing travels under the Strait of Belle Isle, where the Atlantic salmon to which the Innu have fishing rights migrate. Fish and caribou are fundamental to the Innu's way of life and anything that may negatively affect these resources threatens the livelihood of the Innu of Ekuanitshit.

Aboriginal Funding Envelope

In your most recent letter, you outline the process by which Aboriginal communities may receive financial aid to participate in environmental assessment processes. We are aware of the Aboriginal Funding Envelope, and indeed, are already participants in the program. The amount of funding provided, however, was insufficient to allow our client to participate effectively in this review process. It is unclear what purpose your explanation serves as the email by Simon Lavière to which you refer explains the fund "a été distribué en totalité aux différentes communautés participantes. Conséquemment, il n'y a pas de fonds supplémentaires disponibles" [translation: "has been completely distributed to the different participant communities. Consequently, there are no supplementary funds available"].

Proposed Consultation

Your letter reiterates your desire to help the Innu of Ekuanitshit participate in the EA process. Specifically, you offer to facilitate discussions between the federal government, the Province, and the community on the proposed Project and the EA process. You refer to Mr. Laverdière's email, in which he states:

"le plan de consultation prévoit des occasions de collaboration avec les différents intervenants des ministères participants à l'évaluation environnementale. Cela peut comprendre des échanges avec des scientifiques qui se penchent sur les différents rapports du promoteur. Ce type de collaboration pourrait permettre à la communauté d'avoir un certain accès à du savoir technique sans avoir besoin d'employer du personnel." [translation: "the consultation plan provides opportunities for collaboration with the different representatives of ministries participating in the environmental assessment. This may include discussions with scientists looking at the various reports of the proponent. This type of collaboration could allow the community to have some access to technical knowledge without the need to hire staff."]

You also mention the possibility of holding meetings and teleconferences to resolve concerns and provide technical assistance. Given our client's inability to retain independent scientific expertise to assist with the EA, access to government scientists would be beneficial. In order to progress beyond mere generalities of possible collaborations and meetings, we will propose the following strategy.

As mentioned above, the Innu of Ekuanitshit are most concerned about the well-being of the migratory fish and the caribou. Our client would welcome the opportunity to receive presentations from government scientists on the Component Studies discussing these two topics in particular. Thereafter, our clients and the community would be better positioned to make more specific inquiries regarding technical issues of concern. Once these presentations take place, meeting the 35-day comment period would be more reasonable. We invite you to propose dates when your scientific representatives would be available to visit the community.

Conclusion

The concerns expressed in our first letter, dated August 5, 2011, persist. The comments regarding the Aboriginal Component Study outlined in our second letter, dated September 13, 2011, remain unanswered. In order to overcome the impasse in which we find ourselves, we have proposed herein to determine and agree on a date on which your government scientists would be able to make presentations to the Innu of Ekuanitshit. Of particular interest is the impact the proposed transmission link may have on the fish and caribou populations. We believe this

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Mr. Bill Coulter

Mr. Pat Marrie

January 23, 2012

Page 4

consultation strategy would allow for both the increased capacity and additional time necessary for the Conseil des Innus de Ekuanitshit to respond to the Component Studies.

Yours,

DIONNE SCHULZE

*

ORIGINAL SIGNED BY

*

David Schulze

cc : Chief Jean-Charles Piétacho
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E – 3

Lower Churchill Hydroelectric Generation Project

Aboriginal Consultation Guidelines for Regulatory Approval Applications



Overview

These Aboriginal Consultation Guidelines (the "Guidelines") will assist the Proponent, Nalcor Energy, and provincial regulatory departments and agencies (the "Departments") discharge any duty to consult that the Province may owe to the Aboriginal governments and organizations identified in Appendix I before issuing regulatory approvals for the Lower Churchill Hydroelectric Generation Project (the "Generation Project").

The Innu of Labrador will be consulted via the environmental management agreement (EMA) contemplated by section 28.7.2 of the Land Claims and Self Government Agreement-In-Principle among the federal government, the Province and the Innu Nation. Until the EMA comes into effect, the Innu of Labrador will be consulted via these Guidelines.

The Guidelines are applicable to the Generation Project, only; they are not applicable to any other project and are not to be used in any way by the Proponent or any Department to inform Aboriginal consultation activities for any other project.

The Guidelines provide general direction, only; the Intergovernmental and Aboriginal Affairs Secretariat (IGAA) will be available to provide on-going support and advice to the Proponent and Departments in using the Guidelines.

The Guidelines provide French versions of template emails (see Appendices II-IV); like the English templates, these French versions must be revised on a case-by-case basis so that they refer properly to the Applications that are the subject of the correspondence. However, it is recognized that not all government officials are sufficiently fluent in French to allow for easy revision of the French templates. In all cases, Departments ought to consult with IGAA which will arrange translation services.

Several of the Aboriginal organizations' working language is French. If email or telephone contact is made to a government official in French by an official of an Aboriginal

organization, Departments should consult with IGAA, which will arrange for translation services.

All steps identified in the Guidelines should be followed for each Application received for a regulatory approval. When the Proponent or a Department, in consultation with IGAA, deems an Application to be *ancillary* to an Application on which the Proponent and the Department has already consulted under the Guidelines, all Aboriginal governments / organizations identified in Appendix I should be notified upon issuance of the ancillary regulatory approval.

For purposes of the Guidelines, an Application includes a written request for any permit, licence or other regulatory approval required by the Proponent for the Generation Project.

The Guidelines, and any form of consultation conducted by the Proponent or Departments pursuant to them, does not constitute acceptance or recognition of asserted Aboriginal or treaty rights. The process of consultation does not create any Aboriginal or treaty rights.

Whenever the Guidelines indicate that the Proponent or Departments are to transmit an Application(s) and any supporting information to all Aboriginal governments / organizations, use of a single email, including the template email content taken from the Appendices and any attachments to all Aboriginal governments / organizations (as a group) is encouraged.

Date: May 30, 2012

Aboriginal Consultation Steps (1-5)

Step 1

Aboriginal consultation on an Application will begin when the Proponent sends the formal Application (including background/supporting information or documentation sufficient for a Department to begin its own review, analysis and processing of that Application) to all Aboriginal governments / organizations, inviting them to review the Application and submit any comments to the appropriate Department within a defined timeframe.

The Proponent should revise the English and French versions of the *Template Email for Distribution of Applications* (APPENDIX II) to identify the Application to be enclosed for comment, the Department to which any comments should be directed and to specify the appropriate timeframe within which comments are invited.

Please see APPENDIX I for email addresses for each Aboriginal government / organization. Street / P.O. Box addresses have also been provided for reference.

Notes for Step 1:

- There may be information related to an Application that the Proponent considers confidential. It is therefore incumbent on the Proponent to engage Aboriginal governments / organizations to pursue protection of any confidential information, should the Proponent choose to do so. The Proponent and the Aboriginal government / organization(s) may wish to consider other means of ensuring that any confidential information is protected; such means may include an Application-specific confidentiality agreement or a confidentiality agreement that applies to the entire regulatory approval process.
- All information disclosed to Aboriginal governments / organizations is for purposes of consultation on the relevant Application, only; it is not to be used for any other purpose or disclosed to any other person without the written consent of the Proponent.
- Where more than one Application is provided to Aboriginal governments / organizations for comment at the same time, the template email should be adjusted accordingly to incorporate all Applications covered by that email.

- In using the template email, the Proponent is to include both the English and unofficial French text in the body of the email.
- The email template includes a copy (cc.) block reminding the Proponent that the appropriate Department and IGAA are to be copied on all correspondence to the Aboriginal governments and organizations (see APPENDIX I for contact information). The Proponent must ensure that each email is copied to the Department and IGAA.
- When providing Aboriginal governments / organizations with an Application, the Proponent should email the Application to all Aboriginal governments / organizations together.
- If the Proponent, rather than the appropriate Department, receives any comments on an Application, those comments should be provided to the Department immediately.

Selection of Timeframes

- Timeframes for return of comments to the Department shall be 15 days, 30 days or 60 days.
- A 30 day timeframe has been applied to all Applications identified in Nalcor Energy's Environmental Impact Statement as potentially required for the Generation Project (see list in Appendix V).
- Where an Application does not appear in Appendix V, the Proponent should consult the appropriate Department which will determine, in consultation with IGAA, the appropriate timeframe of 15 days, 30 days or 60 days by considering such factors as the complexity of the Application, the timeframes in which similar applications are typically approved, and the length of time required for the Department to complete its own review and analysis of the Application.
- Any variation from the above-noted process of determining timeframes should be preceded by consultation between the Department and IGAA.

Step 2

Once the Application and associated template email is assembled, sent to all Aboriginal governments / organization and copied to the Department and IGAA, the Department should commence its internal review and analysis of the Application.

Notes for Step 2:

- There is no reason for the Department to delay beginning its review of an Application until the timeframe for comments from Aboriginal governments / organizations has ended. However, the Department must not issue a regulatory approval prior to the end of the timeframe for comments from Aboriginal governments / organizations.
- If the Department receives a request from any Aboriginal government / organization for an extension of the prescribed timeframe, the Department must consult with IGAA to coordinate an appropriate response.
- **If the Department receives comments on an Application from an Aboriginal government / organization(s), the Department must review the comments and reconsider its initial analysis of the Application in light of those comments (see Step 5).** The Department is encouraged to contact IGAA to coordinate both the review of comments received from an Aboriginal government / organization(s), and preparation of a response.

Step 3

When the timeframe for comments from Aboriginal governments / organizations has ended, the Department should:

(1) revise the *Template Email for Notification of End of Timeframe for Comments* (APPENDIX IV) to state the date on the email accompanying the Application, the name of the Application and the fact that the timeframe of XX days has ended. On the day that the timeframe lapses, the Department should send the email to all Aboriginal governments / organizations; and then

(2) contact IGAA to confirm whether it has received comments on the Application. If no comments have been received by either the Department or IGAA, the Department should complete its own review of the regulatory approval and proceed to Step 4.

If any comments have been received, the Department should skip the next step and proceed to Step 5.

Notes for Step 3:

- Where possible, the Department should send a single email to all Aboriginal governments / organizations at once, and copy IGAA (the Proponent need not be copied on communication undertaken in Step 3).
- If the timeframe for comment for more than one Application ends on the same day, the Department should revise the template email appropriately to include all such Applications.
- If the Department is not yet in a position to issue the regulatory approval when the timeframe for comment expires, the Department should contact IGAA to re-confirm that no comments have been received when the regulatory approval is ready to be issued. If no comments have been received, the Department should proceed to issue the regulatory approval.

Step 4

The Department should revise the *Template Email for Distribution of Regulatory Approvals – No Comments* (APPENDIX III) to refer to the original cover letter and Application, and identify the enclosed regulatory approval.

Notes for Step 4:

- The template email has a copy (cc.) block which indicates that the Proponent and IGAA are to be copied on the email sent to all Aboriginal governments / organizations.
- If multiple regulatory approvals are attached to an email, the Department should revise the email appropriately to refer to all associated Applications.
- In using the template email, the Department is to include both the English and unofficial French versions in the body of the email.
- As noted above, it may be difficult for the Department to revise the French template email to incorporate relevant details such as the name of the Application. The Department is asked to please engage IGAA, which will arrange assistance in revising the French version of the cover letters.

Step 5

Where comments are received from an Aboriginal government / organization, the responsible Department should give full and fair consideration to the comments in its review of the Application. Within thirty (30) days of receipt of such comments the Department should provide the Aboriginal government / organization with full and fair consideration of the comments, in writing. Upon issuing its written response to the comments by email, the Department should also indicate that within seven (7) days of receipt of the Department's response, the Aboriginal government or organization may request a conference call to discuss the Department's response.

Notes for Step 5:

- The Department should contact IGAA if it receives any comments related to any Application or regulatory approval, before or after the timeframe for comments has ended, even if the correspondence indicates that the Aboriginal government or organization supports or has no concerns with the Application or regulatory approval.
- If any comments are received on an Application at any time before the Department is ready to issue the associated regulatory approval, the Department should not issue the regulatory approval without first consulting IGAA.

For Further Advice or Assistance Contact:

Brian Harvey
Director, Policy and Planning
Aboriginal Affairs Branch
Intergovernmental and Aboriginal Affairs Secretariat
t 709 [REDACTED] 487
e [brianharvey@\[REDACTED\]](mailto:brianharvey@[REDACTED])

APPENDIX I
Contact Information

1. **Nalcor Energy**

stevepellerin@

Mr. Steve Pellerin
Nalcor Energy
Hydro Place, 500 Columbus Drive

Fax: (709): 985

2. **Nunatsiavut Government**

tom_sheldon@

Mr. Tom Sheldon
Director, Environment Division
Nunatsiavut Government

Fax: (709) 931

3. **NunatuKavut Community Council**

grussell@

Mr. George Russell Jr.
Environment and Resource Manager
NunatuKavut Community Council

Fax: (709) 594

4. **Council of the Innu of Ekuanitshit**

reception.conseil@

Chef Jean-Charles Piétacho
Conseil des Innus d'Ekuanishit

Fax: (418) [REDACTED] 085

5. **Council of the Innu of Pakua Shipu**

reception@[REDACTED]

Conseil des Innus de Pakua Shipu
[REDACTED]

Fax: (418) [REDACTED] 622

6. **Council of the Innu of Unamen Shipu**

bacgeo@[REDACTED]

Chef Georges Bacon
Conseil de bande des Montagnais d'Unamen Shipu
[REDACTED]

Fax: (418) [REDACTED] 921

7. **Innu Nation of Matimekush-Lac John**

realmck@[REDACTED] (copy nadir.andre@[REDACTED]; mcgagnon@[REDACTED])

Chef Réal McKenzie
Conseil de la Nation Innu Matimekush-Lac John
[REDACTED]

Fax: (418) [REDACTED] 856

Copy to: Nadir André
BCF LLP

[REDACTED]
Fax: (514) [REDACTED] 515

Marie-Christine Gagnon
BCF LLP
[REDACTED]

8. **Innu of Nutashkuan**

conseil.de.bande@ [REDACTED]

Chef François Bellefleur
Conseil des Montagnais de Natashquan

[REDACTED]

Fax: (418) [REDACTED] 606

9. **Uashat mak Mani-Utenam First Nation**

ken.rock@ [REDACTED]

Innu Takuaitkan Uashat mak Mani-Utenam
c/o Ken Rock

[REDACTED]

Fax: (418) [REDACTED] 937

10. **Naskapi Nation of Kawachikamach**

kawawa@ [REDACTED]

Chief Louis Einish
Naskapi Nation of Kawawachikamach

[REDACTED]

Fax: (418) [REDACTED] 130

11. **Innu Nation**

preid@ [REDACTED] linnes@ [REDACTED]

Innu Nation
c/o Larry Innes and Paula Reid

[REDACTED]

Fax: (709) [REDACTED] 396

APPENDIX II
Template Email for Distribution of Applications
ENGLISH

XX "Month" 2012

I am writing on behalf of Nalcor Energy, the proponent of the Lower Churchill Hydroelectric Generation Project ("Project"), to provide you with the enclosed application for [insert name of regulatory approval].

The Government of Newfoundland and Labrador's [insert name of Department / Agency] is responsible for the above-noted regulatory approval (attached), which Nalcor Energy requires for the Project. Any comments you may wish to provide in relation to this Application are welcome, and should be provided to [insert Departmental contact name] of the [Department / Agency] within [XX] days of the date of this email. [Insert contact name] may be contacted by email at [insert email address] or telephone at [insert phone number].

You may also wish to consult the Department of Environment & Conservation's Environmental Assessment website, which contains important documents related to the Project, online: <http://www.env.gov.nl.ca/env/env_assessment/projects/Y2010/1305/index.html>, as well as the Canadian Environmental Assessment Agency's web registry of documents related to the Project, online: <<http://www.ceaa.gc.ca/050/05/documents-eng.cfm?evaluation=26178>>.

Please note all information disclosed to you is for your use for the purposes of consultation on the relevant Application only and is not to be used for any other purposes or disclosed to any other person without the written consent of Nalcor Energy.

The official language of the Government of Newfoundland and Labrador is English. As such, this English language email is the official and authoritative communication from Nalcor Energy to your organization. The French translation of this email is for your convenience only.

Please do not hesitate to contact the above-noted provincial Department or Agency should you have any questions or concerns regarding the information or documentation included herewith.

Sincerely,

Steve Pellerin, Nalcor Energy

cc. [Departmental contact]
Brian Harvey, IGAA

TRADUCTION NON OFFICIELLE

Je vous écrit au nom du Nalcor Energy (qui est promoteur du projet de centrale de production d'énergie hydroélectrique dans la partie inférieure du fleuve Churchill) concernant la jointe Demande de [insert name of regulatory approval].

Le Ministère de [insert name of Department / Agency] du gouvernement de Terre-Neuve-et-Labrador est responsable de la jointe Demande, qui Nalcor Energy a besoin pour son projet. Toute observation que vous pourriez faire à l'égard de cette demande sont les bienvenus; vous pourriez les envoyer à [insert Departmental contact name] du Ministère de [Department / Agency] dans les [XX] jours de la date de cette lettre. Vous pouvez contacter [Insert contact name] via courriel électronique [insert email address] ou téléphone [insert phone number].

Vous pouvez également consulter le site Web de l'évaluation environnementale du ministère de l'Environnement et Conservation, qui contient des documents importants liés au projet: http://www.env.gov.nl.ca/env/env_assessment/projects/Y2010/1305/index.html, ainsi que le Régistre canadien d'évaluation environnementale, qui contient de nombreux documents liés au projet, en ligne: <http://www.ceaa.gc.ca/050/05/documents-eng.cfm?evaluation=26178>.

S'il vous plait noter que tous les renseignements communiqués à vous est pour votre utilisation à des fins de consultation sur la demande appropriée et ne doit pas être utilisé à d'autre fins ou communiquées à toute autre personne sans le consentement écrit du Nalcor Energy.

La langue officielle du gouvernement de Terre-Neuve-et-Labrador est l'anglais. En conséquence, ce courriel en anglais comprend la communication officielle et autorité du Nalcor Energy à votre organisation; la traduction française non officielle est pour plus de commodité seulement.

S'il vous plaît contacter le ministère du gouvernement de Terre-Neuve-et-Labrador noté ci-dessus si vous avez des questions ou des préoccupations à l'information ou la documentation ci-jointe.

Sincèrement,

Steve Pellerin, Nalcor Energy

cc. [Departmental contact]
Brian Harvey, IGAA

APPENDIX III
Template Email for Distribution of Regulatory Approvals – No Comments
ENGLISH

XX ["Month"] 2012

I write further to my correspondence of [insert date of originating correspondence via which the Application was sent to the Aboriginal government or organization for comment], in which I provided a copy of Nalcor Energy's Application for [insert name of regulatory approval] and requested that you provide any comments in relation to that Application within [insert number of days that was provided in original cover letter] days.

We have now proceeded to issue the regulatory approval related to that Application, and have enclosed a copy of same for your information.

The official language of the Government of Newfoundland and Labrador is English. As such, this English language email is the official and authoritative communication from the Government of Newfoundland and Labrador to your organization. The French translation of this email is for your convenience only.

Please do not hesitate to contact the undersigned should you have any questions or concerns regarding the information or documentation included herewith.

Sincerely,

[insert name, Department and contact information of sender]

cc. Steve Pellerin, Nalcor Energy
Brian Harvey, IGAA

TRADUCTION NON OFFICIELLE

Je vous écrit à la suite de ma correspondance du [insert date of original letter enclosing Application(s)], dans laquelle je fournis une copie de la Demande de Nalcor Energy concernant [insert name of Application]; j'ai demandé que vous fournissez des commentaires à l'égard de cette demande dans les [insert number of days in time frame for comments] jours de la date de cette lettre.

Nous avons procédé à l'émission de l'autorisation à l'égard de cette demande visée, et ont joint une copie de même pour votre information.

La langue officielle du gouvernement de Terre-Neuve-et-Labrador est l'anglais. En conséquence, ce courriel en anglais comprend la communication autorité du gouvernement de Terre-Neuve-et-Labrador à votre organisation; la traduction française non officielle est pour plus de commodité seulement.

S'il vous plaît communiquer avec le soussigné si vous avez des questions ou des préoccupations à l'information ou la documentation ci-jointe.

Sincèrement,

[Insert name, Department and contact information of sender]

cc. Steve Pellerin, Nalcor Energy
Brian Harvey, IGAA

APPENDIX IV
Template Email for Notification of End of Timeframe for Comments

ATTENTION:

The timeframe for comments on [insert name of Application], which was referred on [insert date of original correspondence] has ended. The Government of Newfoundland of Labrador will now proceed to issue the applicable regulatory approval.

ATTENTION:

Le délai pour les commentaires sur [insert name of Application], qui a été renvoyé le [insert date of original correspondence] a expiré. Le gouvernement de Terre-Neuve-et-Labrador va maintenant procéder à délivrer le permis applicable.

APPENDIX V

Aboriginal Government / Organization Comment Timeframes (Possible Generation Project Regulatory Approval Applications)

Activity	Regulatory Approval	Legislative Authority	Timeframe for Aboriginal Comment
Establishment of Work Camps	Septic System Commercial – Certificate of Approval for septic systems > 4,500L/day – in an unserved area and not covered by a Municipality	Newfoundland and Labrador <i>Water Resources Act</i> , SNL 2002, c.W-4.01; <i>Environmental Control Water and Sewage Regulations</i> 2003	30 days
	Certificate of Approval for private sewage < 4,546/day	Newfoundland and Labrador <i>Health and Community Services Act</i> , SNL 1995, c.P-37.1; <i>Sanitation Regulations</i>	30 days
	Certificate of Approval for Commercial Building under National Building/Fire/Life Safety Code	Newfoundland and Labrador <i>Fire Prevention Act</i> , SNL 1991 c.34 and the National Fire Code of Canada 1990	30 days
	Buildings Accessibility Design Registration or Exemption Registration Newfoundland and Labrador	Newfoundland and Labrador <i>Building Accessibility Act</i> , RSNL 1990, c.R-10, <i>Building Accessibility Regulations</i>	30 days
	Tobacco and Food Licence Application	Newfoundland and Labrador <i>Food and Drug Act</i> , RSNL 1990, c.F-21, <i>Food Premises Regulations</i>	30 days
Land Requirements	Crown Lands – Crown Land Lease/License/Permit	Newfoundland and Labrador <i>Lands Act</i> , SNL 1991 c.36	30 days
	Notice of Intent for Reservation of Shoreline	Newfoundland and Labrador <i>Lands Act</i> , SNL 1991 c.36	30 days
Waste Management Related to Construction Activities	Waste Oil – Handling and Disposal	Newfoundland and Labrador <i>Environmental Protection Act</i> , SNL 2002 c.E-14.2, <i>Used Oil Control Regulations</i>	30 days
Garbage Disposal/Waste Management	Waste Management System, Certificate of Approval	Newfoundland and Labrador <i>Environmental Protection Act</i> , SNL 2002 c.E-14.2, <i>Waste Disposal and Litter</i>	30 days

Activity	Regulatory Approval	Legislative Authority	Timeframe for Aboriginal Comment
Access Roads	Bridges, Certificate of Approval, Application for Environmental Permit to Alter a Body of Water	Newfoundland and Labrador <i>Water Resources Act</i> , SNL 2002, c.W-4.01, Section 48	30 days
	Culvert Installation, Certificate of Approval, Application for Environmental Permit to Alter a Body of Water	Newfoundland and Labrador <i>Water Resources Act</i> , SNL 2002, c.W-4.01, Section 48	30 days
	Certificate of Approval for Stream Fording, Application for Environmental Permit to Alter a Body of Water	Newfoundland and Labrador <i>Water Resources Act</i> , SNL 2002, c.W-4.01, Section 48	30 days
	Permit for Access off any Highway	Newfoundland and Labrador <i>Urban and Rural Planning Act</i> , SNL 2000, c.O-8, <i>Highway Sign Regulations</i>	30 days
Construction of Dams	Dams and Appurtenant Structures, Certificate of Approval	Newfoundland and Labrador <i>Water Resources Act</i> , SNL 2002, c.W-4.01, Section 48	30 days
Construction of Generating Facilities	Water Resources – Water Course Crossings, Certificate of Environmental Approval	Newfoundland and Labrador <i>Water Resources Act</i> , SNL 2002, c.W-4.01, Section 48	30 days
	Construction (Site Drainage) Certificate of Approval	Newfoundland and Labrador <i>Water Resources Act</i> , SNL 2002, c.W-4.01, Section 48	30 days
Stream Crossings/ Fording	Water Resources – Water Course Crossings, Certificate of Environmental Approval	Newfoundland and Labrador <i>Water Resources Act</i> , SNL 2002, c.W-4.01, Section 48	30 days
Fuel Storage	Fuel Storage & Handling – Temporary Storage Remote Locations	Newfoundland and Labrador <i>Environmental Protection Act</i> , SNL 2002, c.E-14.2, <i>Storage and Handling of Gasoline and Associated Products Regulations, 2003</i>	30 days
	Fuel Storage & Handling – A Permit Flammable & Liquid Storage & Dispensing (above or below ground) & for Bulk Storage (above ground only)	Newfoundland and Labrador <i>Environmental Protection Act</i> , SNL 2002, c.E-14.2, <i>Storage and Handling of Gasoline and Associated Products Regulations, 2003</i> , and <i>Fire Prevention Act</i> , SNL 1991, c.34	30 days
Potable Water Supply	Water Resources – License to Drill Water Wells	Newfoundland and Labrador <i>Water Resources Act</i> , SNL 2002, c.W-4.01, <i>Well Drilling Regulations</i>	30 days

Activity	Regulatory Approval	Legislative Authority	Timeframe for Aboriginal Comment
Water Supply for Camp/Work Site	Water Resources – General Application for Water Use Authorization – for all beneficial uses of water from any source – Application for Permit for Using Ground Water for Non-Domestic Uses	Newfoundland and Labrador <i>Water Resources Act</i> , SNL 2002, c.W-4.01	30 days
Water Use	Water Use Authorization	Newfoundland and Labrador <i>Water Resources Act</i> , SNL 2002, c.W-4.01	30 days
	Approval for Water Supply System	Newfoundland and Labrador <i>Water Resources Act</i> , SNL 2002, c.W-4.01	30 days
Construction Activities	Operating Permit/Fire Season – Crown or private land for a company or individual to operate during forest fire season	Newfoundland and Labrador <i>Forestry Act</i> , RSNL 1990, c.F-23, <i>Forest Fire Regulations</i>	30 days
	Permit to Cut Crown Timber – A permit is required for commercial or domestic cutting of timber on Crown land	Newfoundland and Labrador <i>Forestry Act</i> , RSNL 1990, c.F-23, <i>Cutting of Timber Regulations</i>	30 days
	Permit to Burn	Newfoundland and Labrador <i>Forestry Act</i> , RSNL 1990, c.F-23, <i>Forest Fire Regulations</i>	30 days
	Letter of Advice to New Construction Project or Industrial Enterprise	Newfoundland and Labrador <i>Forestry Act</i> , RSNL 1990, c.O-3	30 days
Borrow Pits and Rock Quarries	Quarry Development Permit – A permit is required to dig for, excavate, remove and dispose of any Crown quarry material	Newfoundland and Labrador <i>Quarry Minerals Act</i> , SNL 1999, c.Q-1.1	30 days
Control of Nuisance Wildlife	Control of Nuisance Wildlife Black Bear Protection Permit/Permit to Destroy Problem Animals	Newfoundland and Labrador <i>Wildlife Act</i> , RSNL, c.W-8, <i>Wildlife Regulations</i>	30 days
Highway Signage	Signs – Highway Services Fingerboard Signs, Approval	Newfoundland and Labrador <i>Urban and Rural Planning Act</i> , SNL 2000, c.U-8, <i>Highway Sign Regulations</i>	30 days
Temporary Diesel Generation and Permanent Emergency Diesel Generation	Permit to Operate Temporary Diesel Generator	Newfoundland and Labrador <i>Environmental Protection Act</i> , SNL 2000, c.E-14.2, <i>Air Pollution Control Regulations</i>	30 days
Environmental Protection Plan (EPP)	Approval of EPP by Minister of Environment and Conservation	Newfoundland and Labrador <i>Environmental Protection Act</i> , SNL 2002, c.E-14.2	30 days

Source: Nalcor Energy, *Lower Churchill Hydroelectric Generation Project Environmental Impact Statement: Project Planning and Description* (Vol. 1, Part B), online: Table IB-G-1 <<http://www.nalcorenergy.com/assets/eisvol1bii.pdf>>.

Labrador-Island Transmission Link Project

Aboriginal Consultation Guidelines for Regulatory Approval Applications



Overview

These Aboriginal Consultation Guidelines (the "Guidelines") will assist the Proponent, Nalcor Energy, and provincial regulatory departments and agencies (the "Departments") discharge any duty to consult that the Province may owe to the Aboriginal governments and organizations identified in Appendix I before issuing regulatory approvals for the Labrador-Island Transmission Link Project (the "Project").

The Guidelines are applicable to the Project, only; they are not applicable to any other project and are not to be used in any way by the Proponent or any Department to inform Aboriginal consultation activities for any other project.

The Guidelines will not apply to permits issued for components of the Project on the Island of Newfoundland.

The Guidelines provide general direction, only; the Intergovernmental and Aboriginal Affairs Secretariat (IGAA) will be available to provide on-going support and advice to the Proponent and Departments in using the Guidelines.

The Guidelines provide French versions of template emails (see Appendices II-IV); like the English templates, these French versions must be revised on a case-by-case basis so that they refer properly to the Applications that are the subject of the correspondence. However, it is recognized that not all government officials are sufficiently fluent in French to allow for easy revision of the French templates. In all cases, Departments ought to consult with IGAA which will arrange translation services.

Several of the Aboriginal organizations' working language is French. If email or telephone contact is made to a government official in French by an official of an Aboriginal organization, Departments should consult with IGAA, which will arrange for translation services.

All steps identified in the Guidelines should be followed for each Application received for a regulatory approval. When the Proponent or a Department, in consultation with IGAA, deems an Application to be ancillary, due its routine nature or due to it being incidental to an Application on which the Proponent and the Department has already consulted under the Guidelines, all Aboriginal organizations identified in Appendix I should be notified upon issuance of the ancillary regulatory approval, and provided with a copy of the issued permit. Efforts have been made to identify ancillary applications in Appendix V.

For purposes of the Guidelines, an Application includes a written request for any permit, licence or other regulatory approval required by the Proponent for the Project.

The Guidelines, and any form of consultation conducted by the Proponent or Departments pursuant to them, does not constitute acceptance or recognition of asserted Aboriginal or treaty rights. The process of consultation does not create any Aboriginal or treaty rights.

Whenever the Guidelines indicate that the Proponent or Departments are to transmit an Application(s) and any supporting information to all Aboriginal governments / organizations, use of a single email, including the template email content taken from the Appendices and any attachments to all Aboriginal governments / organizations (as a group) is encouraged.

Date: 02 July 2013

Aboriginal Consultation Steps (1-5)

Step 1

Aboriginal consultation on an Application will begin when the Proponent sends the formal Application (including background/supporting information or documentation sufficient for a Department to begin its own review, analysis and processing of that Application) to all Aboriginal governments / organizations, inviting them to review the Application and submit any comments to the appropriate Department within a defined timeframe.

The Proponent should revise the English and French versions of the *Template Email for Distribution of Applications* (APPENDIX II) to identify the Application to be enclosed for comment, the Department to which any comments should be directed and to specify the appropriate timeframe within which comments are invited.

Please see APPENDIX I for email addresses for each Aboriginal government / organization. Street / P.O. Box addresses have also been provided for reference.

Notes for Step 1:

- There may be information related to an Application that the Proponent considers confidential. It is therefore incumbent on the Proponent to engage Aboriginal governments / organizations to pursue protection of any confidential information, should the Proponent choose to do so. The Proponent and the Aboriginal government / organization(s) may wish to consider other means of ensuring that any confidential information is protected; such means may include an Application-specific confidentiality agreement or a confidentiality agreement that applies to the entire regulatory approval process.
- All information disclosed to Aboriginal governments / organizations is for purposes of consultation on the relevant Application, only; it is not to be used for any other purpose or disclosed to any other person without the written consent of the Proponent.
- Where more than one Application is provided to Aboriginal governments / organizations for comment at the same time, the template email should be adjusted accordingly to incorporate all Applications covered by that email.

- In using the template email, the Proponent is to include both the English and unofficial French text in the body of the email.
- The email template includes a copy (c.c.) block reminding the Proponent that the appropriate Department and IGAA are to be copied on all correspondence to the Aboriginal governments and organizations (see APPENDIX I for contact information). The Proponent must ensure that each email is copied to the Department and IGAA.
- When providing Aboriginal governments / organizations with an Application, the Proponent should email the Application to all Aboriginal governments / organizations together.
- If the Proponent, rather than the appropriate Department, receives any comments on an Application, those comments should be provided to the Department immediately.

Selection of Timeframes

- A 30 day timeframe has been applied to all Primary Applications identified in Nalcor Energy's Environmental Impact Statement as potentially required for the Transmission Project (see list in Appendix V).
- Where an Application does not appear in Appendix V, the Proponent should consult the appropriate Department which will determine, in consultation with IGAA, the appropriate timeframe by considering such factors as the complexity of the Application, the timeframes in which similar applications are typically approved, and the length of time required for the Department to complete its own review and analysis of the Application.
- Any variation from the above-noted process of determining timeframes should be preceded by consultation between the Department and IGAA.

Step 2

Once the Application and associated template email is assembled, sent to all Aboriginal governments / organization and copied to the Department and IGAA, the Department should commence its internal review and analysis of the Application.

Notes for Step 2:

- There is no reason for the Department to delay beginning its review of an Application until the timeframe for comments from Aboriginal governments / organizations has ended. However, the Department must not issue a regulatory approval prior to the end of the timeframe for comments from Aboriginal governments / organizations.
- If the Department receives a request from any Aboriginal government / organization for an extension of the prescribed timeframe, the Department must consult with IGAA to coordinate an appropriate response.
- If the Department receives comments on an Application from an Aboriginal government / organization(s), the Department must review the comments and reconsider its initial analysis of the Application in light of those comments (see Step 5). The Department is encouraged to contact IGAA to coordinate both the review of comments received from an Aboriginal government / organization(s), and preparation of a response.

Step 3

When the timeframe for comments from Aboriginal governments / organizations has ended, the Department should:

(1) revise the *Template Email for Notification of End of Timeframe for Comments* (APPENDIX IV) to state the date on the email accompanying the Application, the name of the Application and the fact that the timeframe of XX days has ended. On the day that the timeframe lapses, the Department should send the email to all Aboriginal governments / organizations; and then

(2) contact IGAA to ascertain whether it has received comments on the Application. If no comments have been received by either the Department or IGAA, the Department should complete its own review of the regulatory approval and proceed to Step 4.

If any comments have been received, the Department should skip Step 4 and proceed to Step 5.

Notes for Step 3:

- In using the template email, the Department is to include both the English and unofficial French versions in the body of the email.
- Where possible, the Department should send a single email to all Aboriginal governments / organizations at once, and copy IGAA.
- If the timeframe for comment for more than one Application ends on the same day, the Department should revise the template email appropriately to include all such Applications.
- If the Department is not yet in a position to issue the regulatory approval when the timeframe for comment expires, the Department should contact IGAA to re-determine whether comments have been received by the time the regulatory approval is ready to be issued. If no comments have been received, the Department should proceed to issue the regulatory approval.

Step 4

The Department should revise the *Template Email for Distribution of Regulatory Approvals – No Comments* (APPENDIX III) to refer to the original cover letter and Application, and identify the enclosed regulatory approval.

Notes for Step 4:

- In using the template email, the Department is to include both the English and unofficial French versions in the body of the email.
- The template email has a copy (c.c.) block which indicates that the Proponent and IGAA are to be copied on the email sent to all Aboriginal governments / organizations.
- If multiple regulatory approvals are attached to an email, the Department should revise the email appropriately to refer to all associated Applications.

Step 5

Where comments are received from an Aboriginal government / organization, the responsible Department should give full and fair consideration to the comments in its review of the Application. Within thirty (30) days of receipt of such comments the Department should provide the Aboriginal government / organization with full and fair consideration of the comments, in writing. Upon issuing its written response to the comments by email, the Department should also indicate that within seven (7) days of receipt of the Department's response, the Aboriginal government or organization may request a conference call to discuss the Department's response.

Notes for Step 5:

- The Department should contact IGAA if it receives any comments related to any Application or regulatory approval, before or after the timeframe for comments has ended, even if the correspondence indicates that the Aboriginal government or organization supports or has no concerns with the Application or regulatory approval.
- If any comments are received on an Application at any time before the Department is ready to issue the associated regulatory approval, the Department should not issue the regulatory approval without first consulting IGAA.

For Further Advice or Assistance Contact:

Brian Harvey
Director – Aboriginal Affairs
Intergovernmental and Aboriginal Affairs Secretariat
t 709. [REDACTED] 487
e [brianharvey@\[REDACTED\]](mailto:brianharvey@[REDACTED])

APPENDIX I

Contact Information

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2. **Nunatsiavut Government**
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Mr. Tom Sheldon
Director, Environment Division
Nunatsiavut Government
[REDACTED]
Fax: (709) [REDACTED] 931
3. **NunatuKavut Community Council**
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Mr. George Russell Jr.
Environment and Resource Manager
NunatuKavut Community Council
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Fax: (709) [REDACTED] 594
4. **Council of the Innu of Ekuanitshit**
[reception.conseil@\[REDACTED\]](mailto:reception.conseil@[REDACTED])

Chef Jean-Charles Piétacho
Conseil des Innus d'Ekuanishit
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5. **Council of the Innu of Pakua Shipu**
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Chef Raymond Bellefleur

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BCF LLP

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David André

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8. **Innu of Nutashkuan**

conseil.de.bande@ [REDACTED]

Chef Rodrigues Wapistan

Conseil des Montagnais de Natashquan

[REDACTED]

Fax: (418) [REDACTED] 606

9.

Uashat mak Mani-Utenam First Nation

jean-claude.pinette@ (Copy morgan.kendall@)

Innu Takuaikan Uashat mak Mani-Utenam
c/o Jean-Claude Pinette

Fax: (418) 937

Copy to: Morgan Kendall
O'Reilly & Associés

Fax no. : (514) 177

10.

Naskapi Nation of Kawachikamach

kawawa@ (Copy renzoni@; johnm@)

Deputy Chief Jimmy James Einish
Naskapi Nation of Kawawachikamach

Fax: (418) 130

Copy to: Paul Renzoni
General Advisor
Naskapi Nation of Kawawachikamach

Mr. John Mameamskum

11.

Innu Nation

preid@ linnes@

Innu Nation
c/o Larry Innes and Paula Reid

Fax: (709) 396

APPENDIX II
Template Email for Distribution of Applications
ENGLISH

XX "Month" 2012

I am writing on behalf of Nalcor Energy, the proponent of the Labrador-Island Transmission Link Project ("Project"), to provide you with the enclosed application for [insert name of regulatory approval].

The Government of Newfoundland and Labrador's [insert name of Department / Agency] is responsible for the above-noted regulatory approval (attached), which Nalcor Energy requires for the Project. Any comments you may wish to provide in relation to this Application are welcome, and should be provided to [insert Departmental contact name] of the [Department / Agency] within [XX] days of the date of this email. [Insert contact name] may be contacted by email at [insert email address] or telephone at [insert phone number].

You may also wish to consult the Department of Environment & Conservation's Environmental Assessment website, which contains important documents related to the Project (http://www.env.gov.nl.ca/env/env_assessment/projects/Y2010/1407/index.html), as well as the Canadian Environmental Assessment Agency's web registry of documents related to the Project <http://www.ceaa.gc.ca/050/details-eng.cfm?evaluation=51746>.

Please note all information disclosed to you is for your use for the purposes of consultation on the relevant Application only and is not to be used for any other purposes or disclosed to any other person without the written consent of Nalcor Energy.

The official language of the Government of Newfoundland and Labrador is English. As such, this English language email is the official and authoritative communication from Nalcor Energy to your organization. The French translation of this email is for your convenience only.

Please do not hesitate to contact the above-noted provincial Department or Agency should you have any questions or concerns regarding the information or documentation included herewith.

Sincerely,

Marion Organ, Nalcor Energy

c.c. [Departmental contact]
Brian Harvey, IGAA

TRADUCTION NON OFFICIELLE

Je vous écris au nom du Nalcor Energy (qui est promoteur du Projet de ligne de transport d'énergie entre le Labrador et l'île de Terre-Neuve) concernant la jointe Demande de [insert name of regulatory approval].

Le Ministère de [insert name of Department / Agency] du gouvernement de Terre-Neuve-et-Labrador est responsable de la jointe Demande, qui Nalcor Energy a besoin pour son projet. Toute observation que vous pourriez faire à l'égard de cette demande sont les bienvenus; vous pourriez les envoyer à [insert Departmental contact name] du Ministère de [Department / Agency] dans les [XX] jours de la date de ce courriel. Vous pouvez contacter [Insert contact name] via courriel électronique [insert email address] ou téléphone [insert phone number].

Vous pouvez également consulter le site Web de l'évaluation environnementale du ministère de l'Environnement et Conservation, qui contient des documents importants liés au projet (http://www.env.gov.nl.ca/env/env_assessment/projects/Y2010/1407/index.html), ainsi que le Régistre canadien d'évaluation environnementale, qui contient de nombreux documents liés au projet (<http://www.ceaa.gc.ca/050/details-eng.cfm?evaluation=51746>).

S'il vous plaît noter que tous les renseignements communiqués à vous est pour votre utilisation à des fins de consultation sur la demande appropriée et ne doit pas être utilisé à d'autre fins ou communiquées à toute autre personne sans le consentement écrit du Nalcor Energy.

La langue officielle du Gouvernement de Terre-Neuve-et-Labrador est l'anglais. En conséquence, ce courriel en anglais comprend la communication officielle et autorité du Nalcor Energy à votre organisation; la traduction française non officielle est pour plus de commodité seulement.

S'il vous plaît contacter le Ministère du Gouvernement de Terre-Neuve-et-Labrador noté ci-dessus si vous avez des questions ou des préoccupations à l'information ou la documentation ci-jointe.

Sincèrement,

Marion Organ, Nalcor Energy

c.c. [Departmental contact]
Brian Harvey, IGAA

APPENDIX III
Template Email for Distribution of Regulatory Approvals – No Comments
ENGLISH

XX ["Month"] 2012

I write further to Nalcor Energy's correspondence of [insert date of originating correspondence via which the Application was sent to the Aboriginal government or organization for comment], in which Nalcor Energy provided a copy of its Application for [insert name of regulatory approval] and requested that you provide any comments in relation to that Application within [insert number of days that was provided in original cover letter] days.

We have now proceeded to issue the regulatory approval related to that Application, and have enclosed a copy of same for your information.

The official language of the Government of Newfoundland and Labrador is English. As such, this English language email is the official and authoritative communication from the Government of Newfoundland and Labrador to your organization. The French translation of this email is for your convenience only.

Please do not hesitate to contact the undersigned should you have any questions or concerns regarding the information or documentation included herewith.

Sincerely,

[insert name, Department and contact information of sender]

c.c. Marion Organ, Nalcor Energy
Brian Harvey, IGAA

TRADUCTION NON OFFICIELLE

Je vous écris à la suite de la correspondance du Nalcor Energy du [insert date of original letter enclosing Application(s)], dans laquelle Nalcor Energy fournit une copie de sa Demande concernant [insert name of Application]; Nalcor a demandé que vous fournissiez des commentaires à l'égard de cette demande dans les [insert number of days in time frame for comments] jours de la date de son courriel.

Nous avons procédé à l'émission de l'autorisation à l'égard de cette demande visée, et ont joint une copie de même pour votre information.

La langue officielle du Gouvernement de Terre-Neuve-et-Labrador est l'anglais. En conséquence, ce courriel en anglais comprend la communication autorité du Gouvernement de Terre-Neuve-et-Labrador à votre organisation; la traduction française non officielle est pour plus de commodité seulement.

S'il vous plaît communiquer avec le soussigné si vous avez des questions ou des préoccupations à l'information ou la documentation ci-jointe.

Sincèrement,

[Insert name, Department and contact information of sender]

c.c. Marion Organ, Nalcor Energy
Brian Harvey, IGAA

APPENDIX IV
Template Email for Notification of End of Timeframe for Comments

ATTENTION:

The timeframe for comments on [insert name of Application], which was referred on [insert date of original correspondence] has ended. The Government of Newfoundland and Labrador will now proceed to issue the applicable regulatory approval.

ATTENTION:

Le délai pour les commentaires sur [insert name of Application], qui a été renvoyé le [insert date of original correspondence] a expiré. Le Gouvernement de Terre-Neuve-et-Labrador va maintenant procéder à délivrer le permis applicable.

APPENDIX V

Possible Project Regulatory Approval Applications

Approval Potentially Required	Legislation	Activity Requiring Approval	Department or Agency	Requirements	Primary (P) / Ancillary (A)
License to Occupy Crown Land, Crown Land Leases / Grants / Easements	<i>Lands Act</i>	Development on Crown Lands	Lands Division, Department of Environment and Conservation	Approval is required for Project Activities and infrastructure on Crown Land.	P
Certificate of Approval for any Alteration to a Body of Water	<i>Water Resources Act</i>	Any activities which may alter a water body	Water Resources Division, Department of Environment and Conservation	Permits are required for construction activities within 15 m of the high watermark of any water body. An application form is required for each alteration.	P
Certificates of Approval for any Instream Activity (including Culvert Installation, Bridges and Fording a Watercourse)	<i>Water Resources Act</i>	Any in-stream activity	Water Resources Division, Department of Environment and Conservation	Approval is required for any in-stream activity, including culvert installations and fording activities, before undertaking the work. This also includes any development within 15 m of the high watermark of any water body.	P

Certificates of Approval for Development Activity in a Protected Public Water Supply Area or Wellhead Protected Public Water Supply Area	<i>Water Resources Act</i>	Construction activity in a protected water supply	Water Resources Division, Department of Environment and Conservation	Approval is required for any activity in a protected public water supply area prior to the commencement of any work.	P
Certificate of Approval for Construction Site Drainage	<i>Water Resources Act</i>	Any run-off from the project site being discharged to receiving waters	Water Resources Division, Department of Environment and Conservation	Approval is required for any run-off from the project site being discharged to receiving waters.	P
Water Use Authorization	<i>Water Resources Act</i>	Water withdrawal for use at temporary camps or during Construction and Operations activities	Water Resources Division, Department of Environment and Conservation	Water use authorization is required for all beneficial uses of water.	A
Application for Water Well Drilling Licence	<i>Water Resources Act</i>	Drilling activity for a water well	Water Resources Division, Department of Environment and Conservation	A licence is required to carry on the business of water well drilling in Newfoundland and Labrador.	A
Application for Permit for Constructing a Non-Domestic Well	<i>Water Resources Act</i>	Establishment of a water well	Water Resources Division, Department of Environment and Conservation	A licence is required to establish a non-domestic water well in Newfoundland and Labrador.	A

Compliance Standard, Potential Permit	<i>Endangered Species Act</i>	Project Activities	Wildlife Division, Department of Environment and Conservation	Prohibits the disturbance, harassment, injury, or killing of an individual of a species designated as threatened, endangered or extirpated. The Minister may, under certain circumstances, issue a permit for an activity affecting a designated species, the residence of a specimen of a designated species or critical or recovery habitat.	P
Access to Highway Permit	<i>Urban and Rural Planning Act, Works, Services and Transportation Act</i> , Protected Road Zoning Regulations	Construction of access roads and trails	Department of Transportation and Works and, where applicable, Service NL	The construction of an access to a highway that is classified as a Protected Road requires approval.	P
Preliminary Application to Develop Land	<i>Urban and Rural Planning Act</i> , Protected Road Zoning Regulations	Construction activity	Service NL	A development permit is required to build on and develop land, whether Crown or privately owned, within the building control lines of a Protected Road or within the boundaries of a Protected Area.	P

Quarry Permit	<i>Quarry Materials Act</i> and Regulations	Extracting borrow material	Mineral Lands Division, Department of Natural Resources	A permit is required to dig for, excavate, remove and dispose of any Crown quarry material.	P
Cutting Permit Operating Permit	<i>Forestry Act</i> and Cutting of Timber Regulations	Clearing land areas for the right-of-way, borrow pits, camp sites or laydown areas	Department of Natural Resources	A permit is required for the commercial or domestic cutting of timber on crown land.	P
Permit to Burn	<i>Forestry Act</i> and Forest Fire Regulations	Any burning required during the Project	Department of Natural Resources	A permit is required to light fires outdoors between April and December. Permits are not issued during forest fire season.	A
Archaeological Research Permit	<i>Historic Resources Act</i>	Any archaeological investigations required	Provincial Archaeology Office, Department of Tourism, Culture and Recreation	A permit is required for any archaeological investigations on land or underwater.	P
Certificate of Approval for Storing and Handling Gasoline and Associated Products	<i>Environmental Protection Act</i> , and Storage and Handling of Gasoline and Associated Products Regulations	Storing and handling gasoline and associated products	Engineering Services Division, Service NL	A Certificate of Approval is required for storing and handling gasoline and associated products.	A
Fuel Cache Permit	<i>Environmental Protection Act</i> and Environmental Guidelines for Fuel Cache Operations	Temporary fuel storage	Engineering Services Division, Service NL	A permit is required for any temporary fuel storage in a remote location.	A

Permit for Storage, Handling, Use or Sale of Flammable and Combustible Liquids	<i>Fire Prevention Act</i> , and Fire Prevention Flammable and Combustible Liquids Regulations	Storing and handling flammable liquids	Engineering Services Division, Service NL	This permit is issued on behalf of the Office of the Fire Commissioner. Approval is based on a review of information provided for the Certificate of Approval for Storing and Handling Gasoline and Associated Products.	A
Certificate of Approval for Installation of a Sewage System	Sanitation Regulations, under the <i>Health and Community Services Act</i>	Sewage disposal and treatment at construction camps	Service NL	Sewage disposal systems designed, constructed or installed to service a private dwelling or a commercial or other building with a daily sewage flow less than 4,546 L must be approved by an inspector before installation.	A
Certificate of Approval for Septic Systems > 4,546 L per day and Well Approval	<i>Environmental Protection Act</i>	Sewage disposal and treatment at construction camps	Engineering Services Division, Service NL	A Certificate of Approval is required for commercial septic systems and wells in an unserved area, not covered by a municipality.	A

Certificate of Approval for a Water Withdrawal System of > 4,500 L per day	<i>Water Resources Act</i>	Water supply at temporary camps, and for use in construction activities	Water Resources Division, Department of Environment and Conservation	Certificate of Approval is required for any private water withdrawal system of 4,500 L/day or greater.	A
Certificate of Approval for Installation of Water Supply System	Sanitation Regulations, under the <i>Health and Community Services Act</i>	Water supply at temporary camps and maintenance depots	Service NL	Water supply systems designed, constructed or installed to service a private dwelling or a commercial or other building, including systems not governed by a municipal council, local service district or local water committee, must be approved by an inspector before installation.	A
Certificate of Approval for a Waste Management System	<i>Environmental Protection Act</i> and Waste Management Regulations	Waste disposal associated with Construction and Operations	Service NL	Approval is required for waste disposal (<i>e.g.</i> , incineration or burying). Used tires must be disposed according to regulations.	A

Food Establishment Licence – Temporary Facility Permit	<i>Health and Community Services Act, Food and Drug Act and Food Premises Regulations</i>	Establishing and operating a temporary camp and kitchen facility, or using/upgrading existing facilities	Operations Division, Service NL	A licence is required to operate food premises. Where municipal services are unavailable, two copies of plans and specifications for water supply and sewage disposal must be submitted with application for a licence. Food premises are routinely inspected to ensure compliance.	A
Permit to Destroy Problem Animals	<i>Wild Life Act</i>	Dealing with nuisance wildlife	Department of Natural Resources	The Department provides direction on handling nuisance animals. Details on the situation must be provided for a permit to be issued.	A
Compliance standards; permits may be required	<i>National Fire Code</i>	On-site structures (temporary or permanent)	Service NL	Approval is required for fire prevention systems in all approved buildings.	A
Compliance standards; permits may be required	<i>National Building Code</i>	On-site structures (temporary or permanent)	Service NL	Approval is required for all building plans.	A

Source: Nalcor's Environmental Impact Statement – Labrador-Island Transmission Link Project – Volume 1. Retrieved from: http://www.env.gov.nl.ca/env/env_assessment/projects/Y2010/1407/component_studies/ch_3_appendix.pdf.

E - 4

David Schulze

From: Peter Madden <auto-reply-lhr@[REDACTED]>
Sent: Friday, April 25, 2014 2:53 PM
To: David Schulze
Subject: NE-LCP-MEMO-000620: LCP Documentation: Environmental Effects Monitoring Plans - Resubmission ACNXREF<M5ASU6oM9MontwgKhIJSB>

Dear David,

You have received a new **Memorandum: NE-LCP-MEMO-000620**

Project: LCP Permits

Type: Memorandum

Mail Number: NE-LCP-MEMO-000620

To: David Schulze, Council of the Innu of Ekuanitshit

Jean-Charles Piétacho, Council of the Innu of Ekuanitshit

Cc: Brian Harvey , Department of Intergovernmental and Aboriginal Affairs

Paul Carter, Environment & Conservation NL

Bas Cleary, Environment & Conservation NL

John Blake, Government of Newfoundland

Ivy Stone, Government of Newfoundland and Labrador

Ms Marion Organ, Nalcor Energy

Jackie Wells, Nalcor Energy

From: P Madden, Nalcor Energy

Sent: 25/04/2014 7:52:36 PM BST (GMT +01:00)

Status: N/A

Subject: LCP Documentation: Environmental Effects Monitoring Plans - Resubmission

Dear Mr. Schulze:

I trust all is well with you.

Attached are the Lower Churchill Project environmental effects monitoring plans previously provided to the Council of the Innu of Ekuanitshit in accordance with the Government of Newfoundland and Labrador Aboriginal Consultation Guidelines.

The Lower Churchill Project encourages and welcomes comments and concerns raised by stakeholders of the Project at any time during the implementation of the associated work. Thereby, please forward any comments the Innu of Ekuanitshit may have specific to the implementation of the Project environmental effects monitoring programs at any time and we will work to incorporate them into the programs, where appropriate.

Thank you for your comments and concerns. Please contact me with any questions.

Best Regards,

Peter

Peter Madden, MAsc., MBA

Regulatory Compliance Lead
Lower Churchill Project

709-972

petermadden@lowerchurchillproject.ca

File Attachments ([Zip download all files](#))

[ILK-PT-MD-0000-EV-PL-0009-01 Vegetation PEEMP B1.pdf](#)
[ILK-PT-MD-0000-EV-PL-0006-01 Freshwater Fish PEEMP B1.pdf](#)
[ILK-PT-MD-0000-EV-PL-0005-01140414 LITL Furbearers PEEMP B1 Final.pdf](#)
[ILK-PT-MD-0000-EV-PL-0003-01 .pdf](#)
[ILK-PT-MD-0000-EV-PL-0004-01 Caribou PEEMP B1.pdf](#)
[LCP-PT-MD-0000-EV-PL-0007-01.pdf](#)
[LCP-PT-MD-0000-EV-PL-0013-01.pdf](#)
[LCP-PT-MD-0000-EV-PL-0014-01.pdf](#)
[LCP-PT-MD-0000-EV-PL-0016-01.pdf](#)
[LCP-PT-MD-0000-EV-PL-0004-01.pdf](#)
[LCP-PT-MD-0000-EV-PL-0005-01.pdf](#)
[LCP-PT-MD-0000-EV-PL-0006-01.pdf](#)
[MFA-PT-MD-0000-EV-PL-0003-01.pdf](#)
[LCP-PT-MD-0000-EV-PL-0025-01.pdf](#)
[LCP-PT-MD-0000-EV-PL-0026-01..pdf](#)
[Table of LCP EEMPs - Provided to Ekuanitshit.pdf](#)

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Lower Churchill Project Environmental Effects Monitoring Plans

Council of the Innu of Ekuanitshit

Plan	Document no.	Status
Muskrat Falls and Labrador Transmission		
Atmospheric Environmental Effects Monitoring Plan	LCP-PT-MD-0000-EV-PL-0014-01	Previously submitted and attached.
Avifauna Protection and Environmental Effects Monitoring Plan	LCP-PT-MD-0000-EV-PL-0004-01	Previously submitted and attached.
Black Bear Protection and Environmental Effects Monitoring Plan	LCP-PT-MD-0000-EV-PL-0006-01	Previously submitted and attached.
Caribou Protection and Environmental Effects Monitoring Plan	LCP-PT-MD-0000-EV-PL-0005-01	Previously submitted and attached.
Furbearers Protection and Environmental Effects Monitoring Plan	LCP-PT-MD-0000-EV-PL-0016-01	Previously submitted and attached.
Ice Formation Environmental Effects Monitoring Plan	MFA-PT-MD-0000-EV-PL-0003-01	Previously submitted and attached.
Methyl Mercury Environmental Effects Monitoring Plan	LCP-PT-MD-0000-EV-PL-0013-01	Previously submitted and attached.
Species at Risk Protection and Environmental Effects Monitoring Plan EEMP	LCP-PT-MD-0000-EV-PL-0007-01	Previously submitted and attached.
Aquatic Environmental Effects Monitoring Plan		April 2014
Navigation Mitigation and Monitoring Plan	LCP-PT-MD-0000-EV-PL-0025-01	Previously submitted and attached.
Human Health Risk Assessment Plan	LCP-PT-MD-0000-EV-PL-0026-01	Previously submitted and attached.
Clearing Execution, Protection and Environmental Effects Monitoring Plan		May 2014
Socioeconomic Environmental Effects Monitoring Plan		May 2014
Labrador-Island Link		
Caribou Protection and Environmental Effects Monitoring Plan	ILK-PT-MD-0000-EV-PL-0004-01	Previously submitted and attached.
Vegetation Protection and Environmental Effects Monitoring Plan	ILK-PT-MD-0000-EV-PL-0009-01	Previously submitted and attached.
Furbearers Protection and Environmental Effects Monitoring Plan	ILK-PT-MD-0000-EV-PL-0005-01	Previously submitted and attached.
Freshwater Fish Protection and Environmental Effects Monitoring Plan	ILK-PT-MD-0000-EV-PL-0006-01	Previously submitted and attached.
Avifauna Protection and Environmental Effects Monitoring Plan	ILK-PT-MD-0000-EV-PL-0003-01	Previously submitted and attached.

**DIONNE
SCHULZE**

S.R.N.C.
AVOCATS + ATTORNEYS

TEL 514 [REDACTED] 748

FAX 514 [REDACTED] 983

WWW. [REDACTED]

**CONSEIL DES INNU DE EKUANITSHIT
APPLICATION FOR FUNDING TO PARTICIPATE BEFORE THE COMMISSION OF
INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT**

David Janzen
DIONNE SCHULZE

March 28, 2018

1. Application for funding

The Conseil des Innu de Ekuanitshit (the “Council”) hereby applies for funding in order to participate in the Commission of Inquiry Respecting the Muskrat Falls Project (the “Commission”). The following four sections correspond to the statements required by section 16 of the *Rules of Procedure* for the Commission of Inquiry Respecting the Muskrat Falls Project (the “Commission” or the “Inquiry”).¹

a) The applicant and its finances

The Council is the elected governing body that represents the Innu of Ekuanitshit, one of the aboriginal peoples of Canada whose rights are recognized and affirmed by section 35 of the *Constitution Act, 1982*. The Innu of Ekuanitshit are also a band within the meaning of section 2 of the *Indian Act*, RSC 1985, c I-5. As the elected governing body, the Council represents the over 600 registered members of the community.

The Council also intends to contact other Innu communities with reserves located in Québec in order to request their support for the Council’s participation before the Inquiry.

While the Council would still seek to participate before the Commission even if it does not receive funding to do so, the availability of funding would have an important influence on the nature and extent of the Council’s participation.

In support of its application, the Council’s most recent financial statements are attached to the present application. The Council provides these statements on a confidential basis and requests that they not be made public as per section 17 of the Commission’s *Rules of Procedure*.

It should be noted that the Council generally enters into yearly funding agreements with Indigenous and Northern Affairs Canada and other federal departments and agencies. Through these agreements, the Council receives funding to provide a variety of public services to its population including some provincial-type services, such as education, and other municipal-type

¹ <https://www.muskratfallsinquiry.ca/files/20180118-Rules-of-Procedure-final-1.pdf>

services, such as housing, wastewater treatment and drinking water, construction and maintenance of public infrastructure, fire protection and garbage collection.

These statements illustrate that most of the funding that the Council receives is dedicated to providing specific programs and services. For example, at section 18, the statements declare that Council depends on funding from Indigenous and Northern Affairs Canada and Health Canada. The Council does not receive any other funding for the purpose of participating in inquiries such as this one and, in general, its discretionary funding is extremely limited. On the other hand, being accustomed to receiving dedicated funding, the Council has always managed these funds responsibly and used them for the purposes for which they were received.

b) Purpose and use of funds

The Council requires funding for the purpose of facilitating its participation before the Inquiry. The funds will be used primarily for professional fees, travel and other related disbursements. More specifically:

- Before the Inquiry, the Council will have to participate in a third language, English, which is spoken by less than 10% of community members. The vast majority of Ekuanitshit community members of Ekuanitshit speak Innu as their first language (over 95% according to the last available census data) and French as their second language. The Council's participation in a third language will require additional time and resources, for example, for the preparation and translation of submissions and other documents.
- Travel from Ekuanitshit to St. John's or Happy Valley-Goose Bay will be required in order to participate before the Inquiry, which will be time-consuming and expensive.
- In order to further the conduct of the Inquiry to the fullest extent possible, the Council has retained legal counsel. While professional representation will

contribute to the efficiency and effectiveness of the Inquiry, it also increases the cost of participation for the Council.

The funds will be accounted for according to the Commission's rules and generally accepted accounting principles.

c) Statement of the applicant's own contributions

The Council des Innu de Ekuanitshit will contribute its own funds and personnel to participate in the Inquiry to the extent possible. For example, the Council has already contributed its own funds in order to prepare submissions on the interpretation of the Commission's terms of reference. In addition, the Chief and councillors and other council employees shall participate as required in order to further the conduct of the Inquiry and to represent the community fairly before the Inquiry.

The fund would be administered through Ekuanitshit's not-for-profit corporation dedicated to the defence of its rights and title on the territory, Corporation Ka Tshishpeuatak, and the person primarily responsible would be:

Name: Isabelle Napess

Position: Director General, Corporation Ka Tshishpeuatak

Address:

Telephone: 418- 132 ext. 223

d) Administration and controls

As noted above, the Council is accustomed to receiving dedicated funding and it would put similar controls in place to those that it uses for other sources of dedicated funding in order to ensure that any funding received is disbursed for the purpose of the Inquiry. For example, the financial controls that would be put into place in order to ensure that funding is disbursed solely for the purpose of the Inquiry would include the use of accounting tools, audits, internal checks



and balances, such as requiring multiple signatories, and the deposit of funds into the trust account of the applicant's legal counsel.

2. Hearing of application

In light of the costs to the Council that would be associated with a hearing in either HappyValley-Goose Bay or St. John's, the Council requests that the Commissioner recommend that it be granted funding on the basis of these written submissions alone. If a hearing is required for this application for funding, the Council requests that the hearing take place at the same time and place as the hearing of its application for standing before the Commission.



AFFIDAVIT


Je soussignée, Rita Mestokosho, conseillère élue siégeant sur le Conseil des Innu de Ekuanitshit, exerçant mes fonctions au [REDACTED] déclare solennellement ce qui suit :

1. Je suis une conseillère élue siégeant sur le Conseil des Innu de Ekuanitshit;
2. L'avocat du Conseil, David Janzen, m'a résumé le contenu de l'*Application for Funding to Participate Before the Commission of Inquiry Respecting the Muskrat Falls Project* ci-jointe et tous les faits qui y sont allégués sont vrais et exacts à ma connaissance personnelle.

ET J'AI SIGNÉ


Conseillère Rita Mestokosho

ASSERMENTÉ devant moi à Ekuanitshit, ce 28 mars 2018.

 109620
Commissaire à l'assermentation pour le
District de

CONSEIL DES INNU DE EKUANITSHIT

ÉTATS FINANCIERS CONSOLIDÉS

31 MARS 2017

CONSEIL DES INNU DE EKUANITSHIT

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DÉCLARATION DES GESTIONNAIRES SUR LA RESPONSABILITÉ

Les états financiers consolidés ci-joints, au 31 mars 2017, du Conseil des Innu de Ekuanitshit sont la responsabilité des gestionnaires. Ils ont été approuvés par le Chef et par le Conseil.

Ces états financiers consolidés ont été dressés conformément aux Normes comptables canadiennes pour le secteur public, tels que définis dans le Manuel de comptabilité de CPA Canada pour le secteur public. Lorsqu'il y a lieu, ils comprennent des montants fondés sur les meilleurs jugements et estimations des gestionnaires. Ceux-ci ont établi des systèmes de contrôle interne pour faire en sorte que les informations financières soient objectives et fiables et que les biens de la bande soient protégés.

Ces états financiers consolidés ont été audités par les auditeurs indépendants, Blouin, Julien, Potvin, Société de comptables professionnels agréés, dont le rapport précise la portée de leur audit et indique leur opinion sur ces documents.

Le Chef et le Conseil assument leur responsabilité à l'égard de ces états financiers par l'entremise d'une décision du Conseil, le quorum ayant été atteint. Ils ont rencontré les auditeurs pour s'assurer que les contrôles internes sont adéquats et examiné les états financiers ainsi que le rapport de l'auditeur indépendant.

Le Chef et le Conseil examinent les états financiers consolidés audités avec les auditeurs indépendants avant de faire des recommandations quant à la présentation de ces documents aux membres de la bande.


Chef


Conseiller

RAPPORT DE L'AUDITEUR INDÉPENDANT

Aux membres du
Conseil des Innu de Ekuanitshit

Nous avons effectué l'audit des états financiers consolidés ci-joints du Conseil des Innu de Ekuanitshit qui comprennent l'état consolidé de la situation financière au 31 mars 2017 et les états consolidés des résultats, de la variation des actifs financiers nets, des flux de trésorerie, du fonds de bande et des résultats, soldes des fonds et informations sectorielles pour l'exercice terminé à cette date ainsi qu'un résumé des principales méthodes comptables et d'autres informations explicatives.

Responsabilité de la direction pour les états financiers.

La direction est responsable de la préparation et de la présentation fidèle de ces états financiers consolidés conformément aux Normes comptables canadiennes pour le secteur public, ainsi que du contrôle interne qu'elle considère comme nécessaire pour permettre la préparation d'états financiers exempts d'anomalies significatives résultant de fraudes ou d'erreurs.

Responsabilité de l'auditeur indépendant

Notre responsabilité consiste à exprimer une opinion sur les états financiers consolidés, sur la base de notre audit. Nous avons effectué notre audit selon les normes d'audit généralement reconnues du Canada. Ces normes requièrent que nous nous conformions aux règles de déontologie et que nous planifions et réalisons l'audit de façon à obtenir l'assurance raisonnable que les états financiers consolidés ne comportent pas d'anomalies significatives.

Un audit implique la mise en œuvre de procédures en vue de recueillir des éléments probants concernant les montants et les informations fournis dans les états financiers. Le choix des procédures relève du jugement de l'auditeur et notamment de son évaluation des risques que les états financiers consolidés comportent des anomalies significatives résultant de fraudes ou d'erreurs. Dans l'évaluation de ces risques, l'auditeur prend en considération le contrôle interne de l'entité portant sur la préparation et la présentation fidèle des états financiers consolidés afin de concevoir des procédures d'audit appropriées aux circonstances et non dans le but d'exprimer une opinion sur l'efficacité du contrôle interne de l'entité. Un audit comporte également l'appréciation du caractère approprié des méthodes comptables retenues et du caractère raisonnable des estimations comptables faites par la direction, de même que l'appréciation de la présentation d'ensemble des états financiers consolidés.

Nous estimons que les éléments probants que nous avons obtenus sont suffisants et appropriés pour fonder notre opinion avec réserve.

Fondement de l'opinion avec réserve

Les états financiers de quatre filiales et de trois sociétés satellites n'ont pas fait l'objet d'un audit. Par conséquent, étant donné que ces placements sont comptabilisés à la valeur de consolidation modifiée, nous ne pouvons déterminer si certains redressements auraient dû être apportés aux résultats et aux placements. À cet égard, les états financiers consolidés ne sont pas conformes aux Normes comptables canadiennes pour le secteur public. L'incidence sur les états financiers consolidés n'a pu être déterminée en raison de la complexité à obtenir l'information adéquate dans les délais requis.

Opinion avec réserve

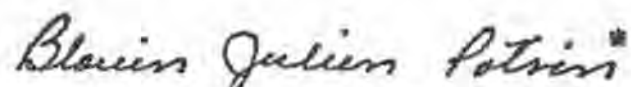
À notre avis, à l'exception des incidences de l'élément décrit dans le paragraphe « Fondement de l'opinion avec réserve », les états financiers consolidés donnent, dans tous leurs aspects significatifs, une image fidèle de la situation financière du Conseil des Innu de Ekuanitshit au 31 mars 2017 ainsi que de ses résultats d'exploitation et de ses flux de trésorerie pour l'exercice terminé à cette date, conformément aux Normes comptables canadiennes pour le secteur public.

Observations

Sans pour autant modifier notre opinion, nous attirons l'attention sur le fait que le Conseil des Innu de Ekuanitshit inclut dans ses états financiers consolidés certaines informations financières qui ne sont pas exigées selon les Normes comptables canadiennes pour le secteur public. Ces informations, établies conformément au modèle prescrit par les Affaires autochtones et Développement du Nord Canada (AADNC) sont présentées dans les renseignements complémentaires.

Autre point

Les chiffres du budget, présentés pour fins de comparaison, ne sont pas audités et, par conséquent, nous n'exprimons pas d'opinion sur ces données.



Société de comptables professionnels agréés

Québec, le 25 juillet 2017

SITUATION FINANCIÈRE CONSOLIDÉE
AU 31 MARS

2017

2016

ACTIF

ACTIFS FINANCIERS

Encaisse
Dépôts à terme (note 5)
Débiteurs (note 6)
Placements (note 7)

PASSIFS

Emprunt bancaire (note 9)
Créditeurs (note 10)
Avances de filiales
Surplus de contribution fixe reporté (note 11)
Produits reportés (note 12)
Dette à long terme (note 13)
Réserves pour remplacement (note 14)

ACTIFS FINANCIERS NETS

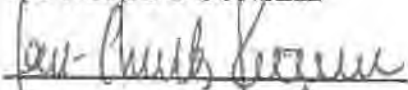
ACTIFS NON FINANCIERS

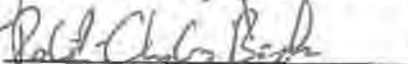
Immobilisations (note 8)
Charges payées d'avance

EXCÉDENT ACCUMULÉ

ÉVENTUALITÉS (Note 17)

AU NOM DU CONSEIL

 , Chef

 , Conseiller

RÉSULTATS CONSOLIDÉS
EXERCICE TERMINÉ LE 31 MARS

2017

2016

PRODUITS

AADNC

Surplus récupérable AADNC

Transfert de (à) surplus de contribution fixe reporté

Intérêts

Santé Canada

Parc Canada

Emploi et développement social Canada

Regroupement Mamit Innuat Inc.

Institut Tshakapesh

Hydro-Québec

Loyers

Location de personnel et de machinerie

S.C.H.L.

SAA

C.S.S.S.P.N.Q.L.

Contributions des usagers

Administration et gestion

Réserves de remplacement

Réserve d'exploitation

Société Ishpitenitamun

Transports Québec

Fondation de la faune du Québec

Pourvoirie du lac Allard et rivière Mingan

Programme de mise en valeur du saumon de l'Atlantique

Redevances

Québec en forme

Divers

Contributions reçues relativement à l'acquisition
d'immobilisations

Produits reportés

CHARGES

Salaires et avantages sociaux

Contrats

Matériel et fournitures

Transport et déplacements

Projets

Montant à reporter

RÉSULTATS CONSOLIDÉS
EXERCICE TERMINÉ LE 31 MARS

2017

2016

CHARGES (suite)

Montant reporté

Frais de location

Entretien et réparations

Électricité

Télécommunications

Assurances

Papeterie et fournitures de bureau

Frais de scolarité

Formation

Honoraires Chef et Conseillers

Honoraires professionnels

Frais d'administration

Hébergement, allocations et achats
de vêtements

Réserves de remplacement

Intérêts et frais bancaires

Mauvaises créances

Activités culturelles, sportives
et éducatives

Élections

Investissements entreprises

Amortissement des immobilisations

Amortissement des produits reportés relatifs
aux immobilisations

Divers

INSUFFISANCE DES PRODUITS SUR LES CHARGES
 AVANT QUOTE-PART DANS LES RÉSULTATS DES
 FILIALES ET SOCIÉTÉS SATELLITES

QUOTE-PART DANS LES RÉSULTATS DES FILIALES

QUOTE-PART DANS LES RÉSULTATS DES
 SOCIÉTÉS SATELLITES

EXCÉDENT (INSUFFISANCE) DES
 PRODUIT SUR LES CHARGES

VARIATION DES ACTIFS FINANCIERS NETS CONSOLIDÉS
EXERCICE TERMINÉ LE 31 MARS20172016EXCÉDENT (INSUFFISANCE) DES
PRODUIT SUR LES CHARGES

AJUSTEMENTS À L'EXCÉDENT ACCUMULÉ (note 3)

VARIATION DES IMMOBILISATIONS

Ajustements

Acquisitions

Amortissement

Produits reportés relatifs aux immobilisations

Amortissement des produits reportés relatifs
aux immobilisations

CHARGES PAYÉES D'AVANCE

VARIATION DES ACTIFS FINANCIERS NETS

ACTIFS FINANCIERS NETS AU DÉBUT

ACTIFS FINANCIERS NETS À LA FIN

**FLUX DE TRÉSORERIE CONSOLIDÉS
EXERCICE TERMINÉ LE 31 MARS**20172016**ACTIVITÉS D'EXPLOITATION**

Excédent (insuffisance) des produits sur les charges
Éléments sans effet sur la trésorerie
 Amortissement des immobilisations
 Amortissement des produits reportés relatifs
 aux immobilisations
 Réserve de remplacement
 Participation dans des entreprises commerciales

Variation nette des éléments hors caisse

ACTIVITÉS D'INVESTISSEMENT

Variation nette des dépôts à terme
Dividendes reçus d'une filiale
Retrait reçu d'une société en commandite
Ajustements des immobilisations
Acquisitions d'immobilisations
Produits reportés relatifs aux immobilisations

ACTIVITÉS DE FINANCEMENT

Variation nette de l'emprunt bancaire
Variation nette des avances d'une filiale
Emprunt à long terme
Versement en capital sur la dette à long terme
Fonds de réserve d'exploitation - S.C.H.L.
Ajustements à l'excédent accumulé

**VARIATION DE LA TRÉSORERIE ET ÉQUIVALENTS
DE TRÉSORERIE****TRÉSORERIE ET ÉQUIVALENTS DE TRÉSORERIE
AU DÉBUT****TRÉSORERIE ET ÉQUIVALENTS DE TRÉSORERIE
À LA FIN**

La trésorerie et les équivalents de trésorerie sont constitués de l'encaisse.

FONDS DE BANDE
EXERCICE TERMINÉ LE 31 MARS

2017

2016

COMPTE DE CAPITAL

Solde au début et à la fin

COMPTE DE PRODUITS

Solde au début

Recettes

Hydro-Québec

Télus

Intérêts

Solde à la fin

**RÉSULTATS CONSOLIDÉS, SOLDES DES FONDS ET
INFORMATIONS SECTORIELLES**

**RÉSULTATS CONSOLIDÉS, SOLDES DES FONDS ET
INFORMATIONS SECTORIELLES (suite)**

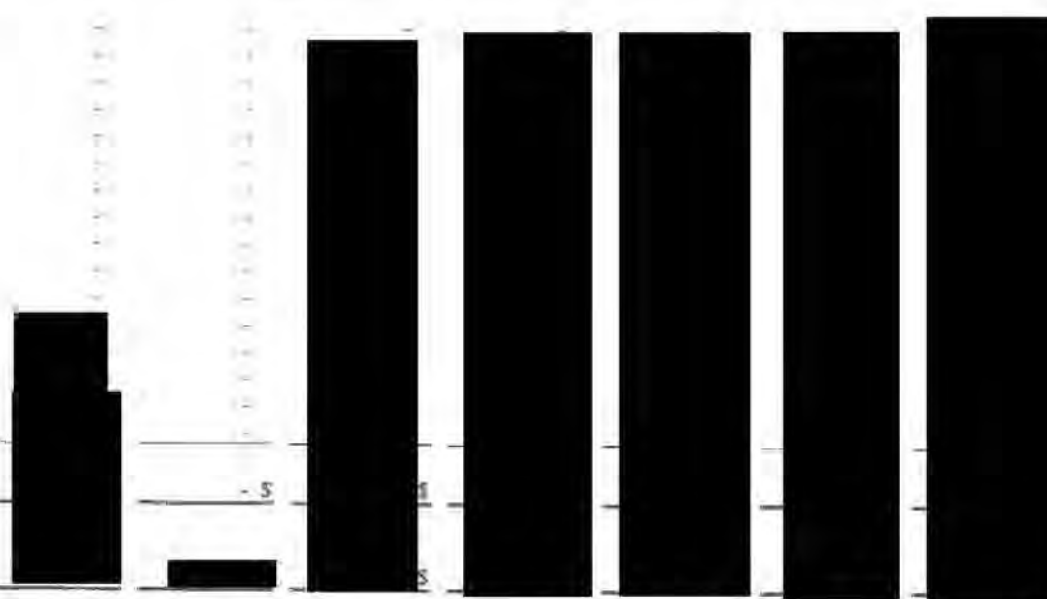
**RÉSULTATS CONSOLIDÉS, SOLDES DES FONDS ET
INFORMATIONS SECTORIELLES (suite)**

Transfert de (à) d'autres services	Transfert de (à) produits reportés	Transfert à surplus de contributions fixes	Autres produits	Total des produits 2016-17	Total des charges 2016-17	Excédent (Insuffisance) 2016-17	Solde (déficit) 2017
---	---	---	--------------------	----------------------------------	---------------------------------	---------------------------------------	----------------------------

- \$

- \$

100
90
80
70
60
50
40
30
20
10
0
-10
-20
-30
-40
-50
-60
-70
-80
-90
-100



- \$

- \$							
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**NOTES AUX ÉTATS FINANCIERS CONSOLIDÉS
AU 31 MARS 2017****1- STATUTS ET NATURE DES ACTIVITÉS**

Le Conseil des Innu de Ekuanitshit est un gouvernement local composé d'un chef et de quatre conseillers, lesquels sont choisis par voie d'élection populaire et dont le mandat consiste à administrer les affaires de la Bande.

2- PRINCIPALES MÉTHODES COMPTABLES

Les états financiers ont été dressés selon les Normes comptables canadiennes pour le secteur public et comprennent les principales méthodes comptables suivantes :

Trésorerie et équivalents de trésorerie

Les fonds de caisse, les soldes bancaires et découverts bancaires, dont les soldes fluctuent souvent entre le découvert et le disponible ainsi que les placements, dont l'échéance n'excède pas trois mois à partir de la date d'acquisition, sont considérés comme des éléments de trésorerie et équivalents de trésorerie.

Dépôts à terme

Les dépôts à terme sont comptabilisés au coût.

Principes de consolidation

Toutes les entités soumises au contrôle du Conseil des Innu de Ekuanitshit sont consolidées une à une, à l'exception des entreprises commerciales qui correspondent à la définition d'entreprise publique. Les activités de ces entreprises sont incluses dans les états financiers consolidés selon la méthode modifiée de comptabilisation à la valeur de consolidation.

Immobilisations corporelles

Les immobilisations corporelles sont comptabilisées au coût. Les contributions reçues relativement à l'acquisition d'immobilisations sont enregistrées comme produits reportés et amorties au produit sur la même base que le coût des biens connexes. L'amortissement est calculé selon la méthode de l'amortissement dégressif aux taux suivants :

Bâtisses
Aqueduc et égouts
Maisons
Aménagement de terrains
Mobilier et équipement
Matériel roulant

**NOTES AUX ÉTATS FINANCIERS CONSOLIDÉS
AU 31 MARS 2017****2- PRINCIPALES MÉTHODES COMPTABLES (suite)****Immobilisations incorporelles**

Le permis de pêche est comptabilisé au coût et n'est pas amorti.

Révision par AADNC, Santé Canada et la S.C.H.L.

Les états financiers seront examinés par les représentants AADNC, de Santé Canada et de la S.C.H.L. et suite à ces révisions, les postes suivants pourraient être modifiés :

Excédent accumulé

Débiteurs - AADNC

Débiteurs - Santé Canada

Débiteurs - S.C.H.L.

Comptabilisation des produits

Tous les produits sont enregistrés selon la méthode de la comptabilité d'exercice. Le financement obtenu aux termes des accords de contribution du gouvernement fédéral est comptabilisé comme un produit une fois les critères d'admissibilité satisfaits. Le financement est comptabilisé comme produit reporté s'il a été limité par le gouvernement fédéral dans un but déclaré, comme un programme particulier ou l'acquisition d'immobilisations. Les produits reportés sont comptabilisés aux produits, au fur et à mesure que les critères de comptabilisation sont satisfaits.

Utilisation d'estimations

La préparation des états financiers, conformément aux Normes comptables canadiennes pour le secteur public, exige que la direction procède à des estimations et pose des hypothèses qui ont une incidence sur le montant présenté au titre des actifs et des passifs, sur l'information fournie à l'égard des actifs et passifs éventuels à la date des états financiers et sur le montant présenté au titre des produits et des charges au cours de la période considérée. Ces estimations sont révisées périodiquement et des ajustements sont apportés au besoin aux résultats de l'exercice au cours duquel ils deviennent connus. Les principales estimations portent sur la dépréciation des actifs financiers et la durée de vie utile des immobilisations.

3- AJUSTEMENTS À L'EXCÉDENT ACCUMULÉ

Santé Canada

AADNC

Projet Habitation

Autres



NOTES AUX ÉTATS FINANCIERS CONSOLIDÉS AU 31 MARS 2017

4- ENCAISSE - RÉSERVES

Afin de se conformer aux exigences du programme de logement social de la S.C.H.L., les fonds de réserve de remplacement ainsi que de surplus de subventions cumulés doivent être versés dans un compte bancaire distinct. En date du 31 mars 2017, la situation était conforme à cette égard.

5- DÉPÔTS À TERME

Les taux d'intérêts sur les dépôts à terme varient de 0.75 % à 1.85 %. Les dépôts à terme viennent à échéance de juillet 2017 à octobre 2021.

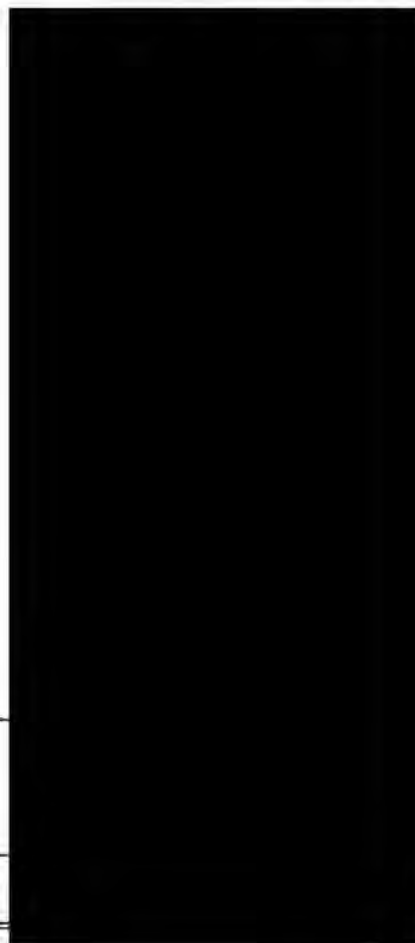
6- DÉBITEURS

Loyers
AADNC
Année courante
Déficit admissible, Surplus récupérable ou autres
Institut Tshakapesh
C.S.S.S.P.N.Q.L.
S.C.H.L.
Santé Canada
Taxes à la consommation (TPS et TVQ)
Pêcheries Uinipekunnu
SAA
Fondation de la faune du Québec
Pêches et Océans Canada
Hydro-Québec
Transport Ekuanitshit Inc.
Société Ishpitenitamun
Financement à recevoir
Divers

Provision pour créances douteuses - loyers

2017

2016



**NOTES AUX ÉTATS FINANCIERS CONSOLIDÉS
AU 31 MARS 2017**

7- PLACEMENTS

2017

2016

Pêcheries Shipek S.E.C.

60 000 parts représentant une participation de
49,99 %

9152-0759 Québec Inc.

100 actions catégorie "A" représentant une
participation de 50 %

Compagnie Atautshuap Inc.

25 000 actions catégorie "A" représentant une
participation de 100 %

Société de gestion Ekuanitshinnuat Inc.

100 actions catégorie "A" représentant une
participation de 100 %

Sécurité Innu Inc.

100 actions catégorie "A" représentant une
participation de 100 %

Pourvoirie du lac Allard et rivière Mingan Inc.

1000 actions catégorie "A" représentant une
participation de 100 %

Voyages inter-nations & associés Inc.

160 actions catégorie "A" représentant une
participation de 33,33 %

Effet à recevoir, sans intérêts, échéance indéterminée

NOTES AUX ÉTATS FINANCIERS CONSOLIDÉS
AU 31 MARS 2017

8- IMMOBILISATIONS

	2017		2016
	Coût	Amortissement cumulé	Valeur nette
Immobilisations corporelles:			
Bâtisses			
Aqueduc et égouts			
Maisons			
Aménagement de terrains			
Mobilier et équipement			
Matériel roulant			
Immobilisations incorporelles:			
Permis de pêche			
Produits reportés:			
Bâtisses			
Aqueduc et égouts			
Maisons			
Aménagement de terrains			
Mobilier et équipement			
Matériel roulant			

**NOTES AUX ETATS FINANCIERS CONSOLIDES
AU 31 MARS 2017**

9- EMPRUNT BANCAIRE

L'emprunt bancaire, d'un montant autorisé de 600 000 \$ est renouvelable annuellement; il porte intérêt au taux préférentiel bancaire majoré de 2 % et est garanti par l'universalité des créances.

10- CRÉDITEURS

Fournisseurs et frais courus
Salaires à payer
Charges sociales et retenues à la source

2017

2016



11- SURPLUS DE CONTRIBUTION FIXE REPORTÉ

Construction et rénovation de logements
dans les réserves, NTKB

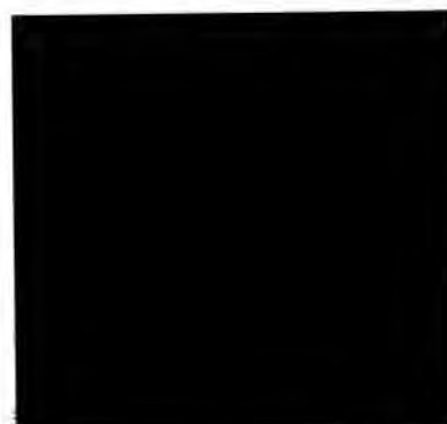
 \$

12- PRODUITS REPORTÉS

SAA
Emploi et développement social Canada
Hockey mineur
Société Ishpitenitamun
Regroupement Mamit Innuat
C.S.S.S.P.N.Q.L.
Fondation de la faune du Québec
Rio Tinto

2017

2016



NOTES AUX ÉTATS FINANCIERS CONSOLIDÉS
AU 31 MARS 2017

13-DETTE À LONG TERME

2017

2016

Emprunts remboursés au cours de l'exercice

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 3,75 %, échéant en février 2019, garanti par une hypothèque de premier rang sur des maisons résidentielles et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 4,95 %, échéant en janvier 2018, garanti par une hypothèque de premier rang sur des maisons résidentielles et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,67 %, échéant en juin 2018, garanti par une hypothèque de premier rang sur trois maisons résidentielles et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 3,9 %, échéant en août 2017, garanti par une hypothèque de premier rang sur cinq maisons résidentielles et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 6,25 %, échéant en août 2017, garanti par les créances résultants des revenus de Santé Canada et des revenus de loyer du Regroupement Mamit Innuat Inc.

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,43 %, échéant en avril 2022, garanti par une hypothèque de premier rang sur une maison résidentielle et par AADNC

Montant à reporter

NOTES AUX ÉTATS FINANCIERS CONSOLIDÉS
AU 31 MARS 2017

13-DETTE À LONG TERME (suite)

2017

2016

Montant reporté

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,39 %, échéant en août 2017, garanti par une hypothèque de premier rang sur une maison résidentielle et par AADNC

Emprunt, remboursable par versements semestriels de [REDACTED] incluant les intérêts calculés au taux de 5 %, échéant en août 2017, garanti par le SAA. Cet emprunt profite d'une aide gouvernementale correspondant aux versements semestriels

Emprunt, remboursable par versements mensuels de [REDACTED] plus les intérêts calculés au taux préférentiel de la banque majoré de 1,5 %, échéant en mars 2031, garanti par une hypothèque de premier rang sur quatre maisons résidentielles et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 5,25 %, échéant en avril 2017, garanti par une hypothèque de premier rang sur deux maisons résidentielles et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux préférentiel de la banque majoré de 1 %, échéant en novembre 2020, garanti par du matériel roulant

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 4,95 %, échéant en janvier 2018, garanti par une hypothèque de premier rang sur cinq maisons résidentielles et par AADNC

Montant à reporter

NOTES AUX ÉTATS FINANCIERS CONSOLIDÉS
AU 31 MARS 2017

13- DETTE À LONG TERME (suite)

2017

2016

Montant reporté

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,08 %, échéant en août 2020, garanti par une hypothèque de premier rang sur un jumelé et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 3,4 %, échéant en mars 2020, garanti par une hypothèque de premier rang sur trois maisons résidentielles et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,11 %, échéant en avril 2021, garanti par une hypothèque de premier rang sur deux maisons résidentielles et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,53 %, échéant en décembre 2017, garanti par une hypothèque de premier rang sur deux maisons résidentielles et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,19 %, échéant en novembre 2020, garanti par une hypothèque de premier rang sur une maison résidentielle et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,65 %, échéant en juin 2017, garanti par une hypothèque de premier rang sur une maison résidentielle et par AADNC

Montant à reporter

NOTES AUX ÉTATS FINANCIERS CONSOLIDÉS
AU 31 MARS 2017

13- DETTE À LONG TERME (suite)

Montant reporté

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,65 %, échéant en juin 2017, garanti par une hypothèque de premier rang sur une maison résidentielle et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,65 %, échéant en juin 2017, garanti par une hypothèque de premier rang sur deux maisons résidentielles et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,19 %, échéant en novembre 2020, garanti par une hypothèque de premier rang sur une maison résidentielle et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,67 %, échéant en juin 2018, garanti par une hypothèque de premier rang sur une maison résidentielle et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,67 %, échéant en juin 2018, garanti par une hypothèque de premier rang sur une maison résidentielle et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 4,9 %, échéant en avril 2018, garanti par une hypothèque de premier rang sur un immeuble

Montant à reporter

2017

2016

\$

NOTES AUX ÉTATS FINANCIERS CONSOLIDÉS
AU 31 MARS 2017

13-DETTE À LONG TERME (suite)

2017

2016

Montant reporté

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,68 %, échéant en avril 2018, garanti par une hypothèque de premier rang sur une maison résidentielle et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,92 %, échéant en avril 2019, garanti par une hypothèque de premier rang sur une maison résidentielle et par AADNC

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 3,41 %, échéant en septembre 2020, garanti par une hypothèque de premier rang sur huit maisons résidentielles. Les remboursements de capital et intérêts font l'objet d'une subvention de Société Ishpitenitamun

Emprunt, d'un montant maximal autorisé de [REDACTED] remboursable, à partir du dernier déboursement, par versements semestriels de 40 502 \$ incluant les intérêts calculés au taux de 6,25 %, échéant 60 mois après le dernier déboursement. Les remboursements de capital et intérêts font l'objet d'une subvention du SAA

Emprunt, remboursable par versements mensuels de [REDACTED] incluant les intérêts calculés au taux de 1,14 %, échéant en juin 2021, garanti par une hypothèque de premier rang sur un jumelé et par AADNC

**NOTES AUX ÉTATS FINANCIERS CONSOLIDÉS
AU 31 MARS 2017**

13- DETTE À LONG TERME (suite)

Les versements estimatifs en capital à effectuer au cours des cinq prochains exercices s'établissent comme suit :

2018
2019
2020
2021
2022



14- RÉSERVES POUR REMPLACEMENT

2017

2016

Réserves contractuelles

Réserve pour remplacement - santé

Fonds de réserve de remplacement - S.C.H.L.

Fonds de réserve d'exploitation - S.C.H.L.

Réserves non contractuelles

Réserve pour remplacement - incendie

Réserve pour remplacement - autres



15- RAPPROCHEMENT DES FONDS AADNC

Produits AADNC selon les états financiers

Produits AADNC selon la confirmation de
financement

**NOTES AUX ETATS FINANCIERS CONSOLIDES
AU 31 MARS 2017****16- INFORMATION SECTORIELLE**

Le Conseil des Innu de Ekuanitshit offre une gamme de services à ses membres. Aux fins de présentation de rapports à la direction, les opérations et les activités sont organisées et présentées par secteur et par projet. Les services offerts à la population regroupent l'éducation, la santé, le développement économique, le logement ainsi que d'autres services à la communauté en plus de l'administration de la bande. Pour chaque segment faisant l'objet d'un rapport distinct, les produits et charges sectoriels représentent à la fois les montants directement attribuables au secteur et les montants alloués de façon raisonnable. La présentation sectorielle est fondée sur les méthodes comptables exposées dans le résumé des principales méthodes comptables figurant à la note 2. Les résultats de chaque segment pour l'exercice sont représentés aux pages 10 à 12.

17- ÉVENTUALITÉS

Le Conseil des Innu de Ekuanitshit a endossé des dettes contractées par des filiales et des sociétés détenues par ses filiales. Il cautionne également les emprunts bancaires de certaines de ces sociétés. Il n'est pas possible d'évaluer le montant que le conseil pourrait devoir payer en cas de défaut de l'une de ces sociétés.

18- DÉPENDANCE ÉCONOMIQUE

La majeure partie des produits du Conseil provient de AADNC et de Santé Canada. La nature et la portée de ces produits ont une telle importance que le Conseil en dépend sur le plan économique.