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**COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT
FINAL SUBMISSIONS OF THE CONSEIL DES INNU DE EKUANITSHIT**

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1. Summary of Ekuanitshit's position

These submissions outline the position of the Conseil des Innu de Ekuanitshit (the “Council” or “Ekuanitshit”) with respect to consultations and mitigation measures imposed by the province (or “government”) and carried out by Nalcor in the context of the Muskrat Falls Project.

From Ekuanitshit's perspective, there were two phases to engagement by Nalcor and the province with the community: a phase prior to the project's release from environmental assessment (“pre-authorization”) and another phase following the release (“post-authorization”).

With respect to the issues for which Ekuanitshit has been granted standing before this Commission, these submissions make the following points.

1.1. What consultation occurred between the established leadership of Ekuanitshit and Nalcor as well as the Government of Newfoundland and Labrador?

Neither Nalcor nor government showed any interest in seriously consulting the Innu of Ekuanitshit.

- Pre-authorization consultation was limited to the environmental assessment process and was largely carried out by Nalcor with little oversight by government. Ekuanitshit's requests for resources that would have allowed for genuine consultation were repeatedly denied.
- There was no real post-authorization consultation with Ekuanitshit. Post-authorization “consultations” consisted of government forwarding hundreds of English-only plans and permit applications to Ekuanitshit, imposing arbitrary timelines for comment,

refusing to provide any capacity or funding, and ignoring Ekuanitshit's concerns and comments.

1.2. What risk assessments and reports were done as regards the concerns raised by Ekuanitshit? Were those assessments appropriately and reasonably considered by Nalcor and the Government?

On the issues of greatest concern to Ekuanitshit, risk assessments were either not appropriately considered or simply never completed.

- *Traditional Knowledge and Land Use:* No traditional knowledge or land-use studies involving Ekuanitshit were ever carried out in relation to the project.
- *Caribou:* The project went ahead without first identifying the critical habitat of threatened herds, without up-to-date recovery plans, without cumulative effects assessments and without adequate mitigation or monitoring measures.
- *Cultural Heritage:* Ekuanitshit was not invited to participate in any historic or archaeological resource monitoring programs or initiatives.

1.3. Were appropriate measures taken to mitigate against reasonably potential adverse effects to the settled or asserted rights of the people of Ekuanitshit?

- Government and Nalcor repeatedly denied Ekuanitshit's requests to provide funding to allow Ekuanitshit to hire its own experts to study and provide constructive input into proposed mitigation and monitoring measures. Government even refused to pay



more than half the cost of interpretation services when Ekuanitshit requested to speak with the province's experts.

2. Submissions

2.1. Context

The Innu of Ekuanitshit continue to use and occupy the territory affected by the Muskrat Falls Project as they have since time immemorial.¹ While Ekuanitshit's reserve is located in Québec, the community is no less connected to those parts of its traditional territory that happen to be found on the other side of the Québec-Labrador border.² Indeed, Innu from communities in Labrador and Québec still meet on the land that they both use to hunt, fish and trap, among other things.³

Between 1975 and 1994, the Innu of Ekuanitshit participated in the Conseil Atikamekw-Montagnais ("CAM") whose mandate was to negotiate the land claims of the Atikamekw and Innu nations. Approximately one-quarter of the land claimed by the CAM is situated in Labrador, including a territory that stretches from Mingan (Ekuanitshit) to the Churchill River.⁴

¹ **Testimony of Jean-Charles Piétacho, Sept. 18, 2018** transcript pp. 41-42; **Testimony of Jean-Charles Piétacho, Feb. 18, 2019** transcript p. 21.

² **Testimony of Jean-Charles Piétacho, Feb. 18, 2019** transcript p. 27; **Testimony of Jean-Charles Piétacho, Sept. 18, 2018** transcript p. 41.

³ **Testimony of Sebastian Penunsi, Sept. 18, 2018** transcript at pp. 26-27.

⁴ **Exhibit P-01710**, Affidavit of Chief Jean-Charles Piétacho at paras 18-19, p. 3.

The land claim of the Innu of Ekuanitshit was accepted for negotiation by the federal government in 1979 but remains unresolved.⁵ The claim has never been accepted by the Government of Newfoundland and Labrador.⁶

Regarding projects affecting Ekuanitshit's traditional territory, Chief Jean-Charles Piétacho testified before this Commission as follows: "We often are told that we're against development. We're not against development. It's the kind of development that's carried out without consultation, without accommodation, and without our consent."⁷

2.2. Pre-authorization

2.2.1. Consultation limited to the environmental assessment process

Ekuanitshit was first contacted by government and by Nalcor in relation to the Muskrat Falls Project in mid-2008, several years after the project's environmental assessment registration.⁸

Pre-authorization consultation by government consisted of informing Ekuanitshit about the environmental assessment process.⁹ Further consultation was delegated to Nalcor to be performed in accordance with the Aboriginal Consultation Guidelines issued by the federal and provincial

⁵ Exhibit P-01457, *Council of the Innu of Ekuanitshit v. Canada (Attorney General)*, 2014 FCA 189, p. 34 at para 89.

⁶ Exhibit P-01710, Affidavit of Chief Jean-Charles Piétacho at paras 25-26, p. 4.

⁷ Testimony of Jean-Charles Piétacho, Feb. 18, 2019 transcript p. 27.

⁸ Testimony of Aubrey Gover, Oct. 3, 2018, transcript p. 55; Testimony of Gilbert Bennett, November 29, 2018 transcript, p. 37.

⁹ Testimony of Aubrey Gover, Oct. 3, 2018 transcript pp. 56-57.



governments. Those Guidelines did not distinguish between Aboriginal groups as to the level of consultation required.¹⁰

While waiting for the Joint Review Panel's report, government oversight of Nalcor's consultation efforts seems to have been limited.¹¹

Nalcor representatives met with Ekuanitshit once in 2009, twice in 2010, and once again in 2011 in relation to the Transmission Link.¹² Amongst other concerns raised at these meetings, Ekuanitshit explained that it required funds to cover fees for experts to study issues of particular concern to the community and in order to review the boxes of English-only documents being sent to the community.¹³

In the end, the only funding that Ekuanitshit received for consultations related to the project (approximately \$67,000) came through the Participant Funding Program administered by the Canadian Environmental Assessment Agency. Ekuanitshit used those funds to prepare written submissions regarding Nalcor's Environmental Impact Statement and to make further comments on the adequacy of Nalcor's responses. As further described below, Ekuanitshit did not receive any funding from Nalcor, nor did Ekuanitshit receive any funding directly from the province.

The level of consultation and funding offered to Ekuanitshit was drastically inferior to what was offered to other indigenous communities. Consultation with the Labrador Innu, for example,

¹⁰ **Exhibit P-01323**, Environmental Impact Statement Guidelines, July 2008 at p. 40. See also **Exhibit P-01352**, Environmental Impact Statement Guidelines and Scoping Document - Labrador-Island Transmission Link - Nalcor Energy dated May 2011 at p. 43.

¹¹ **Testimony of Aubrey Gover, Oct. 3, 2018** transcript p. 59.

¹² **Exhibit P-01710**, Affidavit of Chief Jean-Charles Piétacho at paras 47, 52, 56, 61, p. 6-7.

¹³ **Exhibit P-01710**, Affidavit of Chief Jean-Charles Piétacho at paras 47, 52, p. 6.

began around 1998,¹⁴ which led to multiple agreements designed to develop an understanding of their traditional knowledge and land use and the provision of millions of dollars in funding.¹⁵

With the limited resources available to it, Ekuanitshit participated in the environmental assessment process as best it could. We identify below certain specific concerns raised by Ekuanitshit and how they were addressed by Nalcor and government.

2.2.2. Specific concerns raised

a) Failure to consider Ekuanitshit traditional knowledge, land and resource use

Ekuanitshit repeatedly expressed its concern that Nalcor and government did not have an adequate understanding of the community's traditional knowledge or land use, thereby making it impossible to accurately assess risks to the environment, to the community's rights or the effectiveness of proposed mitigation measures.¹⁶

Despite Ekuanitshit's concerns, no traditional knowledge or land use studies involving its community members were ever carried out in relation to the project.

The Aboriginal Consultation Guidelines for the project did indeed require Nalcor's Environmental Impact Statement to demonstrate its understanding of Aboriginal traditional

¹⁴ **Exhibit P-00271**, Indigenous Consultation Report – Muskrat Falls Project dated August 21, 2018 at p. 11.

¹⁵ **Exhibit P-01333**, Information Response #s JRP.146 to JRP.164 dated August 2010 at p. 143-144. **Exhibit P-01351**, Submission from the Innu of Ekuanitshit to the Joint Review Panel Public Hearings, April 2011 at p. 6.

¹⁶ For example: **Exhibit P-00319**, Comments of the Innu of Ekuanitshit on the Consultation Assessment Report Submitted as Supplemental Information to IR JRP.151, October 2010; **Exhibit P-01340** Comments of the Innu of Ekuanitshit on the Additional Information Provided by the Proponent at p. 3-4.



knowledge and contemporary land use and indicate how these would be considered in planning and carrying out the project.¹⁷

However, the traditional knowledge and land use of the Innu of Ekuanitshit was not considered in preparing Nalcor's 2009 Environmental Impact Statement for the generating stations,¹⁸ and this deficiency was not remedied during the Joint Review Panel process.

During this process, Nalcor first requested that Ekuanitshit sign an English-only "Community Consultation Agreement" with no work plan and no budget.¹⁹ Nalcor sent a modified "Community Engagement Agreement" to Ekuanitshit in spring 2010 under which all activities, including the collection of data and preparation of reports on the community's land use and traditional knowledge, would have been accomplished within four months on a budget of \$87,500.²⁰

Based on Ekuanitshit's own experience with the very recent La Romaine hydroelectric construction project in Québec, it believed that the proposed budget and timeframe were insufficient to produce credible work.²¹ Ekuanitshit has since been proved correct in that the study

¹⁷ **Exhibit P-01323**, Environmental Impact Statement Guidelines, July 2008 at p. 40; see also **Exhibit P-01352**, Environmental Impact Statement Guidelines and Scoping Document - Labrador-Island Transmission Link - Nalcor Energy dated May 2011 at p. 43.

¹⁸ **Exhibit P-01355**, Environmental Impact Statement - Volume 1 Part A - Project Planning and Description, February 2009 at p. 267; see also **Testimony of Gilbert Bennett, November 29, 2018**, transcript at p. 34.

¹⁹ **Exhibit P-01335**, May 13, 2009 from Gilbert Bennett to Chef Jean-Charles Piétacho re Community Consultation Agreement.

²⁰ **Exhibit P-01333**, Information Response #s JRP.146 to JRP.164 dated August 2010 at p. 143 and p. 167; also **Exhibit P-01342**, LT from D. Schulze to M. Hatherly re Proposed Lower Churchill Hydroelectric Generation Project.

²¹ **Exhibit P-00319**, Comments of the Innu of Ekuanitshit on the Consultation Assessment Report Submitted as Supplemental Information to IR JRP.151, October 2010 at p. 29; See also **Exhibit P-01351**, Submission from the Innu of Ekuanitshit to the Joint Review Panel Public Hearings, April 2011 at p. 6-7.



produced with the one Quebec Innu community to have accepted Nalcor's offer (Pakua Shipi)²² suffered from "serious deficiencies" and was "not credible social science"²³ according to an anthropologist cited extensively in documents submitted by Nalcor to the Joint Review Panel.²⁴

Ekuanitshit's proposal, that it mandate an expert, to be paid by Nalcor, supervised by a Nalcor-Ekuanitshit joint committee and supported by community liaison officers,²⁵ was never accepted by Nalcor.

The Joint Review Panel report thus concluded that "there are uncertainties regarding the extent and locations of current land and resource use by Quebec Aboriginal groups in the Project area", adding that "additional information could be forthcoming during government consultations."²⁶

Neither Nalcor nor Government took any steps to address those uncertainties or to gather additional information following the Joint Review Panel's report.²⁷

The Joint Review Panel also recommended that "Nalcor involve all Aboriginal groups in the design and implementation of its proposed community land and resource use monitoring

²² **Exhibit P-00271**, Indigenous Consultation Report – Muskrat Falls Project dated August 21, 2018 at p. 16-17; see also **Exhibit P-01334**, Supplemental Information to IR JRP.151 (Consultation Assessment Report) dated September 2010 at p. 337-362.

²³ **Exhibit P-01343**, Transmittal dated June 23, 2011 from Rick Hendriks to Pat Marrie, cc Richard Nuna and Paula Reid re Labrador-Island Transmission Link - Historic Resources Component Study at p. 8-9. See also **Exhibit P-01345**, Labrador-Island Transmission Link - Environmental Impact Statement - Innu Nation Comments dated June 12, 2012 at p. 35.

²⁴ For example in **Exhibit P-01334**, Supplemental Information to IR JRP.151 (Consultation Assessment Report) dated September 2010.

²⁵ **Exhibit P-01341**, LT D. Schulze to L. Griffiths and H. Clarke re Proposed Lower Churchill Hydroelectric Generation Project at p. 4.

²⁶ **Exhibit P-00041**, Report of the Joint Review Panel dated August 2011 at p. 24 and p. 203.

²⁷ **Testimony of Aubrey Gover, October 3, 2018**, transcript p. 61; **Testimony of Gilbert Bennett, November 29, 2018**, transcript p. 44.



program for the duration of the construction period to ensure that parameters of importance to these groups and Traditional Knowledge are included.”²⁸

While the province accepted the intent of this recommendation,²⁹ if such a program was ever implemented,³⁰ Ekuanitshit was never invited to participate.

With respect to the Transmission Link, Nalcor simply refused to contemplate the negotiation of a land and resource use study or similar formal arrangement with Ekuanitshit at all.³¹

In sum, the project has been carried out by Nalcor and government without any consideration of Ekuanitshit’s traditional knowledge and without a complete or accurate understanding of the community’s land use.

b) Effects on caribou

Caribou are of sacred importance to the Innu of Ekuanitshit³² and the Council was particularly concerned about the effects of the project on caribou given that three herds (George River, Lac Joseph, Red Wine Mountain) were known to inhabit the project area.

²⁸ **Exhibit P-00041**, Report of the Joint Review Panel dated August 2011 at p. 203.

²⁹ **Exhibit P-00051**, Government of Newfoundland and Labrador’s Response to the Report of the Joint Review Panel, March 15, 2012 at p. 18.

³⁰ **Testimony of Gilbert Bennett, June 25, 2019**, transcript p. 60-61: Mr. Bennett was unaware whether such a program existed.

³¹ **Exhibit P-01344**, E-mail dated July 1, 2011, 8:37 AM from MaryHatherly@nalcenergy.com to David Schulze, cc Toleniuk@osler.com, StevePellerin@nalcenergy.com, et al re Response to E-Mail: Community Engagement -- Ekuanitshit - Labrador-Island Transmission Link Project.

³² **Testimony of Jean-Charles Piétacho, February 18, 2019**, transcript at p. 26: “The animal that’s the most important, the most sacred, to which we owe our survival is – along with the salmon – is the caribou.

Ekuanitshit raised its concerns at every possible opportunity, specifically pointing out, for example: the need for a study on the effects on the Lac Joseph herd and for cumulative effects assessments;³³ the need for more accurate and up-to-date information on the Red Wine Mountain herd's use of the project area,³⁴ including the need to identify the herd's critical habitat;³⁵ and the inadequacy of proposed mitigation and monitoring measures.³⁶

- With respect to the George River herd, the Joint Review Panel concluded that it “could not make a determination about cumulative significance because a proper cumulative effects assessment for the herd was not carried out.”³⁷ While the Panel recommended that several parties cooperate to carry out a cumulative effects assessment, to Ekuanitshit's knowledge no such assessment has ever been carried out.
- With respect to the Lac Joseph herd, the Panel noted that “Nalcor did not include this herd in its assessment.”³⁸ Despite Ekuanitshit's submissions on the need for a study on the direct and indirect effects of the project on the herd,³⁹ the Panel made no

³³ **Exhibit P-01340**, 20091218 Comments of the Innu of Ekuanitshit on the Additional Information provided by the proponent p. 8-9.

³⁴ **Exhibit P-01336**, 20090622 Ekuanitshit comments on EIS at p. 23.

³⁵ **Exhibit P-01347**, Comments of the Innu of Ekuanitshit on the Comprehensive Study Report at p. 4-5.

³⁶ For example: **Exhibit P-01336**, 20090622 Ekuanitshit comments on EIS at p. 6; **Exhibit P-01753**, 20140925 LT from D. Schulze to I. Stone re Species at Risk and Monitoring Plan.

³⁷ **Exhibit P-00041**, Report of the Joint Review Panel dated August 2011 at p. 152. “The Panel furthermore notes that a previous Panel considering the Voisey's Bay Nickel Mine Project, had recommended that any further development consider the cumulative impact of development on the George River caribou herd, including the impact of habitat fragmentation.”

³⁸ **Exhibit P-00041**, Report of the Joint Review Panel dated August 2011 at p. 19.

³⁹ **Exhibit P-01351**, Submission from the Innu of Ekuanitshit to the Joint Review Panel Public Hearings, April 2011 at p. 3.

specific recommendation on the subject and to Ekuanitshit's knowledge no such study has ever been carried out.

- With respect to the Red Wine Mountain herd, which is considered threatened under the provincial *Endangered Species Act* and the federal *Species at Risk Act*, the Joint Review Panel:
 - stated that it clearly would have been desirable for the herd's "critical habitat"⁴⁰ to have been identified before the Panel's hearings;⁴¹
 - recommended that "all reasonable efforts" be made to identify the herd's critical habitat before a final decision was made, noting that decision makers would not be able to appreciate the impact of the project on the herd "without knowing whether the primary habitat to be flooded is critical habitat;"⁴²
 - recommended that Nalcor monitor the herd's response, including any population changes, through the construction phase and early part of the operation phase;⁴³
 - recommended that Nalcor be required to play an enhanced role in the recovery process by putting resources into research and recovery efforts and participating actively in the overall effort to ensure the herd's recovery;⁴⁴

⁴⁰ *Endangered Species Act*, SNL 2001, c E-10.1 at s. 2(c): "'critical habitat' means habitat that is critical to the survival of a species."

⁴¹ **Exhibit P-00041**, Report of the Joint Review Panel dated August 2011 at p. 143.

⁴² **Exhibit P-00041**, Report of the Joint Review Panel dated August 2011 at p. 143. "It clearly would have been desirable for all recovery strategies and critical habitat identification to have been completed before the start of the hearing, regardless of when they are required under federal or provincial legislation... The recovery strategy for boreal woodland caribou, according to Environment Canada, was legally required by 2007."

⁴³ **Exhibit P-00041**, Report of the Joint Review Panel dated August 2011 at p. 159.

⁴⁴ **Exhibit P-00041**, Report of the Joint Review Panel dated August 2011 at p. 152.



- concluded that “the Project would cause a significant adverse environmental effect on the Red Wine Mountain caribou herd.”⁴⁵
- Despite the Panel’s recommendations and conclusions above:
 - to date, the herd’s critical habitat has still not been identified;⁴⁶
 - Nalcor has already ceased to monitor the herd’s response;⁴⁷
 - Department of Environment officials are unaware of any efforts by government to assess the impact of the project on the herd or to oversee or evaluate the effectiveness of any mitigation measures proposed by Nalcor.⁴⁸

c) Effects on fish, especially salmon

In relation to the Transmission Link in particular, Ekuanitshit was concerned about the negative impacts on Atlantic salmon stocks that migrate through the Strait of Belle Isle and upon which the community relies.

In a letter sent roughly a month after a meeting where Ekuanitshit raised its concern, Nalcor again refused to provide the Council with any financial capacity to retain its own expert to advise the community on Nalcor’s fish habitat component study.⁴⁹ Ekuanitshit’s requests for a study on

⁴⁵ **Exhibit P-00041**, Report of the Joint Review Panel dated August 2011 at p. 151. Nalcor’s modelling considered only 30 percent of the herd’s range, because habitat data was not available for the rest of the herd’s range: p. 144.

⁴⁶ **Exhibit P-04229**, Responsibility Matrix and Status of Recommendations of the Joint Review Panel at p. 6: Recovery plan remains “pending”.

⁴⁷ **Exhibit P-04332**, Environmental Assessment Commitments for Lower Churchill Project Labrador Island Transmission Link - Status Update and High Level Description of Supporting Documentation dated June 2019 at p 39; **Testimony of Gilbert Bennett, June 26, 2019**, transcript at p. 57.

⁴⁸ **Testimony of Dr. Susan Squires, June 20, 2019**, transcript at p. 101.

⁴⁹ **Exhibit P-01349**, 20110913 LT from D. Schulze to P. Marrie and B. Coulter at p. 3.



the effects of the submarine cables on the migration patterns of the salmon harvested by the community were similarly dismissed.⁵⁰

Moreover, as Nalcor had refused to contemplate the negotiation of a traditional knowledge and resource use study, the component studies did not incorporate any traditional knowledge of the Innu of Ekuanitshit that could have assisted in establishing baselines regarding ecosystem function, resource abundance, distribution and quality.⁵¹

d) Protection of cultural heritage

Ekuanitshit emphasized its intense historical use of the project area throughout the environmental assessment process, noting that the Innu of Sheshatshiu had even given the name “Ekuanatshiu Ministuk” to one of the islands in the Churchill River near Muskrat Falls.⁵²

After observing that Aboriginal communities in both Labrador and Quebec had affirmed the existence of burial sites within and near the Project area,⁵³ the Joint Review Panel:

- “recommended that Nalcor involve all affected groups in searching for, documenting and commemorating historic and archaeological resources;”⁵⁴

⁵⁰ **Exhibit P-01720**, 20120511 LT from D. Schulze to S. Pellerin at p. 6; **Exhibit P-01723**, 20120612 Comments on the Adequacy of the EIS on the LITL at p. 5.

⁵¹ **Exhibit P-01349**, 20110913 LT from D. Schulze to P. Marrie and B. Coulter; **Exhibit P-01720**, 20120511 LT from DS to S. Pellerin.

⁵² **Exhibit P-00319**, Comments of the Innu of Ekuanitshit on the Consultation Assessment Report Submitted as Supplemental Information to IR JRP.151, October 2010 at p. 23.

⁵³ **Exhibit P-00041**, Report of the Joint Review Panel dated August 2011 at p. 219.

⁵⁴ **Exhibit P-00041**, Report of the Joint Review Panel dated August 2011 at p. 25.



- noted that “Nalcor committed to make use of best practice archaeological interpretation and analysis methods and to engage local communities in the development of commemoration initiatives;”⁵⁵
- recommended that Nalcor consider inviting Aboriginal communities in Quebec to participate in a program to document and interpret archaeological sites and artifacts and that it share with them the results of its historic resources monitoring.⁵⁶

While government accepted the intent of this recommendation, none of these commitments or recommendations were implemented with respect to the Innu of Ekuanitshit. Nalcor did not engage directly with any of the Quebec Innu communities on this matter.⁵⁷ Meanwhile, government engagement with the Quebec Innu communities consisted of forwarding them English versions of Nalcor’s archaeological permit applications, rejecting Ekuanitshit’s request for funding to allow the community have its own archaeologist review proposed historic resources management programs,⁵⁸ and further refusing to pay for more than half the cost of interpretation services when Ekuanitshit requested conference calls with the province and its archaeologists.⁵⁹

⁵⁵ **Exhibit P-00041**, Report of the Joint Review Panel dated August 2011 at p. 25.

⁵⁶ **Exhibit P-00041**, Report of the Joint Review Panel dated August 2011 at p. 220.

⁵⁷ **Testimony of Gilbert Bennett, June 26, 2019**, transcript at p. 54.

⁵⁸ **Exhibit P-01749**, 20140616 e-mails D. Schulze to M. Drake; **Exhibit P-01744**, 20140707 LT from B. Harvey to D. Schulze.

⁵⁹ **Exhibit P-01748**, 20140728 LT from D. Schulze to B. Harvey; **Exhibit P-01750**, 20140822 LT from B. Harvey to D. Schulze.

e) No economic opportunities for Ekuanitshit

Ekuanitshit was concerned that steps be taken to ensure that economic opportunities related to the project be made available to its community members. The Joint Review Panel agreed, recommending that Nalcor initiate an employment outreach program for Quebec Innu communities that would include transportation assistance from Sept-Îles and measures to address language barriers.⁶⁰

Government rejected the recommendation and no specific employment benefits were offered to Quebec Innu communities, with employment opportunities related to the project generally prioritized as follows: 1) Labrador Innu; 2) residents of Labrador; 3) other residents of Newfoundland; 4) others.⁶¹

2.3. Post-authorization

2.3.1. Guidance of the Federal Court of Appeal

Ekuanitshit was disappointed by pre-authorization consultations, but had hoped that Nalcor and the province would heed the guidance of the Federal Court of Appeal, ruling on Ekuanitshit's application for judicial review of the federal authorization of the Lower Churchill Project. The Court made the following comment that is of equal application to the provincial government:

The Joint Review Panel found that certain studies should be carried out at a later stage in order to better appreciate the concerns of Quebec Aboriginal peoples, including

⁶⁰ **Exhibit P-00041**, Report of the Joint Review Panel dated August 2011 at p. 244.

⁶¹ **Exhibit P-04229**, Responsibility Matrix and Status of Recommendations of the Joint Review Panel at p. 15; see also **Exhibit P-00051**, Government of Newfoundland and Labrador's Response to the Report of the Joint Review Panel, March 15, 2012 at p. 21; **Testimony of Aubrey Gover, October 3, 2018**, transcript at p. 63-64.

[Ekuanitshit]. 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).⁶²

The relevant guidance from the Supreme Court of Canada was as follows:

The Project Committee concluded that some outstanding TRTFN [Taku River Tlingit First Nation] concerns could be more effectively considered at the permit stage or at the broader stage of treaty negotiations or land use strategy planning. The majority report and terms and conditions of the Certificate make it clear that the subsequent permitting process will require further information and analysis of Redfern, and that consultation and negotiation with the TRTFN may continue to yield accommodation in response. For example, more detailed baseline information will be required of Redfern at the permit stage, which may lead to adjustments in the road's course. Further socio-economic studies will be undertaken. It was recommended that a joint management authority be established. It was also recommended that the TRTFN's concerns be further addressed through negotiation with the Province and through the use of the Province's regulatory powers. The Project Committee, and by extension the Ministers, therefore clearly addressed the issue of what accommodation of the TRTFN's concerns was warranted at this stage of the project, and what other venues would also be appropriate for the TRTFN's continued input. It is expected that, throughout the permitting, approval and licensing process, as well as in the development of a land use strategy, the Crown will continue to fulfill its honourable duty to consult and, if indicated, accommodate the TRTFN.⁶³

⁶² **Exhibit P-01457**, *Council of the Innu of Ekuanitshit v. Canada (Attorney General)*, 2014 FCA 189, p. 42 at para. 109 (emphasis added).

⁶³ *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74, para. 46 (emphasis added).

2.3.2. Absence of any engagement by Nalcor or government

Ekuanitshit was informed that there were three post-authorization consultation mechanisms available to it:

- a) participation in the Community Liaison Committee (“CLC”);
- b) direct engagement with Nalcor on issues of concern;
- c) participating in the permitting process established by government.⁶⁴

a) The Community Liaison Committee excluded the Quebec Innu

The Joint Review Panel recommended that a monitoring and community liaison committee with representation from Aboriginal organizations be established and provided with sufficient resources to allow for staff support and independent expert advice.⁶⁵ Government’s response was that such a committee would be established by Nalcor.⁶⁶

In response to a request for information about the committee from Ekuanitshit, Nalcor sent them the committee’s terms of reference.⁶⁷ Under these terms of reference, provided to Ekuanitshit in English only, the Aboriginal members of the committee would not include any representation from the Quebec Innu communities. The letter welcomed Ekuanitshit to send a representative to committee meetings, while specifying that the meetings and all related material would be in

⁶⁴ **Exhibit P-04215** LT G. Bennett to D. Schulze re request for further information on the Joint Review Panel Recommendation 15.5 at p. 2-3.

⁶⁵ **Exhibit P-00041**, Report of the Joint Review Panel dated August 2011 at p. 293.

⁶⁶ **Exhibit P-00051**, Government of Newfoundland and Labrador’s Response to the Report of the Joint Review Panel, March 15, 2012 at p. 33.

⁶⁷ **Exhibit P-04215**, LT G. Bennett to D. Schulze re request for further information on the Joint Review Panel Recommendation 15.5, p. 4-9.

English only and that Ekuanitshit would have to cover all of its own costs related to its participation.⁶⁸ On such conditions, Ekuanitshit obviously declined to participate.

b) Nalcor declined to engage directly with Ekuanitshit

In June 2013, the Canadian Environmental Assessment Agency published its Comprehensive Study Report on the Transmission Link, concluding that “the Project, when cumulative environmental effects are taken into account, is likely to cause significant adverse environmental effects on the Red Wine Mountains [caribou] Herd.”⁶⁹

In response to the publication of this report, in July 2013 Ekuanitshit attempted to organize a meeting with officials from Nalcor and the federal and provincial governments to discuss cumulative environmental effects on the endangered Red Wine Mountain caribou herd.⁷⁰

Nalcor declined to participate, stating that it had already provided Ekuanitshit with an extensive body of material through its environmental impact statement and component studies.⁷¹ Nalcor did not make any subsequent offer to engage directly with the Innu of Ekuanitshit in relation to the project.

⁶⁸ **Exhibit P-04215**, LT G. Bennett to D. Schulze re request for further information on the Joint Review Panel Recommendation 15.5 at p. 3.

⁶⁹ **Exhibit P-04217**, Canadian Environmental Assessment Agency - Labrador-Island Transmission Link - Comprehensive Study Report dated June 2013 at p. 4.

⁷⁰ **Exhibit P-04219** LT from D. Schulze to G. Bennett re Hydroelectric power generation project on the Lower Churchill River at p. 3.

⁷¹ **Exhibit P-04221**, LT from M. Organ to D. Schulze re Reply to your letter dated July 8, 2013 concerning the Labrador-Island Transmission Link Project (Transmission Project).

c) The permitting process: no capacity and no consideration of Ekuanitshit's concerns

According to government, the objective of post-authorization consultation was to identify particular impacts on specific asserted Aboriginal rights and develop mitigation measures which could be implemented via the terms and conditions of a regulatory approval.⁷²

During the post-authorization phase, hundreds or perhaps thousands of English-only regulatory approval applications related to the project were forwarded to Ekuanitshit.

Despite Ekuanitshit's requests:

- government refused to provide any capacity funding to Ekuanitshit during the post-environmental assessment regulatory approval phase of the Project;⁷³
- government also refused, when sending a permit application, to provide information as to the potential adverse impacts on Ekuanitshit's interests of the activities contemplated by the application or as to any anticipated mitigation measures.⁷⁴

Furthermore, with respect to timeframes:

- government nearly always stipulated the same arbitrary 30-day period for comment, whether the application concerned a parking lot not in any proximity to Muskrat Falls⁷⁵ or Nalcor's *Species at Risk Impacts Mitigation and Monitoring Plan*, a

⁷² **Exhibit P-01721**, 20120529 LT from A. Gover to D. Schulze.

⁷³ **Exhibit P-00328**, 20120502 LT from D. Schulze to Hon. French and Kennedy, p. 3; **Exhibit P-01721**, 20120529 LT from A. Gover to D. Schulze; see also response in **Exhibit P-01722**, 20120530 LT from D. Schulze to A. Gover.

⁷⁴ **Exhibit P-00328**, 20120502 LT from D. Schulze to Hon. French and Kennedy, p.4; **Exhibit P-01721**, 20120529 LT from A. Gover to D. Schulze; see also response in **Exhibit P-01722**, 20120530 LT from D. Schulze to A. Gover.

⁷⁵ **Exhibit P-01714**, 20120402 from L. Durno to Marie-Elda Mestokosho.re ElectrSubstationCrownLands.



document with complex, technical language and the potential to seriously affect the people of Ekuanitshit's ability to exercise their constitutionally-protected hunting and fishing rights;

- meanwhile, government routinely failed to respond within 30 days to letters sent by Ekuanitshit's representatives, with some response times extending beyond 18 months.⁷⁶

Government's refusal to provide Ekuanitshit with any capacity or to consider Ekuanitshit's legitimate concerns extended to issues of particular importance to Ekuanitshit, including the protection of the community's cultural heritage and the protection of endangered caribou herds.

With respect to archaeological permits, as outlined above, government rejected Ekuanitshit's request for funding to have the community's own archaeologist review proposed historic resources management programs,⁷⁷ and further refused to pay for more than half the cost of interpretation services when Ekuanitshit requested to speak to the province's archaeologists.⁷⁸

Ekuanitshit's experience with respect to Nalcor's *Species at Risk Mitigation and Monitoring Plan*, required for its permit application under the *Endangered Species Act*, was similar. In particular:

⁷⁶ **Exhibit P-04525**, 20131209 from David Schulze to Stephen Corbett re: Transmission line consultations.

⁷⁷ **Exhibit P-01741**, 20140616 LT from D. Schulze to M. Drake; **Exhibit P-01744**, 20140707 LT from B. Harvey to D. Schulze.

⁷⁸ **Exhibit P-01748**, 20140728 LT from D. Schulze to B. Harvey; **Exhibit P-01750**, 20140822 LT from B. Harvey to D. Schulze.



- government rejected Ekuanitshit's request for resources so that the final version of the plan could be reviewed by the community's own biologist;⁷⁹
- government ignored the community's request for an opportunity for an exchange between Ekuanitshit and its biologist with government representatives and biologists;⁸⁰
- government refused to pay for more than half the cost of interpretation services when Ekuanitshit requested conference calls with the province's biologists;⁸¹
- government stipulated the same 30-day deadline for comment as for all other permit applications;⁸²
- government approved the plan and issued the permit without addressing Ekuanitshit's most important concerns about the substance of the plan.⁸³

More specifically:

- construction went ahead while caribou habitat protection plans were ten years overdue;⁸⁴

⁷⁹ **Exhibit P-01733**, 20140217 LT from D. Schulze to I. Stone, p.2; **Exhibit P-01735**, 20140324 LT from I. Stone to D. Schulze, p.2.

⁸⁰ **Exhibit P-01733**, 20140217 LT from D. Schulze to I. Stone, p.2; **Exhibit P-01735**, 20140324 LT from I. Stone to D. Schulze; **Exhibit P-01736**, 20140326 LT from D. Schulze to I. Stone; **Exhibit P-01738**, 20140417 LT I. Stone to D. Schulze; **Exhibit P-01737**, 20140417 LT D. Schulze to I. Stone.

⁸¹ **Exhibit P-01743**, 20140625 LT D. Schulze to I. Stone; **Exhibit P-01745**, 20140716 LT from I. Stone to D. Schulze.

⁸² **Exhibit P-01735**, 20140324 LT from I. Stone to D. Schulze.

⁸³ **Exhibit P-01761**, 20141119 LT from D. Schulze to I. Stone et B. Cleary.

⁸⁴ **Exhibit P-04258** 200407 Recovery Strategy for Three Woodland Caribou Herds in Labrador at p. 6; **Exhibit P-01753**, 20140925 LT from D. Schulze to I. Stone re Species at Risk and Monitoring Plan at p. 12; **Exhibit P-04229**, Responsibility Matrix and Status of Recommendations of the Joint Review Panel at p. 6-7. **P-04257**, 20140925 LT from D. Schulze to M. Alexander and M. Landry : The Government of Newfoundland was due to enact its caribou recovery action plan in 2006, but has yet to do so.

- the province never met its obligations under its own legislation intended to protect endangered species;⁸⁵
- the plan did not include elements required by the guidelines developed in other jurisdictions for boreal caribou mitigation and monitoring plans;⁸⁶
- ever since the environmental assessment, Nalcor has declared that it could leave out mitigation measures mentioned in its environmental impact statement if it decided that these measures were not practical or feasible, either technically or economically; as a result, Ekuanitshit remains unaware of any measures taken by government to limit or oversee Nalcor's discretion.⁸⁷

In sum, despite the Federal Court of Appeal's promise of honourable consultation and accommodation, Ekuanitshit was not seriously consulted about its concerns nor is it aware of any serious mitigation measures taken to address its concerns. The province nevertheless approved at least than 1,969 different permits for the project's construction from 2012 through June 30, 2016.⁸⁸

⁸⁵ A list of the province's obligations under the *Endangered Species Act* may be found in **Exhibit P-01753**, 20140925 LT from D. Schulze to I. Stone re Species at Risk and Monitoring Plan. For instance, the province, by virtue of paragraph 19(2) of the *Endangered Species Act*, should have attached conditions to the permit, such as mitigation measures.

⁸⁶ **Exhibit P-01755**, 20141008 LT from D. Schulze to I. Stone.

⁸⁷ **Exhibit P-01753**, 20140925 LT from D. Schulze to I. Stone re Species at Risk and Monitoring Plan, p. 5; see also **Exhibit P-04259**, "Labrador-Island Transmission Link Species at Risk Impacts Mitigation and Monitoring Plan," section 7.13, pp. 40, 43, section 8.2, pp. 51, 52, 60, 61, 62.

⁸⁸ **Exhibit P-04526**, Labrador Affairs Secretariat, "[Lower Churchill Project, Government of Newfoundland and Labrador Permit Approvals](#)."



2.3.3. Failure to oversee implementation of JRP recommendations

While Ekuanitshit was disappointed by government's rejection of certain Joint Review Panel recommendations as outlined above, it also seems that government did not carry out any systematic oversight to ensure that recommendations were implemented.

Indeed, government's own monitoring spreadsheet on the status of the Joint Review Panel recommendations was not updated from May 2014 until June 2019 when an update was requested by this Commission.⁸⁹

⁸⁹ **Exhibit P-04229**, Responsibility Matrix and Status of Recommendations of the Joint Review Panel; **Testimony of Dr. Susan Squires, June 20, 2019**, transcript at pp. 19, 20, 30, 31 and 87.

BOOK OF EXHIBITS

**COMMISSION OF INQUIRY RESPECTING THE MUSKRAT
FALLS PROJECT**

**FINAL SUBMISSIONS OF THE CONSEIL DES INNU DE
EKUANITSHIT**

TAB	EXHIBIT
1.	200407_P-04258
2.	200807_P-01323
3.	200902_P-01355
4.	200906_P-01336
5.	201005_P-01333
6.	201009_P-01334
7.	201010_P-00319
8.	201104_P-01351
9.	201105_P-01352
10.	201108_P-00041
11.	201306_P-04217
12.	201906_P-04332
13.	20090513_P-01335
14.	20091218_P-01340
15.	20100813_P-01341
16.	20101109_P-01342
17.	20110623_P-01343
18.	20110701_P-01344
19.	20110913_P-01349
20.	20120315_P-00051
21.	20120402_P-01714
22.	20120511_P-01720
23.	20120512_P-00328
24.	20120512_P-01710
25.	20120529_P-01721
26.	20120530_P-01722
27.	20120612_P-01345
28.	20120612_P-01723
29.	20121219_P-04215
30.	20130708_P-04219
31.	20130726_P-04221
32.	20130727_P-01347
33.	20131209_P-04525
34.	20140217_P-01733
35.	20140324_P-01735
36.	20140326_P-01736
37.	20140417_P-01738
38.	20140417_P-01737
39.	20140616_P-01741
40.	20140625_P-01743
41.	20140707_P-01744
42.	20140708_P-01749
43.	20140716_P-01745
44.	20140728_P-01748
45.	20140822_P-01457

46.	20140822_P-01750
47.	20140925_P-01753
48.	20140925_P-04257
49.	20141008_P-01755
50.	20141119_P-01761
51.	20180821_P-00271
52.	20180918_Transcript S. Penunsi et J-C Piétacho
53.	20181003_Transcript A.Gover
54.	20181129_Transcript G. Bennett
55.	20190218 Transcript J-C Piétacho
56.	20190620 Transcript S. Squires
57.	20190625 Transcript G. Bennett
58.	20190626 Transcript G. Bennett
59.	Endangered Species Act, SNL 2001, c E-10_extracts
60.	P-04229
61.	P-04526

Recovery Strategy for Three Woodland Caribou Herds (*Rangifer tarandus caribou*; Boreal population) in Labrador

Prepared By:

Isabelle Schmelzer on behalf of the Labrador Woodland Caribou Recovery Team, for the Inland Fish and Wildlife Division, Department of Environment and Conservation, Government of Newfoundland and Labrador.

Date Completed:

July 2004

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Disclaimer:

The Recovery Strategy for Woodland Caribou (Boreal population) in Labrador was prepared by the Labrador Woodland Caribou Recovery Team to identify recovery strategies, based on sound biological principles, to protect and recover Woodland caribou (Boreal population). It does not necessarily represent official positions of agencies and/or the views of individuals involved in the document's preparation. The goals, objectives and recovery actions identified in the recovery document are subject to the program priorities and budgetary constraints of the participating agencies and organizations. Goals, objectives, and recovery approaches may be modified in the future to accommodate new objectives or findings.

Executive Summary:

The Recovery Strategy for Woodland Caribou (Boreal population) in Labrador is a document prepared by the Labrador Woodland Caribou Recovery Team to identify recovery strategies deemed necessary, based on sound biological principles, to protect and recover sedentary Woodland caribou. This Recovery Strategy was prepared in response to the designation of the Lac Joseph, Red Wine Mountains and Mealy Mountains caribou herds as 'Threatened' under the Endangered Species Act of Newfoundland and Labrador on July 31, 2002 (ESA E-10.1, 2001). The Committee on the Status of Endangered Wildlife in Canada (COSEWIC) has also designated sedentary Woodland caribou, including these herds, as 'Threatened' in 2001, and they are listed in Schedule 1 of the federal *Species at Risk Act (SARA)* as well.

Section I pertains wholly to recovery, and includes recovery goals and objectives, approaches and specific steps required to meet these, and actions that are completed or underway within each of the described approaches. The primary goals of the recovery strategy are to prevent the extinction of and improve the status of current herds until they are viable, self-sustaining populations distributed throughout their available current and historic ranges. Actions required to recover sedentary woodland caribou herds will be focused in 4 main areas: stewardship and education; habitat protection; research and monitoring; and management and protection. We outline specific steps that will be taken within each of these approaches, the anticipated outcome, and refers to the particular recovery objectives addressed by the proposed actions.

Section II provides background information on the distribution and population status for each listed herd, examines historical and potential threats faced by these herds, and outlines the ecological and cultural role of caribou in Labrador. Three herds, the Lac Joseph herd (LJH), the Red Wine Mountains herd (RWMH), and the Mealy Mountains herd (MMH) form a continuum across southern Labrador and northeastern Québec, and are bounded to the north by the migratory George River herd. Herd range adjacencies and the absence of geographical barriers between them result in range overlap, and during the winter, migratory forest-tundra caribou (*migratory ecotype*) enter outer portions of the ranges resulting in intermingling of animals from multiple herds. While historical ranges remain largely intact, changes in range use (associated with declines in population size), have occurred in all herds. Current recruitment rates in all herds indicate good recovery potential despite declining population trends, and suggest that mortality, not recruitment, may be a significant limiting factor for these herds.

Several threats contributing to the population decline or limiting recovery of sedentary woodland caribou herds in Labrador have been identified. Legal and illegal hunting and incidental mortality that occur when sedentary animals mix with winter aggregations of the migratory George River caribou herd, are a primary threat. Other factors, ranging from habitat loss and alteration to various types of disturbance, also exist. Most threats are interdependent and differ in terms of their relative current and historical significance among herds.

The approach that will be undertaken to define critical and recovery habitat is also described in Section II. Critical and recovery habitat are discussed in context of the population goals for short and long-term persistence, or survival and recovery. From an applied perspective, these are the areas required to sustain minimum and viable populations, respectively. To derive scientifically credible definitions, both habitat and population goals are founded in the biological requirements and population ecology of the herds.

The Recovery Team has concluded that recovery of all 3 herds is ecologically and

technically feasible. While considerable portions of all 3 herd ranges are still intact, and several protected areas have been proposed, several challenges remain. Illegal hunting continues to limit recovery and/or contribute to observed declines. Additionally, resource development and extraction activities continue to increase, previously inaccessible areas are becoming so, and no protected areas have been formally established. Recruitment data suggest that the inherent capacity of all 3 herds to recover is excellent if these challenges can be managed or overcome.

The purpose of the Recovery Strategy for sedentary woodland caribou in Labrador is to outline a course of action that will lead to the recovery and de-listing of the Lac Joseph, Red Wine Mountains and Mealy Mountains caribou herds under the Endangered Species Act. Details regarding actions necessary to implement the Strategy will be included in an accompanying Action Plan, to be drafted within the next 2 years. The Recovery Strategy will be updated as new information becomes available, and revised every five years until recovery has been achieved.



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

- (i) The advisory roles of independent experts, government agencies, communities, holders of Aboriginal traditional and community knowledge and renewable resource users;
- (j) 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.

The Proponent shall explain how the public shall continue to be involved, including participation in the design and implementation of environmental management and monitoring and follow-up programs.

The Proponent shall describe plans to maintain communications and working relationships with the affected communities, Aboriginal organizations, municipalities and government agencies throughout the life of the Project. The intent of these plans is to involve those groups in monitoring and follow-up programs, including in the identification and work towards the reduction of adverse physical, biological or socio-economic effects, and the enhancement of beneficial effects.

To design complete and comprehensive program proposals, the Proponent shall prepare and submit these documents subsequent to the completion of the environmental assessment, but before the initiation of the Project itself.

4.7 RESIDUAL EFFECTS AND DETERMINATION OF SIGNIFICANCE

Residual effects are those adverse environmental effects which cannot or will not be avoided or mitigated through the application of environmental control technologies, best management practices or other acceptable means.

The EIS shall list and contain a detailed discussion and evaluation of residual effects, including residual cumulative effects, which shall be defined in terms of the parameters outlined in sections 4.5.1 and 4.5.3.

The EIS shall contain a concise statement and rationale for the overall conclusion relating to the significance of the residual adverse environmental effects. The EIS will, for ease of review, include a summary table of the environmental effects, proposed mitigation and residual adverse effects.

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 or should not address any particular issue(s), the EIS should include supporting reasons.

The results of those consultations are to be presented in a separate chapter of the EIS with individual section for each of the affected Aboriginal groups. The Proponent must refer readers to the relevant sections of the EIS, as appropriate.

4.9 PUBLIC PARTICIPATION

Public consultation meetings are required of the Proponent to present the proposal and to record interests and concerns, including those received in response to the Registration. These concerns shall be addressed in a separate chapter of the EIS.

The Proponent shall describe the activities and information sessions that it will hold or that have already been held within the context of the Project at the local, regional and national levels, where applicable. The Proponent shall indicate the methods used and their relevance, the locations where information sessions were held, the persons and organizations attending, the concerns voiced and the extent to which this information was incorporated in the design of the Project as well as in the EIS. Moreover, the Proponent shall describe how issues were recorded and addressed through the use of tables of concordance. Any outstanding issues shall be clearly identified.

Protocol for this meeting shall comply with the legislation and with the Newfoundland and Labrador's Department of Environment and Conservation's Environmental Assessment Division's policy (as amended) on advertisement requirements for public meetings/information sessions included in **Appendix B**.

As a minimum, public meetings must be held in the communities of Happy Valley-Goose Bay, Northwest River, Mud Lake, Rigolet, Churchill Falls, in the region of Labrador West and St-John's.

4.10 ENVIRONMENTAL PROTECTION PLAN

The Proponent shall prepare an Environmental Protection Plan (EPP) for each main construction site and have them approved by the regulatory authorities before starting construction. They shall be stand-alone documents that shall target the site foreperson, the Proponent's occupational health, safety and environmental compliance staff, as well as government environmental surveillance staff. The EPPs shall address construction, operation and modification phases of the Project. A proposed Table of Contents and an annotated outline for the EPPs is to be presented in the EIS which shall address the major

Lower Churchill Hydroelectric Generation Project
Environmental Impact Statement

VOLUME I PART A
Project Planning and Description



Lower Churchill Hydroelectric Generation Project
Environmental Impact Statement
February 2009

VOLUME I PART A
Project Planning and Description

9.0 ENVIRONMENTAL ASSESSMENT APPROACH AND METHODS

The approach and methods that are used in the environmental assessment for the Project are compliant with the requirements of the *CEAA*, the *NLEPA* and its Regulations and the EIS Guidelines. The methods used in conducting this assessment are intended to provide reviewers with a clear understanding of how the Project will interact with the environment and of the environmental effects that will result from this interaction.

Issues of concern or potential environmental effects were identified in the EIS Guidelines and are also based on the results of stakeholder and public consultation, local and existing knowledge regarding potential environmental effects of industrial projects (specifically hydroelectric projects), as well as the Study Team's knowledge of the existing environment in the area and professional judgement. The assessment is organized around these identified issues of concern or potential environmental effects.

Aboriginal traditional and community knowledge was considered in the preparation of the EIS in accordance with the EIS Guidelines. As defined in the EIS Guidelines:

traditional and community knowledge may be regarded as the knowledge, understanding and values that Aboriginal and local communities have in relation to the environment and the potential environmental effects of the Project and proposed mitigation measures. This knowledge is based on personal observation, collective experience and/or oral transmission.

This environmental assessment was developed in consideration of sustainable development and a precautionary approach. The EIS demonstrates that Project activities were assessed and mitigation measures were discussed and incorporated into Project design in a precautionary manner considering any potential for serious or irreversible damage to the environment, especially with respect to ecological functions and integrity, and ability to maintain biological diversity. All assumptions about the environmental effects of the proposed actions are explained, as well as approaches to reduce or eliminate adverse environmental effects. Proposed mitigation, follow-up and monitoring activities, particularly in areas where scientific uncertainty exists in the prediction of environmental effects, are identified.

The methods used for this environmental assessment consist of steps that have been generally applied to each Valued Environmental Component (VEC) or Key Indicator (KI). Some variations in presentation of information have been made where appropriate to accommodate the differences in VECs. In this way, Project-related environmental effects are assessed at either the VEC or KI level. Using the methods described below, the environmental effects analyses are presented in Volume IIA and Volume IIB (Biophysical Assessment) and Volume III (Socio-Economic Assessment).

9.1 The Knowledge Base

In preparing the EIS, two important sources of information have been relied upon: local community and Aboriginal Traditional Knowledge (the latter as communicated through Innu Nation) and an extensive body of field data collected from the biophysical environment. These provide a basis for conducting the analysis, which leads to the predictions of environmental effects. This section presents the knowledge base available and describes how it has been employed to support the EIS. As well, descriptions are provided of a range of models used to define interaction processes between the Project and the biophysical environment, as well as to make quantifiable predictions of effects.

A description of the approach to the collection of Aboriginal traditional and community knowledge is provided in Sections 9.1.1 and 9.1.2. Aboriginal, traditional and community knowledge has been incorporated into the assessment of relevant VECs or KIs. Sources of Aboriginal traditional and community knowledge include an ITKC

Report provided by Innu Nation entitled: *Innu Kaishitshissenitak Mishta-shipu, Innu Environmental Knowledge of the Mishta-shipu (Churchill River) Area of Labrador in Relation to the Proposed Lower Churchill Project* (Innu Nation 2007) (Appendix IB-H) and information gathered through informant interviews for land and resource use. The ITKC Report presents data organized by both location and species, allowing this information to be effectively incorporated into the EIS.

9.1.1 Innu Traditional Knowledge

Aboriginal Traditional Knowledge (ATK) is described as:

a body of knowledge built up by a group of people through generations of living in close contact with nature. ATK is cumulative and dynamic. It builds upon the historic experiences of a people and adapts to social, economic, environmental, spiritual and political change (CEAA Interim Principles).

In addition to the ITKC Report, Innu Nation has also provided a *Report on the Fieldtrip to Ushkan-shipiss, October 14, 2006* (Innu Nation 2008). As agreed with Innu Nation, both reports are included in their entirety in the EIS in Appendices IB-H and IB-J.

Innu Nation has cautioned not to over interpret ITK and advised that the EIS should remain flexible to the provision of multiple interpretations of environmental phenomena and of scientific and traditional knowledge. Nalcor Energy has been cautious and respectful in the application of ITK to the environmental assessment of the Project. ITK is incorporated in verbatim quotes throughout the EIS at appropriate locations. The quotes are identified by boxed and italicized text, so that the information is not misrepresented.

The ITKC Report has provided:

- factual knowledge about the environment;
- factual knowledge about past and current use of the environment;
- values about how things should be and what is proper to do in relation to the environment; and
- Innu cosmology by which information about the environment is organized.

Nalcor Energy has incorporated knowledge about the environment and its use, principally in the descriptions of the existing environment (Chapter 5 and in Volume IIA, Chapter 2 and Volume III, Chapter 2). The information on values held is placed according to topic in the environmental effects prediction and effects management sections of the EIS. Descriptions of the environment and its change over time and space reflect available ITK and provide an improved understanding of local environmental processes.

ITK has been considered with respect to alternatives within the Project. For example, the spiritual importance of the knoll at Muskrat Falls led to a careful examination of alternatives that could minimize or reduce disturbance to the site. The ITK assisted in planning for the prevention or reduction of potential adverse environmental effects, as shown in the various mitigation and effects management measures identified throughout the EIS. ITK has been taken into account in the process of analysis and prediction of environmental effects, including cumulative effects.



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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:

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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**

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June 22, 2009

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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.

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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.

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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.

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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."

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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.

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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.

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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.

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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 turbinized 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.

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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.

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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.

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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
David Schulze,
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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 reservoir 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 Matimekossh-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 Kaniapiscaw) 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	<i>Comparison with the Ekuanitshit Innu</i>
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.

IR# JRP.151

**Aboriginal Consultation and Traditional Land and
Resource Use**

- Historic activities
- Traditional Knowledge
- Important issues; and
- Identification of actions Nalcor is proposing to take to address the issues as appropriate.

Although it is preferred to see consultation/capacity agreements finalized with various groups it is Nalcor's expectation that the submission of the 2010 Consultation Assessment Program Report together with whatever results are obtained through the community consultation/capacity agreements will augment the existing information and allow the Panel to proceed with hearings.

Consultation/Capacity Agreements

Nalcor is sensitive to the resource constraints facing communities when engaging in consultation. Although there is no legal requirement for the conclusion of consultation/capacity arrangements, Nalcor has developed an approach to consultation which includes provision of funding and other support to the community to facilitate consultation where appropriate.

Commencing in the spring of 2009 Nalcor offered draft consultation/capacity agreements to NunatuKavut, Pakua Ship, Unamen Shipu, Nutashkuan, Ekuanitshit, Uashat mak Mani-Utenam and Matimekush-Lac John for discussion (Attachment 1). On December 11, 2009, an agreement was concluded with NunatuKavut. This agreement expired on March 31, 2010. A renewal agreement with NunatuKavut is currently being pursued. In response to concerns expressed by other communities, a modified agreement, the Community Engagement Agreement was offered in late winter, 2010 to the other communities (Attachment 2). On April 29, 2010 an agreement was concluded with Pakua Shipi.

Nalcor continues to seek opportunities to engage in consultation with the Naskapi Nation of Kawawachikamach, however due to an absence of evidence of land use activities in the Project area, and the remote proximity, no formal consultation/capacity agreements have been offered.

As explained in IR# JRP.2a, the physical footprint of the Project does not extend into Labrador Inuit Lands or the Labrador Inuit Settlement Area. Therefore, no consultation/capacity agreements have been offered.

Update on Negotiation of Agreements and Consultation Activities

Nalcor's approach to the consultation required by the Guidelines has taken into account an assessment of the land and resource use of each group in the proposed Project Area and the potential impact of the Project upon those interests. Nalcor has reviewed available documentation and information looking for evidence of historical and contemporary use of lands or resources in the proposed Project Area, the proximity of the group to the proposed Project Area and the impact of potential environmental effects upon interests of each group.

This approach to consultation has resulted in differences in level of engagement with different groups. All groups listed in the Guidelines have been provided with notice and relevant information respecting the Project. Subsequent steps taken by Nalcor to ensure meaningful and adequate consultation have been tailored to the particular circumstances of each group.

Innu Nation

Nalcor has been engaged in consultation with Innu Nation since 2000 and consultative efforts are ongoing. Between 2000 and 2008 consultation was conducted pursuant to a series of confidential Process Agreements. These agreements were designed to provide the Innu with Project-related information, identify issues and

concerns, develop an understanding of Innu land use and social, cultural and economic activities (both contemporary and historic) and Innu traditional knowledge and determine appropriate actions and measures to be undertaken by Nalcor. The various Process Agreements established a framework and terms of reference for three distinct matters: the conduct of Lower Churchill Innu Impacts and Benefits Agreement (IBA) negotiations to accommodate and mitigate the potential adverse impacts of the Project upon the Innu of Labrador; a regularized community consultation process fully funded by Nalcor and its predecessors; and Innu participation on a Task Force which served as the vehicle for the sharing, exchange and evaluation of a comprehensive range of environmental, engineering and other technical information. The Task Force also supervised the collection and review of information concerning Innu traditional knowledge relating to Innu land and resource use within the proposed Project Area.

Since the conclusion of the Process Agreements, consultation has been conducted pursuant to a series of individualized understandings and agreements. The remaining work of the Task Force was completed under a short term MOU. Separate funding was continued for IBA negotiations and the community consultation process.

On September 26, 2008, Innu Nation and the Province signed the Tshash Petapen (New Dawn) Agreement (Attachment 3) which established the framework for conclusion of the IBA, Churchill Falls Hydro-electric Development Redress Agreement and a bilateral land claims agreement-in-principle.

On February 16, 2010, negotiations respecting accommodation for the potential adverse impacts of the Project were concluded and Innu Nation and Nalcor initialed the IBA and the Churchill Falls Hydro-electric Development Redress Agreement.

Since initialing, ongoing consultations with Innu Nation are being conducted pursuant to a MOU signed on February 16, 2010 which fully describes the obligations of Nalcor and Innu Nation until ratification of the IBA.

NunatuKavut (formerly Labrador Metis Nation)

Nalcor's consultative efforts with NunatuKavut commenced in April 2007 and have been ongoing since that time. On December 11, 2009 NunatuKavut and Nalcor, concluded a Consultation/Capacity Agreement. As a result of the agreement, NunatuKavut submitted a preliminary report to Nalcor, outlining its membership's issues and concerns with the proposed Project. This Agreement expired on March 31, 2010. Parties are now engaged in negotiating the terms of a renewal consultation agreement.

Regardless of the outcome of negotiations of consultation/capacity agreements, Nalcor will subject to the approval of the communities, continue to engage in consultation respecting the Project through the provision of information and through community meetings to determine particular issues and concerns. Nalcor has prepared a Plain Language Summary of the EIS. Nalcor has written to NunatKavut respecting the Plain Language Summary and indicated its intention to deliver one or more presentations on the Project, based on this summary, at a mutually convenient time and location in late spring/early summer, 2010.

It is also Nalcor's intention, subject to receiving the approval of NunatuKavut, to pursue data collection through the 2010 Consultation Program. The results of that program will be incorporated into the 2010 Consultation Assessment Report to be submitted to the Panel by September 30, 2010.

A detailed record of consultation with NunatuKavut is provided (Attachment 4).

Nunatsiavut Government

Information and documentation supplied by the Labrador Inuit in the course of land claims negotiations and as evidenced in the Labrador Inuit Land Claims Agreement does not illustrate any record of historical use and occupancy by the Labrador Inuit of the land and resources in the proposed Project Area.

Nalcor has collected over 30 years of data which has concluded that there will be no measurable Project-related impacts upon either lands or resources within the Labrador Inuit Settlement Area or upon Inuit rights under the treaty.

As a result of this information it is Nalcor's view that the project requirement for consultation can be fulfilled by an ongoing process of notice, information exchange and bilateral discussions without the necessity of a formal consultation agreement between Nalcor and the Nunatsiavut Government.

Nalcor has advised the Nunatsiavut Government of the results of its assessment of the lack of Project impacts upon the Labrador Inuit Settlement Area and Inuit rights under the Agreement and has offered to meet to discuss this assessment.

Nalcor remains prepared to continue to meet with the Nunatsiavut Government to exchange Project-related information and to that end has prepared a Plain Language Summary which will be available in both English and Inuktitut. Nalcor has advised the Nunatsiavut Government that it will make this summary available to the Nunatsiavut Government and will deliver an oral presentation on the Project in both English and Inuktitut at a mutually convenient time and location in late spring/early summer, 2010.

A detailed record of consultation with the Nunatsiavut Government is provided (Attachment 5).

Pakua Shipi

Although Pakua Shipi has been identified in the Guidelines, existing information available to Nalcor indicates no record of historic or current land and resources use and occupancy by the community in the Project Area.

Notwithstanding this lack of evidence, Nalcor and Pakua Shipi concluded a Consultation/Capacity Agreement on April 29, 2010. The Parties have developed a jointly agreed upon workplan and work scope for the exchange of Project-related information, identification of community concerns, and the collection of current traditional land and resource use information. The results of the implementation of this agreement will be incorporated into the 2010 Consultation Assessment Report to be delivered to the Panel by Nalcor by September 30, 2010.

In addition to consultation conducted under the Consultation/Capacity Agreement, Nalcor has prepared a Plain Language Summary of the EIS. Nalcor has written to Pakua Shipi respecting the Plain Language Summary indicating its intention to deliver one or more presentations on the Project based on this summary at a mutually convenient time and location in late spring/early summer, 2010.

A detailed record of consultation with Pakua Shipi is provided (Attachment 6).

Unamen Shipu

Although Unamen Shipu has been identified in the Guidelines, existing information available to Nalcor indicates no record of historic or current land and resources use and occupancy by the community in the Project Area.

Notwithstanding this lack of evidence, during the past year Nalcor has been engaged in correspondence and discussions with Unamen Shipu respecting the terms and conditions of formal consultation/capacity arrangements. Negotiations with the community have been productive and are ongoing.

Regardless of the outcome of negotiations of consultation/capacity agreements, Nalcor will continue to engage in consultation respecting the Project through the provision of information and through community meetings to determine particular issues and concerns. Nalcor has prepared a Plain Language Summary of the EIS. Nalcor has written to Unamen Shipu respecting the Plain Language Summary and indicated its intention to deliver one or more presentations on the Project based on this summary at a mutually convenient time and location in late spring/early summer, 2010.

It is also Nalcor's intention, subject to receiving the approval of the community, to pursue data collection through the 2010 Consultation Program in Unamen Shipu. The results of that program will be incorporated into the 2010 Consultation Assessment Report to be submitted to the Panel by September 30, 2010.

A detailed record of consultation record with Unamen Shipu is provided (Attachment 7).

Nutashkuan

Although Nutashkuan has been identified in the Guildelines, existing information available to Nalcor indicates no record of historic or current land and resources use and occupancy by the community in the Project Area.

Notwithstanding this lack of evidence, during the past year Nalcor has been engaged in meetings, correspondence and discussions with Nutashkuan respecting the terms and conditions of formal consultation/capacity arrangements. The most recent iteration of such arrangements is currently under review by the Chief and Council but no formal agreement has been concluded.

Regardless of the outcome of negotiations of consultation/capacity agreements, Nalcor will continue to engage in consultation respecting the Project through the provision of information and through community meetings to determine particular issues and concerns. Nalcor has prepared a Plain Language Summary of the EIS. Nalcor has written to Natashkuan respecting the Plain Language Summary and indicated its intention to deliver one or more presentations on the Project based on this summary at a mutually convenient time and location in late spring/early summer, 2010.

It is also Nalcor's intention, subject to receiving the approval of the community, to pursue data collection through the 2010 Consultation Program in Natashkuan. The results of that program will be incorporated into the 2010 Consultation Assessment Report to be submitted to the Panel by September 30, 2010.

A detailed record of consultation with Natashkuan is provided (Attachment 8).

Ekuanitshit

Although Ekuanitshit has been identified in the Guildelines, existing information available to Nalcor indicates no record of historic or current land and resources use and occupancy by the community in the Project Area.

Notwithstanding this lack of evidence, during the past year Nalcor has been engaged in meetings, correspondence and discussions with Ekuanitshit respecting the terms and conditions of formal community consultation arrangements. Initial discussions were very productive, resulting in the exchange of draft agreements. While it appeared that parties were close to reaching agreement in the early part of 2010, negotiations have stalled and no formal agreement has been concluded.

Regardless of the outcome of negotiations of consultation/capacity agreements, Nalcor will continue to engage in consultation respecting the Project through the provision of information and through community meetings to determine particular issues and concerns. Nalcor has prepared a Plain Language Summary of the EIS. Nalcor has written to Ekuanitshit respecting the Plain Language Summary and indicated its intention to deliver one or more

presentations on the Project based on this summary at a mutually convenient time and location in late spring/early summer, 2010.

It is also Nalcor's intention, subject to receiving the approval of the community, to pursue data collection through the 2010 Consultation Program in Ekuanitshit. The results of that program will be incorporated into the 2010 Consultation Assessment Report to be submitted to the Panel by September 30, 2010.

A detailed record of consultation with Ekuanitshit is provided (Attachment 9).

Uashat mak Mani-Utenam

Although Uashat mak Mani-Utenam has been identified in the Guidelines, existing information available to Nalcor indicates no record of historic or current land and resources use and occupancy by the community in the Project Area.

Notwithstanding this lack of evidence, Nalcor has made repeated efforts to engage the Innu of Uashat mak Mani-Utenam in a formal consultative process, and to that end has provided the community with draft agreements for its review and consideration. However, no response has been received from Uashat mak Mani-Utenam.

Regardless of the outcome of negotiations of consultation/capacity agreements, Nalcor will continue to engage in consultation respecting the Project through the provision of information and through community meetings to determine particular issues and concerns. Nalcor has prepared a Plain Language Summary of the EIS. Nalcor has written to Uashat mak Mani-Utenam respecting the Plain Language Summary and indicated its intention to deliver one or more presentations on the Project based on this summary at a mutually convenient time and location in late spring/early summer, 2010.

It is also Nalcor's intention, subject to receiving the approval of the community, to pursue data collection through the 2010 Consultation Program in Uashat mak Mani-Utenam. The results of that program will be incorporated into the 2010 Consultation Assessment Report to be submitted to the Panel by September 30, 2010.

A detailed record of consultation with Uashat mak Mani-Utenam is provided (Attachment 10).

Matimekush-Lac John

Although Matimekush-Lac John has been identified in the Guidelines, existing information available to Nalcor indicates no record of historic or current land and resources use and occupancy by the community in the Project Area.

Notwithstanding this lack of evidence, Nalcor has made repeated efforts to engage the Innu of Matimekush-Lac John in a formal consultative process, and to that end has provided the community with draft agreements for its review and consideration. Nalcor has been advised by the Chief of Matimekush-Lac John that the most recent draft provided to the community on April 9, 2010 is under review by the community's legal counsel. However, efforts to arrange a meeting to discuss the terms and conditions of the proposed agreement have to-date been unsuccessful.

Regardless of the outcome of negotiations of consultation/capacity agreements, Nalcor will continue to engage in consultation respecting the Project through the provision of information and through community meetings to determine particular issues and concerns. Nalcor has prepared a Plain Language Summary of the EIS. Nalcor has written to Matimekush-Lac John respecting the Plain Language Summary and indicated its intention to deliver

one or more presentations on the Project based on this summary at a mutually convenient time and location in late spring/early summer, 2010.

It is also Nalcor's intention, subject to receiving the approval of the community, to pursue data collection through the 2010 Consultation Program in Matimekush-Lac John. The results of that program will be incorporated into the 2010 Consultation Assessment Report to be submitted to the Panel by September 30, 2010.

A detailed record of consultation with Matimekush-Lac John is provided (Attachment 11).

Naskapi Nation of Kawawachikamach

Kawawachikamach was not identified in the Guidelines and existing information available to Nalcor indicates no record of historical land and resources use and occupancy by the community in the Project Area.

Notwithstanding these factors, Nalcor has and will continue to provide Kawawachikamach with notice and ongoing Project-related information, and opportunities for the community to identify its issues and concerns. Nalcor has concluded that a formalized consultation agreement is not necessary. Nalcor advised Kawawachikamach that a Plain Language Summary of the EIS has been prepared, which will be offered to the community in English and in Naskapi, and that Nalcor will deliver an oral presentation on the Project based on this summary at a mutually convenient time and location in late spring/early summer, 2010.

A detailed record of consultation with the Naskapi Nation of Kawawachikamach, including an updated table, is provided (Attachment 12).

Groups Unwilling to Share Information on Present and Current Land and Resource Use

Nalcor will continue to work openly and in good faith to provide Aboriginal groups with information and opportunities to assist in the provision of current land and resource use information to the Panel. Should a group be unwilling to share this information with Nalcor, the Panel process provides the opportunity for those groups to put information before the Panel if it chooses to.

ATTACHMENT 2

INFORMATION RESPONSES LOWER CHURCHILL PROJECT

JOINT REVIEW PANEL

Aboriginal Consultation and Traditional Land and Resource Use

IR# JRP.151

COMMUNITY ENGAGEMENT AGREEMENT TEMPLATE

May 2010

Confidential & Without Prejudice

COMMUNITY ENGAGEMENT AGREEMENT

BETWEEN: **Nalcor Energy**, a body corporate existing pursuant to the *Energy Corporation Act*, SNL 2007, c. E-11.01, having its head office in the City of St. John's, in the Province of Newfoundland and Labrador, represented herein by Gilbert Bennett, Vice-President Lower Churchill Project, Nalcor Energy, duly authorized to sign this Community Engagement Agreement;

("Nalcor")

AND: _____

(each of Nalcor and _____ being a "Party" and collectively, the "Parties")

WHEREAS:

1. Section 4.8 of the *Environmental Impact Statement Guidelines* for the Lower Churchill Hydroelectric Generation Project provides for consultation between Nalcor, as the Proponent and the Innu of _____ in order to:
 - i. familiarize _____ with the Lower Churchill Hydroelectric Generation Project and its potential environmental effects;
 - ii. identify any issues or concerns of _____ regarding potential environmental effects of the Lower Churchill Hydroelectric Generation Project; and
 - iii. identify what actions the Proponent proposes to take to address any issues or concerns of _____ regarding the potential environmental effects of the Lower Churchill Hydroelectric Generation Project.
2. Nalcor wishes to provide information respecting both the proposed hydroelectric generation components and the Labrador-Island transmission link of the Lower Churchill Hydro-electric Project (the proposed hydroelectric generation components and the Labrador-Island transmission link being collectively the "Project") and to consult with the Innu of _____ to obtain information with respect to the potential environmental effects of the Project upon the interests of the Innu of _____ and to determine what actions may be necessary to address the issues and concerns of the Innu of _____ if any, including mitigation measures and accommodation measures;
3. Nalcor and _____ wish to enter into this Community Engagement Agreement (the "Agreement") which is intended to provide _____ with capacity funding to work with Nalcor to develop and implement a framework and process

that will assist the Parties to work collaboratively and cooperatively in the exchange of Project-related information and associated activities.

NOW THEREFORE, in consideration of the terms and other considerations set out below, the Parties agree to develop and implement a process for the exchange of Project-related information in accordance with the requirements of the *Environmental Impact Statement Guidelines* and this Agreement.

6. IDENTIFICATION OF CONTACTS

- 6.1 Subject to section 1.2, within five (5) days of the execution of this Agreement and in any event no later than May 5, 2010, _____ shall hire one full-time Project Coordinator who shall, in cooperation with the Nalcor Contact, be responsible for the development and implementation of the Workplan approved under section 2.4 and who shall perform the duties set out in the Workplan.
- 6.2 The selection of, and the terms of reference for, the Project Coordinator shall be subject to Nalcor's prior consent, which consent shall not be unreasonably withheld. The Project Coordinator shall be accountable to both _____ and Nalcor for the performance of his or her duties under the Workplan.
- 6.3 Within five (5) days of the execution of this Agreement and in any event no later than May 5, 2010, Nalcor shall designate an individual to serve as the Nalcor Contact.
- 6.4 On or before May 7, 2010, the Nalcor Contact will make contact with the Project Coordinator to identify him/herself, to exchange contact information, to discuss any information that may be required in order to implement the terms of this Agreement and to set a target date for completion of the draft workplan described in section 2.2.

7. DEVELOPMENT AND APPROVAL OF WORKPLAN

- 7.1 The Project Coordinator and the Nalcor Contact shall jointly develop and implement a community engagement process which will facilitate the achievement of the following objectives:
 - To identify one or more points of contact in the community to enable effective communication, information exchange and consultation between the Parties with respect to the Project;
 - To provide funding for the participation of the community in the community consultation process;
 - 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.

2.2 In order to develop an effective community engagement process which will achieve the objectives referred to in section 2.1, the Parties agree that their first priority will be to work cooperatively to finalize a detailed schedule of consultation activities and tasks. The Parties have established a preliminary schedule attached as Appendix "A" to this Agreement and agree that the Project Coordinator and the Nalcor Contact will meet within five (5) days after making contact under section 1.4 and in any event no later than May 12, 2010, to review and revise this preliminary schedule and develop a draft workplan which will include a detailed schedule of proposed community consultation activities and tasks to be completed during the term of this Agreement. The draft workplan developed by the Project Coordinator and the Nalcor Contact shall include the following components, as appropriate:

- Provision of information to _____ by Nalcor: what information and when it will be provided;
- Collection of required information from _____: what information will be collected, when and how it will be collected and when it will be provided to Nalcor and in what form;
- Meetings: the meetings required by this Agreement or as agreed to by the Parties and the location, participants, purposes and timing of such meetings;
- Work to be accomplished between each meeting (including collection and provision of information, analysis and input);
- Internal community consultation: what is required and when this will be accomplished;
- Identification of tasks associated with major activities and required resources;
- Deliverables: schedule for submission of monthly reports referred to in section 5.1 and the final Project Coordinator's Report referred to in section 5.5.

2.3 The draft workplan shall be completed within five (5) days of the first meeting of the Project Coordinator and the Nalcor Contact under section 2.2 and in any event no later than May 17, 2010 and upon its completion the draft workplan shall be immediately forwarded to _____ and Nalcor for review and for Nalcor's approval.

2.4 Nalcor shall review the draft workplan and shall either approve the draft workplan or, if in Nalcor's opinion, elements of the draft workplan are not reasonable, it shall provide _____ with notice of its proposed changes together with supporting reasons. The Parties agree to negotiate any revisions to the draft workplan in good faith so that they may arrive at a mutually agreeable workplan. If the draft workplan is approved by Nalcor, it shall become the Workplan. The Workplan shall replace the preliminary schedule attached as Appendix "A". The Workplan shall be attached as Appendix "A" and form part of this Agreement. The Parties agree that the Workplan shall be approved no later than May 20, 2010.

- 2.5 The Parties agree to cooperate with one another to ensure the objectives of the community engagement process set out in section 2.1 are achieved. In the event of a dispute, the Project Coordinator and the Nalcor Contact agree to meet within five (5) days of written notice of the dispute and to attempt to resolve the dispute through reasonable efforts taken in good faith. If the dispute cannot be resolved, it shall be referred to the Senior Representatives of Nalcor and _____ identified in section 8.2.

3. TERM AND AMENDMENT

- 3.1 This Agreement shall come into effect upon its execution by the Parties.
- 3.2 The Parties agree that the term of this Agreement shall be for the period commencing upon its execution (the "Effective Date") and expiring one hundred and twenty (120) days from the Effective Date.
- 3.3 Notwithstanding section 3.2, this Agreement may be terminated at any time upon either Party giving thirty (30) days written notice of intent to terminate to the other Party.
- 3.4 In the event of termination under section 3.3, Nalcor (without prejudice to any other rights or remedies available to it), shall pay to _____ an amount to cover eligible expenditures incurred or accrued up to the date of termination plus any other costs properly attributable to termination that _____ reasonably incurs and which are documented to the satisfaction of Nalcor acting reasonably, which other costs shall not exceed ten per cent (10%) of the total of payments made under section 4.2 immediately prior to the date of termination and _____ shall provide Nalcor with all outstanding reports (whether in final or draft form) referred to in section 5.1 as well as any information, data, material and analysis collected or produced by the Project Coordinator up to the date of termination.
- 3.5 For greater certainty, upon termination under section 3.3, _____ shall not be entitled to make any claim against Nalcor for any consequential costs, losses, including loss of profit or damages associated with or arising upon notice of termination or termination and Nalcor shall not be responsible for any new expenditures made or committed to by _____ after the notice of intent to terminate is given by Nalcor under section 3.3.
- 3.6 Upon the expiration of this Agreement under section 3.2 or termination under 3.3, _____ will repay to Nalcor any funding advanced in excess of eligible expenditures incurred pursuant to this Agreement.
- 3.7 Where enters into a contract for the supply of a work, good or service required by or permitted under this Agreement and for which the funding provided by Nalcor under section 4.1 is to be applied, _____ shall ensure that such contract provides for termination on the following terms:
- a) termination may be arranged on short notice and at minimum expense; and
 - b) no allowance shall be made for any consequential costs or losses, including loss of profits;

and no compensation shall be payable to _____ for obligations under any such contract which, in Nalcor's reasonable opinion, were incurred by _____ as a result of its failure to obtain or include such termination provisions.

- 3.8 This Agreement may only be amended with the written consent of both Parties and any such amendment will become effective upon its execution by the Parties, unless another date is agreed to.

4 FUNDING

- 4.1 Nalcor shall provide funding in accordance with the budget attached as Appendix "B" to this Agreement.

- 4.2 Subject to section 4.6, the total estimated amount of funding, including a 10% administration fee, for eligible expenditures under this Agreement, as set out in Appendix "C" and incurred by or on behalf of _____ in the implementation of the Workplan shall be _____ dollars (\$_____) Canadian, plus taxes as applicable under the *Excise Tax Act (Canada)*¹ which shall be advanced to _____ in four installments to be paid as follows:

- (a) the first payment of _____ dollars (\$_____) shall be made on the Effective Date;
- (b) the second payment of _____ dollars (\$_____) shall be made on the later of sixty (60) days after the Effective Date or July 1, 2010;
- (c) the third payment of _____ dollars (\$_____) be made on the later of ninety (90) days after the Effective Date or August 1, 2010; and
- (d) the fourth and final payment of _____ dollars (\$_____) shall be made on the later of 120 days after the Effective Date or on the date that both the Project Coordinator's Report referred to in section 5.5 and the final Progress Report required under section 5.1 have been received by Nalcor.

- 4.3 Notwithstanding section 4.2, Nalcor reserves the right to withhold payments referred to in section 4.2 in whole or in part as follows:

- (a) either or both of the second or third payments referred to in section 4.2 may be withheld if the reporting requirements set out in section 5.1 have not been fulfilled by _____ or the Project Coordinator, as the case may be;
- (b) the full amount of the fourth and final payment referred to in section 4.2 may be withheld until Nalcor has received both the Project Coordinator's Report referred to in section 5.5 and the final Progress Report referred to in section 5.1,

and Nalcor shall not be liable to pay any amounts so withheld under this section unless and until _____ is in compliance with the requirements of section

¹ Tax issues under review by Nalcor.

5.1 or 5.5 or both, as applicable.

- 4.4 The Parties agree that, subject to approval in writing by Nalcor, funds allotted for one line item set out in the budget attached as Appendix "B" may be reallocated or transferred in whole or in part to one or more other line items in that budget, provided that _____ continues to comply with this Agreement and with the Workplan. If _____ proposes to transfer or reallocate funding between or among the budgetary line items set out in Appendix B, it shall, prior to such proposed reallocation or transfer, first submit a request in writing in a timely manner to Nalcor for its approval. Nalcor will not unreasonably deny such a request and will respond to _____ in a timely manner. In no case shall a transfer or reallocation of funds under this section result in any increase in the funding obligations, commitments or liabilities of Nalcor beyond that which has been agreed to by the Parties pursuant to this Agreement.
- 4.5 _____ will use the funding provided under section 4.2 for the sole purpose of carrying out this Agreement and will expend those funds only in accordance with the list of eligible expenditures set out in Appendix "C" to this Agreement.
- 4.6 _____ will apply for all rebates to which it is entitled under provincial or federal legislation, including but not limited to the goods and services tax under the *Excise Tax Act* (Canada) where applicable.²

5 REPORTING REQUIREMENTS

- 5.1 On the fifteenth (15th) day of each month, commencing on June 15, 2010 and continuing thereafter until August 15, 2010 or for each subsequent calendar month while this Agreement is in effect, the Project Coordinator shall provide to the Nalcor Contact and to _____ a Progress Report consisting of the following:
- (e) a written activity report for the preceding calendar month describing the progress in the implementation of the Workplan, including activities undertaken and any relevant issues which have been identified; and
 - (f) an unaudited financial report in the format presented in Appendix "D" prepared in accordance with generally accepted accounting principles, reporting total revenues and eligible expenditures incurred and accrued and funded pursuant to this Agreement in the preceding calendar month, together with all supporting documentation, including, where appropriate, a detailed description of the hours worked, honoraria, expenses and costs billed

² Necessity for clause and final wording under review by Nalcor.

in accordance with the following schedule:

Date of Submission of Progress Report	Period Covered by Progress Report
June 15, 2010	May 1, 2010 – May 31, 2010
July 15, 2010	June 1, 2010 – June 30, 2010
August 15, 2010	July 1, 2010 – July 31, 2010

The final Progress Report for the month of August, 2010 shall be submitted to Nalcor by the Project Coordinator no later than August 31, 2010.

- 5.2 _____ shall, no later than ninety (90) days following the expiration of this Agreement under section 3.2 or termination under section 3.3, provide Nalcor with an audited financial statement prepared in accordance with generally accepted auditing principles showing total revenue and eligible expenditures under this Agreement and detailing that the funds received under this Agreement were fully accounted for and spent properly and in accordance with the terms of this Agreement.
- 5.3 Nalcor may request from _____ such information and documentation that it may reasonably require to confirm that advances or payments made pursuant to this Agreement were disbursed for eligible expenditures and made by the Project Coordinator in accordance with this Agreement and may, at its own expense, appoint an independent auditor to verify eligible expenditures made by the Project Coordinator pursuant to this Agreement.
- 5.4 The Parties shall meet at least once every month while this Agreement is in effect or more often as agreed, to exchange information respecting the Project and the progress of community engagement pursuant to this Agreement, to discuss the issues, questions and concerns generated during the consultation process, and to report on the environmental assessment process and to review ongoing implementation of the Workplan.
- 5.5 Within five (5) days prior to the expiration of this Agreement, the Project Coordinator shall provide to Nalcor and _____ a final report in writing, entitled the "Project Coordinator's Report" which shall contain the following:
- A description of the community, including population;
 - A detailed description of the consultation activities undertaken during the term of this Agreement, including the type, date and frequency of such activities;
 - A transcript of any and all community information sessions, participant interviews and any other data generated, whether in written, recorded or digital format, during the consultation process, including any notices of meetings; and
 - A detailed description of _____ and community issues and concerns respecting the Project and any information respecting current land and resource usage for traditional purposes and traditional knowledge which has been produced by or disclosed during the consultation process.

- 5.6 Within ten (10) days after the expiration of this Agreement, Nalcor and _____ shall review the Project Coordinator's Report and to discuss next steps.

6 INFORMATION, CONFIDENTIALITY AND DISCLOSURE

- 6.1 The Parties agree that it will be necessary to share, evaluate and discuss certain information to fulfill the objectives of this Agreement and therefore agree to provide such information as is relevant and necessary to fulfill the objectives of this Agreement in a timely manner. The Parties acknowledge that certain information may be restricted, commercially sensitive or otherwise subject to confidentiality requirements. Nalcor agrees to provide access to such restricted, confidential or commercially sensitive information that Nalcor deems necessary and relevant to the objectives of this Agreement, provided that appropriate confidentiality agreements have been executed by the Parties to protect such confidential and commercially sensitive information and is satisfied that third parties to whom such information may be disclosed are subject to the same confidentiality requirements.
- 6.2 Notwithstanding anything else in this Agreement, _____ acknowledges that Nalcor shall not be obliged to disclose or share with _____ environmental, engineering, financial or other information pertaining to the evaluation of particular development options with respect to or associated with the Project by Nalcor.
- 6.3 The Parties agree to execute appropriate confidentiality agreements to protect restricted, confidential or commercially sensitive information and subject to section 6.4, to release information respecting the Project and traditional knowledge, including in relation to land, water and resource usage, only in accordance with the terms of such confidentiality agreements or as otherwise required by law.
- 6.4 The Parties agree that the property in the Project Coordinator's Report referred to in section 5.5 and the Progress Reports submitted under section 5.1 shall be vested in Nalcor and may be submitted to the Joint Review Panel during the environmental assessment of the Project or used in any other proceedings related to the subject matter of this Agreement. The Parties agree that _____ may use the Project Coordinator's Report or the monthly Progress Reports, provided that _____ first obtains the written consent of Nalcor to such use, which consent shall not be unreasonably withheld.

7 WITHOUT PREJUDICE

- 7.1 This Agreement and all negotiations surrounding it shall not be, and nothing contained in this Agreement shall be, construed as conferring on, recognizing, limiting, modifying, replacing, denying or derogating from any Aboriginal, treaty or constitutional rights or obligations of either the Parties or of the Innu of _____ and their representatives thereof and is without prejudice to the positions which may be taken by the Parties with respect thereto in any other forum, court of law or otherwise.
- 7.2 Nalcor acknowledges that it is the position of _____ that neither this Agreement, any negotiations surrounding it nor the consultation activities conducted pursuant to it shall be construed as meeting the constitutional obligations of the Crown in right of Newfoundland and Labrador, nor those of the Crown in right of Canada.

- 7.3 Notwithstanding section 6.1, this Agreement and all negotiations surrounding it and the consultation activities conducted pursuant to this Agreement are not subject to settlement privilege and either Party may refer to the existence or the content of this Agreement and any discussions, negotiations, activities or reports conducted or prepared pursuant to this Agreement and may tender evidence of such discussions, negotiations, activities or reports in any action, petition or proceeding in any forum relating to the issue of consultation.
- 7.4 This Agreement is a legally binding agreement which is intended to clarify and improve the working relationship of and communication between the Parties. It is not, and shall not be interpreted to be, a treaty or land claims agreement within the meaning of s.25 or s.35 of the *Constitution Act, 1982*.
- 7.5 This Agreement and the negotiations leading to its formation, execution and implementation are without prejudice to any Party in any future negotiations.
- 7.6 Except as otherwise specifically provided herein, nothing in this Agreement shall limit in any manner the rights, jurisdiction, authority, obligations or responsibilities of either Party or their representatives.
- 7.7 Nothing in this Agreement obliges _____ or Nalcor to act in a manner inconsistent with or contrary to law and nothing in this Agreement fetters or is to be interpreted as fettering the discretion or decision making authority of _____ or Nalcor.
- 7.8 Nothing in this Agreement is intended to limit the participation by _____ or by Nalcor in any public processes established by Newfoundland and Labrador or Canada respecting the environmental assessment of the Project.

8 NOTICE

- 8.1 Any notice or other communication required or permitted to be given under this Agreement shall be given in writing and will be deemed to have been well and sufficiently given if sent by registered mail, courier or facsimile to:

In the case of Nalcor Energy, to:

Todd Burlingame
 Environment and Aboriginal Affairs Manager
 Nalcor Energy -- Lower Churchill Project
 P.O. Box 12800, 500 Columbus Drive
 St. John's, NL A1B 0C9
 Ph: (709) 737-4251
 Fax: (709) 737-1985

In the case of, _____ to:

Any notice sent by registered mail shall be deemed to have been duly given and received by a Party on the fifth business day following the day of mailing and on the following day if sent by facsimile transmission.

- 8.2 A person shall be designated by each of the Parties to act as the Senior Representative of that Party for the purposes of this Agreement. Until the Parties to this Agreement are otherwise advised, the designated persons who represent each of the Parties are:

In the case of Nalcor Energy,

Gilbert Bennett
Vice President
Lower Churchill Project
Nalcor Energy
P.O. Box 12800, 500 Columbus Drive
St. John's, NL A1B 0C9
Ph: (709) 737-1836
Fax: (709) 737-1782

In the case of _____,

- 8.3 In the event that it becomes necessary to substitute individuals for those referred to in section 8.2, the Party doing so shall notify the other Party in accordance with section 8.1 and provide the appropriate documentation to effect the change.

9 GENERAL

- 9.1 There will be no presumption that any ambiguity in any of the terms of this Agreement shall be interpreted or resolved in favour of either Party.
- 9.2 This Agreement and any valid amendment to it constitute the entire agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed by the Parties and supersedes all prior oral or written representations and agreements. There are no other agreements, understandings, representations, warranties, collateral agreements or conditions affecting this Agreement except as expressed or anticipated in it.
- 9.3 _____ represents that this Agreement is binding upon itself and the Innu of _____ and that all necessary actions have been taken to authorize the execution of this Agreement.
- 9.4 Nalcor represents that this Agreement is binding upon it and that all necessary actions have been taken to authorize the execution of this Agreement.
- 9.5 _____ represents and warrants that there are no actions or proceedings pending by or against _____ or any of its members that would materially impair its ability to fulfill its obligations under this Agreement and that it has not

entered into any other agreement that would prevent it from fulfilling its obligations under this Agreement.

- 9.6 This Agreement is a legally binding contract which shall be considered to have been made in Newfoundland and Labrador and is subject to laws of general application and shall be interpreted in accordance with the laws of Newfoundland and Labrador and the federal laws of Canada applicable therein without regard to conflicts of laws principles that would impose the laws of any other jurisdiction and each Party hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Newfoundland and Labrador and all courts competent to hear appeals therefrom.
- 9.7 No Party shall challenge or support a challenge to the validity of this Agreement or any provision thereof.
- 9.8 The Parties agree to do or cause to be done all acts or things necessary to implement and carry into effect this Agreement to its full extent.
- 9.9 The provisions of Article 6 (Information, Confidentiality and Disclosure), section 4.7 (repayment of funding), sections 5.1 and 5.5 (reporting requirements), section 5.6 (meeting of the Parties), section 7.3 (no settlement privilege) and this section 9.9 shall survive the expiration of this Agreement under section 3.2 or termination under section 3.3.

10 LANGUAGE

- 10.1 The Parties agree that, for the purpose of convenience, all written communications, including any notices, reports and other documentation ("written communications") required or permitted by this Agreement between _____ and Nalcor shall be in French. Notwithstanding the preceding, the Parties agree that where the original language of a written communication is French, Nalcor reserves the right, at its sole cost, to translate such written communication into English, using an agreed-upon certified translator listed in Appendix "E". Where a written communication prepared in French is translated in accordance with this section, the Parties agree to be bound by and shall not challenge the validity of such translation. The Parties further agree that the English version (whether original or in translation) of any written communication shall be authoritative and in the case of inconsistency between the French version and the English version of a written communication, the English version (whether original or translated) shall prevail. Nalcor shall be entitled to use only the English version of a written communication in any proceeding or forum, including in any submission to the Joint Review Panel.

IN WITNESS WHEREOF each of the Parties have caused this Agreement to be executed by the duly authorized signing officers of the Parties:

Nalcor Energy

Per

Per

Witness

Date

Per

Per

Witness

Date

SUPPLEMENTAL INFORMATION TO IR JRP.151 (CONSULTATION ASSESSMENT REPORT)

September 2010

15.0 REFERENCES

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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
Dionne Schulze, Attorneys at Laws

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.cea.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.

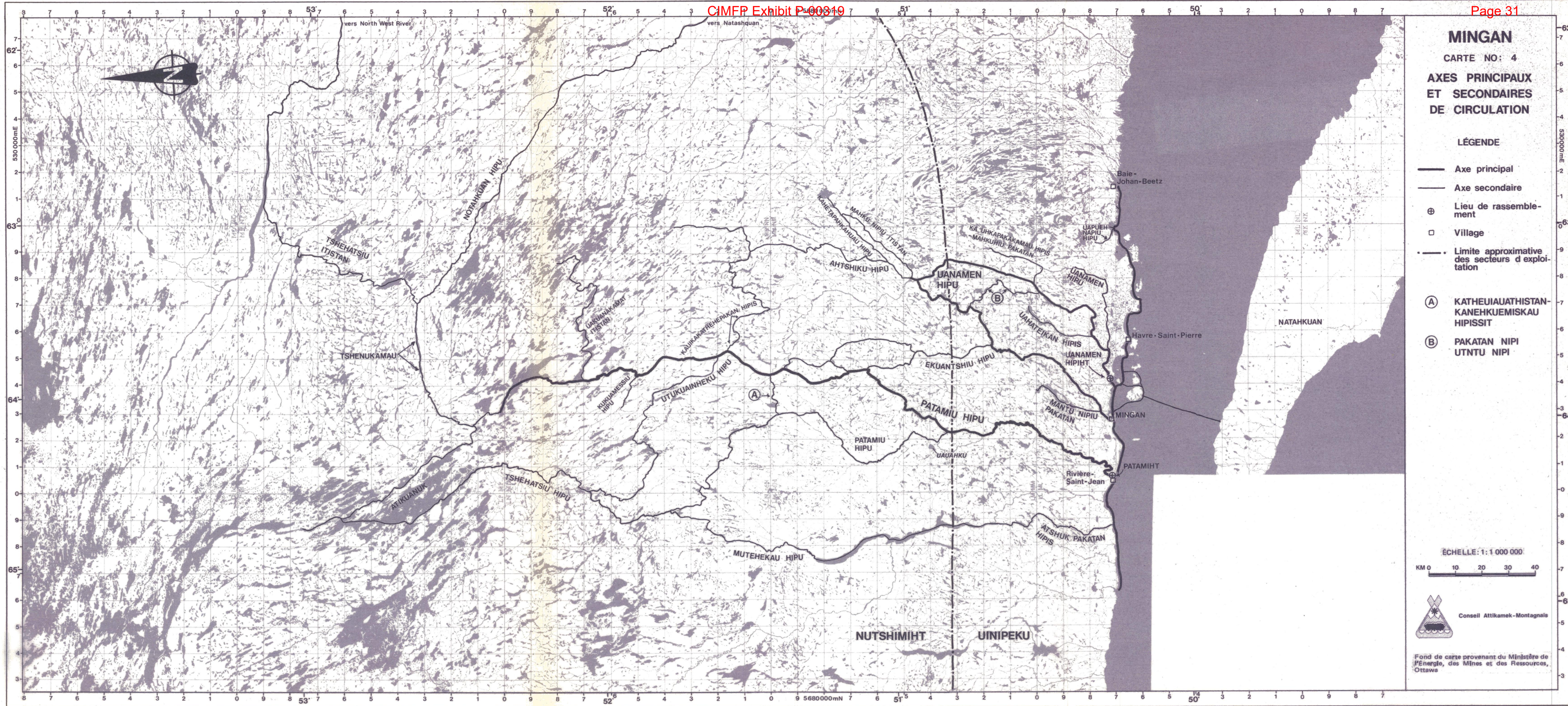


In addition, even when the results of the research at Pakua Shipi contradicted the proponent's preconceived ideas and indicated occupation by the Innu of the territory in the vicinity of the project, Nalcor chose to submit its Supplemental Information and to declare all the issues resolved before having 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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**SUBMISSION FROM THE INNU OF EKUANITSHIT
TO THE JOINT REVIEW PANEL PUBLIC HEARINGS**

CEAR 07-05-26178
Lower Churchill Hydroelectric Generation Project

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April 2011



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I. Introduction

This brief is a complementary document to the documents already submitted to the Joint Review Panel and the Canadian Environmental Assessment Agency (the Agency) by the Innu of Ekuanitshit for this file and submitted to the registry.

The main positions adopted up to now are as follows:

- The environmental impact statement (EIS) cannot be deemed admissible until the consultation of the Innu of Ekuanitshit, required from the proponent under the *Guidelines* has been completed¹.
- Moreover, given the absence of a study on the direct and indirect effects on the lac Joseph herd, the EIS does not comply with the *Guidelines* regarding large mammals in general, caribou specifically, as well as the cumulative environmental effects².
- The Ekuanitshit Innu Council has neither the technical resources nor the financial means required to provide the Review Panel with a study on the use, by the Innu, of the land and resources affected by the project, and the potential negative impacts of the project on these activities³.
- Rather, it is the proponent's duty, pursuant to Section 4.8 of the *Guidelines*, to demonstrate its understanding of the interests, values, concerns, contemporary and historic activities, Aboriginal traditional knowledge and important issues of the Innu of Ekuanitshit and "show how these aspects will be taken into account when planning and carrying out the project⁴."
- The absence of a study from the Innu of Ekuanitshit stems from the inadequate means offered by the proponent to complete it, said offer following its statement to the effect that, in any case, there was no indicator of their historic or contemporary use on the project's land area⁵.
- On another matter, the true scope of the project is not the one specified by the proponent, because, in reality, the project is now formed of the Muskrat Falls generating facility and

¹CEAR 07-05-26178, document 413.

² Document 290.

³ Documents 273, 332, 542.

⁴ Documents 290, 560.

⁵ Document 517.



Labrador–Island transmission link, upon which the generating facility will depend entirely.

- As such, the ongoing assessment contravenes section 15 of the *Canadian Environmental Assessment Act* (the Act), which requires the assessment of any operation forming a project related to a physical work if the project is “likely to be carried out in relation to that physical work⁶.”

II. The interest of the Innu of Ekuanitshit in the project

The interest of the Innu of Ekuanitshit in this project has not been established because the *Environmental Impact Statement (EIS) Guidelines* that were set out by both the federal and provincial governments require the proponent to take the interests, values and concerns of the community into account, as well as the contemporary and historic activities of its members.

Nonetheless, it is important to recall certain undeniable facts regarding the occupation, by the Innu of Ekuanitshit, of the land targeted by the project.

- The proponent’s searches on historical and archaeological resources brought to light an intense use of the region by the Innu of Mingan in the 19th century⁷.
- Hydro-Québec recognized, during another environmental assessment, that the “land used by the Innu of Ekuanitshit in the 20th century...in depth, ...went all the way to the Churchill River in Labrador⁸.”
- This use in the 20th century has been documented in the autobiography of Mathieu Mestokosho—an Innu of Ekuanitshit who was born close to 1885 and who passed away in 1980—which details how, for the biggest part of his life, he and a great many other members of the community would leave in August and go towards the lands of Labrador up to Northwest-River, coming back to Mingan only at the end of spring⁹.
- In 1979, the Government of Canada accepted the occupation and use of the land in Labrador, as claimed by the Innu of Ekuanitshit, as a basis for negotiations to come to an agreement, when it accepted to negotiate with the Atikamekw and Montagnais Council.

⁶ Documents 560, 688.

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

⁸ Hydro-Québec, *Romaine Complex; Environmental Impact Assessment* (December 2006), vol. 6, p. 38-8. (French only)

⁹ See Appendix B for excerpts from: Serge Bouchard, *Caribou Hunter: A Song of a Vanished Innu Life* (Vancouver, Greystone Books, 2006).



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(In 1994, the AMC ceased its operations, and the Mamu Pakatatau Mamit Assembly took over the file on behalf of the communities of the lower North Shore, including the Ekuanitshit.)

- Since 2000, the Government of Newfoundland and Labrador, who has refused to negotiate the comprehensive claims of the “Innu from Quebec”—under the pretext that it must first settle the situation with Innu Nation¹⁰—has stated that the Innu from Quebec were or must be involved in the conservation efforts for the caribou¹¹ and more specifically in its woodland caribou recovery strategy¹².
- Since 2009, the continuation of caribou hunting activities in Labrador by the Innu of Ekuanitshit has been funded by the Innu Aitun Fund, created by the Inuit Impact and Benefit Agreement reached with Hydro-Québec, within the framework of the Romaine River Complex¹³.

During the public hearing, members of the community, both elders and elected officials, testified on their contemporary and traditional occupation of the land targeted by the project.

III. The “consultation” of the Innu of Ekuanitshit required from the proponent

A. The proponent’s legal obligation

The proponent is the one who is required to show in the EIS that it has studied the important issues of the Innu of Ekuanitshit, among other Aboriginal communities.

Such an exercise requires, on the one hand, the study of the contemporary occupation and traditional uses of the land and, on the other hand, an exchange between the proponent and the Innu, with a view to establishing the expected impacts of the project. This process has been described as a “consultation” in Section 4.8 of the *Guidelines*.

¹⁰ “Ministerial Statement - Coastal link road”, April 29, 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”, April 10, 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”, February 21, 2010, <http://www.releases.gov.nl.ca/releases/2010/nr/0221n01.htm>

¹³ Appendix B to the brief: Société Ishpitenitamun, “Gestion du Fonds Innu Aitun : ERA Ekuanitshit, Comité Innu Aitun Ekuanitshit”, July 8, 2010.



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B. The offer for consultation made by the proponent was clearly inadequate

The Innu of Ekuanitshit refused the proponent's offer to sponsor an underfunded, hastily made assessment. They were able to ascertain the offer's inadequacy because of their previous experience with a similar project and proponent: the Romaine Complex proposed by Hydro-Québec.

As specified in greater detail in another proposal, the EIS submitted by Hydro-Québec for the Romaine project included several assessments on the occupation and use of the land by the Innu of Ekuanitshit. These assessments had been prepared by consultants hired by Hydro-Québec, but whose mandate had received the approval of the community and whose work benefited from its contribution¹⁴. In addition, other assessments had also been made by Hydro-Québec to report on the impacts of the project on said occupation of the land by the Innu, which represented a separate endeavour from the community assessments.

For this project, the proponent alleges that it has fulfilled its obligations to the Innu of Ekuanitshit by offering the Council an amount of \$87,500, with which the community was going to conduct by itself an assessment within a timeframe of four months¹⁵.

Moreover, the assessment was to cover all the aspects specified in Section 4.8 of the *Guidelines*, i.e., not only “the interests, values, concerns, contemporary and historic activities, Aboriginal traditional knowledge and important issues” for them, but also “show how these aspects will be taken into account when planning and carrying out the project”

However, the proponent was forced to admit, in March of 2011, that Innu Nation had received for its part, approximately \$12 million for the assessments of the project and its impacts on Sheshatshiu and Natuashish¹⁶. The funding for the consultation process for these two communities goes back to 1998, even before the project had been defined¹⁷, and the assessments continued until at least July 2010¹⁸.

¹⁴ Document 517, “Comments of the Innu of Ekuanitshit on the Consultation Assessment Report submitted as Additional document for Information Request No. 151”, October 25, 2010.

¹⁵ Response to Information Request No. CEC.151, Attachment 1, “Community Consultation Agreement Template”, May 2010.

¹⁶ “Court begins hearing arguments into Aboriginal objection to Lower Churchill”, Canadian Press, March 16, 2011, <http://www.thestar.com/news/canada/article/954723--court-begins-hearing-arguments-into-Aboriginal-objection-to-lower-churchill>

¹⁷ EIA, §8.3.1.5

¹⁸ Additional document for Information Request No. CEC.151, pp. 3-14, 3-17, 3-32, 3-35 to 3-37.



While the proponent is free to make different offers to different Aboriginal communities in accordance with its evaluation of their needs, the disproportion between the \$12 million over 12 years granted to Innu Nation and the \$87,500 over four months granted to the Innu of Ekuanitshit is so great that they have a right to question the proponent's good faith¹⁹.

C. The role of the Innu of Ekuanitshit

The obligation to prepare the assessments required under the *Guidelines* is first and foremost the responsibility of the proponent and, to this end, it must offer Aboriginal communities the appropriate means to achieve this objective.

An Aboriginal community like the Ekuanitshit is not obligated to agree to an inadequate impact assessment by accepting any and all consultation processes that the proponent is willing to offer it. That is why the Innu declined the offer that the proponent made to them.

When the Panel Review decided to go ahead with the public hearings in spite of the shortcomings in the EIS raised by several Aboriginal communities, including the Innu of Ekuanitshit, it presumed that the deficiencies of the EIS could be rectified by the communities themselves through their own submissions²⁰.

However, the Ekuanitshit Innu Council has neither the technical resources nor the financial means required to offset the absence of an assessment on them by the proponent. Chief Jean-Charles Piétacho addressed this topic during the hearings.

The last scientific assessment on the occupation of the land in question goes back to 1983, when the report entitled "Occupation et utilisation du territoire par les Montagnais de Mingan" was prepared by Robert Comtois for the Atikamekw and Montagnais Council²¹.

Moreover, the Innu of Ekuanitshit were forced to concentrate their efforts on the land claimed in Quebec following the refusal of the Government of Newfoundland to negotiate with them on their claims for Labrador, which explains the absence of other assessments.

Lastly, the description itself of the use of the land would only constitute the first part of the assessment required by the *Guidelines* regarding the Innu of Ekuanitshit, as the project's impacts on them still have to be ascertained. The assessment of the pros and cons of the project for the community (required by Part 4.5.1 of the *Guidelines*) requires scientific and technical expertise

¹⁹ Response to Information Request No. CEC.151, p. 6.

²⁰ We are referring to the letters of the Panel Review to Chief Jean-Charles Piétacho dated December 3, 2010 and February 11, 2011

²¹ See Appendix A in this brief.



in civil engineering, hydrology or biology, which the personnel of the Ekuanitshit Innu Council themselves do not have, and which they do not have the financial means to hire.

IV. The Review Panel is not addressing the true scope of the project

A. The problem

The scope of the project, as defined in the assessment submitted to the Review Panel, is not in compliance with section 15 of the Act, which requires that the scope include the entire project.

The proponent did not include the Labrador–Island transmission link in the project’s description. Rather, it is limited to the “Lower Churchill Hydroelectric Generation Project”. The proponent submitted the description of a “Labrador–Island Transmission Link” project separately on January 29, 2009.

However, when considered as a whole, the project before the Review Panel includes the Labrador–Island Transmission Link, that the proponent has defined as being a separate project. However, splitting up the transmission link from the power plants is illegal, for the reasons defined below.

B. The requirements of the *Canadian Environmental Assessment Act*

In a recent judgment, the Supreme Court of Canada explained how to establish the scoping of a project, pursuant to section 15 of the Act:

[39]Regardless of the assessment track, the RA or Minister’s discretion to scope a project and to scope the environmental assessment is outlined in s. 15. Section 15(1) grants the discretion to scope to either the Minister, in the case of mediation or a review panel, or the RA. However, the exercise of this discretion is limited by s. 15(3). Section 15(3) provides that an environmental assessment of a physical work shall be conducted in respect of every “construction, operation, modification, decommissioning, abandonment or other undertaking” in relation to the project. Consistent with the view that the “project as proposed by the proponent” is to apply in the absence of text or context to the contrary, the scoping of the project performed by the RA or Minister under s. 15(1) is subject to s. 15(3). In other words, the minimum scope is the project as proposed by the proponent, and the RA or Minister has the discretion to enlarge the scope when required by the facts and circumstances of the project. The RA or Minister is also granted further discretion by s. 15(2) to combine related proposed projects into a single



project for the purposes of assessment. In sum, while the presumed scope of the project to be assessed is the project as proposed by the proponent, under s. 15(2) or (3), the RA or Minister may enlarge the scope in the appropriate circumstances.

[40]It follows, then, that the scoping discretion under s. 15(2) and (3) acts as an exception to the general proposition that the level of assessment is determined solely based on the project as proposed by the proponent. The Act assumes that the proponent will represent the entirety of the proposed project in relation to a physical work. However, as noted by the government, a proponent could engage in “project splitting” by representing part of a project as the whole, or proposing several parts of a project as independent projects in order to circumvent additional assessment obligations (see government factum, at para. 73).[...]²²

C. Splitting up of the project by the proponent

1. The history of the project demonstrates the relation between the link and the generating facilities

In the EIS, the proponent mentioned that the “Lower Churchill” project had already undergone a comprehensive environmental assessment in 1979–1980²³. What it failed to mention was that in the review done by the environmental assessment panel at the time, the transmission link from Labrador to Newfoundland and the generating facilities at Gull Island and Muskrat Falls were reviewed jointly, as part of one single project.

According to the Panel’s report, submitted in December of 1980, the project comprised the following:

²²MiningWatch Canada v. Canada (Fisheries and Oceans), 2010 SCC 2, [2010] 1 S.C.R. 6

²³EIA, p. 1-17.



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1.1 Introduction

The Lower Churchill hydroelectric project consists in building generating facilities on the lower portion of the Churchill and high voltage transmission lines linking Churchill Falls to St. John's (Newfoundland), across the Strait of Belle Isle²⁴.

Moreover, the project had first been split up into two parts for the purposes of the assessment: a generation project at Gull Island and a transmission link project from Labrador to Newfoundland.

However, when the Lower Churchill Development Corporation decided to also build a generating facility at Muskrat Falls, the government at that time decided to fuse both processes together:

When the LCDC was created, the project was modified to include a generating facility at Muskrat Falls. When a review for this was requested under the Environmental Assessment and Review Process (EARP) at the federal level, the Review Panels established previously were fused into one single Review Panel, responsible for reviewing the comprehensive Lower Churchill Hydroelectric Generation Project²⁵.

If, under the *Environmental Assessment and Review Process Guidelines Order*, SOR/84-467, the two generating facilities and the transmission link formed only one project, then there is no reason for which the same project could be split up for the purposes of an assessment under the Act.

Moreover, the 1980 decision to merge both processes, even a few years after they had begun, should serve as precedent for this assessment and allow the Review Panel to assess both components of what is in reality a single project.

2. The objectives of the provincial government show the relation between the transmission link and the generating facilities

Newfoundland-and-Labrador's *Energy Plan*, issued in 2007, describes the Lower Churchill project as follows:

²⁴Appendix F to the Brief: Lower Churchill Hydroelectric Generation Project, Environmental Assessment Panel Report (Ottawa, Supply and Services Canada Department, 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.

The primary goal of the project, according to the Government of Newfoundland and Labrador, who is the only shareholder of the proponent, is to transmit the power generated in Labrador to the Island. Since the start of this environmental assessment process, the Government has therefore defined the project as two generating facilities and one transmission link between Labrador and the Island.

3. Recent changes demonstrate the relation between the link and the generating facilities

a) The provincial government's decision in October of 2010

The description of the role of the Lower Churchill project in the provincial government's energy plan should be sufficient on its own to demonstrate that there is only one single project, rather than two separate projects, as submitted by the proponent for assessment.

Furthermore, the changes to the project announced by the Government of Newfoundland and Labrador in the fall of 2010 have removed all doubts on this subject.

On October 18, 2010, the Government of Newfoundland and Labrador made the following statement:

²⁶ Government of Newfoundland and Labrador, *Energy Plan: Focusing our energy* (2007), pp. 31, 32 <http://www.nr.gov.nl.ca/energyplan/energyreport.pdf>



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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.

First and foremost, let us note that the government emphasized the “commencement” of the project, even though the proponent had submitted the description of the project to the relevant authorities almost four year ago.

Second, the government underscored the fact that this project will have the effect of linking Labrador with Newfoundland Island and provide the Island with a renewable source of power.

Third, the government has added a new aspect to the description of the project: a maritime transmission link from the Island of Newfoundland to Nova Scotia.

²⁷ Government of Newfoundland and Labrador, “News Release: Lower Churchill Project to Become a Reality; Province Signs Partnership with Emera Inc. for Development of Muskrat Falls” (November 18, 2010), available online at: <http://www.gov.nl.ca/lowerchurchillproject/release.htm>



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The agreement between the Government of Newfoundland and Labrador and the Government of Nova Scotia signalled a change in the approach for the project. Since the signing of this agreement, at the very least, the transmission link is “a project ...in relation to” the generating facilities as per subsection 15(3) of the Act.

b) All power generated by the Muskrat Falls generating facility will be transmitted by the link between Labrador and the Island

The proponent recently admitted that all the power generated by the Muskrat Falls facility will be transmitted by the link from Labrador to the Island, i.e., after the proponent had changed its approach to the implementation of the project.

In its EIS, the proponent had specified three export approaches for the power generated by his project:

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 Quebec 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 Provinces.²⁸

However, on May 11, 2010, the *Régie de l'énergie du Québec*²⁹ rejected certain claims submitted by the proponent against Hydro-Québec TransÉnergie³⁰ (HQT). The proponent alleged that HQT had underestimated the transmission capacity of the Churchill Falls lines by 450 megawatts³¹, a capacity it wanted in order to export the power to be generated by a future generating facility in lower Churchill. The capacity was deemed to be 1120 megawatts in winter and 1339 megawatts in summer³².

²⁸ Information Request No. CEC.5 (July 3, 2009), p. 8.

²⁹ *Newfoundland and Labrador Hydro v. Hydro-Québec*, Régie de l'énergie, Ruling No. D-2010-053 (May 11, 2010)

³⁰ Hydro-Québec TransÉnergie is the division of Hydro-Québec that is in charge of transmitting power in Quebec.

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

³² *Id.* at par. 109.



Nonetheless, the *Régie de l'énergie* supported HQT regarding its calculation of the capacity of the Churchill Falls lines. According to the proponent, because the Muskrat Falls plant will have a capacity of 824 megawatts³³, if HQT had correctly determined the capacity of the Churchill Falls lines to be 670 megawatts in summer and 889 megawatts in winter, the proponent will need another link to export his power.

This is why, a few months after the *Régie de l'énergie* had rendered its decision, the Government of Newfoundland and Labrador announced its new transmission approach for the power generated by the facilities: via the Labrador–Island transmission link and a maritime transmission link from the Island of Newfoundland to Nova Scotia.

With this change of approach to the project, the proponent is showing that it no longer expects to use the Churchill Falls lines to export the power generated by Muskrat Falls. In a letter it recently sent to the Review Panel, the proponent specified that only the Gull Island power plant will use the HQT transmission links.

As for the only generating facility that the proponent expects to build in the near future, access to export markets for the power generated by Muskrat Falls will depend on the transmission links to Newfoundland and a future underwater cable to Nova Scotia.

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 .

³³ EIA, p. 1-8.

³⁴ Document 1148, Nalcor, letter to the Joint Review Panel dated April 1, 2011, pp. 4 to 5, available online at: <http://www.ceaa-acee.gc.ca/050/documents/49310/49310F.pdf>



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The Labrador–Island transmission link is now the essential condition required to fulfill the power plant project’s main goals: providing power to the province and exporting power to third parties. As such, the transmission link is therefore “a project ...in relation to” the other aspects and it must be included in any and all assessments of the project under subsection 15(3) of the Act.

In other words, if for whatever reason the Labrador–Island transmission link project is not approved, then the power generated by Muskrat Falls will be of no use whatsoever.

c) Changes to the transmission link project description since the provincial government’s decision

On November 29, 2010, the Department of Environment and Conservation of Newfoundland and Labrador announced that the proponent had revised the project description for the transmission link:

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.

However, the first version of the project’s description specified that the transmission link started at the Gull Island power plant³⁶.

This change made to the transmission link project shows, once again, that this project and the one of the Muskrat Falls facility cannot exist one without the other.

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.



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d) The generating facilities have no reason for existing without the link to Newfoundland

In the first version of its environmental assessment, submitted in February of 2009, the proponent had described the necessity of the project as follows:

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.

Regarding the purpose of the project, the proponent had specified that meeting the current and future energy needs of the province was the main priority of the project:

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.

The proponent admits, however, that the largest part of the province's energy demand (73 %) stems from Newfoundland Island³⁹. Moreover, almost all of Labrador's demand is already met by Churchill Falls⁴⁰: the existing plant could meet the demand at least until 2025⁴¹.

The needs of the province that will be met by the project will therefore be those of Newfoundland, while the scope of the project brought before the Review Panel does not include any way of transmitting power to it.

³⁷ EIA, Volume I, Part A (February 2009), p. 2-1.

³⁸ *Id.*, at p. 2-3.

³⁹ *Id.*, at p. 2-11.

⁴⁰ *Id.*

⁴¹ *Id.*, at p. 2-12.



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The proponent has also stated numerous times that part of the project's rationale and purpose is also to replace the Holyrood thermal generating station⁴². When the Review Panel asked the proponent to support its claims regarding greenhouse gases (GHG) reduction resulting from the project, he explained the following:

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.

The relation between the project and the transmission link is clear, as the Holyrood station is on Newfoundland Island.

In short, if the proponent uses future provincial demand as a rationale to build the Muskrat Falls and Gull Island facilities, then it is obvious that the generating facilities will not be able to meet this demand without the transmission link, which will be part and parcel of the project.

4. Applying criteria established by the Canadian Environmental Assessment Agency to facts about the project

Under section 16 of the Act, an environmental assessment that is being reviewed by a review panel must examine the need and purpose of the project.

The Canadian Environmental Assessment Agency (the Agency) defines these terms as follows:

The “need” for the project is defined as the problem the project aims to solve or an opportunity to be seized. As such, the “need” establishes the rationale required for the project.

The “purpose” of the project is defined as the goal to be attained by carrying out the project⁴⁴.

Let us recall the criteria established by the Agency to determine the scope of a project, as set out in its *Operational Policy Statement*:

In determining whether a project scope should be expanded beyond the project as proposed by the proponent, responsible authorities should consider

⁴² EIA, Volume I, Part A, p. 2-12; Response to the Information Request No. CEC.7S/85S.

⁴³ Response to the Information Request No. CEC.146, p. 22.

⁴⁴ Canadian Environmental Assessment Agency, *Operational Policy Statement: Questions related to the “need for the project”, “purpose”, “alternatives” and “alternative means” to carry out a project under the Canadian Environmental Assessment Act* (November 2007), on Page 2.



how the additional components are linked to the project as proposed by the proponent. Where these components are connected actions, for instance:

- where one is automatically triggered by another;
- where one cannot proceed without the other; or
- where both are part of a larger whole and have, if considered separately, no independent utility.

The project scope should generally be expanded to include any such additional component(s)⁴⁵.

The generating facilities proposed by the proponent within the framework of this assessment, as well as the transmission link that it proposed in a separate assessment, “both are part of a larger whole” and the facilities “have, if considered separately, no independent utility.”

Firstly:

- according to the proponent, the main use of the generating facilities is to meet the current and future energy needs of the Province;
- however, the vast majority of these needs are found on Newfoundland Island; and
- moreover, the needs of Labrador will be met by the Churchill Falls facility at least until 2025.

As such, the project cannot be used to meet the needs of the Province; it therefore has no usefulness independent of the transmission link.

Secondly:

- the proponent and its shareholder are asking to move the Holyrood thermal generating station, stating it is one of the main “purposes” of the project; and
- however, the Holyrood thermal generating station is also located on Newfoundland Island.

⁴⁵ Canadian Environmental Assessment Agency, *Operational Policy Statement: Establishing the Project Scope and Assessment Type under the Canadian Environmental Assessment Act* (2010), p. 3.



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The facilities will therefore not be of any use by themselves in reducing the emissions of Holyrood without the transmission link.

Thirdly:

- according to the proponent, the secondary use of the generating facilities is to sell power to third parties; and
- however, the only link available to the proponent to sell power generated by the Muskrat Falls facility is the Labrador –Island transmission link.

Consequently, the Muskrat Falls facility will be of no use by itself as a source of revenue for the proponent and its shareholder, the provincial government, without the Labrador –Island transmission link.

Section 15 of the Act requires that the scope of the project comprise as much the generating facilities as the transmission link, as they are components that are closely related to each other.

D. Procedure suggested to the Review Panel

1. Requesting an amendment to its terms of reference

The Innu of Ekuanitshit believe that, because the true scope of the project is not before the Review Panel, it must exert the power it has under Section 4.4.8 of the *Procedures for an Assessment by a Review Panel* to seek an amendment to its terms of reference:

4.4.8 A review panel may seek an amendment to its terms of reference. For minor amendments, the President of the Agency, in consultation with the Responsible Authority, has the authority to make a change to the terms of reference. The procedure for requesting a minor amendment to a terms of reference is through a letter from the panel chairperson to the President of the Agency. Should a minor amendment be requested, the President of the Agency shall ensure a response is provided to the panel's letter within 14 days. Requests for substantive amendments must be made to the Minister, who will make every effort to respond within 14 days of the request. The review panel shall continue with the review to the extent possible while waiting for the response in order to adhere to the time lines of the original terms of reference. The review panel shall notify participants of any changes to its terms of reference.



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The Review Panel must request, without delay, an amendment to its terms of reference from the Minister of Environment Canada to include the Labrador –Island transmission link in the scope of the project to be assessed.

2. The consequences of an improperly defined project scope on future report

Should the Minister refuse to broaden the scope of its terms of reference, then the Review Panel would be unable to assess the environmental impacts of the project and the extent of these impacts.

When performing an assessment of the project, the Review Panel is required to take the aspects specified in section 16 of the Act into account, specifically:

- (a) the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;
- (b) the significance of the effects referred to in paragraph (a);

Pursuant to Part II of its terms of reference, the Review Panel must also take the following aspects into account, including:

- 9. Environmental effects of the project, including the environmental effects of malfunctions, accidents or unplanned events that may occur in connection with the Project;
- 10. Any cumulative environmental effects that are likely to result from the Project in combination with other projects or activities that have been or will be carried out; and
- 11. The significance of the environmental effects as described in items 9 and 10.

The exact assessment of the environmental effect of a project requires that its scope be defined correctly. If the scope of a project is missing important and key components, as is the case for this assessment, then it will be impossible for the Review Panel to meet the requirements of section 16 of the Act and fulfill its terms of reference.



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This interpretation of section 16 and the mandate is, moreover, the only one which will enable the Review Panel to meet the true objective of the Act that paragraph 4. (1) (a) defines as “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.”

According to the Federal Court, “the Joint Review Panel's failure to comply with a requirement of section 16 of Act can constitute an error of law⁴⁶.”

In addition, when the Supreme Court of Canada ruled in *MiningWatch Canada v. Canada* that the goal of subsections 15(2) and 15(3) is to prevent project splitting by proponents, its decision was binding as much for the Review Panel as for the Minister of the Environment or the Agency.

In another recent ruling, the Supreme Court of Canada also explained the following:

[33] However, in a country founded on the rule of law and in a society governed by principles of legality, discretion cannot be equated with arbitrariness. While this discretion does of course exist, it must be exercised within a specific legal framework. Discretionary acts fall within a normative hierarchy. In the instant cases, an administrative authority applies regulations that have been made under an enabling statute. The statute and regulations define the scope of the discretion and the principles governing the exercise of the discretion, and they make it possible to determine whether it has in fact been exercised reasonably⁴⁷.

It shall not be lawful for the Review Panel to accept a violation of the Act by nonetheless submitting a comprehensive report if the Minister of Environment Canada refuses to modify its terms of reference.

The Review Panel will not be able to submit to the Minister a report taking into account “the nature and importance of the environmental impacts that the Project could have”, without modifying the scope of the project to include the transmission link. The Review Panel must therefore refuse to report on the environmental impacts without having had the possibility of assessing the project according to its real scope.

⁴⁶*Alberta Wilderness Assn. v. Cardinal River Coals Ltd.*, [1999] 3 F.C. 425, quoting the ruling in *Alberta Wilderness Assn. v. Express Pipelines Ltd.*, (1996), 137 D.L.R. (4th) 177 (C.A.F.) in support of this principle.

⁴⁷*Montréal (City) v. Montreal Port Authority*, [2010] 1 S.R.C. 427, par. 33.



Government
of Canada

Gouvernement
du Canada



ENVIRONMENTAL IMPACT STATEMENT GUIDELINES and SCOPING DOCUMENT

Labrador-Island Transmission Link

Nalcor Energy

**Issued by the Government of Newfoundland and Labrador and
the Government of Canada**

May, 2011

To design complete and comprehensive program proposals, the Proponent shall prepare and submit these documents subsequent to the completion of the environmental assessment, but before the initiation of the Project itself.

4.7 RESIDUAL EFFECTS AND DETERMINATION OF SIGNIFICANCE

Residual effects are those adverse environmental effects which cannot or will not be avoided or mitigated through the application of environmental control technologies, best management practices or other acceptable means.

The EIS shall list and contain a detailed discussion and evaluation of residual effects, including residual cumulative effects, which shall be defined in terms of the parameters outlined in sections 4.5.1 and 4.5.3.

The EIS shall contain a concise statement and rationale for the overall conclusion relating to the significance of the residual adverse environmental effects. The EIS will, for ease of review, include a summary table of the environmental effects, proposed mitigation and residual adverse effects.

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 NunatuKavut Community Council and the Nunatsiavut Government and, in Quebec, the Innu communities of Uashat Mak Mani-Utenam, Ekuanitshit, Nutaskuan, Unamen Shipu, Pakuashipi, Matimekush-Lac John, and the Naskapi Nation of Kawawachikamach.

The Proponent should offer consultation/information meetings with each of the above-mentioned Aboriginal groups.

The Proponent should communicate with the above mentioned Aboriginal groups to offer oral presentations in Aboriginal communities. The Proponent shall also offer to provide simultaneous translation of the oral presentations in the Aboriginal language spoken in the particular Aboriginal community. Presentations should describe the project, its predicted impacts and their significance, and proposed mitigation measures.

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:

1. familiarizing the group with the Project and its potential environmental effects;
2. identifying any issues of concern regarding potential environmental effects of the Project; and
3. identifying what actions the Proponent is proposing to take to address each issue identified, as appropriate.

The Proponent shall explain in the EIS the process undertaken to understand the interests, values, concerns, contemporary and historic activities, Aboriginal traditional knowledge

and important issues facing Aboriginal groups including any meetings, presentations and consultations held with the above-mentioned Aboriginal groups and communities including any oral or written translation and interpretation in Aboriginal languages.

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

The results of those consultations are to be presented in a separate chapter of the EIS with an individual section for each of the affected Aboriginal groups. The Proponent must refer readers to the relevant sections of the EIS, as appropriate.

4.9 PUBLIC PARTICIPATION

Public consultation meetings are required of the Proponent to present the proposal and to record interests and concerns, including those received in response to the Registration. These concerns shall be addressed in a separate chapter of the EIS.

The Proponent shall describe the activities and information sessions that they will hold or that they have already held within the context of the Project at the local, regional and national levels, where applicable. The Proponent shall indicate the methods used and their relevance, the locations where information sessions were held, the persons and organizations attending, the concerns voiced and the extent to which this information was incorporated in the design of the Project as well as in the EIS. Moreover, the Proponent shall describe how issues were recorded and addressed through the use of tables of concordance. Any outstanding issues shall be clearly identified.

Protocol for this meeting shall comply with the legislation and with the Newfoundland and Labrador Department of Environment and Conservation's Environmental Assessment Division's policy on advertisement requirements for public meetings/information sessions included in **Appendix B**.

As a minimum, public meetings in Labrador must be held in the communities, of Happy Valley-Goose Bay, Northwest River, Sheshatshiu and Forteau. On the Island portion of the Province meetings must be held in, or at locations easily accessible to, the communities of Flower's Cove, Portland Creek, Deer Lake, Grand Falls, Clarenville, Holyrood and St. John's.

4.10 ENVIRONMENTAL PROTECTION PLAN

The Proponent shall prepare an Environmental Protection Plan (EPP) for each main construction site and have them approved by the regulatory authorities before starting construction. They shall be stand-alone documents that shall target the site foreperson, the Proponent's occupational health, safety and environmental compliance staff, as well as government environmental surveillance staff. The EPPs shall address construction, operation and modification phases of the Project. A proposed Table of Contents and an annotated outline for the EPPs is to be presented in the EIS which shall address the major construction and operational activities, permit requirements, mitigation measures and contingency planning as follows:

- Proponent's environmental policies

Report of the Joint Review Panel

Lower Churchill Hydroelectric Generation Project
Nalcor Energy
Newfoundland and Labrador



Joint Review Panel established by Canada's Minister of the Environment,
the Minister of Environment and Conservation for Newfoundland and Labrador,
and the Minister for Intergovernmental Affairs for Newfoundland and Labrador

plans are vital. However, the Panel questioned Nalcor's certainty that riparian and wetland habitat would re-establish and concluded that the residual adverse effect of the Project on these habitats, even with the proposed compensation strategy, would be significant.

Rare Plants

No listed plant species under federal or provincial regulations were found within the footprint of the Project, although the Panel noted that information on rare plants in Labrador is limited. Eight regionally uncommon plant species were found in the Project area and several participants noted the importance of these species. During the public hearing, participants and Aboriginal groups stated that they were concerned about rare plants in the inundated area, especially common wood sorrel and mountain maple, and medicinal plants such as the Canada yew. Nalcor stated that if sufficient numbers of these species were not identified outside of the footprint, any plants found inside the flooded zone would be relocated.

The Panel concluded that, with appropriate mitigation, the adverse effects of the Project on rare plant species would not likely be significant.

Wildlife

The EIS assessed effects of the Project on selected species, including moose, black bear, beaver, marten, porcupine, caribou and birds. Nalcor chose these key indicator species based on their sensitivity to Project interactions, their ability to indicate effects on larger components of the environment, their economic, recreational or cultural importance to stakeholders, and population status and vulnerability.

Nalcor did not predict significant adverse effects for most species because the Project would not flood a large percentage of their primary habitat. Participants were particularly concerned about the six species of wildlife designated as being at risk. The federal and provincial governments are required to develop recovery strategies for these species that must identify critical habitat. The Panel concluded that the Project would not be likely to have significant effects on listed species other than the Red Wine Mountain caribou herd. However, the lack of recovery strategies and identification of critical habitat for some of these species makes a final significance determination premature. The Panel recommended that governments make all reasonable efforts to put recovery strategies in place before making final decisions about the effects of the Project on listed species.

The timing of impoundment recommended for the protection of fish would also be optimal for most terrestrial species, and therefore, with this mitigation, the Panel concluded that the recommended timing of impoundment would not have significant adverse effects on terrestrial species.

Caribou

The Red Wine Mountain caribou herd is considered threatened under the provincial *Endangered Species Act* and the Canadian *Species at Risk Act*. The George River caribou herd is in decline but not considered threatened and hunting is legal within permitted seasons. The Lac Joseph caribou herd is also known to occur in the Project area; however, Nalcor did not include this herd in its assessment.

Nalcor concluded that there would be significant cumulative effects on the Red Wine Mountain herd because some caribou habitat would be lost. However, Nalcor stated that hunting and predation have been identified as limiting factors for this herd, rather than habitat. Therefore, the

participants, rather than from the organization, and affiliation of participants could not always be confirmed.

The Panel concluded that, based on information identified through the environmental assessment process, there were uncertainties regarding the extent and locations of current land and resource use by the Inuit-Metis in the Project area. The Panel recognized that additional information could be forthcoming during government consultations. To the extent that there are current uses in the Project area, the Panel concluded that the Project's impact on Inuit-Metis land and resource uses, after implementation of the mitigation measures proposed by Nalcor and those recommended by the Panel, would be adverse but not significant.

The Panel also observed that many land and resource use locations reported to be frequented by Inuit-Metis are outside of the Project area and would remain unaffected and accessible. Measures considered to mitigate the effects of the Project on trapping activities and to compensate for losses of trapping income, property or equipment attributed to the Project may also be particularly relevant for Inuit-Metis.

Quebec Aboriginal Groups

Limited information was received regarding current land and resource use activities for traditional purposes in the Project area by Aboriginal persons living in Quebec due, in part, to unsuccessful attempts by Nalcor and most groups to sign consultation agreements to gather information. Time constraints during the public hearing did not allow the Panel to visit each community and therefore community representatives had to attend community hearing sessions held in Sept-Iles. They informed the Panel that the information provided was incomplete, and that insufficient time and resources were available to provide a more complete picture. The accuracy and completeness of the information provided by Nalcor was also challenged. Beside caribou hunting, any other current land and resource use activities for traditional purposes in the Project area by Aboriginal persons living in Quebec appear to be seasonal, sporadic and of short duration, including incidental harvesting along the Trans Labrador Highway.

The Panel concluded that, based on information identified through the environmental assessment process, there were uncertainties regarding the extent and locations of current land and resource use by Quebec Aboriginal groups in the Project area. The Panel recognized that additional information could be forthcoming during government consultations. To the extent that there are current uses in the Project area, the Panel concluded that the Project's impact on Quebec Aboriginal land and resource uses, after implementation of the mitigation measures proposed by Nalcor and those recommended by the Panel, would be adverse but not significant.

The Panel also observed that many land and resource use locations reported to be frequented by Aboriginal persons living in Quebec are outside of the Project area and would remain unaffected and accessible.

The Panel recommended that Nalcor involve all Aboriginal groups in the design and implementation of its proposed community land and resource use monitoring program and include Traditional Knowledge.

CULTURE AND HERITAGE

Nalcor assessed Project effects on historical and archaeological resources, sites of spiritual and cultural importance and changes to the river landscape.

Nalcor assessed effects of the Project in those areas where Project components would cause physical disturbance. Nalcor developed its archaeological program and proposed mitigation measures in compliance with the provincial *Historic Resources Act*. All historic and archaeological sites identified to date that could potentially be disturbed or lost as a result of the Project would be excavated or documented before any ground disturbance activities occur. Measures would also be implemented to address the discovery of previously unknown sites and artifacts during construction. Nalcor committed to make use of best practice archaeological interpretation and analysis methods and to engage local communities in the development of commemoration initiatives.

Participants recommended that investigation, documentation and commemoration of historic and archaeological resources be undertaken before flooding begins so that irreversible losses might be offset and ancestors of all origins and their harvesting heritage recognized and honoured. Participants also requested that Nalcor's commemoration commitment ensure that intangible resources – trails, portages, customs and stories – be recorded. They also indicated that local heritage organizations could benefit by receiving funding to undertake part of this work and to implement youth education programs.

The Panel acknowledged that Nalcor has been proactive in surveying historic and archaeological potential, and has worked extensively with Innu Elders to address their cultural concerns. The resources Nalcor has and would apply to studying, identifying and documenting historic and archaeological sites and artifacts would enable considerable investigation in the history of the region that might otherwise not happen. The Project would also provide opportunities for Aboriginal persons to obtain training and experience in archaeology. However, it would be unlikely that all sites and artifacts of cultural importance or meaning would be located. The Panel recommended that Nalcor involve all affected groups in searching for, documenting and commemorating historic and archaeological resources.

The Panel noted in particular that the creation of the Smallwood Reservoir resulted in losses of culturally and historically important sites and artifacts, with no consultation, acknowledgement or commemoration.

Three sites of spiritual and cultural importance to the Labrador Innu would be lost because of flooding. Nalcor's mitigation measures consisted of documenting their significance and minimizing disturbances through alternate facility layout and construction methods. Nevertheless, Innu Elders felt that animal spirits could retaliate in response to being disturbed and that efforts should be made to appease them. The Panel acknowledged the importance of recognizing, accepting and respecting the cultural beliefs of the communities to be affected. The Panel also recommended that the Province develop an approach to assign place names in consultation with Aboriginal communities for any new Project-related landscape features.

Many participants talked about their deep emotional connection with the Churchill River, which has strong historical, cultural and spiritual significance for them because of their own travels on the river or because of family or community connections. The creation of the two reservoirs would result in the disappearance of valued river features, including fast flowing water, rapids and falls, shallow delta areas, islands, varying water levels and associated river shoreline. The Panel concluded that the Project would cause significant adverse effects on culture and heritage after mitigation, particularly with respect to the "loss of the river" as a highly valued cultural and spiritual landscape. This effect would apply to a large proportion of the river between Churchill Falls and Goose Bay, would be irreversible, and would last for the duration of the Project.

critical habitat will be critical for government decision makers to be in a position to properly evaluate the potential risk the Project poses to the recovery of listed species. Without the recovery strategies and critical habitat, decision makers will not be in a position to fully appreciate the Project's impact on the most vulnerable species.

To illustrate, the Panel learned during the course of the environmental assessment of the Project about the primary Red Wine Mountain caribou herd habitat that would be flooded. The Panel notes that the area to be flooded is significant, however, the percentage of primary habitat is modest. The Panel was provided with a recovery strategy for the Red Wine Mountain caribou herd; however, the strategy fails to identify critical habitat for its recovery. Without knowing whether the primary habitat to be flooded is critical habitat for the recovery of the Red Wine Mountain herd, it is more difficult for the Panel to assess the impact of the Project on the prospect for recovery of the herd.

It clearly would have been desirable for all recovery strategies and critical habitat identification to have been completed before the start of the hearing, regardless of when they are required under federal or provincial legislation. Unfortunately, this did not happen. Only the recovery strategies for the harlequin duck and the Red Wine Mountain caribou herd were provided to the Panel. A number of the strategies, including those for the common nighthawk, olive sided flycatcher and rusty blackbird, are not required to be completed until after the conclusion of this environmental assessment. The absence of these recovery strategies makes it more difficult for the Panel to assess the impact of the Project on the recovery of these listed species.

What is particularly troubling to the Panel is that in some cases, recovery strategies and critical habitat identification appear to have been required to be completed under legislation before the hearings but were not available to the Panel. The recovery strategy for boreal woodland caribou, according to Environment Canada, was legally required by 2007, but was not expected until June 2011. The completion of recovery strategies and the identification of critical habitat are government responsibilities. They are not the responsibility of Nalcor.

The Panel concludes that based on the information available the Project is not expected to have a significant impact on listed species other than the Red Wine Mountain caribou herd; however the lack of recovery strategies and identification of critical habitat for some of these species make a final significance determination premature.

RECOMMENDATION 7.3 Recovery strategies for endangered species

The Panel recommends that, if the Project is approved, federal and provincial governments make all reasonable efforts to ensure that recovery strategies are in place and critical habitat is identified for each listed species found in the assessment area before a final decision is made about the effects of the Project on those species. Compliance with federal and provincial species protection legislation should be seen as a minimum standard. In fairness to Nalcor, this work should be given the priority needed to ensure that the Project decision is not unduly delayed. A final Project decision should only be made once government decisionmakers are satisfied that the recovery of listed species would not be compromised by the Project. Where Environment Canada is relying on provincial efforts to fulfill its obligations under the safety net provisions of the federal *Species at Risk Act*, before a federal decision is made about the Project it should satisfy itself that the provincial efforts for any species at risk are sufficient for its recovery and will not be compromised by the Project.

RECOMMENDATION 7.4 Compliance with species at risk legislation

The Panel recommends that, if the Project is approved, Nalcor should work with federal and provincial departments responsible for species at risk legislation to ensure all Project-related activities comply with restrictions and prohibitions against harassment, disturbance, injuring or killing of listed species or destroying and disturbing their residence.

Should it not be possible to complete recovery strategies and identify critical habitat not required by law before making a project decision, decision-makers should take a precautionary approach. This means decision-makers should err on the side of overestimating the Project's impact on listed species and should assume, unless there is clear evidence to the contrary, that the assessment area includes critical habitat and is otherwise essential to the recovery of the species.

7.5 CARIBOU**7.5.1 Nalcor's Views**

The EIS also assessed effects of the Project on habitat, health, and mortality for the Red Wine Mountain caribou herd and the George River caribou herd. The Red Wine Mountain caribou herd is considered threatened under the provincial *Endangered Species Act* and the Canadian *Species at Risk Act*. The George River caribou herd is in decline but not considered threatened and hunting is legal within permitted seasons. The Lac Joseph caribou herd was also known to occur in the Project area; however, Nalcor did not include this herd in its assessment.

The Red Wine Mountain caribou herd was selected as a key indicator due to its small size, sedentary nature and limited range, factors which made it particularly vulnerable to Project effects. The George River herd was noted as having seasonal overlap with the Project area during the winter months. Nalcor considered the possibility of Project effects on the Lac Joseph caribou herd in response to an information request from the Panel but stated that it had limited spatial overlap at the northern extent of its range and therefore was not expected to be affected by the Project. The respective ranges of the caribou herds in relation to the Project area are provided in Figure 10.

In its assessment, Nalcor used the Red Wine Mountain caribou herd range as the caribou assessment area, which is approximately 57,000 square kilometres. Nalcor acknowledged that the range of the migratory George River caribou herd covers most of the Ungava Peninsula, but that a portion of its annual movements overlaps with the Project and would be captured within the caribou assessment area (Figure 11).

To carry out the habitat modelling for the Red Wine Mountain caribou herd, Nalcor used Forest Management District 19 as its study area. This area represents approximately 30 percent of the recent range of the Red Wine Mountain caribou herd. Nalcor explained its choice of study area noting that detailed habitat data were not available for the rest of the herd's range. Nalcor stated that the absence of sufficient habitat data for the remainder of the range would not affect its modelling predictions as the effects of the Project did not extend beyond the forest inventory area. After habitat types were determined, Nalcor used telemetry data to understand caribou use of the assessment area.

Innu Nation cited concerns that the Project would invite new activity in the area and cumulative effects on caribou would be compounded. It stated that these forms of landscape changes could have a major impact on caribou populations through both direct and indirect effects. Innu Nation also noted that the Province intervened in the Romaine Hydroelectric Complex project due to the potential effects on caribou. However, Nalcor had not included this project in its cumulative effects assessment.

Innu communities in Quebec noted that there were cumulative effects on the George River herd including the Churchill Falls project, mining projects, railway projects and transmission lines. They predicted that the Project would impact them further.

7.5.3 Panel Conclusions and Recommendations

In reaching its conclusions on the effects of the Project on caribou, the Panel considered the following factors to be particularly relevant:

- the presence of the endangered boreal woodland caribou (Red Wine Mountain caribou herd) in the Project area;
- the cumulative impact of a range of past and present human activities on the Red Wine Mountain caribou herd;
- the presence of other caribou herds of particular importance to local Aboriginal and non-Aboriginal residents, particularly the George River caribou herd; and
- the large range of the George River caribou herd, other developments in that range, including the Romaine Hydroelectric Complex project, and the limited area included in Nalcor's cumulative effects assessment for the herd.

The Panel concludes that the recovery of the Red Wine Mountain caribou herd is very much in doubt with or without the Project. Most participants agreed with Nalcor's assessment that human hunting and predation are the major contributors to the current plight of the herd, and will continue to be significant threats to its survival. The Panel noted the commitment by Innu Nation to stop the hunt of caribou within the known range of the Red Wine Mountain caribou herd.

Beyond the threat of human hunting, there is uncertainty and some level of disagreement over the significance of other contributing factors, such as the Trans Labrador Highway, habitat fragmentation, and climate change, among others. The status of the provincial recovery strategy, and particularly its failure to identify the location of critical habitat, adds to the uncertainty surrounding the possible scale of the impact of the Project on the Red Wine Mountain caribou herd.

Based on the imperiled status of the Red Wine Mountain caribou herd and the uncertainty and disagreement over the range of factors that might be important for its recovery, the Panel concludes that any adverse effects of the Project on individual animals within the Red Wine Mountain caribou herd would be significant. Nalcor correctly pointed out that there is sufficient primary habitat outside the area directly affected by the Project. It is nevertheless clear that the Project, if it were to proceed, would pose a variety of risks to members of the herd, including possible displacement, possible increase in animal predation resulting from changes in the predator-prey dynamics and possible road kills from increased traffic, among others.

The Panel concludes that in light of the current state of the herd and the cumulative effects on its recovery, the Project would cause a significant adverse environmental effect on the Red Wine Mountain caribou herd.

RECOMMENDATION 7.5 Road construction and decommissioning

The Panel recommends that, if the Project is approved, the provincial Department of Natural Resources require Nalcor to minimize road construction outside the reservoirs, by locating new roads inside the impoundment area as much as possible. Any new roads proposed by Nalcor to be located outside the impoundment areas should be carefully reviewed by the Forestry Branch of the Department of Natural Resources and only approved if there is no reasonable alternative. In order to ensure that conservation objectives are met, all temporary roads outside the reservoir should be decommissioned as soon as possible to the satisfaction of the provincial Department of Environment and Conservation.

RECOMMENDATION 7.6 Recovery of the Red Wine Mountain caribou herd

The Panel recommends that, if the Project is approved, the provincial Department of Environment and Conservation ensure that adequate resources are available so that all reasonable efforts to ensure the recovery of the Red Wine Mountain caribou herd are taken. In addition, the Department should require Nalcor to play an enhanced role in the recovery process for the Red Wine Mountain caribou herd by putting resources into the process for research and recovery efforts and to participate actively in the overall effort to ensure the recovery of the caribou herd.

Concerns about the recent decline of the George River caribou herd were raised at the hearing. Information about the decline only became available a few months before the hearing. As a result, other than a general indication that the decline is still within the historical fluctuation of the herd, limited information was available about the possible causes of the decline or the cumulative effects of the Project with other past, current or future projects on the herd. Clearly, there are many individual impacts on the herd throughout its vast range. Some concerns were raised about the different management approaches in the provinces of Quebec and Newfoundland and Labrador. The Panel furthermore notes that a previous Panel considering the Voisey's Bay Nickel Mine Project, had recommended that any further development consider the cumulative impact of development on the George River caribou herd, including the impact of habitat fragmentation.

The Panel concludes that the effect of the Project on the George River caribou herd in isolation is not likely to be significant. The Panel is not in a position to make a cumulative significance determination because a proper cumulative effects assessment for the George River herd was not carried out and information on the recent decline came too late in the process to allow for proper consideration of its implications for this environmental assessment.

RECOMMENDATION 7.7 Management of the George River caribou herd

The Panel recommends that, if the Project is approved, the provinces of Quebec and Newfoundland and Labrador, Environment Canada and all interested Aboriginal communities initiate a dedicated range-wide joint management program for the George River caribou herd, and through this program cooperatively carry out a comprehensive cumulative effects assessment of the impact of human activities on the herd to be updated periodically as required.

uncertainties in approving herbicides based on short-term trials. In light of the precautionary approach, and in an effort to minimize the risk of harmful effects that may only become apparent through long-term exposure, the Panel concludes that the use of herbicides should be limited to situations where, in the judgment of provincial regulators, there is no reasonable alternative vegetation control method available.

RECOMMENDATION 7.9 Vegetation control

The Panel recommends that, if the Project is approved, Nalcor be required to restrict the use of chemical herbicides to areas where alternative vegetation control is not reasonably possible. Approval of the use of herbicides should only be granted after Nalcor has submitted an overall vegetation control plan to the provincial Department of Environment and Conservation, demonstrating that all alternatives have been adequately explored and the use of non-chemical approaches maximized.

7.8 MONITORING, FOLLOW-UP AND ADAPTIVE MANAGEMENT

The Project, if it should proceed, would result in a range of effects on the terrestrial environment. These effects raise a number of important issues that require ongoing monitoring. Furthermore, there is some uncertainty about the extent of the effects and the effectiveness of mitigation measures. The Panel has therefore considered the need for ongoing monitoring, reporting, follow-up and adaptive management with respect to terrestrial issues.

RECOMMENDATION 7.10 Monitoring, follow-up and adaptive management for the terrestrial environment

The Panel recommends that, if the Project is approved and in addition to its monitoring commitments listed in Chapter 7, Terrestrial Environment, Nalcor should carry out the following monitoring programs:

- monitor the effectiveness of riparian and wetland habitat compensation work, including the effect on wetland sparrows;
- monitor the response of the Red Wine Mountain caribou herd including any population changes through the construction phase and in the early part of the operation phase;
- monitor wolf predation of caribou, particularly the Red Wine Mountain herd;
- monitor interactions of the George River caribou herd with Project activities and facilities and identify any impacts;
- monitor ashkui formation in the Project area;
- monitor direct and indirect impacts on waterfowl, such as waterfowl adjustment to changes in riparian habitat, and changes in location and formation of ashkui;
- confirm the presence of and monitor the impact of the Project on salamanders and spring peepers;
- develop a detailed mitigation and monitoring plan for all listed species for approval by the provincial Department of Environment and Conservation;
- confirm the presence outside the flood zone of the eight plant species identified by Nalcor as unique to the river valley, plus the two additional species listed by the Department of Environment and Conservation (marsh horsetail and hidden fruit bladderwort) and develop a detailed mitigation plan for these plant species for approval by the Department;
- monitor the impact of the Project on furbearers, small game, small mammals, and black bears; and

Based on the information on current land and resource use identified through the environmental assessment process, there are uncertainties regarding the extent and locations of current land and resource use by Quebec Aboriginal groups in the Project area. The Panel recognizes that additional information could be forthcoming during government consultations. To the extent that there are current uses in the Project area, the Panel concludes that the Project's impact on Quebec Aboriginal land and resource uses, after implementation of the mitigation measures proposed by Nalcor and those recommended by the Panel, would be adverse but not significant.

Monitoring and Follow Up

The Panel recognizes that the decline in land and resource use activities for traditional purposes by Aboriginal persons in recent years may be attributed to several factors external to the Project. In the future, it might be difficult to determine the extent to which the Project might contribute to a continuing move away from traditional activities on the land, or might to a degree support traditional activities by providing financial resources to buy equipment or pay for travel into the country through wage employment, or in the case of Innu Nation, Impacts and Benefits Agreement payments. The Panel acknowledges Nalcor's commitment to conduct land and resource use monitoring on a community level.

RECOMMENDATION 9.3 Community level land and resource use monitoring

The Panel recommends that, if the Project is approved, Nalcor involve all Aboriginal groups in the design and implementation of its proposed community land and resource use monitoring program for the duration of the construction period to ensure that parameters of importance to these groups and Traditional Knowledge are included.

Benefits

Any Aboriginal people who would be employed with the Project would have additional financial resources, which could be directed to the practice of traditional land and resource use activities. In addition, the Panel considers that members of Innu Nation would have increased opportunity to practice traditional land and resource use activities if financial resources coming from the *Tshash Petapen* Agreement are applied to this purpose.

place names for the new reservoirs and other Project or geographical features, would represent a permanent loss of Innu cultural heritage. The attribution of place names relevant to the Innu would compensate for the loss of Innu toponyms, both as a result of this Project and as a result of the development of Churchill Falls, and would help commemorate the generations of Innu people who have used and occupied the river valley.

River Landscape

Many participants spoke to a sense of loss associated with the permanent conversion of the Churchill River between Churchill Falls and Muskrat Falls into two large reservoirs. Participants highlighted elements of the river valley that were negatively affected following the development of Churchill Falls, including shorelines gouged by ice, erosion slumps on the riverbanks and disappearance of riparian habitats. Participants also mentioned that the flooding at Churchill Falls caused the loss of landscape landmarks familiar to those who had travelled extensively in the region prior to the development.

Participants predicted that the landscape in the river valley would continue to lose aesthetic quality if the flowing river is converted into two reservoirs.

Grand RiverKeeper Labrador Inc. advocated for the Churchill River to be designated a *heritage river* under the Canadian heritage river program to protect its natural and cultural features, ensure a more acceptable alternative future use, such as ecotourism, and to complement the designation of the Mealy Mountain National Park. The provincial Department of Environment and Conservation noted that a designation under the Canadian heritage river program was not a formal legislated protection mechanism but rather a stewardship initiative requiring the support and involvement of all interested stakeholders. A heritage river could be designated because of its natural features or cultural significance and a proposal would have to come from the provincial government. However, resources have not been made available for the Province to complete an assessment of rivers in Labrador that could be suitable for heritage designation.

11.3 PANEL CONCLUSIONS AND RECOMMENDATIONS

In reaching its conclusion on Culture and Heritage, the Panel considered the following factors to be particularly relevant:

- inundating the Churchill River valley would lead to the loss and disturbance of sites and artifacts of historic, archaeological, spiritual and cultural importance and would also affect intangible aspects of the river related to the use, meaning and attachment attributed to the Churchill River and surroundings by local residents and Aboriginal persons;
- local residents, including members of Aboriginal groups, have indicated that they have a deep emotional connection with the Churchill River;
- Innu Elders indicated that building the dam at *Manitu-utshu* (the rock knoll) would be disrespectful to the creatures living under it but that communicating with them may appease them;
- Nalcor was required to follow the requirements of the provincial *Historic Resources Act* and the Provincial Archaeology Office reviewed Nalcor's methodology and procedures;
- sites, artifacts and intangible aspects of the river that could be affected by the Project are of diverse origins and have been attributed to the various groups that participated in the review process;
- participants in both Labrador and Quebec noted the existence of burial sites within and near the Project area; and

- descendents of trappers wish to commemorate their trapping heritage, including by marking the losses sustained by the creation of the Smallwood Reservoir, among other measures.

The Panel notes that Nalcor would be obliged to continue to work closely with the Provincial Archaeology Office in completing its work on historic and archaeological resources should the Project receive approval and has committed to implement a program to recover information and artifacts from sites through recording, analyzing and interpretation. The Panel also notes that Nalcor would have to consult with the Provincial Archaeology Office and obtain approval for all proposed mitigation measures relating to historic and archaeological resources before proceeding with construction. However, the Panel considers that Nalcor should not only meet, and where appropriate exceed, regulatory standards related to the management and protection of historic and archaeological resources, but should also work in close collaboration with local communities and Aboriginal groups to recover, preserve, document and commemorate sites and artifacts of historical and cultural importance that could otherwise be irreversibly lost because of the Project.

The Panel recognizes the value of including all affected groups in searching for, documenting and commemorating historic and archaeological resources and the importance of respecting the deep emotional, cultural and spiritual connection that local residents of all origins have for the Churchill River. Nalcor's mitigation program should address both tangible heritage resources (sites and artifacts) and intangible resources (stories and knowledge). Nalcor should be required to implement all monitoring commitments related to cultural and heritage information made during the course of the environmental assessment process. In addition, Aboriginal groups should be kept informed of the work to be undertaken by Nalcor throughout Project construction and operation.

RECOMMENDATION 11.1 Involvement of Aboriginal groups in the management and protection of historic and archaeological resources

The Panel recommends that, if the Project is approved, Nalcor, in collaboration with the Provincial Archaeology Office, establish and support a program to involve all three Labrador Aboriginal groups in (a) the documentation and interpretation of known historic and archaeological sites and artifacts and (b) the process to be followed in the case of inadvertent discoveries of previously unknown sites and artifacts during construction, including notification of the three groups. Nalcor should also give consideration to inviting participation by interested Aboriginal communities in Quebec. Nalcor should share with Aboriginal groups the results of its work on the monitoring of historic and archeological resources to be compiled and provided annually to the Provincial Archaeology Office.

The Panel notes that the creation of the Smallwood Reservoir resulted in the loss of culturally and historically important sites and artifacts, with no consultation, acknowledgement or commemoration, and this is still seen as an injustice by local residents. The Panel recognizes that Nalcor has been approaching the possible development of the Lower Churchill Project in a very different way and acknowledges the survey work already carried out and Nalcor's commitments made during the public hearing to engage with communities to develop ways to commemorate sites and artifacts of historic and cultural importance and to make historic and archaeological information available to be displayed locally.

RECOMMENDATION 11.2 Commemoration initiatives

The Panel recommends that, if the Project is approved, Nalcor work in collaboration with local communities and Aboriginal groups to (a) identify sites, artifacts and intangible elements (including portages, traplines, trails and personal stories) to be documented and commemorated, (b) determine how commemoration should occur and (c) implement

contribution if required to both enable current participants to complete their training and to meet additional training requirements.

At the hearing sessions in Sept-Iles, a number of Aboriginal groups expressed the view that, should the Project proceed, some of their members would be interested in employment opportunities. While it is not clear how many would avail themselves of those opportunities, the Panel would consider such involvement to be very beneficial.

RECOMMENDATION 12.7 Employment outreach to Quebec Aboriginal communities

The Panel recommends that, if the Project is approved, Nalcor initiate an employment outreach program for interested Aboriginal groups in Quebec; such a program could include among other measures, a specific recruitment program, transportation assistance from Sept-Iles, and measures to address social and cultural issues including any associated language barriers.

Business Opportunities

There are measures that can enhance the initiatives already committed by Nalcor for maximizing the benefits that can accrue from business opportunities related to the supply of goods and services to the Project. For example, the concept of using quantitative objectives or targets to help maximize benefits in a particular sector is already used by Nalcor in the Gender Equity Program, the Diversity Program, for employment levels both in engineering and in general construction, and for goods and services contracts for Innu Nation. This concept should be extended to the general goods and services sector.

RECOMMENDATION 12.8 Quantitative targets for goods and services

The Panel recommends that, if the Project is approved, the concept of quantitative objectives or targets be applied to the provision of goods and services, with targets established both for the province as a whole, and for Labrador.

RECOMMENDATION 12.9 Enhanced supplier development program

The Panel recommends that, if the Project is approved, Nalcor enhance its supplier development program by implementing the following measures: (a) establish the Labrador Business Opportunities Committee and appoint the full time Coordinator in Happy Valley-Goose Bay as soon as possible, (b) ensure the Coordinator (a Nalcor employee) has sufficient seniority within the organization to influence relevant procurement decisions and has full access to all procurement information and related decision making, (c) release as soon as possible the list of goods and services required by the Project, with specific indications of time frame, approximate volumes and dollar values or ranges as appropriate, and (d) ensure immediately that all engineering management personnel involved in specifications, bidder prequalification, and procurement are fully aware of Nalcor's commitments towards maximizing benefits in this area and act accordingly.

It is important for businesses and prospective bidders to have accurate and timely information to help them make their capacity investment decisions. Thus, at the time of Muskrat Falls sanction, it would be important to factor in the most up to date information about that part of the Project, as well as general prospective information on Gull Island. If, for any reason, Gull Island were to be sanctioned first, then the same principle would apply.

appoint a Monitoring and Community Liaison Committee, which would include representation from communities and community agencies, Aboriginal groups, provincial and federal government departments and ex-officio representation from Nalcor. The Panel notes that it would be important for the communities most affected by the Project to have a voice in the selection of Committee members to represent them and that this could be done through a nomination process.

The Committee would play an important role in ensuring a transparent approach to communicating the results of the monitoring programs to the public by various means including public forums, print and electronic media. It could also seek independent expert advice, if necessary to address public concerns.

Given the diversity of biophysical, employment, business, social and health effects to monitor, it is expected that subcommittees would be formed to address the various areas. The Panel anticipates that biophysical and economy and business monitoring programs would be established by Nalcor at the detailed Project planning stage and that the results of the social effects needs assessment and research described in Chapter 13 would inform the ongoing monitoring of social effects which would be reviewed by this Committee. If human mercury level monitoring is required, the details would be developed by Nalcor in collaboration with Health Canada and the provincial Department of Health and Community Services as outlined in Chapter 13 and overseen by this Committee.

RECOMMENDATION 15.5 Lower Churchill Project Monitoring and Community Liaison Committee

The Panel recommends that, if the Project is approved, prior to the start of construction, the provincial Department of Environment and Conservation appoint a Monitoring and Community Liaison Committee, using a community-based nomination process. Nalcor, through the Department, should provide the Committee with sufficient resources to allow for staff support, expenses and a modest honorarium for non-government participants, acquisition of independent expert advice, and adequate communication with community residents including occasional public forums. The mandate of the Committee would be set out in the Authorizing Regulation and the Federal-Provincial regulatory plan. The Committee would operate throughout the construction period and for the first ten years of the operating period, at which point the continuing need for the Committee should be reassessed by the Department in consultation with the Committee, the communities and Nalcor.

The Committee would:

- provide community feedback and advice to the Department and to Nalcor on relevant issues including Project-specific mitigation, impact monitoring and adaptive management committed to by Nalcor and as recommended by the Panel;
- be empowered as required to establish subcommittees or working groups to address the key areas of biophysical monitoring and follow-up, enhancing employment and business benefits, and health and social issues;
- have representation from communities, community-based agencies and non-government organizations, Aboriginal organizations, relevant federal and provincial government departments and Nalcor (ex-officio); and
- liaise with the public to ensure a transparent approach to addressing public concerns and the communication of monitoring results.



Canadian Environmental
Assessment Agency

Agence canadienne
d'évaluation environnementale

Labrador-Island Transmission Link

Comprehensive Study Report



June 2013

Canada 

Potential environmental effects and concerns identified during the environmental assessment include:

- the impacts of the Project on caribou;
- the impacts of electromagnetic fields (EMF) from the submarine cables and shoreline electrodes on marine life;
- concern that the transmission line right of way and access roads and trails will enable access to previously remote areas;
- the impacts of transmission line construction and maintenance on water bodies; and
- the impacts of the Project on outfitters and recreational use of the environment.

Methods to reduce or eliminate the Project's potential environmental effects were incorporated into overall project planning and design. For example, the proponent relocated a portion of the transmission line right of way to parallel the South Side Access Road from the Trans Labrador Highway Phase 3 to the Muskrat Falls generation site to avoid creation of new access in the range of the Red Wine Mountains Caribou herd. Additional mitigation is described throughout this Comprehensive Study Report.

A follow-up program is required under the former Act and is being developed to verify the accuracy of the environmental assessment and to determine the effectiveness of the proposed mitigation measures for this Project. The follow-up program would include consideration of impacts to vegetation (listed plants), avifauna, furbearers (marten), caribou and the marine environment. For example, the follow-up program would confirm effects predictions regarding EMFs that will be generated by the submarine cables and electrodes.

The Canadian Environmental Assessment Agency (the Agency) prepared this Comprehensive Study Report in consultation with Environment Canada, Fisheries and Oceans Canada, Health Canada, Natural Resources Canada, Public Works and

Government Services Canada, Transport Canada and the Province of Newfoundland and Labrador. It was prepared following a technical review of the proponent's Environmental Impact Statement and associated information. The Comprehensive Study Report was also informed by comments received from Aboriginal groups and the public.

Except for one component of the environment, the Red Wine Mountains Herd of woodland caribou, the Agency concludes that with the implementation of mitigation measures, the Project is not likely to cause significant adverse environmental effects. The Red Wine Mountains Herd is listed as threatened under the *Species at Risk Act*. While the Project itself is likely to result in minor, adverse, but non-significant environmental effects on the Red Wine Mountains Herd, the Herd continues to be under significant pressure when taking into account other projects and activities. The Agency therefore concludes that the Project, when cumulative environmental effects are taken into account, is likely to cause significant adverse environmental effects on the Red Wine Mountains Herd, even if the Project itself will only minimally contribute to these effects. The Agency recognizes that Nalcor would implement extensive measures to mitigate further impacts to the Red Wine Mountains Herd.

Following a public consultation on this Report, the Minister of the Environment will decide whether, taking into account the implementation of mitigation measures, the Project is likely to cause significant adverse environmental effects. The Project will then be referred back to Fisheries and Oceans Canada, Transport Canada, Natural Resources Canada and Public Works and Government Services Canada for appropriate course of action in accordance with section 37 of the former Act.

ENVIRONMENTAL ASSESSMENT COMMITMENTS FOR LOWER CHURCHILL PROJECT LABRADOR ISLAND TRANSMISSION LINK**Status Update and High Level Description of Supporting Documentation****June 2019**

Commitment	Phase	Status	High Level Description of Supporting Documentation
	C - Construction; O&M - Operations		
As illustrated throughout this EIS, the EA process, including its associated governmental, Aboriginal and stakeholder consultation, has been and will continue to be a key aspect of Project planning and design to further understand any sites of cultural-historical importance or other historic and heritage resources that may be located within or near planned Project activities.	C	Completed	Historic Resources Assessment (Stage 2) – Labrador-Island Transmission Link (Newfoundland Segment); Historic Resources Impact Assessment, Labrador-Island Link – Labrador Segment; Historic Resources Permits; Research conducted at L'Anse au Diable (permit and report); 2011 Historic and Heritage Resources Assessment and Potential Mapping: Strait of Belle Isle Cable Landing Sites and Shore Electrode Locations
The company must meet any current environmental regulations laid out in both provincial and federal legislation and will consider potential new environmental legislation.	C	Completed	Regulatory Compliance Plan (LCP-PT-MD-0000-EV-PL-0021-01)
Alternative clearing methods, including mechanical and manual clearing: - Right-of-way (ROW) clearing will be carried out in accordance with standard utility practices and procedures, and will involve the removal of all vegetation that exceeds 2 m at maturity. - Vegetation will be removed primarily by mechanical harvesters, with chain saws or other hand-held equipment potentially used in small areas (e.g., along watercourses).	C	Completed	The following permits were obtained and adhered to: LCP-00384 (Commercial Clearing/Operating Permit - 2018 HVdc Line - District 9 and 12), SLI-00486 (Commercial Clearing/Operating Permit - 2018 Clearing HVdc Line - Section 1, Segments 1 and 2 - Labrador), SLI-00762 (Commercial Clearing/Operating Permit - 2018 HVdc Line - District 16 - Pasadena), SLI-00763 (Commercial Clearing/Operating Permit - 2018 HVdc Line - District 17 - Port Saunders), SLI-00773 (Commercial Clearing/Operating Permit - 2018 HVdc Line - District 18), SLI-00855 (2018 Commercial Cutting/Operating Permit - Sunnyside to Soldiers Pond - District 1), SLI-00995 (Commercial Clearing/Operating Permit - 2018 HVdc Line - Districts 10 and 11), SLI-00997 (Commercial Clearing/Operating Permit - 2018 HVdc Line - District 06), SLI-01071 (Commercial Clearing/Operating Permit - 2018 HVdc Line - District 4), SLI-01435 (Commercial Clearing/Operating Permit - 2018 H Vdc Line - District 2) Monitoring was conducted by onsite environmental monitors

ENVIRONMENTAL ASSESSMENT COMMITMENTS FOR LOWER CHURCHILL PROJECT LABRADOR ISLAND TRANSMISSION LINK**Status Update and High Level Description of Supporting Documentation****June 2019**

Commitment	Phase	Status	High Level Description of Supporting Documentation
Nalcor is to prepare and submit a post-construction report to DFO estimating/assessing the extent to which the berms on the cables provide habitat for fish and other marine life.	O&M	Ongoing	Planning is underway to collect video during the Marine Emissions Monitoring Program
Nalcor is to prepare and submit a post-construction report to DFO measuring the strength of the electromagnetic field generated by the submarine cables during its various operational modes in a manner that enables confirmation of the related predictions in the Environmental Impact Statement for this project.	O&M	Ongoing	Planning is underway to this data during operations as a part of the Marine Emissions Monitoring Program.
An aerial survey will be conducted each winter during the construction period to provide a general understanding of the location of the RWMH and the MMH caribou relative to Project components and planned Project construction areas	C	Completed	Nalcor Energy Lower Churchill Project, Environmental Effects Monitoring Program - 2014 Red Wine Mountains Caribou Herd, 2014 Aerial Survey and Collar Deployment; 2015 Annual Caribou Report – Red Wine Mountain Herd (includes Aerial survey); Nalcor Energy Lower Churchill Project, Environmental Effects Monitoring Program - 2016 Red Wine Mountains Caribou Herd, 2016 Aerial Survey; 2015 Annual Caribou Report – Mealy Mountain Herd (includes Aerial Survey); 2016 Annual Caribou Report – Mealy Mountain Herd (includes Aerial Survey); 2017 Annual Caribou Report – Mealy Mountain Herd (includes Aerial Survey)
Each year an annual report will be submitted to NLDEC-WD that will include the following components: <ul style="list-style-type: none"> • Analysis of woodland caribou distribution, movement and habitat selection in the range of the RWMH and MMH, based on telemetry collar data. • Discussion of any mortality events involving collared caribou. • Georeferenced information on all caribou sightings (from this program and other programs or sources) and monitoring of established buffers, as they related to ground and aerial-based surveys within 20 km of the Project area. 	C	Completed	2014 Annual Caribou Report – Red Wine Mountain Herd ; 2015 Annual Caribou Report – Red Wine Mountain Herd; 2016 Annual Caribou Report – Red Wine Mountain Herd ; 2017 Annual Caribou Report – Red Wine Mountain Herd; Nalcor Energy, Labrador-Island Transmission Link – Environmental Effects Monitoring Program – Red Wine Mountains Caribou Herd - 2014-2017 Winter and Calving/Post-Calving Ranges; 2015 Annual Caribou Report – Mealy Mountain Herd; 2016 Annual Caribou Report – Mealy Mountain Herd; 2017 Annual Caribou Report – Mealy Mountain Herd; Nalcor Energy, Labrador-Island Transmission Link – Environmental Effects Monitoring Program – Mealy Mountains Caribou Herd - 2014- 2017 Winter and Calving/Post-Calving Ranges
As illustrated throughout this EIS, the EA process, including its associated governmental, Aboriginal and stakeholder consultation, has been and will continue to be a key aspect of Project planning and design.	C	Completed	Chapters 7 & 8 of the Labrador-Island Transmission Link Environmental Impact Statement; Stakeholder Relations Strategy
PEEMP Reporting Requirements - Freshwater Fish, Construction, Monthly. Monthly Water Quality Report - monthly summary of the sample analysis at site locations of various water chemistry parameters such as nitrates, ammonia, pH and total suspended solids (TSS).	C	Completed	Monthly Water Quality Reports: NE-LCP-MEMO-001785, NE-LCP-MEMO-001773, NE-LCP-MEMO-001872, NE-LCP-MEMO-001899, NE-LCP-MEMO-002026, NE-LCP-MEMO-002086, NE-LCP-MEMO-002217, NE-LCP-MEMO-002283, NE-LCP-MEMO-002363, NE-LCP-MEMO-002442, NE-LCP-MEMO-002510, NE-LCP-MEMO-002577, NE-LCP-MEMO-002640, NE-LCP-MEMO-002703, NE-LCP-MEMO-002784, NE-LCP-MEMO-002825, NE-LCP-MEMO-002885, NE-LCP-MEMO-002957, NE-LCP-MEMO-003010, NE-LCP-MEMO-003054, NE-LCP-MEMO-003126, NE-LCP-MEMO-003255



Hydro Place
500 Columbus Drive
P. O. Box 12800
St. John's, NL
A1B 0C9

TO:	FROM:
Chef Jean-Charles Piétachio	Gilbert Bennett
COMPANY:	DATE:
Conseil des Innus d'Ekuanitshit	5/13/2009
FAX NUMBER:	PAGES INCLUDING COVER:
418-949-2085	9
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
418-949-2234	
RE:	YOUR REFERENCE NUMBER:
Community Consultation Agreement	
<input type="checkbox"/> URGENT <input type="checkbox"/> FOR REVIEW <input type="checkbox"/> PLEASE COMMENT <input type="checkbox"/> PLEASE REPLY <input type="checkbox"/> PLEASE RECYCLE	

NOTES/COMMENTS:

Please see attached.

Please disregard previous
Fax. Replace with this one.
Thank you,
Brenda.

This facsimile message is privileged and contains confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this in error, please notify us immediately by telephone and return the original transmission to us by mail without making a copy.

Confidential and Without Prejudice
Nalcor Community Consultation Agreement

COMMUNITY CONSULTATION AGREEMENT – ●, 2009.

BETWEEN: **Nalcor Energy**, a body corporate existing pursuant to the *Energy Corporation Act*, SNL 2007, c. E-11.01, having its head office in the City of St. John's, in the Province of Newfoundland and Labrador;

("Nalcor")

AND: Conseil des Innus d'Ekuanitshit

("Ekuanitshit")

(Collectively, the "Parties")

WHEREAS:

1. The *Environmental Impact Statement Guidelines* for the environmental assessment of the generation components of the Lower Churchill Project (the "Project") require that the Proponent consult with named Aboriginal groups and communities to familiarize the group or community with the Project and its potential environmental effects, to identify any issues or concerns regarding potential environmental effects of the Project and to identify what actions the Proponent proposes to take to address issues or concerns.
2. Nalcor has registered the proposed transmission line project for environmental assessment by the Governments of Newfoundland and Labrador and Canada and wishes to provide information respecting the proposed transmission line project to Ekuanitshit.
3. Nalcor wishes to provide information respecting both the generation and transmission components of the Project and to consult with Ekuanitshit in respect of the Project impacts in order to fulfill certain of the requirements of the *Environmental Impact Statement Guidelines* and to obtain information with respect to the potential environmental effects of the Project upon the interests and rights of the Innu of Ekuanitshit.

NOW THEREFORE the Parties agree to conduct consultation in respect of the Project in accordance with the following terms and conditions of this Community Consultation Agreement (the "Consultation Agreement"):

1. Community Consultation

1.1 Ekuanitshit and Nalcor shall jointly implement a community consultation process that shall have the following objectives:

- to enable and facilitate effective communication and consultation between the Parties with respect to the Project and to fund the participation of Ekuanitshit in achieving the objectives of this Consultation Agreement in accordance with its terms;
- to respond to questions, issues and concerns raised by the Innu of Ekuanitshit about the Project;

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Draft Community Consultation Agreement

- to determine what Innu of Ekuanitshit think about the project and how it may affect the Innu of Ekuanitshit;
 - to communicate the findings of the community consultation process to Ekuanitshit and Nalcor;
 - to identify traditional knowledge and current use of resources.
- 1.2 The Parties agree to cooperate with each other to ensure the objectives of the community consultation process set out in section 1.1 are achieved. In the event of a dispute, the Parties agree to meet within five (5) days of written notice of the dispute and to attempt to resolve the dispute through reasonable efforts taken in good faith. If the dispute cannot be resolved by the parties, it shall be referred to the Senior Representatives of Nalcor and Ekuanitshit, identified in section 7.2.
- 1.3 Ekuanitshit shall employ one full-time community consultation officer for Ekuanitshit funded by Nalcor in accordance with Appendix "B" of this Consultation Agreement and who will perform the community consultation officer's duties in that community. The selection and employment of the community consultation officer shall be subject to Nalcor's prior approval. The community consultation officer will gather and disseminate information on the Project from and to Ekuanitshit using one or more of the following methods:
- community resource centres;
 - workshops;
 - informant interviews;
 - community newsletters;
 - internet communications;
 - radio open-line programs; and
 - community information sessions.
- 1.4 Within twenty (20) days of the execution of this Consultation Agreement, Ekuanitshit shall provide to Nalcor, for its approval, a Workplan and schedule of community consultation activities for the period commencing on the date of execution of this Consultation Agreement up to and including the preparation of the final report pursuant to section 4.2 twelve (12) months after the execution of this Consultation Agreement. The Workplan shall be attached as Appendix "A" to this Consultation Agreement.
- 2. Term and Amendment**
- 2.1 This Consultation Agreement shall come into effect upon its execution by the Parties.
- 2.2 The Parties agree that the term of this Consultation Agreement shall be for the period commencing upon the execution of this Consultation Agreement (the "Effective Date") and terminating the earlier of twelve (12) months from the date of execution or sixty (60) days from the date of written notice under section 2.3(b).

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Draft Community Consultation Agreement

2.3 Notwithstanding section 2.2,

- (a) the Parties may, by agreement in writing, extend the term of this Consultation Agreement; and
- (b) either Party may terminate this Consultation Agreement at any time by giving the other Party sixty (60) days written notice of intent to terminate.

2.4 Upon termination, all elements of this Consultation Agreement terminate, including all financial contribution commitments, and any unexpended advances of funds will be returned by Ekuanitshit to Nalcor. For greater certainty, Nalcor shall not be responsible for any new expenditure made, incurred or committed to by Ekuanitshit after the date of termination referred to in section 2.2.

2.5 This Agreement may only be amended with the written consent of both Parties and any such amendment will become effective upon its execution by the Parties, unless another date is agreed to.

3. **Funding**

3.1 Nalcor shall provide honoraria and funding in accordance with Appendix "B" of this Consultation Agreement.

4. **Reporting Requirements**

4.1 On a monthly basis, Ekuanitshit shall provide to Nalcor:

- a written activity report describing the consultation activities undertaken, including any relevant issues emerging as a result of such consultation; and
- an unaudited monthly financial report in the format presented in Appendix "C" prepared in accordance with generally accepted accounting principles, reporting total revenues and eligible expenditures incurred and accrued and funded pursuant to this Consultation Agreement.

4.2 No later than twelve (12) months after the effective date of this Consultation Agreement, Ekuanitshit shall provide to Nalcor a report in writing summarizing the consultation activities which have been undertaken and describing the findings of the consultation process, including any traditional knowledge or information on the current use of resources for traditional purposes within the Project area.

4.3 Ekuanitshit shall, no later than ninety (90) days following the close of its fiscal year, provide Nalcor with an audited financial statement prepared in accordance with generally accepted auditing principals showing total revenue and eligible expenditures under this Consultation Agreement and detailing that the funds received under this Consultation Agreement were accounted for and spent properly and in accordance with this Consultation Agreement.

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- 4.4 Nalcor may request from Ekuanitshit such information and documentation that it may reasonably require to confirm that advances or payments made pursuant to this Consultation Agreement were disbursed for eligible expenditures and made by Ekuanitshit in accordance with this Consultation Agreement and may, at its own expense, appoint an independent auditor to verify eligible expenditures made by Ekuanitshit pursuant to this Consultation Agreement.

5. Information, Confidentiality and Disclosure

- 5.1 The Parties agree that it will be necessary to share, evaluate and discuss certain information to fulfill the objectives of this Consultation Agreement and therefore agree to provide such information as is relevant and necessary to fulfill the objectives of this Consultation Agreement. The Parties acknowledge that certain information may be restricted, commercially sensitive or otherwise subject to confidentiality requirements. Nalcor agrees to provide access to such restricted, confidential or commercially sensitive information, where necessary and relevant to the objectives of this Consultation Agreement, provided that appropriate confidentiality agreements have been executed by the Parties to protect such confidential and commercially sensitive information.
- 5.2 Notwithstanding anything else in this Consultation Agreement, Ekuanitshit acknowledges that Nalcor shall not be obliged to disclose or share with Ekuanitshit environmental, engineering, financial or other information pertaining to the evaluation of particular development options by Nalcor.
- 5.3 The Parties agree to execute appropriate confidentiality agreements to protect restricted, confidential or commercially sensitive information and to release information respecting the Project only in accordance with the terms of such confidentiality agreements or as otherwise required by law.
- 5.4 The Parties agree that all discussions leading to the formation of this Consultation Agreement, this Consultation Agreement and discussions, negotiations, information acquired and reports prepared pursuant to this Consultation Agreement will be confidential and will not be disclosed to any other person except:
- (a) as the Parties agree in writing;
 - (b) as may be required by law or by the terms of any confidentiality agreement executed between the Parties;
 - (c) as may be permitted pursuant to the exercise of a statutory or regulatory discretion; or
 - (d) pursuant to section 6.2 or in litigation dealing with a breach or an alleged breach of this Consultation Agreement.

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6. Without Prejudice

- 6.1 This Agreement and all negotiations surrounding it shall not be, and nothing contained in this Consultation Agreement shall be, construed as conferring on, recognizing, limiting, modifying, replacing, denying or derogating from any Aboriginal, treaty or constitutional rights or obligations of either the Parties or the Innu of Ekuanitshit which may be claimed by the Parties, or the Innu of Ekuanitshit and their representatives thereof and is without prejudice to the positions which may be taken by the Parties with respect thereto in any other forum, court of law or otherwise.
- 6.2 Notwithstanding section 6.1, this Consultation Agreement and all negotiations surrounding it and the consultation activities conducted pursuant to this Consultation Agreement are not subject to settlement privilege and either Party may reference the existence or the content of this Consultation Agreement and any discussions, negotiations, activities or reports conducted or prepared pursuant to this Consultation Agreement and may tender evidence of such discussions, negotiations, activities or reports in any action, petition or proceeding in any forum relating to the issue of consultation.
- 6.3 This Agreement is not, and shall not be interpreted to be, a treaty or land claims agreement within the meaning of s.25 or s.35 of the *Constitution Act, 1982*.
- 6.4 This Consultation Agreement and the negotiations leading to its formation, execution and implementation are without prejudice to any Party in any future negotiations.
- 6.5 Except as otherwise specifically provided herein, nothing in this Consultation Agreement shall limit in any manner the rights, jurisdiction, authority, obligations or responsibilities of either Party or their representatives.
- 6.6 Nothing in this Consultation Agreement obliges Nalcor to act in a manner inconsistent with or contrary to law and nothing in this Consultation Agreement fetters or is to be interpreted as fettering the discretion of Nalcor.
- 6.7 Nothing in this Consultation Agreement is intended to limit the participation by Ekuanitshit or by Nalcor in any public processes established by Newfoundland and Labrador or Canada respecting the environmental assessment of the Project.

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Draft Community Consultation Agreement

7. Communications

- 7.1 Any notice or other communication required or permitted to be given under this Consultation Agreement shall be given in writing and will be deemed to have been well and sufficiently given if sent by registered mail, courier or facsimile to:

In the case of Nalcor Energy, to:

Gilbert Bennett
Vice President
Lower Churchill Project
P.O. Box 12800, 500 Columbus Drive
St. John's, NL A1B 0C9
Ph: (709) 737-1836

In the case of Ekuanitshit to:

Any notice sent by registered mail shall be deemed to have been duly given and received by a Party on the fifth business day following the day of mailing and on the following day if sent by facsimile transmission.

- 7.2 A person shall be designated by each of the Parties to act as the Senior Representative of that Party for the purposes of this Consultation Agreement. Until the Parties to this Consultation Agreement are otherwise advised, the designated persons who represent each of the Parties are:

In the case of Nalcor Energy,

Gilbert Bennett
Vice President
Lower Churchill Project
P.O. Box 12800, 500 Columbus Drive
St. John's, NL A1B 0C9
Ph: (709) 737-1836

In the case of Ekuanitshit,

- 7.3 In the event that it becomes necessary to substitute individuals for those referred to in section 7.2, the Party doing so shall notify the other Party in accordance with section 7.1 and provide the appropriate documentation to effect the change.

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Draft Community Consultation Agreement

8. General

- 8.1 There will be no presumption that any ambiguity in any of the terms of this Consultation Agreement shall be interpreted or resolved in favour of either Party.
- 8.2 This Consultation Agreement, including the Appendices, and any valid amendment to it constitute the entire agreement between the Parties with respect to the subject matter of this Consultation Agreement, unless otherwise agreed by the Parties.
- 8.3 Ekuanitshit represents that this Consultation Agreement is binding upon itself and the Innu of Ekuanitshit and that all necessary actions have been taken to authorize the execution of this Consultation Agreement.
- 8.4 Nalcor represents that this Consultation Agreement is binding upon it and that all necessary actions have been taken to authorize the execution of this Consultation Agreement.
- 8.5 Ekuanitshit represents and warrants that there are no actions or proceedings pending by or against Ekuanitshit or any of its members that would materially impair its ability to fulfill its obligations under this Consultation Agreement and that it has not entered into any other agreement that would prevent it from fulfilling its obligations under this Consultation Agreement.
- 8.6 This Consultation Agreement is a legally binding contract which shall be considered to have been made in Newfoundland and Labrador and is subject to laws of general application and shall be interpreted in accordance with the laws of Newfoundland and Labrador and the federal laws of Canada applicable therein without regard to conflicts of laws principles that would impose the laws of any other jurisdiction and each Party hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Newfoundland and Labrador and all courts competent to hear appeals therefrom.
- 8.7 No Party shall challenge or support a challenge to the validity of this Consultation Agreement or any provision thereof.
- 8.8 The Parties agree that compliance by Nalcor with the provisions of this Consultation Agreement completely fulfills the requirements of the *Environmental Impact Statement Guidelines* and discharges the obligations of Nalcor with respect to consultation with Ekuanitshit in respect of the *Environmental Impact Statement Guidelines*.
- 8.9 All communications, notices, reports and other documentation required or permitted by this Consultation Agreement shall be made only in French or English, provided that such communications, notices, reports and other documentation shall be provided to the receiving Party in the official language of that Party.

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IN WITNESS WHEREOF each of the Parties have caused this Consultation Agreement to be executed by the duly authorized signing officers of the Parties:

Nalcor Energy

Per

Per

Witness

Date

Conseil des Innus d'Ekuanitshit

Per

Per

Witness

Date

CIMFP Exhibit P-01335

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Draft Community Consultation Agreement

APPENDIX "A"

WORKPLAN

- 10 -

APPENDIX "B"

ELIGIBLE EXPENDITURES

Eligible expenditures to be funded under the terms and conditions of this Consultation Agreement must be legitimate and reasonable and are defined as follows:

- salary for 1 community consultation officer: [\$●]
- pre-approved travel, honoraria and disbursements incurred [\$● per elder to a maximum of \$●].

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APPENDIX "C"

MONTHLY FINANCIAL REPORT FORMAT

STATEMENTS OF REVENUES AND EXPENDITURES		REPORT PERIOD	
Month of:	Month Current	Project to Date	
		Opening	Closing
Revenue:			
Expenditures			
Total			
Community Consultation			
Salaries and Benefits			
Travel and Disbursements			
Community Consultation			
Office and Overhead Costs			
Total			
Total Expenditures			
Transfers			
Community Consultation			
Payments as per Agreement			
Transferred – in			
Transferred – out			
Balance Funded			



Hydro Place, 500 Columbus Drive,
P.O. Box 12800, St. John's, NL
Canada A1B 0C9
t. 709.737.1833 or 1.888.576.5454
f. 709.737.1985

Doc. No. 09-5/911

May 13, 2009

Chef Jean-Charles Piétacho
Conseil des Innus d'Ekuanitshit
35, rue Manitou, Case Postale 420
Mingan, Québec
G0G 1V0

Dear Chef Piétacho:

As you are aware, Nalcor Energy ("Nalcor") has registered both the generation project and the Island Link transmission project for environmental assessment with the Governments of Newfoundland and Labrador and Canada and has provided copies of relevant documentation respecting each project to the Conseil des Innus d'Ekuanitshit ("Ekuanitshit").

Nalcor wishes to consult with Ekuanitshit respecting both the generation and transmission projects to obtain information with respect to the potential environmental effects of the Project upon the interests of its members.

To assist us in engaging in meaningful consultation, Nalcor has prepared a Community Consultation Agreement which is attached for your review. This agreement is intended to regularize our ongoing consultation on the environmental effects of the two projects and to provide funding in accordance with an agreed upon community consultation workplan.

I'd be grateful if you would review the attached and, if you are in agreement with its terms, please return two signed copies to me at the following address:

Mr. Gilbert Bennett
Vice-President, Lower Churchill Project
Nalcor Energy
500 Columbus Drive, P. O. Box 12800
St. John's, Newfoundland and Labrador
A1B 0C9

CIMFP Exhibit P-01335

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Chef Jean-Charles Piétacho
Conseil des Innus d'Ekuanitshit
May 13, 2009

2

I will, in turn, sign the agreements and return one copy to you for your records.

Thank you,



Gilbert Bennett, P. Eng.
Vice President
Lower Churchill Project

Enclosure (1)





**COMMENTS OF THE INNU OF EKUANITSHIT
ON THE ADDITIONAL INFORMATION
PROVIDED BY THE PROPONENT, NALCOR
ENERGY**

**LOWER CHURCHILL HYDROELECTRIC GENERATION
PROJECT**

CEAR 07-05-26178

David Schulze
Dionne Schulze, Counsel for Corporation Nishipiminan
On behalf of the Innu of Ekuanitshit

December 18, 2009

I. Role of the Environmental Impact Statement in environmental assessment

The primary obligations of the Panel are to “ensure that the information required for an assessment of a project by a review panel is obtained and made available to the public” (*Canadian Environmental Assessment Act* (CEA Act), paragraph 34(a)).

The information required for the assessment of a project includes, at a minimum, the information that must be provided by the proponent in the Environmental Impact Statement (EIS) presented to the Review Panel in accordance with the directives set out in the *Environmental Impact Statement Guidelines* issued by the Government of Canada and the Government of Newfoundland and Labrador in July 2008.

It is only “once the Panel is satisfied that all the relevant information is available,” that it can “make a determination on the sufficiency of the EIS for the purpose of public hearings.” See: “Agreement Concerning the Establishment of a Joint Review Panel for the Environmental Assessment of the Lower Churchill Hydroelectric Generation Project” (2008), Schedule 1, Part III, paragraphs 3 and 6 (we underlined).

A deficient EIS cannot, by definition, be sufficient for the purpose of hearings since the information required for the assessment of the project would not be available to either the public or the Panel.

II. Lack of an assessment of the impacts on the Innu of Ekuanitshit

A. Requirements of the CEA Act

Subsection 2(1) of 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.”

The *Guidelines* specify that the Innu community of Ekuanitshit is one of the Aboriginal groups to be considered (§4.8).

In this particular instance, the responsible authorities, i.e. the Minister of Transport and the Minister of Fisheries and Oceans, must consider the project’s impacts on land and resource use by the Innu of Ekuanitshit. No valid decision concerning the project could be made without this information.

The Ministers assigned responsibility for gathering information to the Review Panel, and the Panel has not indicated its intention to disregard the *Guidelines* and compensate for the deficiencies of the EIS by gathering information on its own initiative.

Moreover, it is obvious that the Innu of Ekuanitshit could not provide the Panel with the technical and scientific description of the project’s impact on their community as required by the CEA Act, having a budget for this purpose of only \$55,850.25, granted under the Aboriginal Funding Envelope of the Participant Funding Program.

In the absence of an EIS that meets the requirements of the *Guidelines*, the Panel could therefore not hold public hearings for the purposes set out in paragraph 34(b) of the CEA Act, nor prepare the report required under paragraph 34(c).

B. Requirements of the *Guidelines*

The July 2008 *Guidelines* stipulate that for the Aboriginal groups concerned, “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).

Furthermore, with respect to the consultation and the description, the Aboriginal groups concerned all have equal status.

To assist in ensuring that the EIS provides the necessary information to address the issues of 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 or should not address any particular issue(s), the EIS should include supporting reasons.

The results of those consultations are to be presented in a separate chapter of the EIS with individual sections for each of the affected Aboriginal groups. (we underlined)

The *Guidelines* also stipulate that the EIS shall demonstrate:

- 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);
- in the delineation of study areas specific to each VEC, that contemporary and historic Aboriginal land use shall be taken into consideration (§4.4.2);
- in the description of the existing environment of the study area that Aboriginal traditional knowledge shall be considered (§4.4.4);
- in the description of relevant land and resource use within the study area of the VECs, that 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);
- in the assessment of the beneficial and adverse effects of the project on the socio-economic environment, that how the project may affect Aboriginal groups shall be considered (§4.5.1);
- in the description of the mitigation measures that the continued access and passage on land by Aboriginals “for harvesting and travel ... and the alternatives to be provided in the event of disruption” shall be ensured (§4.6.1(f)); and

- in the description of the mitigation measures that “to maximize labour market opportunities” for Aboriginals shall be considered (§4.6.1(l)).

Obviously, if the proponent does not consult the Innu of Ekuanitshit, it will be unable to consider their interests, values and concerns or their contemporary and historic activities, as the *Guidelines* require. Without specific and planned consultation of the Innu of Ekuanitshit by the proponent, the EIS cannot adequately describe the project’s effects on this Aboriginal community or the planned mitigation measures.

C. Lack of consultation of the Innu of Ekuanitshit

In another environmental assessment, Hydro-Québec had no problem recognizing that “[translation] essentially, the territory used by the Innu of Ekuanitshit 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).

However, the proponent waited until May 2008 to contact the Innu of Ekuanitshit and, then, only to propose a meeting, without providing any support to assist the community in its ability to respond to this invitation (Response, IR# JRP.2.a-2).

The proponent knew or should have known that, at the same time, the Innu of Ekuanitshit were busy participating in the environmental assessment of the Romaine Hydroelectric Complex Project (CEAR Reference No. 04-05-2613), another major project proposed in the heart of their territory.

However, since 1998, the proponent has been consulting Innu Nation, i.e. an organization of the two communities in Labrador, Sheshatshiu and Natuashish (EIS §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). However, the proponent admits in its EIS that the community of Natuashish will not even be affected by the project (EIS, Vol. III, p. 4-25).

The proponent was clearly influenced by the policy of its shareholder, the Newfoundland government, which has systematically refused to consult the Innu whose reserves are located in Quebec (Newfoundland and Labrador, House of Assembly, *Proceedings*, Vol. 45, No. 2 (May 18, 2006), Hon. Ed Byrne, Minister of Natural Resources).

The proponent made no other concrete gestures before proposing, in a letter in May 2009, the funding of a single consultation officer position (Response, IR# JRP.2.c). Despite the obvious inadequacy of this offer, given the scope of the project, the Council agreed to meet with the proponent’s representatives on an exploratory basis during a meeting held in the community on June 1, 2009 (Response, IR# JRP.2).

The proponent has still not decided on a method for gathering information concerning “the interests, values, concerns, contemporary and historic activities” of the Innu of Ekuanitshit, as required by the *Guidelines*, and it has still not proposed a method for how these will be considered “in planning and carrying out the project.”

III. Other EIS deficiencies

A. Fish and mitigation measures

1. Requirements of the *Guidelines*

“Among the effects of the project to be assessed on the biophysical environment, effects on fish and fish habitat [...] should be considered” (§4.5.1).

More specifically, the proponent shall:

- “describe the relevant components of the aquatic environment within the study area of the VECs, including [...] biological diversity, composition, abundance, distribution, population dynamics and habitat utilization of aquatic species, including fish” (§4.4.4.2(g));
- prepare a component study on “fish and fish habitat (plankton, benthos, marine mammals)” (§4.4.5(e)); and
- determine “whether the project is likely to cause significant environmental effects on renewable resources and therefore compromise their capacity to meet present and future needs,” including fish, and “clearly establish, taking into account the result of their impact assessment, whether these renewable resources are likely to be significantly affected following the implementation of proposed mitigation measures (residual significant environmental effects)” (§4.5.4).

The *Guidelines* also stipulate a specific mitigation measure for fish, i.e., to develop “an approach to determine, develop and maintain minimum flow requirements when describing mitigation measures for the construction, reservoir filling and operation phases of the project, including fish habitat maintenance and fish passage, such as the fish passage facility in the causeway across the Churchill River associated with the Trans Labrador Highway Phase III” (§4.6.1(d)).

For general mitigation measures, the EIS shall:

- identify and discuss those measures “that are technically and economically feasible and that would mitigate the significant adverse effects of the project and enhance beneficial effects, including the interaction of these measures with existing environmental management plans” (§4.6.1);
- evaluate the rationale for and effectiveness of these measures, and discuss “mitigation failure [...] with respect to risk and severity of consequence” (§4.6.1);
- describe mitigation measures “for the construction, operation and maintenance phases” (§4.6.1); and
- ensure that they are effectively implemented by describing “the environmental and socio-economic monitoring and follow-up programs to be incorporated into construction, operation and maintenance activities (§4.6.4).

2. Lack of a habitat compensation strategy

It will be recalled that, in their submissions on the adequacy of the EIS, the Innu of Ekuanitshit pointed out that the proponent based its environmental analysis of fish species in the reservoirs on a method that is not particularly reliable. Moreover, even if this method produced more reliable results, it did not consider the actual operating conditions of the facilities or fluctuations in water depth and current velocity conditions in the reservoirs. See: Document No. 213, “Comments on the Adequacy of the EIS,” CEAR 0705-26178, June 22, 2009.

In its responses to requests for additional information, the proponent admits that Fisheries and Oceans Canada (DFO) determined harmful alteration, disruption or destruction (HADD) of fish habitat far exceeding the EIS predictions. In fact, the DFO determination identified 5 135.91 ha of fish habitat that will be harmfully altered or destroyed, a figure which the proponent now concedes is valid. (Response, IR# JRP.49(a)).

These different conclusions can in fact be attributed to the proponent’s claim that post-project habitat utilization by fish could be beneficial, while DFO emphasized the uncertainty surrounding these conditions and application of the precautionary principle. Nalcor eventually accepted the validity of DFO’s analysis (Response, IR# JRP.49(a)).

The proponent now concedes that because of the difference in the original conclusions, the actual HADD caused by the project is not included in the EIS (Response, IR# JRP.49(a)). The proponent also states that it cannot include details of its planned mitigation strategy in the responses to the requests for additional information since this strategy will not be completed until 2010 (Response, IR# JRP.49(b)).

3. Lack of required mitigation measures

Under section 5 of the CEA Act, an environmental assessment is required for this project because Fisheries and Oceans Canada may issue a permit or licence under subsection 35(2) of the *Fisheries Act* (*Guidelines*, §1.3). However, subsection 35(2) allows the alteration, disruption or destruction of fish habitat “by any means or under any conditions authorized by the Minister or under regulations” made under the *Fisheries Act*.

The mitigation measures proposed by the proponent will constitute the “authorized conditions” since, under DFO policy, habitat compensation is required when a *Fisheries Act* subsection 35(2) authorization will be issued (DFO, *Practitioners Guide to Habitat Compensation*, version 1.1, §3.1.1).

The compensation that the proponent is proposing in order to address the HADD that its project will cause is therefore a key element of this environmental assessment. If the mitigation measures that constitute the compensation are not included in the EIS and cannot be provided in the responses to the requests for additional information, then the requirements of sections 4.6.1 and 4.6.4 of the *Guidelines* will not be met.

B. Caribou and cumulative effects**1. The requirements of the *Guidelines***

When describing “the relevant components of the terrestrial environment within the study area of the VECs [valued environmental components],” the proponent shall include the “composition, abundance, distribution, population dynamics and habitat utilization of terrestrial fauna, including mammals” (§4.4.4.3(i)).

More specifically, caribou was selected as a “key indicator species [...] to focus the environmental assessment.” Caribou was selected in particular for its representativeness, its “importance in the food web” and its “importance from socio-cultural and economic perspectives” (§4.4.4.3).

Large mammals are also one of the VECs for which component studies must be prepared (§4.4.5).

Not only is it public knowledge that caribou migrations extend beyond the project study area, but the proponent is also required to study the cumulative effects of the project. In fact, the CEA Act requires that the assessment of a project by a review panel shall include a consideration of “any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out” (paragraph 16(1)(a)).

The *Guidelines* specify that “cumulative effects are defined as changes to the environment due to the project where those overlap, combine or interact with the environmental effects of other existing, past or reasonably foreseeable projects or activities” (§4.5.3).

In its EIS, the proponent was therefore required to:

- (a) identify and justify the VECs that will constitute the focus of the cumulative effects assessment;
- (b) present a justification of the spatial and temporal boundaries of the cumulative effects assessment. The boundaries for the cumulative effects assessment will again depend on the effects being considered (e.g., will generally be different for different effects). These cumulative effects boundaries will also generally be different from (larger than) the boundaries for the corresponding project effects;
- (c) describe and justify the choice of projects and selected activities for the cumulative effects assessment. These shall include past activities and projects, those being carried out and future projects or activities likely to be carried out;
- (d) describe the mitigation measures that are technically and economically feasible and determine the significance of the residual cumulative effects; and
- (e) assess the effectiveness of the measures applied to mitigate the cumulative effects. In cases where measures exist that are beyond the scope of the proponent’s responsibility that could be effectively applied to mitigate these effects, the proponent shall identify these effects and the parties that have the authority to act.

Guidelines, §4.5.3

In the preparation of its EIS, the proponent was required to consider the guide published by the Canadian Environmental Assessment Agency (*Guidelines*, §4.5.3). Caribou was specifically mentioned as an example in this guide when assessing “landscape nibbling” as a cumulative effect. The Agency’s guide mentioned not only direct habitat loss, but also habitat fragmentation (*Cumulative Effects Assessment Practitioners’ Guide* (1999), Form 10).

2. Lac Joseph caribou herd

Both the Innu of Ekuanitshit in their submissions on the acceptability of the EIS and the Review Panel itself in its information request cited a study by the Newfoundland government indicating that the range of the Lac Joseph caribou herd extends well beyond the study site (Government of Newfoundland and Labrador. Department of Environment and Conservation, “Recovery strategy for three Woodland Caribou herds (*Rangifer tarandus caribou*: Boreal population) in Labrador,” 2004).

The Panel also pointed out that “with regards to the project, the proponent states that ‘Nalcor Energy’s operations at Churchill Falls and the associated transmission, as well as the project, are within the range of the sedentary Lac Joseph and Red Wine Mountains caribou herds, both considered threatened under federal and provincial legislation” (IR# JRP.122) (underlined in the original).

The proponent has acknowledged the overlap between the area used by the Lac Joseph herd and the footprint of the project, and that caribou from this herd are “occasionally” found within the Lower Churchill watershed (Response, IR# JRP.122).

3. Lack of a study of the impacts on the herd

It will be recalled that in their submissions on the acceptability of the EIS, the Innu of Ekuanitshit pointed out that “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.”

The Innu of Ekuanitshit also pointed out that the proposed follow-up and mitigation measures program for woodland caribou was “clearly insufficient.” See: Document No. 213, “Comments on the Adequacy of the EIS,” CEAR 07-05-26178, June 22, 2009.

The Panel, asked the proponent “to confirm its understanding of the range of the Lac Joseph herd and to either justify or reconsider the exclusion of the Lac Joseph caribou herd from the environmental assessment.” See: IR# JRP.122.

The proponent claims that project effects to the Lac Joseph caribou are not likely because individual Lac Joseph female caribou are rarely found within the lower Churchill River valley or other locations where physical disturbances associated with the project are anticipated. The proponent therefore did not act on the Panel’s request to reconsider the exclusion of the Lac Joseph herd from its EIS (Response, IR# JRP.122).

The proponent's conclusions concerning the presence of the herd in the project study area are, in all cases, contradicted by the province's biologists. Furthermore, the proponent has never justified its decision to not conduct a cumulative effects assessment whose spatial boundaries would be larger than the boundaries for the corresponding project effects.

The Innu of Ekuanitshit reiterate the conclusion of their consulting biologist that "it would therefore have been advisable to conduct a complete inventory of the watershed in the winter or spring [...] as Hydro-Québec did for the Romaine complex in the winter of 2008 (at the request of Ekuanitshit)." They further argue that given the lack of a study on the direct and indirect effects on the Lac Joseph herd, the EIS does not meet the requirements of the *Guidelines* concerning large mammals in general and caribou in particular, as well as the requirements concerning cumulative effects.

IV. The Environmental Impact Statement is insufficient

A. Fundamental deficiencies in the study

The July 2008 *Guidelines* stipulate that for the Aboriginal groups concerned, including the Innu of Ekuanitshit, "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 proponent acknowledges that it has not yet decided on a method for gathering information concerning the Innu of Ekuanitshit (Response, IR# JRP.2). It has not yet proposed a method for how their interests will be considered "in planning and carrying out the project."

The *Guidelines* require the description of mitigation measures in general and more specifically the description of "mitigation measures for the construction, reservoir filling and operation phases of the project, including fish habitat maintenance" (§4.6.1(d)).

The proponent admits that the potential extent of the harmful alteration, disruption or destruction (HADD) of fish habitat exceeds what is indicated in the EIS (Response, IR# JRP.49(a)). Compensatory measures will be required by DFO before it issues a permit or licence under subsection 35(2) of the *Fisheries Act*, which is what triggered this environmental assessment.

However, the mitigation measures that constitute the compensation are not included in the EIS and cannot be provided in the responses to the requests for additional information, since the strategy will not be completed until 2010 (Response, IR# JRP.49(b)).

The proponent was required to include in its EIS the "composition, abundance, distribution, population dynamics and habitat utilization" of caribou, which was selected as a "key indicator species [...] to focus the environmental assessment" (§4.4.4.3). Furthermore, the proponent was required to include the cumulative effects of the project and to justify the spatial boundaries of the cumulative effects assessment (§4.5.3; CEA Act, paragraph 16(1)(a)).

The proponent has acknowledged the overlap between the area used by the Lac Joseph herd and the footprint of the project, and that caribou from this herd are “occasionally” found within the Lower Churchill watershed (Response, IR# JRP.122). However, the proponent has refused to act on the Panel’s request to reconsider the exclusion of the Lac Joseph herd from its EIS because effects to the Lac Joseph caribou are not likely (Response, IR# JRP.122).

The proponent’s conclusions concerning the presence of the herd in the project study area are, in all cases, contradicted by the province’s biologists. Furthermore, the proponent has never justified its decision to not conduct a cumulative effects assessment whose spatial boundaries would be larger than the boundaries for the corresponding project effects.

B. The Environmental Impact Statement is deficient in law

The fundamental purpose of environmental assessment is “early identification and evaluation of all potential environmental consequences of a proposed undertaking” (*Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, citing R. Cotton and D.P. Emond, “Environmental Impact Assessment,” in J. Swaigen, ed., *Environmental Rights in Canada* (1981), 245, at p. 247).

The *Guidelines* provide that the “information-gathering [...] component which provide[s] the decision maker with an objective basis for granting or denying approval for a proposed development” (*Oldman*) must begin, first of all, with the Environmental Impact Statement provided by the proponent.

The Panel’s information-gathering process relies primarily on the EIS – as supplemented by the requests for additional information and the responses provided by the proponent – as well as the public hearings. It is on the basis of the information in the EIS and the hearings that the Panel will formulate its recommendations to the two Ministers who established the Panel and its terms of reference.

A deficient EIS cannot, by definition, be accepted or serve as the basis for hearings since “the information required for the assessment of the project” would not be available to either the public or the Panel, as required by paragraph 34(a) of the *Canadian Environmental Assessment Act*.

An EIS that does not meet the criteria set out in the *Guidelines* cannot enable the Panel to be “satisfied that all the relevant information is available” and to “make a determination on the sufficiency of the EIS for the purpose of proceeding to public hearings.” See: “Agreement Concerning the Establishment of a Joint Review Panel for the Environmental Assessment of the Lower Churchill Hydroelectric Generation Project,” Schedule 1, Part III, paragraphs 3 and 6.

C. Conclusion

The proponent’s Environmental Impact Statement, as submitted and supplemented by its responses to the requests for additional information, does not meet the requirements of the *Guidelines*.

The Environmental Impact Statement is therefore insufficient and cannot serve as the basis for the planned public hearings.



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August 13, 2010

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COURTESY TRANSLATION

Ms. Lesley Griffiths and Mr. Herbert Clarke
Co-Chairs
Lower Churchill Joint Review Panel Secretariat
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Re: Proposed Lower Churchill Hydroelectric Generation Project (Gull Island et Muskrat Falls); Your file no. CEAR 07-05-26178; our files nos. 7550/001 and 7550/002

Dear Madam, Dear Sir,

I. Introduction

This is further to the letter of June 17, 2010 sent to you by counsel for the proponent, concerning the intervention by our client the Conseil des Innus de Ekuanitshit with respect to the above-mentioned project.

We would point out that the lawyer who signed this letter was previously unknown to us: he has never been in contact with the Innus of Ekuanitshit, nor the undersigned in my capacity as their representative.

We regret that the proponent seems more inclined to have lawyers from a third province interpret its inability to consult our client than to make the necessary efforts to meet the requirements of the guidelines.

Moreover, we are taking the liberty to attaching our own courtesy translation. The June 17th letter suggests that: "It is noted in the May 25, 2010 letter that Ekuanitshit will be 'conducting' an 'environmental assessment' of the Project." No such statement appears in our May 25th letter.



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II. State of the law

A. The Guidelines

Nalcor's principal obligation under the *Environmental Impact Statement Guidelines* is not to consult the Innus of Ekuanitshit.

The actual obligation to consult Aboriginal peoples belongs to the Crown as the legal decision-maker, not to a project's proponent, as the Supreme Court of Canada explained in the *Haida v. British Columbia* judgment. Moreover, the question of the adequacy of Crown consultation is specifically excluded from your mandate pursuant to the "Agreement Concerning the Establishment of a Joint Review Panel for the Environmental Assessment of the Lower Churchill Hydroelectric Generation Project" (2008).

The proponent's real obligation is to demonstrate in its environmental impact statement (EIS) that it understands "the interests, values, concerns, contemporary and historic activities, Aboriginal traditional knowledge and important issues facing" the Innus of Ekuanitshit, among others, and to "indicate how these will be considered in planning and carrying out the Project": *Guidelines*, July 2008, §4.8.

It is only in order to "assist in ensuring that the EIS provides the necessary information to address issues of potential concern to these groups, [that] the Proponent shall consult with each group" specified in the *Guidelines*.

B. Nalcor's new distorted position

Previously, Nalcor at least admitted that it had to ensure the "participation of each Quebec Innu community" as well as the "collection of accurate and comprehensive data relating to Project impacts upon current land and resource usage": Response to Information Request No. JRP.2, p. 3.

Nalcor admitted it had to provide your panel with a "final assessment of the Project's anticipated effects on the current use of lands and resources for traditional purposes by the enumerated Quebec Innu communities": Response to Information Request No. JRP 2, p. 25

Without giving an unqualified endorsement to this analysis, we note that these steps would at the very least require: 1) a study of the current occupation and traditional uses; and 2) an exchange between the proponent and the Aboriginal group in order to determine the project's anticipated effects.



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However, the new position adopted by Nalcor's counsel in his June 17th letter is very different. It alleges that the obligation is only to "provide an Aboriginal group with information" as well as "opportunities to consult."

Moreover, Nalcor's counsel alleges that the proponent met its obligation to consult by "providing Project-related information to all Aboriginal groups named in the Guidelines, by meeting or offering to meet with each group, by inviting each group to communicate its issues and concerns and, where appropriate, by offering to enter into formal consultative agreements supported by capacity funding." But as described below, it seems that for Nalcor, it is only appropriate to offer the agreement that suits the proponent and nothing else.

The proponent would thereby set itself above the Guidelines issued by the federal and provincial governments. Nalcor would no longer have to provide a study of "the interests, values, concerns, contemporary and historic activities, Aboriginal traditional knowledge and important issues facing" the Innus of Ekuanitshit, nor would it have to "indicate how these will be considered in planning and carrying out the Project."

II. Correcting the facts

A. Steps taken by the proponent

We remain surprised that the proponent continues to set out to the panel details of negotiations that Nalcor itself characterized as "confidential and 'without prejudice'": Response to Information Request No. JRP.2, p. 25.

In face of a dubious version of the facts, we are obliged to summarize for the panel the steps taken by the proponent in a process its counsel now characterizes as "consultation" or an "offer to consult".

In May 2008, Nalcor asked for a meeting with the Conseil des Innus de Ekuanitshit as soon as possible but without offering any framework for its efforts, nor any support for community capacity. In May 2009, Nalcor asked the Chief immediately to sign an agreement drafted in English only and which included neither a budget nor a work plan. After a meeting between elected officials from Ekuanitshit and Nalcor executives on June 1, 2009, the proponent's in-house counsel proposed a series of draft agreements to the undersigned, without finalizing any.

After a second meeting between elected officials from Ekuanitshit and Nalcor representatives on January 27, 2010, the parties agreed verbally to follow the model of the La Romaine hydro-electric project with respect to the process by which the proponent would meet its obligations under the environmental assessment guidelines.



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More particularly, the parties agreed to work on an agreement under which Nalcor and Ekuanitshit would agree on the mandate for an expert, to be paid by the proponent to carry out a study on the Innus of Ekuanitshit; his or her work would be supported by community liaison officers paid by the proponent and would be supervised by a Nalcor-Ekuanitshit joint committee.

A month after a meeting between lawyers held on February 26, 2010, and after Ekuanitshit provided a detailed draft agreement based on this meeting, Nalcor disavowed its earlier commitment and proposed a totally different approach.

On March 26, 2010, Nalcor proposed a short-term agreement meant to pay for a consultant to be hired by the community for work which the proponent characterized as a “scoping exercise”. This work would have to be carried out quickly and any follow-up would depend upon the results, except that the criteria for continuing the work were not defined. Moreover, Nalcor refused even to take a position on the principle of reimbursing the now considerable legal fees Ekuanitshit had incurred to negotiate an agreement, unless Nalcor received a copy of the accounts, which are confidential.

After the undersigned stated his surprise at Nalcor’s change in position and insisted that the principle of reimbursing legal fees had to be recognized, Nalcor’s in-house counsel indicated that its executives would contact Chief Jean-Charles Piétacho directly.

On April 6, 2010, the proponent wrote directly to Chief Piétacho and alleged, despite its change in position, that the parties were close to an agreement; Nalcor also offered to visit the community to explain the project. On April 14, 2010, Chief Piétacho answered directly: he accepted the proponent’s offer of a visit to the community but added that providing information did not relieve the proponent of its obligations under the Guidelines. In the same letter, Chief Piétacho explained that Nalcor’s recent actions had in fact prevented finalization of an agreement and he reiterated the undersigned’s mandate.

On April 15, 2010, Nalcor’s in-house counsel proposed yet another draft agreement to Ekuanitshit: briefly stated, it would entail the payment of \$87,500, with which the community would itself prepare the study of the topics set out in section 4.8 of the Guidelines and that it would have to do so within four months. (An amount of \$3,000 was included to pay for legal fees.) A few weeks later, Nalcor explained that this study would not be followed by any other phase of work unless the proponent concluded it was necessary, thereby again changing its position.

In a letter dated April 23, 2010, the proponent asked to come to Ekuanitshit as part of a “Summer Consultation Program” for the “collection of land and resource use information and to provide Project related information to residents.”



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However, the direction decided upon and the goals pursued by Nalcor were revealed by the “Panel Update on Consultation Activities and Negotiation of Agreements; May 2010” which the proponent provided to you on June 2, 2010.

On the one hand, Nalcor stated that without even meeting the Innus of Ekuanitshit, it had already concluded there was “no record of historic or current land and resources use and occupancy by the community in the Project Area.” On the other hand, it wished to complete its collection of information during summer in order to be able to file a “2010 Consultation Assessment Report” by September 30, 2010.

It is worth noting that even though Nalcor reached an agreement with the Innus of Pakua Shipi on the model it had proposed to Ekuanitshit, the proponent stated it had already concluded that this community also could not demonstrate any historic or contemporary use of the project area.

B. Inaccuracies in the June 17, 2010 letter

Based on the offer the proponent has made, Nalcor’s view of its obligation to “consult” the Innus of Ekuanitshit is that it amounts to:

- providing them with \$87,500 for them to carry out themselves and within four months the study which section 4.8 of the Guidelines has required of the proponent since July 2008;
- coming to the community to explain the project but on a schedule allowing the proponent to file a report on the meeting with the panel by September 30, 2010;
- evaluating the study to be prepared by the Innus of Ekuanitshit and meeting them to collect information about them, even though the proponent has already decided that they do not use and have not occupied the project area historically.

Under the circumstances, there is reason to doubt whether Nalcor is “aware of its obligations to consult with Aboriginal groups as set out in the Environmental Impact Assessment (‘EIS’) Guidelines.”

On another topic, the June 17th letter from counsel alleges that Ekuanitshit’s response to his client’s offer of an agreement was “met with a demand for upfront compensation and a reiteration of Ekuanitshit’s position that, as a precondition to the commencement of hearings, Nalcor commit to enter into the negotiation of a mitigation/accommodation agreement before impacts would be identified and assessed.”

We do not know what the basis for this statement might be, but we believe it is appropriate to cite the following excerpts from an exchange of email between the undersigned



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and Nalcor's in-house counsel on March 26, 2010, at the time the proponent had made its unilateral proposal of a new "phased" approach.

Counsel for Nalcor wrote:

1. Phase One: this would be a 3 to 4 month agreement which would entail the retention of a consultation coordinator to work in the community and who would have the following responsibilities: work with a Nalcor designate to develop an agreed-upon workplan; disseminate Project information supplied by Nalcor; conduct an initial issues scoping exercise to gather and analyze the views of the community respecting the Project; produce a report to be shared with Nalcor and the community which would essentially be an issues scoping document. Upon finalization of the initial report the parties would develop a workplan for Phase Two based on the outcome of Phase One consultation. This approach is somewhat similar to the Community Capacity Agreement draft provided to you previously. However, the associated budget would be commensurate with the enhanced nature of the responsibilities of the coordinator. Nalcor would be prepared to work very closely with the coordinator and would in addition, undertake its own obligations re: provision of project information.

2. Phase Two: the content of Phase Two would be to a large extent dictated by the results of the Phase One consultation but as a working hypothesis, we think that this might be the 'consultant' stage (based on a modified version of the HQ agreement). In addition, we anticipate that it is at this stage that any requirements for mitigation/accommodation would be identified which could then be implemented through a Phase Three agreement.

We responded to this proposal with the following concerns:

3) Phased approach to community studies

The following does not exhaust my questions and concerns about the approach you set out below. Among other things, I note that Phase 1 does not provide for the services of anyone other than a "consultation coordinator" which, by the nature of the work, would not appear be a position that could be filled within the community (if only because of the language requirements). For reasons similar to those set out above, we do not foresee providing facilities and services to such a coordinator without compensation by Nalcor and would need to see this principle reflected in any agreement.

More important at this point, however, is for me to understand where you see this multi-stage process fitting in the Joint Review Panel's schedule.

As I understand your current proposal, it is after Phase 2 that Nalcor will be able demonstrate to the JRP compliance with requirements of the guidelines which I would summarize as an understanding of the Innu of Ekuanitshit's land use and social, cultural and economic activities, both contemporary and historic, their Aboriginal traditional and community knowledge, as well as the values they attach to these environmental components.



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In reference to the guidelines, Phase 3 would involve the means to consider this information in planning and carrying out the Project, as well as mitigation and compensation measures.

You will recall that as recently as a few months ago, your client's position before the JRP was that a casual exchange of correspondence and an afternoon meeting had discharged Nalcor's obligations with respect to the EIS guidelines as far as the Innu of Ekuanitshit were concerned.

Either you will need to be clearer on the timelines or you else we will need to address Ekuanitshit's position that its participation in Phases 2 or 3 cannot be relied upon before completion as justification by Nalcor for the EIS to go to hearings before the JRP.

(emphasis added)

In other words, Ekuanitshit never asked for compensation as a precondition but instead, for agreement on the principle that the community should be compensated should the Conseil des Innus be required to devote resources to the study proposed by the proponent.

Similarly, Ekuanitshit never insisted on negotiating mitigation and accommodation measures as a precondition but instead indicated that its participation in a study of project impacts could not be taken to indicate its agreement that the environmental impact study was sufficient.

It was the proponent which abandoned a collaborative approach in favour of proposing a study which only advanced its own interests and schedule. Nevertheless, its counsel now accuses Ekuanitshit of being obstructionist when the community was merely reacting by setting out its own position. The only explanation we can see is that Nalcor's offer was made on a take it or leave it basis, which would not be a sign of good faith.

III. Conclusion

The letter of June 17, 2010 sent to you by counsel for Nalcor demonstrates a mistaken analysis of his client's obligations and an inaccurate version of the facts.

The Conseil des Innus de Ekuanitshit would much prefer to receive serious offers of consultation rather than to be obliged to correct inaccuracies in letters filed by the proponent in the Joint Review Panel's registry.

In fact, the proponent changed its position several times since January 2010 before finally offering the Conseil des Innus de Ekuanitshit an amount of \$ 87,500 with which it would have had to complete by itself and within four months the study which section 4.8 of the Guidelines has nevertheless required of Nalcor since July 2008. It wishes to evaluate this study and to meet the Innus of Ekuanitshit even though it has already decided that they do not use and have not occupied the project area historically.



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With this approach, it is hard for us to see how the proponent will meet its obligation to file a sufficient environmental impact study. Our client nevertheless remains open to helping Nalcor meet its obligations on terms that are both realistic and respectful.

On another topic, the Conseil des Innus de Ekuanitshit anticipates providing a response to the proponent's request to come to the community but based on a schedule which would allow for meeting a sufficient number of members, which a visit during the summer would not allow.

Yours,

DIONNE SCHULZE

David Schulze

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November 9, 2010

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Ms. Mary Hatherly
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Re: Proposed Lower Churchill Hydroelectric Generation Project (Gull Island and Muskrat Falls); CEAR no. 07-05-26178; our files nos. 7550/001 and 7550/002

Dear Mary,

Introduction

This is further to our submissions to the Joint Review Panel (JRP) on behalf of the Innu of Ekuanitshit and in response to Nalcor's "2010 Consultation Assessment Report", filed on September 27th.

As you know, in those submissions we informed the JRP that your Environmental Impact Statement (EIS) contains deficiencies with respect to the required information concerning Ekuanitshit. As a result, the Panel could not be "satisfied that all the relevant information is available" and could only make the determination that the EIS is insufficient to "for the purpose of proceeding to public hearings."

We have therefore asked the Panel to exercise its power to convene Nalcor and Ekuanitshit a meeting "required for the clarification of additional and/or technical information." Such a meeting would not be necessary, however, if the parties could come to an agreement along the lines described below and which our client has mandated us to propose.



Ms. Mary Hatherley
Nalcor Energy - Lower Churchill Project
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Points of agreement and disagreement

We assume that there is no debate between us over the fact that Nalcor has the obligation under the *Guidelines* to demonstrate in its environmental impact statement (EIS) that it understands “the interests, values, concerns, contemporary and historic activities, Aboriginal traditional knowledge and important issues facing” the Innu of Ekuanitshit, among others, and to “indicate how these will be considered in planning and carrying out the Project”: §4.8.

As Nalcor admitted, that obligation requires the “participation of each Quebec Innu community” and the “collection of accurate and comprehensive data relating to Project impacts upon [their] current land and resource usage”: Response to Information Request No. JRP.2, p. 3.

We note however that Nalcor has taken the position that there is “no record of historic or current land and resources use and occupancy... in the Project Area” by Ekuanitshit, as expressed in its “Panel Update on Consultation Activities and Negotiation of Agreements; May 2010”. As you know, we strongly disagree with this position.

Moreover, we do not believe that in the absence of participation by the Innu communities, with an adequate budget and according to an appropriate schedule, the activities summarized in your “2010 Consultation Assessment Report” could constitute compliance with Nalcor’s obligations.

The purpose and content of Nalcor’s “Draft – Community Engagement Agreement”

Up till now Ekuanitshit has not participated in Nalcor’s “collection of accurate and comprehensive data relating to Project impacts upon current land and resource usage” because of the community’s conviction that the means offered by Nalcor are inadequate.

Your “Draft – Community Engagement Agreement” proposed that each community (identified as “●” in the text below) would hire a “project coordinator” who would cooperate with Nalcor to “develop and implement a community engagement process” which “would facilitate the achievement of the following objectives” in the space of only four months:

- 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;



Ms. Mary Hatherley
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- 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.

In your subsequent email to me on May 30th, you explained:

The objectives of this draft agreement are as follows: to provide the community with Project-related information; to facilitate the collection of data respecting the community's current land and resource use in order to augment information to enable Nalcor to demonstrate its understanding of Ekuanitshit's interests, values, concerns, contemporary and historic activities, Aboriginal traditional knowledge and important issues facing the community (see Guidelines section 4.8). If an agreement were to be concluded with Ekuanitshit, these activities would be overseen by a Project coordinator, hired by the community, working in close cooperation with Nalcor personnel to collect data, disseminate information and prepare reports. I can confirm that it is Nalcor's view that the activities described in the draft agreement can be implemented over a four month period and with a budget of approximately \$87,500.

The challenge of preparing the relevant reports

As you know, Ekuanitshit considered your proposal to be unrealistic and impractical, both with respect to funding and scheduling. This apprehension proved to be well-founded and your belief that consultation could be carried out in four months for \$87,500 has since been contradicted by your own Appendix 4 to "2010 Consultation Assessment Report".

The document entitled "Land and Resource Use Interviews Report – Pakua Shipi" concerns the only Innu community with its reserve in Québec, which accepted your draft agreement.

According to this report, Nalcor's consultation of the Innu of Pakua Shipi remained incomplete at the end of the period covered by the agreement. As of the end of August, the "land and resource use data presented on the final map" still had to "be validated with the key informants." In addition, Nalcor still had "responses as well as appropriate mitigation measures" to present to the community in answer to the "questions and concerns [which] have been raised by the community."

Nalcor also provided ample grounds for scepticism about its proposed process when, six weeks after entering into its agreement with Pakua Shipi but six weeks before beginning the



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study, Nalcor informed the JRP it had already concluded there was “no record of historic or current land and resources use and occupancy by the community in the Project Area.”

Despite this unfortunate context, the Innu of Ekuanitshit remain committed to offering their cooperation to Nalcor in order for it to meet the requirements of the *Environmental Impact Statement Guidelines*.

In answer to Nalcor’s request of July 16th to come to the community to make a presentation about the project, the Innu of Ekuanitshit received three proponent representatives on September 13th, in both a closed-door meeting with Council and a public community meeting.

We regret that Nalcor declined Ekuanitshit’s invitation also to convene a meeting between experts who have worked for the community and Nalcor representatives in order to have an exchange concerning the data available concerning historic or current resource use and land occupancy by the community in the Project Area. We are surprised that Nalcor chose to decline such an offer just weeks before filing its “2010 Consultation Assessment Report” on September 27th.

Nevertheless, we are encouraged by the statements made on September 13th by Nalcor representatives that while the meeting was informational, they hoped it would be the beginning of a longer process including the preparation of studies to determine the real use and occupation of the project area.

The way forward

Another useful result of the September 13th meeting was that Ekuanitshit learned informally that in Pakua Shipi, after the community reached an agreement based on your draft, the budget provided by Nalcor was used to pay local personnel “to collect data” and “disseminate information”, while it was Nalcor which prepared the reports. We note from the “Land and Resource Use Interviews Report – Pakua Shipi” that Nalcor staff or consultants also participated in the interviews.

If Nalcor is now prepared to pay for the cost of conducting interviews and preparing the resulting reports, this approach substantially changes the value of the budget you offered in your “Draft – Community Engagement Agreement”.

That being said, the Innu of Ekuanitshit could not agree to entrust Nalcor staff or consultants with the responsibility of collecting or analyzing information provided by community members in order to prepare a report “to identify [each community’s] traditional knowledge and current use of land and resources in the Project area.” Now that Nalcor has taken



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the position there is no record of such use and occupancy, your staff would lack credibility and it would be impossible to establish a climate of trust for informants.

We see a simple solution to this problem, which is for the parties to agree on the mandate for an outside expert to prepare the report required by paragraph 4.8 of the *Guidelines*. At the same time, a local project coordinator funded by Nalcor as proposed in your draft could assist in data collection and information dissemination.

There would obviously be no real increased cost to Nalcor for the outside expert's work because it would simply replace the work the proponent's staff or consultants would otherwise have carried out.

Procedural remarks

If we can agree upon the basic approach described above, we could undertake more detailed discussions concerning scheduling, budgeting, personnel and other logistics.

If we can reach an agreement, we would be able to inform the JRP that there was no need for the Panel to exercise its power to convene Nalcor and Ekuanitshit to a meeting "required for the clarification of additional and/or technical information," namely, the Environmental Impact Statement's clear deficiencies with respect to the required information concerning the Innu of Ekuanitshit.

Please note that we reserve the right to disclose this correspondence to the Panel.

We look forward to your response.

Yours,

DIONNE SCHULZE

David Schulze

cc: Mr. Todd Burlingame
Manager, Environment and Aboriginal Affairs
Nalcor Energy – Lower Churchill Project
BY E-MAIL TO ToddBurlingame@nalcorenergy.com



Transmittal

COVER PAGE			
TO:	Environment and Conservation – Pat Marrie, Project EA Chair		
CC:	Canadian Environmental Assessment Agency – Bill Coulter, Project Manager		
CC:	Innu Nation – Richard Nuna, Paula Reid		
FROM:	Rick Hendriks		
RE:	Labrador-Island Transmission Link – Historic Resources Component Study		
DATE:	June 23, 2011	PAGES:	13 (including this page)

1. INTRODUCTION

1.1. Background

An interim draft of the Historic Resources Component Study for the Labrador-Island Transmission Link (LITL) Environmental Assessment was reviewed by Innu Nation in March 2009. At that time, comments were provided to the Proponent concerning the interim draft. A response to Innu Nation's comments was provided by Nalcor in May 2009.

The review was undertaken by Mr. Peter Armitage of Wolverine & Associates Inc. on behalf of Innu Nation.

1.2. Scope of Review

The scope of this review encompasses primarily two reports prepared for Nalcor Energy by Stantec Consulting Ltd.:

- Labrador-Island Transmission Link: Historic and Heritage Resources Component Study (15 July 2010, Stantec 2010);
- Labrador-Island Transmission Link: Historic and Heritage Resources Component Study Supplementary Report (18 February 2011).

While the information in these reports pertains to locations both on the Island of Newfoundland and in Labrador, this review encompasses only locations in Labrador.

This review is informed by the following:

- Rick Hendrik's 23 March 2009 review of the draft "Labrador-Island Transmission Link Historic and Heritage Resources Study" on behalf of Innu Nation (Hendriks, 2009);
- Minaskuat Inc.'s 2009 draft report "Labrador-Island Transmission Link: Historic and Heritage Resources Study" (Minaskuat, 2009);



2.5. Regional context and incorporation of archaeological/historical data

In August 2001, I reviewed a report concerning historic resources potential mapping on behalf of the Innu Nation, and met directly with Newfoundland and Labrador Hydro staff and its consulting archaeologists to discuss the review (Armitage, 2001).⁷ At the time, I noted that a previous draft of the report had failed “to place the project area in its proper regional context. Relevant portions of adjacent Quebec, especially the Quebec Côte-Nord, had been excluded”. However, I noted that the problem had “been rectified through the redefinition of the regional study area (see Fig.4.2) and the addition of new text (e.g. p. 45) and a map showing sites on the Quebec Côte-Nord (Fig. 4.5).” Furthermore, I noted that the recognition given to “the location of the Churchill River in a complex network of Innu travel routes is explicit (p.46).”

However, attention to the full regional archaeological and historic context for the assessment research related to the LITL has narrowed in terms of its geographic extent in the most recent reports by Stantec (2011, 2010) and Minaskuat (2009), and it is no longer clear that important data from the Quebec portion of the territory are being used for the purpose of archaeological potential mapping, the design of survey strategies, and the interpretation of results. For example, no evidence is apparent that the results of archaeological research by Archéotec Inc. in relation to the Hydro-Québec’s Romaine Hydroelectric Complex have been consulted by Stantec archaeologists (e.g. Archéotec inc., 2000a, 2000b). Nor has Pintal, et al.’s study (1986) concerning the archaeology of the St. Augustine River been consulted (see also Groison, et al., 1985). Archaeological data for the entire Quebec Lower North Shore area is directly relevant to the historic and heritage resource assessment of both the Lower Churchill Project and the LITL and should be relied upon heavily for all archaeological research on the Labrador side of the border.

2.6. Issues previously raised by the Innu Nation

In 2009, Innu Nation advisor, Rick Hendriks, raised a number of issues with respect to Minaskuat Inc.’s draft report “Labrador-Island Transmission Link: Historic and Heritage Resources Study” (Minaskuat, 2009; Hendriks, 2009). The current study (Stantec, 2010) was reviewed with these issues in mind, and the results follow.

2.6.1. Data concerning Quebec Innu LUO

One important issue that has been partially rectified is the lack of Quebec Innu LUO data in the draft report. The Proponent and its consultants have made a concerted effort to obtain and review publicly available LUO information including LUO reports completed by the Conseil Attikamek-Montagnais in 1983. While they were not able to conduct research in La Romaine, Natashquan, Mingan, Sept-Iles/Maliotenam and Schefferville, a “Community Engagement Agreement” was reached with the First

⁷ In addition to myself, participants included Fred Schwarz, Yves Labrèche, Rick Hendriks, Larry LeDrew and possibly Dave Kiell.



Nations government of “Pakua Shipi” (St. Augustine) with respect to research in the community (Nalcor, 2010, Appendix 2, Records of Consultation, pp.23-30). Pursuant to that Agreement, 11 interviews were conducted there with 22 respondents between June 29 and July 14, 2010. The results of the research were published as “Appendix 4, Land and Resource Use Interviews Report – Pakua Shipi” in Nalcor (2010).⁸

It is beyond the scope of this review to undertake a systematic evaluation of the “Pakua Shipi” report. However, the report suffers from a number of serious deficiencies which have a direct bearing on the conduct of historic resource assessment in the LITL study area. In brief, these include:

- the methods and reporting do not in any way conform to the best practices described by Tobias in his data collection guide for indigenous use and occupancy map surveys. Data quality standards have not been met in terms of objectivity, reliability, validity, precision, accuracy, integrity, auditability and representativeness (Tobias, 142-145). For this reason, the data presented in the report, especially on the map of “Current Land and Resource Use – Pakua Shipi,” are not credible;
- mapping was conducted at 1:250,000 scale and relied heavily on large polygons. As noted by Tobias (2009:384), “large-polygon maps often don’t provide the accuracy, precision, reliability and other attributes required for credibility.”⁹ For example, the large, rose-coloured, hatched polygon over the Mealy Mountains is labelled “cultural site (birth places, burial grounds, spiritual places, meeting places, etc.)” with no further information provided either on the map or in the text of the report. This area is a core, historic land use area for Innu who settled in Sheshatshiu, and even though the Sheshatshiu people who lived in this area have strong kinship connections with the Innu in Pakut-shipu, people who settled in the latter community and their descendants have not used this part of the Mealy Mountains area in the post settlement period (i.e. 1960s). More detailed, credible information is required in order to support claims of “current” land use by Pakut-shipu Innu in this particular area;
- the temporal aspect of the LUO research is poorly defined although the aforementioned map describes the spatial data as “current.” What does current mean here – LUO within the last 10 years, 20 years, 50 years, within living memory? The interview questionnaire asks respondents to indicate when they lived/stayed at an overnight location, when birds were hunted, fish caught, etc. at specific locations, but no indication is given as to whether all mapped land use features were consistently tagged with temporal information;

⁸ The author(s) of this report are not identified in the document itself but they appear to have been Brittany Mestokosho (“Community Coordinator”) in collaboration with Virginia Soehl (“Nalcor Aboriginal Planning Lead”) and Elisabeth Poirier-Garneau (“Nalcor Aboriginal Planning Coordinator”) (Nalcor, 2010, Appendix 2, Records of Consultation, pp.23-30).

⁹ See Tobias’ lengthy discussion concerning the problem of large polygons (2009:384-391).



- the report contains no discussion of how the sample of respondents was designed. cursory demographic information (e.g. gender, age, employment) concerning the sample is provided but there is no rationale for why the respondents were selected for interviews in the first place. Therefore, external reviewers cannot evaluate the quality of the sampling method in terms of potential bias and representativeness;
- the report contains no description of data gaps and research limitations, further evidence that it is not auditable, and therefore not credible social science;
- while small scale LUO mapping can provide useful, background information to support historic resource assessment, in terms of the survey strategy, archaeological potential mapping, and the interpretation of archaeological sites and material, mapping at a larger scale (1:50,000) would have provided more accurate and precise data concerning camp locations, caches, portages and travel routes of greater benefit to the archaeological consultants working for Nalcor Energy. The fact that a finer scale of mapping was not used constitutes a missed opportunity. Moreover, the Proponent missed an opportunity to validate, complement, and improve upon the accuracy of, the spatial data presented in the 1983 CAM report for Pakut-shipu;.
- Having commissioned and conducted the LUO research in Pakut-shipu, Nalcor Energy is largely responsible for the scientific accuracy and validity of the research results. If methods are chosen and the research conducted in such a way that data quality standards are compromised, that is entirely the Proponent's responsibility. Therefore, it is inappropriate for Nalcor Energy to say that it *"takes no position with respect to the accuracy or validity of any of the information produced or assertions made by an Aboriginal community, group or organization or by a third party for or in respect of an Aboriginal community, group or organization"* which may be contained herein and the inclusion of or reference to such information or assertion in this Report is not and shall not be construed as evidence of its endorsement or acceptance by Nalcor Energy" (2010, Disclaimer, p.16-1, my italics).

2.6.2. Integration of Innu LUO data

Hendriks was "concerned that the [draft] Report is unclear as to how available Innu land use information was used to inform the determination of areas of high potential and field testing locations" (2009:2). While the maps showing "Archaeological Potential Mapping" (e.g. Stantec 2010, Appendix F) are of sufficient scale to review decisions concerning the delineation of various potential zones, I share Hendriks' concern with respect to the integration of Innu LUO data into the potential mapping exercise. Stantec should describe in greater detail the way in which it integrated Labrador **and** Quebec Innu LUO data into the determination of archaeological potential. Were the data used only in a general way, for example, to identify the rivers that served as major travel routes? Or, were campsites, portages and other LUO data digitized and analyzed in a GIS environment in conjunction with topographic variables?

From: MaryHatherly@nalcenergy.com
Sent: Friday, July 01, 2011 8:37 AM
To: David Schulze
Cc: TOleniuk@osler.com; StevePellerin@nalcenergy.com; GBennett@nalcenergy.com; ElisabethPoirier-Garneau@nalcenergy.com; VirginiaSoehl@nalcenergy.com; SBonnell@nalcenergy.com; CWarren@nlh.nl.ca
Subject: Response to E-Mail: Community Engagement -- Ekuanitshit - Labrador-Island Transmission Link Project

David:

Thank you for your recent e-mail concerning the commencement of negotiations of formal community consultation arrangements between Ekuanitshit and Nalcor with respect to the proposed Labrador-Island Transmission Link Project (the "Transmission Project"). Nalcor has carefully considered this proposal and wishes to advise you as follows.

Nalcor does not contemplate the negotiation of a land and resource use study or similar formal arrangement with Ekuanitshit at this time. However, please be assured that Nalcor is cognizant of the requirements of the Transmission Project EIS Guidelines, including the requirement to demonstrate its understanding of Ekuanitshit's interests, values, concerns, contemporary and historic activities, traditional knowledge and important issues facing the community, so that these issues can be considered in the planning and carrying out of the Transmission Project. Nalcor is firmly committed to continuing its engagement with Ekuanitshit in order to provide the community with Project-related information and to develop an understanding of the community's views and issues of concern which will assist Nalcor in identifying what it can do to address these issues. In this regard it is my understanding that the recent meeting between representatives of Nalcor and the Band Council and community was a productive one and that certain issues such as the Transmission Project's potential effects on caribou and salmon and the use of herbicides have been brought to the attention of Nalcor. Nalcor will respond directly to the community with respect to these concerns and hopes to continue to have a dialogue with the community on these and other issues which may emerge during the environmental assessment process, including issues and concerns related to the potential effects of the Project and potential mitigation measures to avoid or reduce such effects. And, of course, once the EIS is submitted, Nalcor Energy would welcome the opportunity to meet again with you and the community to present additional information on the Transmission Project, its potential effects and proposed mitigation and to discuss these issues in more detail. In addition, Nalcor would be happy to return to the community to discuss the component studies of interest to community members by holding information sessions or technical workshops. Should Ekuanitshit be interested in an information session or technical workshop relating to a component study or any other matter of interest to the community, we would encourage Band Council to contact Nalcor directly and we will work with the community to make the necessary arrangements.

While Nalcor does not propose to enter into formal arrangements with the community at present, it invites the community to continue to provide any information regarding interests, values, issues or concerns that it may have with respect to the Transmission Project directly to Nalcor or to regulators as part of the ongoing environmental assessment process. Nalcor is in the process of finalizing the Aboriginal Component Study which will be submitted to regulators and stakeholders, including Ekuanitshit, in the near future. This study will set out Nalcor's understanding of Ekuanitshit's interests in the Transmission Project area, based on current

documentation. However, should Ekuanitshit have additional information which demonstrates an interest in the Transmission Project or the Project area which is greater than, or different in kind from, Nalcor's understanding as reflected in the Aboriginal Component Study, Nalcor would strongly encourage the community to bring this information forward and we would be prepared to reconsider our position with respect to the conclusion of formal arrangements.

Regards,

Mary



Mary Hatherly
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COURTESY TRANSLATION

September 13, 2011

BY FAX TO 902-426-6550
AND BY EMAIL TO <Labrador-
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Environmental Assessment Chair
Department of Environment and Conservation
4th Floor, West Block, Confederation Complex
C.P. 8700
St. John's, Newfoundland and Labrador A1B 4J6**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.



Mr. Bill Coulter
Canadian Environmental Assessment Agency
Mr. Pat Marrie
Newfoundland and Labrador Department of Environment and Conservation
September 13, 2011
Page 2

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>



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September 13, 2011
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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.



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Canadian Environmental Assessment Agency
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Newfoundland and Labrador Department of Environment and Conservation
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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 418-949-2085

Mr. Yves Bernier
Corporation Nishipiminan
BY FAX TO 418-949-2177

Mr. Simon Laverdière
Canadian Environmental Assessment Agency
BY EMAIL TO <Simon.Laverdiere@ceaa-acee.gc.ca>

**Government of Newfoundland and Labrador's Response
to the
Report of the Joint Review Panel
for
Nalcor Energy's Lower Churchill Hydroelectric Generation Project**

Response to Recommendations

(No. 1)

Recommendation 4.1 – Government confirmation of projected long-term returns

The Panel recommends that, if the Project is approved, before making the sanction decision for each of Muskrat Falls and Gull Island, the Government of Newfoundland and Labrador undertake a separate and formal review of the projected cash flow of the Project component being considered for sanctioning (either Muskrat Falls or Gull Island) to confirm whether that component would in fact provide significant long-term financial returns to Government for the benefit of the people of the Province. Such financial returns must be over and above revenues required to cover operating costs, expenditures for monitoring, mitigation and adaptive management, and financial obligations to the Innu Nation. The Panel further recommends that the Government of Newfoundland and Labrador base these reviews on information on energy sales, costs and market returns that have been updated at the time of sanction decision, and make the results of the reviews public at that time. The financial reviews should also take into account the results of the independent alternatives assessment recommended in Recommendation 4.2.

Response:

The Government of Newfoundland and Labrador accepts the principle that a review of the Project's financial viability is required prior to sanction, but does not support the Panel's assumption that the information provided by the proponent was inadequate. Based on information that Nalcor has already provided, the Government is satisfied that the development of each component of the Project will result in significant financial benefits to the Government for the people of the Province, over and above revenues required to fund the mitigation measures and monitoring activities that the Project requires.

(No. 2)

Recommendation 4.2 – Independent analysis of alternatives to meet domestic demand

The Panel recommends that, before governments make their decision on the Project, the Government of Newfoundland and Labrador and Nalcor commission an independent analysis to address the question "What would be the best way to meet domestic demand under the 'No Project' option, including the possibility of a Labrador-Island interconnection no later than 2041 to access Churchill Falls power at that time, or earlier, based on available recall?" The analysis should address the following considerations:

(No. 23)

Recommendation 7.3 – Recovery strategies for endangered species

The Panel recommends that, if the Project is approved, federal and provincial governments make all reasonable efforts to ensure that recovery strategies are in place and critical habitat is identified for each listed species found in the assessment area before a final decision is made about the effects of the Project on those species. Compliance with federal and provincial species protection legislation should be seen as a minimum standard. In fairness to Nalcor, this work should be given the priority needed to ensure that the Project decision is not unduly delayed. A final Project decision should only be made once government decision makers are satisfied that the recovery of listed species would not be compromised by the Project. Where Environment Canada is relying on provincial efforts to fulfill its obligations under the safety net provisions of the federal Species at Risk Act, before a federal decision is made about the Project it should satisfy itself that the provincial efforts for any species at risk are sufficient for its recovery and will not be compromised by the Project.

Response:

The Government of Newfoundland and Labrador accepts the intent of this recommendation but does not accept the proposed timelines. Recovery Strategies that contain full or partial identification of critical habitat may not necessarily be posted for all *Endangered Species Act* listed species within the Project footprint prior to Project approval.

Recovery document development and critical habitat identification is a complex process which, under provincial legislation, requires the formation of a recovery team. This ensures participation of numerous stakeholders including provincial, federal and Aboriginal groups, in addition to fulfilling legislated consultation processes and timelines. Under provincial legislation, critical habitat is identified where appropriate.

The Wildlife Division is available to review Project related activities to facilitate Nalcor's understanding of restrictions and prohibitions under the provincial *Endangered Species Act* and the *Wild Life Act* and, to the extent possible, advise on mitigation measures for any activities which could compromise the recovery of species based on current knowledge at the time.

(No. 24)

Recommendation 7.4 – Compliance with species at risk legislation

The Panel recommends that, if the Project is approved, Nalcor should work with federal and provincial departments responsible for species at risk legislation to ensure all Project-related activities comply with restrictions and prohibitions against harassment, disturbance, injuring or killing of listed species or destroying and disturbing their residence.

Response:

The Government of Newfoundland and Labrador accepts this recommendation. The Wildlife Division is available to review Project related activities to facilitate Nalcor's understanding of restrictions and prohibitions under the provincial *Endangered Species Act* and the *Wild Life Act*. Nalcor should then conduct activities to be in compliance with these Acts.

(No. 25)

Recommendations 7.5 – Road construction and decommissioning

The Panel recommends that, if the Project is approved, the provincial Department of Natural Resources require Nalcor to minimize road construction outside the reservoirs, by locating new roads inside the impoundment area as much as possible. Any new roads proposed by Nalcor to be located outside the impoundment areas should be carefully reviewed by the Forestry Branch of the Department of Natural Resources and only approved if there is no reasonable alternative. In order to ensure that conservation objectives are met, all temporary roads outside the reservoir should be decommissioned as soon as possible to the satisfaction of the provincial Department of Environment and Conservation.

Response:

The Government of Newfoundland and Labrador accepts the Panel recommendation with respect to road construction and decommissioning.

(No. 26)

Recommendation 7.6 – Recovery of the Red Wine Mountain caribou herd

The Panel recommends that, if the Project is approved, the provincial Department of Environment and Conservation ensure that adequate resources are available so that all reasonable efforts to ensure the recovery of the Red Wine Mountain caribou herd are taken. In addition, the Department should require Nalcor to play an enhanced role in the recovery process for the Red Wine Mountain caribou herd by putting resources into the process for research and recovery efforts and to participate actively in the overall effort to ensure the recovery of the caribou herd.

Response:

The Government of Newfoundland and Labrador accepts this recommendation. The Red Wine caribou herd is a Woodland caribou which is listed as Threatened under the provincial *Endangered Species Act* and the federal *Species at Risk Act*. The Province, however, retains jurisdiction and management authority.

In 2004, Newfoundland and Labrador released its first recovery document under the *Endangered Species Act* for this species entitled "Recovery strategy for three Woodland caribou herds (*Rangifer tarandus caribou*; *Boreal population*) in Labrador." The document was prepared by the Labrador Woodland Caribou Recovery Team which Nalcor is a member of and provided advice on actions needed to recover the species in Labrador. This recovery document is currently being updated with new information,

activities complete, critical habitat and new actions required based on the new information that has been gathered over the past seven years. The updated recovery plan is scheduled to be released in 2012.

(No. 27)

Recommendation 7.7 – Management of the George River caribou herd

The Panel recommends that, if the Project is approved, the provinces of Quebec, and Newfoundland and Labrador, Environment Canada, and all interested Aboriginal communities initiate a dedicated range-wide joint management program for the George River caribou herd, and through this program cooperatively carry out a comprehensive cumulative effects assessment of the impact of human activities on the herd to be updated periodically as required.

Response:

The Government of Newfoundland and Labrador accepts the intent of this recommendation. It is the intent of the Government of Newfoundland and Labrador, as per the Labrador Caribou Management Initiative, to cooperatively develop a management plan for the George River caribou that ensures the involvement of the Quebec Government and aboriginal groups. Government intends to consider Aboriginal Traditional Knowledge in developing management measures and is already engaged in caribou management consultation activities with Innu Nation and Quebec Innu. Government will also take into consideration the Torngat Wildlife and Plants Co-Management Board and the Hunting, Fishing and Trapping Coordinating Committee constituted pursuant to the James Bay and Northern Quebec Agreement and the Northeastern Quebec Agreement. The structure and function of this process is currently being established.

(No. 28)

Recommendation 7.8 – Effect of reservoir preparation activities on migratory birds

The Panel recommends that, if the Project is approved, Nalcor and Environment Canada negotiate an agreement prior to reservoir preparation regarding whether and how clearing could proceed between May and July without violating the Migratory Birds Convention Act. To initiate this process, Nalcor should be required to submit a plan describing how it would carry out clearing activities during this period in compliance with the Migratory Birds Convention Act.

Response:

The Government of Newfoundland and Labrador notes this recommendation has been directed to Nalcor and Environment Canada.

(No. 29)

Recommendation 7.9 –Vegetation control

The Panel recommends that, if the Project is approved, Nalcor be required to restrict the

use of chemical herbicides to areas where alternative vegetation control is not reasonably possible. Approval of the use of herbicides should only be granted after Nalcor has submitted an overall vegetation control plan to the provincial Department of Environment and Conservation, demonstrating that all alternatives have been adequately explored and the use of non-chemical approaches maximized.

Response:

The Government of Newfoundland and Labrador accepts the intent of this recommendation that approval of the use of herbicides should only be granted after Nalcor has submitted an overall vegetation control plan and it is fully in keeping with the practices of Integrated Vegetation Management.

(No. 30)

Recommendation 7.10 – Monitoring, follow-up and adaptive management for the terrestrial environment

The Panel recommends that, if the Project is approved and in addition to its monitoring commitments listed in Chapter 7, Terrestrial Environment, Nalcor should carry out the following monitoring programs:

- monitor the effectiveness of riparian and wetland habitat compensation work, including the effect on wetland sparrows;
- monitor the response of the Red Wine Mountain caribou herd including any population changes through the construction phase and in the early part of the operation phase;
- monitor wolf predation of caribou, particularly the Red Wine Mountain herd;
- monitor interactions of the George River caribou herd with Project activities and facilities and identify any impacts;
- monitor ashkui formation in the Project area;
- monitor direct and indirect impacts on waterfowl, such as waterfowl adjustment to changes in riparian habitat, and changes in the location and formation of ashkui;
- confirm the presence of and monitor the impact of the Project on salamanders and spring peepers;
- develop a detailed mitigation and monitoring plan for all listed species for approval by the provincial Department of Environment and Conservation;
- confirm the presence outside the flood zone of the eight plant species identified by Nalcor as unique to the river valley plus the two additional species listed by the Department of Environment and Conservation (marsh horsetail and hidden fruit bladderwort) and develop a detailed mitigation plan for these plant species for approval by the Department;
- monitor the impact of the Project on furbearers, small game, small mammals, and black bears; and
- collaborate with the Department of Environment and Conservation to develop an appropriate approach to monitor pine marten in areas affected by the Project where there is no trapping activity.

Response:

The Government of Newfoundland and Labrador accepts the intent of this recommendation. The Department of Environment and Conservation will continue to advise monitoring programs regarding issues under provincial jurisdiction. The Department of Environment and Conservation will work cooperatively with the federal government and Aboriginal groups to advise Nalcor on the requirements of a scientifically defensible monitoring program.

(No. 31)

Recommendation 8.1 – Trapping compensation program

The Panel recommends that, if the Project is approved, Nalcor be required to establish a compensation program for all bona fide trappers along the lower Churchill River, without requiring proof of ten years' use as an entry point. Instead, compensation should be commensurate with the total extent of trapping activity during the previous ten years, as shown by the recorded income attributable to the Project area. Compensation should be awarded within six months after an individual trapper has established eligibility.

Response:

The Government of Newfoundland and Labrador accepts the intent of this recommendation.

(No. 32)

Recommendation 8.2 – Mud Lake ice bridge mitigation

The Panel recommends that, if the Project is approved, Nalcor, the Government of Newfoundland and Labrador and the Mud Lake Improvement Committee negotiate an agreement to address how any future adverse changes to the ice bridge that would lengthen the existing period of time when residents are unable to cross the river by boat or snowmobile would be assessed and mitigated. Alternative transportation options should be provided if travel across the river is prevented during the freeze-up or break-up for periods in excess of two weeks. The selected solution should adequately meet the residents' needs for everyday and emergency travel and should respect the character of the community. Road access should not be imposed on the community as a solution to address ice bridge changes without its consent. The primary onus to cover the costs of this mitigation should be placed on Nalcor. The agreement should also address the role of the Province in mitigating any cumulative effects caused by climate change.

Response:

The Government of Newfoundland and Labrador accepts the intent of this recommendation. The Government of Newfoundland and Labrador will review Nalcor's ice monitoring and climate change reports which may be used to assess any changes to the period of ice road use resulting from the Project. Government will consult relevant Aboriginal organizations as appropriate.

Nalcor shall only be required to provide alternative transportation if travel is adversely

approach. Nalcor should be required to pay the stumpage fees for the forestry operators salvaging the extra timber.

Response:

The Government of Newfoundland and Labrador accepts the intent of the recommendation to allow local forestry operators to clear additional areas.

(No. 36)

Recommendation 9.1 – Noise and dust management

The Panel recommends that, if the Project is approved, and to avoid disturbance of persons carrying out traditional land and resource use activities, Nalcor be required to monitor and manage construction traffic and borrow pit activities to minimize dust problems, noise and sleeping disturbance for occupants of cabins and camps along the roads.

Response:

The Government of Newfoundland and Labrador accepts the intent of this recommendation for Nalcor to monitor and manage construction traffic and borrow pit activities to minimize dust and noise problems. Construction and borrow pit activities are regulated for the protection of workers by the Occupational Health and Safety legislation and would include dust and noise. This may indirectly address some of the public concerns; however, there may be some negative effects that will not be mitigated such as equipment operation affecting cabin occupants. These could be addressed by the application of measures proposed by Health Canada for Hamilton River Road in other locations where seasonal camps are located within 2 kilometres of Project infrastructure having a high potential for noise and air emissions, such as quarries and access roads.

(No. 37)

Recommendation 9.2 – Relocation of Canada yew

The Panel recommends that, if the Project is approved, Nalcor be required to collaborate with Innu Elders on where and how to relocate Canada yew plants, conduct regular field visits with Elders for assessment, and employ any adaptive management procedures required to maintain a stable population of the plant.

Response:

The Government of Newfoundland and Labrador accepts the intent of this recommendation as the plant is culturally significant to the Innu people.

(No. 38)

Recommendation 9.3 – Community level land and resource use monitoring

The Panel recommends that, if the Project is approved, Nalcor involve all Aboriginal groups in the design and implementation of its proposed community land and resource use monitoring program for the duration of the construction period to ensure that

parameters of importance to these groups and Traditional Knowledge are included.

Response:

The Government of Newfoundland and Labrador accepts the intent of this recommendation. A community land and resource use monitoring program would inform the process used by the Government of Newfoundland and Labrador to review Nalcor Energy's post-environmental assessment (EA) regulatory approval applications.

(No. 39)

Recommendation 11.1 – Involvement of Aboriginal Groups in the management and protection of historic and archaeological resources.

The Panel recommends that, if the Project is approved, Nalcor, in collaboration with the Provincial Archaeology Office, establish and support a program to involve all three Labrador Aboriginal groups in (a) the documentation and interpretation of known historic and archaeological sites and artifacts and (b) the process to be followed in the case of inadvertent discoveries of previously unknown sites and artifacts during construction, including notification of the three groups. Nalcor should also give consideration to inviting participation by interested Aboriginal communities in Quebec. Nalcor should share with Aboriginal groups the results of its work on the monitoring of historic and archeological resources to be compiled and provided annually to the Provincial Archaeology Office.

Response:

The Government of Newfoundland and Labrador accepts the intent of this recommendation, that aboriginal groups be involved in the management and protection of historic and archaeological resources.

(No. 40)

Recommendation 11.2 – Commemoration initiatives

The Panel recommends that, if the Project is approved, Nalcor work in collaboration with local communities and Aboriginal groups to (a) identify sites, artifacts and intangible elements (including portages, traplines, trails and personal stories) to be documented and commemorated, (b) determine how commemoration should occur and (c) implement specific commemorative initiatives (such as plaques and story boards) at appropriate locations in communities and throughout the river valley. Local heritage organizations could benefit by receiving funding to undertake part of this work and to implement education and interpretation programs.

Response:

The Government of Newfoundland and Labrador accepts the intent of this recommendation that Nalcor undertakes commemorative and educational efforts to preserve historical, archaeological, spiritual and cultural sites and artifacts.

contribution if required to both enable current participants to complete their training and to meet additional training requirements.

Response:

The Government of Newfoundland and Labrador accepts the intention of this recommendation, subject to conclusion of a funding agreement with the Government of Canada.

(No. 48)

Recommendation 12.7 – Employment Outreach to Quebec Aboriginal Communities

The Panel recommends that, if the Project is approved, Nalcor initiate an employment outreach program for interested Aboriginal groups in Quebec; such a program could include among other measures, a specific recruitment program, transportation assistance from Sept-Îles, and measures to address social and cultural issues including any associated language barriers.

Response:

Recognizing the priorities of the IBA and the Benefits Strategy, the Government of Newfoundland and Labrador recognizes that Nalcor will take appropriate measures to meet its human resource requirements for the Project, and further recognizes that employment opportunities are open to Aboriginal people living in Quebec.

(No. 49)

Recommendation 12.8 – Quantitative targets for goods and services

The Panel recommends that, if the Project is approved, the concept of quantitative objectives or targets be applied to the provision of goods and services, with targets established both for the province as a whole, and for Labrador.

Response:

Subject to the IBA and Benefits Strategy, the Government of Newfoundland and Labrador accepts the intent of this recommendation and will continue to work with Nalcor and private sector interests to maximize supplier development opportunities and partnerships for Labrador and the province as a whole.

(No. 50)

Recommendation 12.9 – Enhanced supplier development program

The Panel recommends that, if the Project is approved, Nalcor enhance its supplier development program by implementing the following measures: (a) establish the Labrador Business Opportunities Committee and appoint the full time Coordinator in Happy Valley-Goose Bay as soon as possible, (b) ensure the Coordinator (a Nalcor employee) has sufficient seniority within the organization to influence relevant procurement decisions and has full access to all procurement information and related decision making, (c) release as soon as possible the list of goods and services required by

Response:

The Government of Newfoundland and Labrador accepts the intent of this recommendation.

(No. 73)

Recommendation 15.4 – Long Term Funding for Environmental Management from government departments

The Panel recommends that, if the Project is approved, the governments of Newfoundland and Labrador and Canada make long-term commitments to support annual budget requests by the relevant departments with responsibilities for Project-related environmental management including socio-economic mitigation commitments. The Panel further recommends that the governments make general commitments with a ten-year forecast, to be updated every five years, until such time as there is no longer evidence of ongoing environmental effects resulting from the Project.

Response:

The Government of Newfoundland and Labrador accepts the intent of this recommendation. The Government of Newfoundland and Labrador supports the provision of adequate and appropriate funding for Project-related environmental management including socio-economic mitigation commitments until there is no longer evidence of on-going environmental effects resulting from the Project. Any allocation of funding would be subject to the appropriate legislative approval.

(No. 74)

Recommendation 15.5 – Lower Churchill Project Monitoring and Community Liaison Committee

The Panel recommends that, if the Project is approved, prior to the start of construction, the provincial Department of Environment and Conservation appoints a Monitoring and Community Liaison Committee, using a community-based nomination process. Nalcor, through the Department, should provide the Committee with sufficient resources to allow for staff support, expenses and a modest honorarium for non-government participants, acquisition of independent expert advice, and adequate communication with community residents including occasional public forums. The mandate of the Committee would be set out in the Authorizing Regulation and the Federal-Provincial regulatory plan. The Committee would operate throughout the construction period and for the first ten years of the operating period, at which point the continuing need for the Committee should be reassessed by the Department in consultation with the Committee, the communities and Nalcor. The Committee would:

- provide community feedback and advice to the Department and to Nalcor on relevant issues including Project-specific mitigation, impact monitoring and adaptive management committed to by Nalcor and as recommended by the Panel;
- be empowered as required to establish subcommittees or working groups to address the key areas of biophysical monitoring and follow-up, enhancing

- employment and business benefits, and health and social issues;
- have representation from communities, community-based agencies and non-government organizations, Aboriginal organizations, relevant federal and provincial government departments and Nalcor (ex-officio); and
- liaise with the public to ensure a transparent approach to addressing public concerns and the communication of monitoring results.

Response:

The Government of Newfoundland and Labrador accepts the intent of this recommendation to establish an Environmental Monitoring and Community Liaison Committee. As identified in the Governments' response to recommendation 15.1, a committee will be established by Nalcor to provide feedback and advice to the Proponent and Government on the effects of the Project. The Government is committed to ensuring consultation with affected Aboriginal groups, communities, and relevant stakeholders to address public concerns and communicate monitoring results.

(No. 75)

Recommendation 15.6 – Project-specific effects monitoring programs

The Panel recommends that, if the Project is approved, all Project-specific effects monitoring programs, whether conducted by Nalcor, governments or in combination, include the following elements:

- identification of monitoring objectives and means of achieving verifiable results capable of guiding remedial action;
- formulation of clearly stated research questions capable of testing impact predictions;
- key measurable indicators linking Project activities to outcomes, and threshold or reference levels to identify Project effects;
- strategies and protocols for data collection and quality control;
- protocols for data compilation, storage, control and access;
- provision for data analysis and assessment; and
- reporting procedures and schedules.

Response:

The Government of Newfoundland and Labrador accepts the intent of this recommendation and will work with other responsible parties to implement the recommendation to the extent of its authority. The Government of Newfoundland and Labrador notes that socio-economic thresholds cannot always conclusively identify Project effects because socio-economic conditions are complex and affected by many external factors. However, Government is committed to identifying key measurable socio-economic indicators that can be linked to Project activities and are most likely to identify trends.

David Schulze

From: Liette L.B. Boudreau [greffe.conseil@ekuanitshit.ca]
Sent: April-02-12 10:48 AM
To: David Schulze
Subject: TR: Consultation- Crown Lands Application #140593, Nalcor Energy
Attachments: CL app Dist Line 23Mar12.pdf; Dist Line easement 23MAR12.pdf

Au cas où si tu n'as pas reçu ces documents.

De : Marie-Elda M-E.M. Mestokosho
Envoyé : 2 avril 2012 09:33
À : Jean-Charles J-C.P. Piétacho
Cc : Liette L.B. Boudreau
Objet : TR: Consultation- Crown Lands Application #140593, Nalcor Energy

De : Durno, Lynn [mailto:ldurno@gov.nl.ca]
Envoyé : 2 avril 2012 09:03
À : Marie-Elda M-E.M. Mestokosho
Cc : stevepellerin@nalcorenergy.com; Harvey, Brian
Objet : FW: Consultation- Crown Lands Application #140593, Nalcor Energy

Please note: this email replaces earlier email. There are three applications you will receive – they are Crown Lands Application #140593, 140594 and 140595.

April 2, 2012

I am writing on behalf of the Government of Newfoundland and Labrador's Crown Lands Administration Division, Department of Environment & Conservation; we are responsible for certain regulatory approvals which Nalcor Energy requires for its Lower Churchill Hydroelectric Generation Project, and we have received the enclosed Application for title under part 1 of Newfoundland and Labrador *Lands Act*, SNL 1991 c.36. Any comments you may wish to make in relation to this application are welcome within thirty (30) days of the date of this letter.

You may also wish to consult the Department of Environment & Conservation's Environmental Assessment website, which contains important documents related to the Lower Churchill Hydroelectric Generation 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 notice, in English, is the official and authoritative communication from the Government of Newfoundland and Labrador to your organization. The French translation of this notice, which follows below, 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.

01/05/2012

Sincerely,

Lynn Durno
Lands Officer I
Crown Lands Division
Dept. of Environment and Conservation
P.O. Box 3014, Station B
Happy Valley-Goose Bay NL A0P 1E0
Telephone No. (709)896-2488
Facsimile No. (709)896-9566

TRADUCTION NON OFFICIELLE

Je vous écrit au nom du « Department of Environment and Conservation – Crown Lands Division » du gouvernement de Terre-Neuve-et-Labrador. Nous sommes responsables de certaines autorisations réglementaires qui Nalcor Energy a besoin pour son projet Projet de centrale de production d'énergie hydroélectrique dans la partie inférieure du fleuve Churchill, et nous avons reçu le joint Demande de titre foncier en vertu du « *Lands Act*, SNL 1991 c.36. ». Toute observation que vous pourriez faire à l'égard de cette demande sont les bienvenus dans les 30 jours de la date de cette lettre.

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 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 linge officielle du gouvernement de Terre-Neuve-et-Labrador est l'anglais. En conséquence, la lettre signée en anglais, à qui cette lettre est jointe, comprend la communication autorité du gouvernement de Terre-Neuve-et-Labrador à votre organisation; cette 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,

Lynn Durno
Lands Officer I
Crown Lands Division
Dept. of Environment and Conservation
P.O. Box 3014, Station B
Happy Valley-Goose Bay NL A0P 1E0
Telephone No. (709)896-2488
Facsimile No. (709)896-9566

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01/05/2012

Newfoundland Labrador

Environment and Conservation

APPLICATION FOR CROWN LANDS

FOR DEPARTMENT USE ONLY

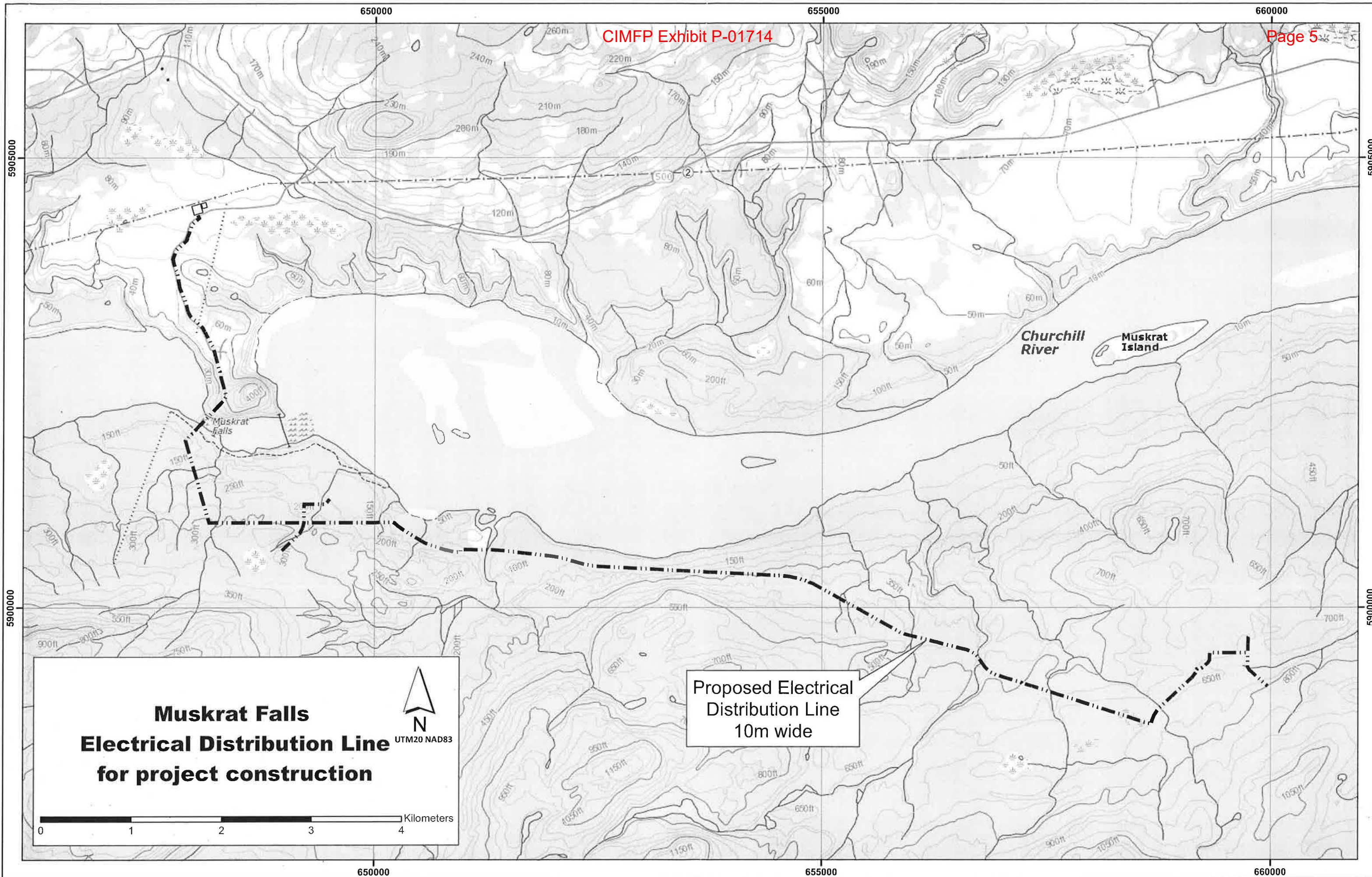
APPLICATION NO. _____ RECEIPT NO. _____
 FILE NO. _____ AMOUNT _____ DATE _____
 DATE REGISTERED _____ INDICATED ON PLAN NO. _____
 INITIAL _____ TOPO NO. _____ INITIAL _____

APPLICATION INFORMATION

SURNAME	NALCOR ENERGY	GIVEN NAME	MIDDLE NAME	AGE
MAILING ADDRESS P.O.Box 12800 (500 Columbus Drive)				
CITY/TOWN	St. John's	PROVINCE	NL	POSTAL CODE A1B 0C9
BUSINESS TELEPHONE	737-1944	HOME TELEPHONE		
ARE YOU A RESIDENT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR?		ARE YOU AN EMPLOYEE OF THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION?		
<input type="checkbox"/> YES <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
HAVE YOU, YOUR SPOUSE, OR ANY DEPENDENT CHILDREN EVER APPLIED FOR, OR RECEIVED LAND FROM THE CROWN?		<input type="checkbox"/> YES <input type="checkbox"/> NO		
IF YES, SPECIFY TITLE NO(s).		N/A		

PROPOSED TENURE AND USE

TYPE OF APPLICATION	<input type="checkbox"/> LEASE	<input type="checkbox"/> GRANT	<input type="checkbox"/> LICENCE TO OCCUPY
LAND USE	<input type="checkbox"/> RESIDENCE	<input type="checkbox"/> COTTAGE	<input type="checkbox"/> AQUACULTURE
	<input type="checkbox"/> COMMERCIAL (provide detailed description below)	<input type="checkbox"/> AGRICULTURE (provide details below)	<input type="checkbox"/> OTHER (provide details below)
Easement for electrical distribution line required for 5 years permission for road being made under separate application			
Dist line will be built along side road			
DESCRIBE BUILDINGS TO BE ERECTED (if applicable)			
DIMENSIONS: LENGTH _____ WIDTH _____ N/A			
PROPOSED WATER AND SEWAGE FACILITIES (if applicable)			
<input type="checkbox"/> WELL <input type="checkbox"/> SEPTIC <input type="checkbox"/> MUNICIPAL WATER <input type="checkbox"/> MUNICIPAL SEWER <input type="checkbox"/> OTHER (provide details below)			
N/A			





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COURTESY TRANSLATION

May 11, 2012

BY FAX: 709-737-1985

Mr. Stephen Pellerin
Director, Environment and Aboriginal Affairs
Nalcor Energy
Hydro Place, 500 Columbus Drive
P.O. Box 12400
St-John's, NL A1B 4K7

Subject: Energy Transmission Lines Project between Labrador and the island of
Newfoundland
CEAR no: 10-03-51746; our file 7550-005

Mr. Pellerin,

This is in response to your May 4th letter to our client, the Innu Council of Ekuanitshit, concerning the above-mentioned environmental assessment.

The hasty request

On less than three weeks' notice, you propose "an oral presentation of the summary" in plain language of the Environmental Impact Statement (EIS) filed on April 9th. Your letter of May 4, 2012 is the last communication our client received from you since your previous letter of August 15, 2011.

In your latest letter, you invited the Council to "present" or "share" with you "additional information... concerning the interests of Ekuanitshit, its values, its questions, its contemporary activities, traditional aboriginal knowledge, as well as important issues facing the community."

However, this was an invitation for the Council to inform Nalcor about its own project at the community's expense, since your in-house counsel Mary Hatherley had sent me an e-mail on July 1, 2011, in which she explained that no funding would be provided to carry out the necessary studies ("Nalcor does not contemplate the negotiation of a land and resource use study or similar formal arrangement with Ekuanitshit at this time").

**COURTESY TRANSLATION**

Mr. Stephen Pellerin

Nalcor Energy

May 11, 2012

Page 2

We note that Ms. Hatherley had promised that the meeting held on June 20, 2011 in the community between members of the Council and representatives of Nalcor would give rise to a more intense and focused discussion concerning, among other things, caribou and Atlantic salmon.

In this regard it is my understanding that the recent meeting between representatives of Nalcor and the Band Council and community was a productive one and that certain issues such as the Transmission Project's potential effects on caribou and salmon and the use of herbicides have been brought to the attention of Nalcor. Nalcor will respond directly to the community with respect to these concerns and hopes to continue to have a dialogue with the community on these and other issues which may emerge during the environmental assessment process, including issues and concerns related to the potential effects of the Project and potential mitigation measures to avoid or reduce such effects.

Yet, our client did not receive any "direct response" or any other communication from you on this matter prior to the filing of the EIS.

The ambiguous purpose of the proposed visit

We note that your letter is quite imprecise as to the purpose of the requested meeting: It would demonstrate your commitment to "hold serious consultations with the Innu of Ekuanitshit," but would take the form of an "oral presentation of the summary".

We do not concede that there have been any consultations to date and we do not see how what you are now proposing could constitute consultation.

In your letter of May 4, 2012, you state that your presentation "would be an opportunity for the Innu of Ekuanitshit to learn more about the project" but also "to share with Nalcor their thoughts and concerns about the project."

However, in your letter of July 20, 2011, you refused the request that we made on July 5, 2011 to provide the Innu Council of Ekuanitshit with the funds necessary to obtain "the services of independent experts to enable it to evaluate your component studies, to ask the right questions about those studies and to thus maximize the benefits from the workshops that you propose." With that kind of capacity, the discussions between our client and your company might indeed be qualified as "consultations".

Unfortunately, this will not be the case for the "oral presentation" followed by a question period that you have proposed, which is merely an information session. Even if our client does not refuse to welcome you for this purpose, it cannot thus be described as "consultation".



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Deficiency of the EIS with regard to Ekuanitshit

We take this opportunity to remind you of the following recommendations made to you on March 13th by the Canadian Environmental Assessment Agency (CEAA) on the aspects which should be included in the EIA:

- “Nalcor be directed to include in the EIS an analysis of the effects, and their significance, of the project’s construction, operation and abandonment on the migration of salmon through the Strait of Belle Isle and the impacts of any effects on the Innu of Ekuanitshit and any other Aboriginal and non-Aboriginal groups and individuals who practice salmon fishing in the areas in and beyond the study area.
- Nalcor be directed to consider and incorporate in a revised Component Study Aboriginal traditional knowledge provided by the Council respecting fish and fish habitat if such information is available to the Proponent.”

It seems evident to us that in order to analyze the project’s effects on salmon fishing by the Innu of Ekuanitshit in the Strait of Belle Isle, Nalcor should have sought input from the community. Likewise, you could not “incorporate in a revised Component Study Aboriginal traditional knowledge provided by the Council” without asking the Council to provide this knowledge.

Nevertheless, rather than approaching our client as recommended by the Agency, you proceeded to file an EIS that you knew to be incomplete in the absence of the information indicated.

The specific question of Atlantic salmon

As you know, our client is concerned about the impact that the transmission line could have on the migratory routes of Atlantic salmon and caribou. The fish and the caribou are fundamental elements of the Innu way of life and anything that could have a negative impact on these resources is a threat to the livelihood of the Innu of Ekuanitshit.

More specifically, the proposed submarine cable runs under the Strait of Belle Isle, which is part of the migratory route for Atlantic salmon, over which the Innu have fishing rights. In this regard, the CEAA gave you the following instruction:

“With respect to your comment on the potential effect on fish stocks, the GL at 4.5.1 requires Nalcor to predict direct and indirect effects of the project on, *inter alia*, fish and fish habitat, including migration patterns. Indirect effects could include changes to socio-economic conditions or changes to the current use of lands and resources for traditional purposes by the Innu of Ekuanitshit. The proponent is required to include in the EIS the required analysis, determination of



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effects and application of mitigation as necessary. The analysis should also include determination of direct and indirect effects within the project area and prediction of the significance of those effects within and beyond the study area.

However, in section 14.2 of the EIS, there is no discussion of the potential effects on Atlantic salmon, because the regional study area was limited to the Strait of Belle Isle and the area around Dowden's Point in Conception Bay.

We have searched chapter 14 in vain for any discussion of the effects on marine habitat and the valued ecosystem components (VECs) that might occur beyond the regional study area, even though such a discussion is promised by Table 14.2.4-1. However, the EIS acknowledges, at Table 14.2.3-2, that the electromagnetic fields could affect salmon migration.

In addition, the EIA admits (at p. 14-42) that the subject of geomagnetic navigation by the fish has not been seriously studied after researchers confirmed the phenomenon in the 1960s. Rather than addressing the issue, your EIS simply concludes its discussion of the effects on Atlantic salmon migration with this statement.

We believe that the EIS completely ignores the concerns of the Innu from Ekuanitshit and the clear instructions given to you by the CEAA.

Word-for-word copying from another study

Our reading of chapter 14 allowed us to learn that its authors had simply reproduced long passages from another study, even though the work is not mentioned in the bibliography.

We will let you decide whether this constitutes plagiarism, but in your EIS, you write:

Even though the idea of geomagnetic navigation is a major field of scientific study, the mechanisms by which animals could implement a bi-coordinate mapping system and overcome its many challenges remain unknown. Adding to the complexity is the role that other environmental cues such as olfaction, celestial navigation, visual landmarks, currents, and temperature / salinity gradients may play, either interactively with geomagnetic navigation or at times dominating the navigation process.

This assertion - seemingly objective and scientific - is in fact the word-for-word reproduction of the following paragraph contained in another study commissioned by the International Association of Geophysical Contractors, except for the underlined words which support the theory of geomagnetic navigation by fish:

Even though the idea of geomagnetic navigation has grown into a major field of scientific study and there is much support for its theory, the mechanisms by which animals might implement a bi-



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coordinate mapping system and overcome its many challenges remain unknown. Adding to the complexity is the role that other environmental cues such as olfaction, celestial navigation, visual landmarks, currents, and temperature/salinity gradients may play, either interactively with geomagnetic navigation or at times dominating the navigation process.

Buchanan, R.A., R. Fechhelm, P. Abgrall, and A.L. Lang, *Environmental Impact Assessment of Electromagnetic Techniques Used for Oil & Gas Exploration & Production*, report by LGL Limited Environmental Research Associates (St. John's, NL) for International Association of Geophysical Contractors (Houston, Texas), p. 11 < <http://www.iagc.org/files/2645/> >

Your EIS also omits the preceding paragraph from its quotation, which confirms that Atlantic salmon possess magnetite. This fact would support the theory that you reject, which is that this mineral is used by the species for the purposes of geomagnetic orientation (in your words: “the apparent sensory use of it in salmon”). The omitted paragraph is as follows:

Biological magnetite has been extracted from chinook salmon (Kirschvink et al. 1985), sockeye salmon (*Oncorhynchus nerka*) (Walker et al. 1988; Mann et al. 1988; Sakaki et al. 1990 [as cited in Yano et al. 1997]), Atlantic salmon (*Salmo salar*) (Moore et al. 1990) and chum salmon (Ogura et al. 1992). In their studies of sockeye salmon, Walker et al. (1988) further contended that single domain magnetite particles suitable for use in magnetoreception are produced in the skull of the fish throughout its life. By the time sockeye make their run to the sea, the amount of magnetite present is sufficient to provide the fish with a magnetoreceptor capable of detecting small changes in the intensity of the geomagnetic field. [...]

p. 34 (our underlining)

We also found that, except at two locations, the part of the EIS entitled “Marine Mammal Detection and Use of Electromagnetic Fields” is almost identical to Part 4.1.4 of the commissioned study, entitled “Geomagnetic Navigation in Marine Mammals”.

Yet, while your EIS removes a sentence in the first paragraph about the difficulty of studying whales, it adds a sentence questioning the reliability of studies affirming the geomagnetic navigation of oceanic cetaceans.

The sentence appearing in the other study at the beginning of the discussion on electromagnetic fields and marine mammals, but not in the EIS, is underlined in the following quotation:

Evidence of geomagnetic detection and orientation in cetaceans is limited and mostly theoretical. Unlike sea turtles and some species of fish, the young of which can be studied in sufficient numbers under controlled experimental conditions, whales and dolphins are difficult to study because of their sheer size, scarcity and mobility. The only evidence that cetaceans may be able to detect geomagnetic cues comes from comparing data on mass stranding locations and times to geomagnetic anomalies.



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p. 19

The sentence added in the EIS is underlined in the following quotation:

In summary, some oceanic cetaceans in some situations may use geomagnetic cues for navigation, and are potentially sensitive to changes from the “normal” as low as 30 nT. However, this is not true in all cases, has never been observed directly, and is difficult to rationalize when the marine environment is a relatively noisy place (i.e., on the order of hundreds of nT) in terms of electromagnetic signals, and marine mammals must use a variety of cues to navigate reliably.

p. 14-84

We find it curious to say the least that when it comes to findings that cetaceans are difficult to study - which would cast doubt on the reliability of your conclusions - your EIS omits a sentence, but that when the other study summarizes a scientific consensus supporting the geomagnetic navigation of cetaceans, your EIS adds a sentence to cast doubt on this consensus.

Conclusion

Our client is prepared to welcome you in the week of May 21st, but wishes to emphasize that what you are proposing is an information session followed by a period of questions and cannot be qualified as “consultation”.

Our client is surprised that you have not contacted the Innu of Ekuanitshit about the effects that the part of the project in the Strait of Belle Isle might have on their salmon fishery, despite the recommendation of the CEAA. Similarly, our client notes that you have never obtained any information about the community’s traditional knowledge on this matter and so could not incorporate it into “a revised component study” as recommended by the CEAA.

We emphasize that the information session you have proposed cannot remedy these deficiencies and that a serious study of these topics, which our client cannot finance, is necessary.

Moreover, we do not trust your conclusions about the effects of electromagnetic fields on the migration of Atlantic salmon, since they are taken from another study and do not rely on scientific literature or scientific data.

We maintain that you remain obligated to study the potential effect of the submarine cable under the Strait of Belle Isle on the use of Atlantic salmon for traditional purposes by Innu of Ekuanitshit, including its effects on the migration of this species outside the study area and up



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to the Romaine River. Again, the financial responsibility for completing such a study belongs to the developer and not to our client.

Sincerely yours,

DIONNE SCHULZE

[Signed]

David Schulze

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Conseil des Innus de Ekuanitshit
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May 2, 2012

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St. John's, NL A1B 4J6**BY FAX TO: 709-729-0059**Hon. Jerome Kennedy, Q.C.
Minister of Natural Resources and Minister
responsible for the Forestry and Agrifoods
Agency
7th Floor, Natural Resources Building
50 Elizabeth Ave.
P.O. Box 8700
St. John's, NL A1B 4J6

Re: Muskrat Falls Project permit applications; our file no. 7550-001
Your files incl. Crown Lands Application #140593, 140594 and 140595;
Crown Lands Application #140743 and 140744, Nalcor Energy;
LCP Application to WRMD#1 - Three Stream Crossings (C7, C8 &
C9) for South Side Access Road;
LCP Application to WRMD#2 - Stream Crossings (C10, C12, C13,
C19 and ACC) for South Side Access Road and Access to
Construction Complex;
Nalcor Quarry Application Referrals, nos. 711:9620, 9621, 9622,
9623, 9641, 9642, 9643, 9644, 9645, 9646, 9647, 9649

Dear Sirs,

During the past month, our client, the Conseil des Innus de Ekuanitshit, has received an extraordinary number of referrals from various divisions and agencies of your respective departments concerning permit applications by Nalcor Energy in relation to the hydroelectric generating station proposed for Muskrat Falls.

All of these referrals request comments within 30 days and to our knowledge, they include:

- an application for a permit to alter a body of water at three stream crossings, dated January 23, 2012, which was apparently forwarded to our client on March 29th, but

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which we have not seen and for which the 30-day deadline expired on Saturday, April 28th, after which it was approved before the end of business on Monday, April 30, 2012;

- an application for a commercial permit to cut Crown timber which was apparently forwarded to our client on March 29th, but which we have not seen;
- three separate applications for permission to build an access road, an electrical distribution line on that road, as well as an electrical substation, all on Crown land, all dated March 23, 2012, all forwarded to our client on April 2nd;
- 12 different applications for quarry permits (filling 72 pages), filed by Nalcor on January 9, 2012, and forwarded to our client on April 10th;
- an application for a permit to alter a body of water at five stream crossings, dated March 23, 2012, which was forwarded to our client on April 17th;
- two separate applications for permission to build a temporary construction camp and two electric transmission lines on Crown land, both dated April 13, 2012, and forwarded to our client on April 27th and 30th, respectively.

To our knowledge, the past month's flood of referrals represents the first time that the Government of Newfoundland has taken any steps towards consulting the Innu of Ekuanitshit on any issue concerning Labrador, other than information sessions on its caribou conservation measures.

We note that in the case of the quarry permit applications, the Mineral Lands Division had previously sent them to seven other provincial government offices and to Innu Nation and the NunatuKavut Council on January 12, 2012 with the remarkable notice that: "If no reply is received by January 26, 2012[,] your concurrence will be assumed."

Under the circumstances, we imagine it is possible that your Mineral Lands Division had intended to do the Innu of Ekuanitshit a favour by giving them 30 days to comment, rather than a mere two weeks, and by refraining from assuming their concurrence in the absence of a prompt reply.

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However, as you must know, the Conseil des Innus de Ekuanitshit represents a population of less than 600 individuals, all of whom use Innu as their first language and French as their second language.

As you must also know, the community participated actively in the principal environmental assessment of the Lower Churchill Hydroelectric Generation Project from comments on the guidelines for the environmental impact statement (EIS) in 2008, through comments on the final report by the Joint Review Panel (JRP) in 2011, including testimony at the JRP's hearings. The Innu of Ekuanitshit are also currently participating in the comprehensive study of the artificially-segmented Labrador-Island Transmission Link Project.

Throughout these other processes, Ekuanitshit has consistently underlined the complexity of the information its members were being asked to review for comment and the community's lack of funding for the scientific experts it would need to carry this out to its satisfaction. In fact, Ekuanitshit worked effectively with its own experts on anthropology, engineering, hydrology and marine and terrestrial biology in order to provide its comments on the La Romaine hydroelectric project, expertise for which Hydro-Québec was prepared to provide the necessary funding.

Currently, the Council is in discussions with the Canadian Environmental Assessment Agency (CEAA) to obtain the assistance of federal government scientists for its response to the EIS for the Labrador-Island Transmission Link, since CEAA has refused further participant funding and Nalcor has refused to provide any funding whatsoever.

The Conseil des Innus de Ekuanitshit would be pleased to open discussions with your departments, as well as with the federal Department of Fisheries and Oceans, on a means to provide the community with the capacity to provide a meaningful response to your referrals. We trust that you understand, however, that under the circumstances our client will not be able to do so within your 30-day deadlines.

In the meantime, we would be pleased to receive the information at your departments' disposal about:

- their understanding of the relationship between the activities authorized by the various permits and interests of the Innu of Ekuanitshit;

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- what your departments anticipate might be the potential adverse impact on those interests; and
- the accommodation measures you anticipate integrating into the permits, if you decided to issue them.

Yours,

DIONNE SCHULZE

*

ORIGINAL SIGNED BY

*

David Schulze

cc:

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Dossier n° T-778-12

COUR FÉDÉRALE

ENTRE :

CONSEIL DES INNUS DE EKUANITSHIT

Demandeur

ET :

LE PROCUREUR GÉNÉRAL DU CANADA, en sa qualité de juriconsulte
du Conseil privé de Sa Majesté pour le Canada

et

L'Honorable Keith ASHFIELD, en sa capacité de
MINISTRE DES PÊCHES ET DES OCÉANS CANADA

et

L'honorable Denis LEBEL, en sa capacité de
MINISTRE DES TRANSPORTS CANADA

et

L'honorable Joe OLIVER, en sa capacité de
MINISTRE DES RESSOURCES NATURELLES CANADA

et

NALCOR ENERGY

et

NEWFOUNDLAND AND LABRADOR HYDRO-ELECTRIC CORPORATION

Défendeurs

AFFIDAVIT OF CHIEF JEAN-CHARLES PIÉTACHO – COURTESY TRANSLATION

I, the undersigned, Jean-Charles Piétacho, Chief of the Innu Council of Ekuanitshit, from the community of Ekuanitshit (Mingan) whose reserve is situated in the Regional County Municipality of Minganie, do hereby declare under oath that:

Introduction

1. I have been elected Chief of the Innu Council of Ekuanitshit in every election since 1991 and I was Band manager from 1975 to 1991.
2. My father Philippe Piétacho was councillor and Chief before me for about 30 years.
3. My great-grandfather Peter Piétacho was Chief long before.

Our land

4. As Chief, I manage the Innu Council but it is the elders who manage our traditional lands and we have a huge territory, Nutshimit, which is our house, our pantry, our school, our hospital – we can find everything there.
5. Ekuanitshit (also called Mingan) is one of the places on the north shore of the St. Lawrence where the Innu from my community hunted in the spring, after spending the winter in the forest.
6. In the time of my father and from time immemorial, the Innu came to the sea (the St. Lawrence) to fish in the salmon rivers or to hunt seal. They used all of the seal: they ate the meat, they made clothing like moccasins and mittens from the pelts and they stored the grease for the winter.
7. But the Innu of Ekuanitshit went up into the interior of our territory to spend the winter in the forest where they hunted small and large game, especially caribou. They went via rivers like the Saint-Jean and the Romaine, making portages and going as far as the Churchill River and as far as Kakatshu-Uatshistun, west of North West River.
8. For example, the Piétacho family territory is on Lake Teueikan-Nipi, in the Lac Brûlé region, near what was designated without our consent as the border between the province of Québec and Labrador.
9. During the Joint Review Panel hearings held on April 7, 2012, in Sept-Îles about the Lower Churchill project, I testified along with elders from my community.
10. The elders told the commissioners how, in their childhood or adolescence, they went by canoe or on foot from the Lower North Shore up to North West River in Labrador.
11. My mother, Agathe Piétacho, who is 76 years old, told how when she was nine years old, her family was in the habit of leaving from Natashquan in August in order to arrive at Sheshatshiu in February and hunted game on her family's territory.

12. My mother talked about the effects of the dam built in 1969 at Churchill Falls and the Smallwood Reservoir that flooded the river, which she described as unimaginable to her.
13. We read excerpts from the autobiography of Mathieu Mestokosho, an Innu hunter from Ekuanitshit born in 1885 that told how he and others, including my grandfather Peter Piétacho, regularly travelled from Mingan all the way to North West River, by canoe and on foot, going via Lac Brûlé and Winokapau Lake and hunting caribou, otter and beaver.
14. The elders and I explained to the panel members that, in the 1950s, settlement or sedentarization was forced on us, particularly through the creation of the reserve and the refusal to pay family allowances to parents who took their children out on to the land.
15. To this was added the forced placement of our children in residential schools that created a break with the traditions of the Innu of Ekuanitshit: the youth no longer went out on to the land and never received that education.
16. Nevertheless, we also explained to the panel that since then, the Innu of Ekuanitshit have been returning to the land to hunt caribou.

Negotiations under the comprehensive claims process

17. I am of the generation that was forced to attend residential school, but since I was a young man, I have been part of the Innu's struggle for recognition of their title and their rights.
18. Between 1975 and 1994, the Innu of Ekuanitshit participated in the Conseil Atikamekw-Montagnais (CAM), whose mandate was to negotiate for the Atikamekw and Innu nations in what the federal government calls the "comprehensive claims process."
19. In 1979, the Government of Canada accepted the claim filed by the CAM, as appears from the letter from the Minister of Indian and Northern Affairs, attached as Exhibit A to my affidavit.
20. One-quarter of the land claimed by the CAM and accepted for negotiation by the Government of Canada is situated in Labrador, including a territory that stretches from Mingan to the Churchill River, as appears from a map included in the claim filed in 1979 and attached to my affidavit as Exhibit B.
21. Between 1981 et 1985, the CAM undertook what was called "*la grande recherche*" ("the great research"): land use and occupancy studies, prepared in order to respond to the requirement in the federal policy on comprehensive claims that an Aboriginal people had to demonstrate that it used and occupied the land at issue from time immemorial. Both the Atikamekw and the Innu demonstrated this to the satisfaction of the Government of Canada.

22. One of the studies prepared as part of *la grande recherche* was entitled “Use and occupancy of the territory by the Montagnais of Mingan” and was prepared by Robert Comtois in 1983.
23. In his study, Comtois described the traditional territory of the Innu of Ekuanitshit as including Winokapau Lake, which is part of the Churchill River, and he describes their travel as far as “Tsheshatshit” and North West River.
24. In 1980, the Government of Québec also accepted the claim, as appears from Exhibit C to my affidavit, but the government of Newfoundland never accepted it.
25. Indeed, the official policy of the Newfoundland government is that it will not negotiate a single one of what it characterizes as “crossboundary claims” before claims by those it characterizes as Aboriginal groups resident in Labrador have been settled, as appears from Exhibit D to my affidavit.
26. The result is that our community could only negotiate with Canada and Québec and only with respect to a part of our territory.
27. After the CAM broke up in 1994, negotiations continued as of 1995 by the communities of the Conseil tribal Mammit Innuat – that is, “the people (or innuat) of the east” – through the Assemblée Mamu Pakatatau Mamit.
28. These were the Innu of the Lower North Shore: Ekuanitshit (Mingan), Nutashkuan (Natashquan), Unamen Shipu (La Romaine) and Pakua-Shipi (St-Augustin). However, in 1998, Nutashkuan decided to join the communities in the west represented by the Conseil tribal Mamuitun.
29. Negotiations between the Assemblée Mamu Pakatatau Mamit and the federal and Québec governments continued until 2007, when the governments cut off funding. During those negotiations, however, we were not able to discuss the territory of the Innu of Ekuanitshit, Unamen Shipu or Pakua Shipi situated in Labrador, since the Newfoundland government never participated.

Challenges to the project in 1998

30. We never stopped asserting our rights and title in Labrador.
31. In 1998, the governments of Québec and Newfoundland wanted to announce a project referred to as Churchill Falls Phase II.
32. The project would have added two turbines to the existing generating station at Twin Falls – which had been built without the Innu having been consulted – and called for the construction of a new hydroelectric station at Gull Island and later, a third at Muskrat Falls.

33. In order to supply the plants, the project called for the diversion of the Saint-Jean and Romaine Rivers, which are south of the border set for Labrador, and Lac Brûlé, which has been a traditional gathering place for the Innu of Ekuanitshit, would have disappeared under the waters of a reservoir between 400 km² and 1,000 km² in size.
34. However the press conference that Premier Lucien Bouchard of Québec and Premier Brian Tobin of Newfoundland wanted to hold on March 9, 1998 in the town of Churchill Falls never took place as they had planned because the Innu were there to greet them.
35. I was among the hundreds of Innu – men, women, children, elders – from the four communities of Mamit Innuat in Québec, the communities in Labrador represented by Innu Nation (Sheshatshiu and Utshimassit, which later became Natuashish), Uashat mak Mani-Utenam (Sept-Îles) and Matimekossh-Lac-John (Schefferville), whose reserve is in Québec, but on the border between the two provinces.
36. We demonstrated on the road from the airport to the town, preventing the two premiers' cars from passing and forcing the two men to turn back. They returned to the airport and had to get to their press conference by helicopter, but we filled the community hall where it was supposed to take place.
37. We found the place where the premiers finally held a last-minute press conference and forced them to explain why the Innu had never been informed about the project, nor consulted.
38. That day, which I will never forget, was the day I was proudest to be Innu: we were all assembled and united to defend our ancestors' land.
39. In the months that followed, the project to build new turbines at the existing station was dropped along with the idea of diverting the Saint-Jean and Romaine Rivers. Despite discussions that continued until 2000, no agreement was ever reached between the governments of Québec and Newfoundland and their Crown corporations, Hydro-Québec and Newfoundland Hydro.
40. As of 1999, Innu Nation began negotiating separately with Newfoundland Hydro about an impact assessment for the construction of new generating stations on the Lower Churchill. However, neither Newfoundland Hydro (now Nalcor Energy), nor the Newfoundland government consulted the Innu of Ekuanitshit on this issue during the following decade.
41. In the meetings about the project that the communities of Mamit Innuat had in 1998 with Hydro-Québec, the company refused to discuss Innu rights to the land, which put an end to the negotiations.
42. On September 26, 2008, Innu Nation signed an agreement-in-principle with the Newfoundland government and Nalcor Energy entitled "Tshash Petapen" or "New Dawn," which proposed not only an agreement on impacts and benefits from the Lower

Churchill project, but also on the rights and title of the Innu of Sheshatshiu and Natuashish.

Discussions with Nalcor

43. The Lower Churchill project is the second major project to be proposed on the territory of the Innu of Ekuanitshit at the same time.
44. Between 2006 and 2008, the Innu of Ekuanitshit were busy taking part in the environmental assessment of the Romaine River hydroelectric station project put forward by Hydro-Québec.
45. The studies on Ekuanitshit filed by Hydro-Québec were prepared by independent consultants who worked with members of our community according to a mandate that our Council had approved. A joint committee supervised their work and Hydro-Québec paid the fees of our representatives and the salary of a local coordinator.
46. We estimate that these studies cost around \$600,000 and even then, they had to be completed through the work of scientific experts and other professionals that we hired with funds provided by Hydro-Québec when we were negotiating an impact-benefit agreement related to the project.
47. At the first meeting that members of Council had with Nalcor representatives, held on June 1st, 2009 in our community at their request, we emphasized that any agreement should cover fees for the consultation of experts, elders and professionals, as these costs were not mentioned in the draft agreement that they had sent to us.
48. I also told them that we were happy to have received them in our community, but there was much understanding to be rebuilt, because while they spoke for a company, their government had not shown us any respect.
49. The project lead, Paul Harrington, answered that it was out of respect that Nalcor representatives had come to our community. The environmental and aboriginal affairs director, Todd Burlingame, said that the draft agreement was the beginning of a long dialogue.
50. I told them that it had often happened that people came to our community speaking of “dialogue” and “consultation”, but that in the end, the meeting had merely been organized in order to justify an approach that had already been decided: whether we say yes or no, the holding of the meeting will be indicated in their report.
51. While Nalcor representatives cited guidelines that spoke of contemporary and historic occupation as if they were two different things, I said that the Innu of Ekuanitshit had never ceded their rights in Labrador.

52. Together with other members of Council, I again met with Nalcor representatives on January 27, 2010. I explained that the community was very, very limited in terms of human resources and that I had received four, if not five, boxes piled full of documents from Nalcor, all of them in English.
53. We therefore insisted on the model of our agreements with Hydro-Québec, which had allowed us to hire neutral, outside resources and the director of environmental and aboriginal affairs, Todd Burlingame, told me that Nalcor was open to this approach.
54. However, in April 2010, Nalcor instead proposed an agreement to the Innu Council of Ekuanitshit that would have provided us with \$87,500 with which the community would have had to complete its own study within a four-month deadline. We could not accept this offer, because our experience with the Romaine project had shown us that the amount was inadequate and the deadline was unrealistic.
55. In May 2010, Nalcor provided a report to the Joint Review Panel stating that it had already concluded that there was no evidence of historic or contemporary use of the project area by the Innu of Ekuanitshit.
56. Despite all these experiences, we accepted a request from Nalcor to receive their representatives in our community on September 13, 2010 so that they could make a presentation on the project at a public meeting.
57. Before the meeting, members of Council met with the Nalcor representatives and I began the meeting by saying that it was not a consultation because everything was not in order.
58. For his part, Councillor Vincent Napish pointed out that the presentation that they proposed to make to the community was not sufficient: for the Romaine project, the experts hired by Hydro-Québec had held some thirty meetings in the community, including meetings about sector studies on wildlife, while Nalcor was proposing 15 minutes on caribou and 15 minutes on salmon.
59. The coordinator of aboriginal planning at Nalcor, Élisabeth Poirier-Garneau, told our elected officials that the promoter's study showed that there was "potentially" no occupation of the territory by the Innu of Ekuanitshit and I had to tell her that I was floored by her words.
60. Ms. Poirier-Garneau admitted that it would be useful to do studies in collaboration with the community, but she didn't offer a budget any different than what had previously been proposed and Ken Brophy, who was responsible for aboriginal consultation, said that time was running out before the Joint Review Panel hearings.
61. Our elected officials met again with Nalcor representatives on June 20, 2011, but this was about the transmission lines from the generating stations and the underwater cables between Labrador and the island of Newfoundland.

62. I told them that I was quite bitter due to our previous discussions, because I had been confident after our January 25, 2010 meeting, but I had since observed that Nalcor simply wanted to meet its federal consultation obligations without any concern as to their content.
63. In addition, during this meeting, Ms. Poirier-Garneau confirmed that priority for any jobs created would go first to members of Innu Nation as beneficiaries of the Tsash Petapen agreement, next to residents of Labrador, and after that to residents of Newfoundland. At best, an Innu from Ekuanitshit might have some advantage over another Quebec resident because of a diversity plan aimed at aboriginals, the disabled and women.

Exchanges with the government of Canada

64. We also met with representatives of the Canadian Environmental Assessment Agency on September 13, 2010, in our community, in order to discuss the dams already under assessment as well as the transmission lines that would connect the generating stations to the island of Newfoundland.
65. Daniel Martineau, who was responsible for aboriginal consultations, told us that, in its decision-making, the federal government was going to use information collected by the Joint Review Panel, its report and responses to the report from the federal departments.
66. Moreover, he said that the Agency was planning to consult Ekuanitshit on the report, possibly in the company of the responsible authorities, and would in any case like to know whether the community was satisfied with the report and if not, why.
67. We did not have any other meetings with federal government representatives with regard to the project, nor with regard to the report issued by the Joint Review Panel.
68. We simply received a letter from the Agency dated September 9, 2011, attached as Exhibit E to my affidavit, asking for written comments on the report within a 45 day deadline from the day on which an Innu translation of the conclusions and recommendations was made available, which I understand occurred on September 27, 2011.

Sworn under oath before me in the community of Ekuanitshit in the Regional County Municipality of Minganie, this 15th day of May 2012

[Signed]

Monique Mestokosho
Commissioner for oaths (number 109620)
for all judicial districts in Québec

[Signed]

Jean-Charles Piétacho



Government of Newfoundland and Labrador
Intergovernmental and Aboriginal Affairs Secretariat

FACSIMILE TRANSMISSION

Date: May 29, 2012

To: David Schulze Fax: 1-514-842-9983

From: Aubrey Gover, ADM
Tel: (709) 729-4665
Fax: (709) 729-4900

Re:

Pages (Including Cover): 3

Message/Comments:

Please see the attached letter.

Original To Follow: ☒ Yes ☐ No



Government of Newfoundland and Labrador
Intergovernmental & Aboriginal Affairs Secretariat

May 29, 2012

David Schulze
Dionne Schulze s.e.n.c
507 Place d'Armes # 1100
Montréal, QC H2Y 2W8
Fax: (514) 842-9983

Dear Mr. Schulze,

Thank you for your letter of May 2, 2012, addressing regulatory approval applications for the Lower Churchill Hydroelectric Generation Project (the "Project"). The Consultation Guidelines for these applications were provided to your client via email on March 22, 2012. I have been asked to reply to your letter of May 2, 2012.

In your letter you (1) indicate that the Conseil would be pleased to open discussions on a means to provide the community with capacity to provide a meaningful response to the above-noted referrals; and, (2) invite provincial departments and agencies referring regulatory approval applications to the Conseil to provide information about the relationship between the activities on which the Conseil is being consulted and the interests of the Ekuanitshit First Nation, the potential adverse impacts on those interests and any accommodation measures that may be integrated into any regulatory approvals.

As you know, the province released the Project from EA, subject to conditions, on March 15, 2012. The Ekuanitshit First Nation received capacity funding throughout the EA of the Project, and participated fully in the EA process before the Joint Review Panel. In addition, provincial officials met with Chief Piétacho on February 13, 2008, in Quebec City, QC regarding the EA of the Project, and Nalcor Energy subsequently began its own efforts to engage the Ekuanitshit First Nation in May 2008, in an attempt to solicit information on potential adverse impacts on the Ekuanitshit First Nation's asserted Aboriginal rights.

In its comprehensive report, the Joint Review Panel concluded that the Project's impact on Quebec Aboriginal contemporary land and resource uses, after implementation of the mitigation measures proposed by Nalcor Energy and those recommended by the Joint Review Panel, would be adverse but not significant.

Given the preceding, Ekuanitshit First Nation should already have extensive information on potential adverse impacts.

At the time of EA Release, the Ekuanitshit First Nation was invited to provide or confirm the appropriate point of contact for consultation on regulatory approvals for the Project. As we did not receive a response to this request, we have continued to send applications to Chief Piétacho via the Conseil's general email account.

As you know, the objective at this juncture is to identify any specific adverse impacts on asserted Aboriginal rights arising from the particular activities applied for by Nalcor Energy, the

proponent of the Project. Since the Project has been released from EA, the objective of the consultation process is not to identify environmental impacts in general, but rather it is to identify particular impacts on specific asserted Aboriginal rights and develop, where appropriate, mitigation measures to address any such impacts which could be implemented via the terms and conditions of a regulatory approval.

We understand that the proponent will offer your client access to its technical and scientific experts to answer questions your client may have regarding the applications. We would encourage you to consider availing yourself of this offer, particularly if you believe it might assist your client in identifying any specific potential adverse impacts on your asserted Aboriginal rights arising from the activities applied for under the permit.

We also understand that provincial officials met with delegations from six Quebec Innu communities, including Mingan, on May 8, 2012, in Sept-Iles, QC, to discuss the George River Caribou Herd. We trust that this meeting will have provided further information to your client on that herd, as well as provided a point of contact with provincial technical and scientific experts on issues you may have in relation to that herd.

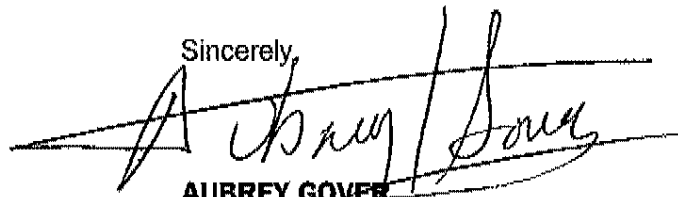
As a result of the foregoing, the province sees no need for capacity funding for the Ekuanitshit First Nation during the post-EA regulatory approval phase of the Project.

In your letter, you also solicited the province's views on potential adverse impacts. Clearly the Ekuanitshit First Nation is in the best position to identify its contemporary use of the project area and how the activity that may be authorized might impact on that use. This is why, of course, the duty to consult places the responsibility for identifying potential adverse impacts on asserted Aboriginal rights on the Aboriginal organization.

In conclusion, as referenced throughout this letter, the very purpose of the referral of regulatory approval applications to the Conseil is to solicit information from the Ekuanitshit First Nation regarding any potential adverse impacts of arising from the activities applied for in the permits on specific Aboriginal rights asserted by the Ekuanitshit First Nation. Provincial departments and agencies will do their utmost to work with the Ekuanitshit First Nation and the proponent to identify and implement measures to mitigate any potential adverse impacts on specific asserted Aboriginal rights, as identified by Ekuanitshit First Nation resulting from activities for which provincial regulatory approvals are required.

Thank you for your correspondence bringing your concerns to our attention.

Sincerely,



AUBREY GOVER
Assistant Deputy Minister (Aboriginal Affairs)

- cc. The Honourable Terry French, Minister of Environment and Conservation
The Honourable Jerome Kennedy, Minister of Natural Resources
The Honourable Nick McGrath, Minister of Intergovernmental and Aboriginal Affairs
William Parrott, Deputy Minister, Environment and Conservation
Diana Dalton, Deputy Minister, Natural Resources
Tracy English, Deputy Minister, Intergovernmental and Aboriginal Affairs
Don Burrage, QC, Deputy Minister, Justice
Charles Bown, Associate Deputy Minister, Natural Resources
Mr. Steve Pellerin, Nalcor Energy

CIMFP Exhibit P-01722

Page 1

Message: COR-2012-000999-01


From: [Harvey, Brian \[EX:/O=PSNL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BRIANHARVEY\]](#)
To: [Nippard, Melissa \[SMTP:MelissaNippard@gov.nl.ca\]](#)
Cc:
Sent: 06/04/2012 at 10:46 AM
Received: 06/04/2012 at 10:46 AM
Subject: Fw: Projet de Muskrat Falls - demandes de permis; n/d nÂ° 7550-001


Brian RM. Harvey

Director, Policy & Planning - Aboriginal Affairs

Intergovernmental & Aboriginal Affairs Secretariat

Government of Newfoundland and Labrador

(709) 729-1487  (w)

(709) 693-1612  (c)

Sent Via BlackBerry

Â _____ Â

From: Harvey, Brian
To: English, Tracy; Gover, Aubrey
Sent: Thu May 31 15:32:06 2012
Subject: Re: Projet de Muskrat Falls - demandes de permis; n/d nÂ° 7550-001

I have done a very quick and very rough translation, but it captures the essence.
Please see below.

Best,
Brian

This is in response to your letter of 29 May 2012. We note you have written in the official language of your government without providing a translation in French, which is the second language of our client.

Unfortunately, we do not find anything in your letter that is confirmed by the facts, save your summary of our letter of May 2, 2012.

You claim the Innu of Ekuanitshit have participated "fully" in the evaluation of the proposed Lower Churchill Generation Project.

The mere reading of the Ekuanitshit's submission to the Joint Review Panel (JRP) or the testimony of its chief, Jean-Charles PiÃ©tacho, would have revealed that the Ekuanitshit have continually raised the lack of resources or technical financial resources required to address the inadequacies of Nalcor's assessment of Ekuanitshit.

Your suggestion that the JRP report ensures that the Innu of Ekuanitshit already have ample information about potential adverse effects of the project shows at best a misreading of the report.

The JRP itself recognised it did not evaluate the project's effects on the Lake Joseph caribou, despite the concerns Ekuanitshit has expressed on this subject.

In its report, the JRP also:

- concluded "that the project is unlikely to bring benefits to Aboriginal communities in QC";
- recognised that "the commission was unable to assess project impacts on current land use by QC Aboriginal organisations";
- admitted that it "could not determine whether it would adversely affect land and resource use, nor ancestral rights and title"; and
- recommended that the question of "whether it would adversely affect land and resource use, [or] the ancestral rights and titles" of Innu on reserves in QC "should be examined under consultations conducted by the government."

However, your government undertook no such consultation with our client prior to issuing its response to the JRP Report on March 15, 2012. Your letter now states that such consultations will not take place after that response, either.

You express your understanding that the proponent intends to offer its technical and scientific experts to our client regarding the permit applications that were discussed in my letter of May 2.

However, this offer was never made to our client. Rather, Nalcor has sent executives and PR people and has never offered to send the terrestrial and marine biologists who could help the community analyse the negative effects of the project.

Moreover, the last two visits of Nalcor representatives were to discuss the so-called transmission line project between Labrador and Newfoundland. It is clear to us that this is the second phase of a single project to build a hydroelectric facility at Muskrat Falls. However, since your government and the proponent have always stubbornly insisted that this phase was a separate project and since this phase was the only topic of discussion, it is inappropriate to describe the information sessions held in Ekuanitshit as access to scientific expertise on the permit applications that your government is proposing to issue for the generation phase.

Also, you may recall that Nalcor had told the JRP that there was no indication of historical or contemporary land of the project area by the Innu of Ekuanitshit; yet, at the same time, Nalcor purported to desire information from them.

You also refer to a meeting held on May 8 in Sept Iles between our client and government officials from Newfoundland on the George River caribou. You should know that there was no discussion of the effects of the project on the herd, although the absence of a study of cumulative project on caribou is precisely one of the major flaws of the JRP report. Accordingly, this meeting is irrelevant to permits and authorisations in question.

In short, you rely upon a series of unsubstantiated assertions and conclude there is no need for the Province to provide capacity support to the Ekuanitshit Innu for its response to the deluge of permits and licenses on which your government purports to consult. Recall that departments send technical documents to our client in English only, and require a response within 30 days.

On another matter, you seem surprised that we ask departments in your government to share their information on "their understanding of the relationship between the activities authorised by the various permits and interests of the Innu of Ekuanitshit Innu" and "the potentially adverse impacts anticipated by these departments on your interests."

CIMFP Exhibit P-01722

Page 3

Know that this is your obligation according to the Supreme Court of Canada:

The Crown must give notice to the Mikisew and to engage directly with them (and not, as seems to have been the case here, an afterthought to the general public consultation session that was held with park users). This dialogue should have included the provision of information on the project dealing with the interests of Mikisew known to the Crown and the prejudicial effect that the project could have, according to the Crown, on that interest.

Mikisew Cree First Nation v.. Canada (Minister of Canadian Heritage), [2005]

If your government does not fulfil this obligation because it shares the proponent's conclusion that our client has no rights in the territory of the project, it would more expedient for all parties if it would state that fact now, and cease having us all believe the referrals are anything but a sham consultation.

Brian RM. Harvey

Director, Policy & Planning - Aboriginal Affairs

Intergovernmental & Aboriginal Affairs Secretariat

Government of Newfoundland and Labrador

(709) 729-1487 (w)

(709) 693-1612 (c)

Sent Via BlackBerry

Â _____ Â

From: English, Tracy

To: Harvey, Brian; Gover, Aubrey

Sent: Thu May 31 12:36:28 2012

Subject: FW: Projet de Muskrat Falls - demandes de permis; n/d n° 7550-001

Une autre lettre pour la traduction.

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From: Valerie Duro [mailto:VDuro@dionneschulze.ca]

Sent: Thursday, May 31, 2012 12:20 PM

To: English, Tracy

Subject: FW: Projet de Muskrat Falls - demandes de permis; n/d n° 7550-001

Â

<<Ltr_Me Aubrey Gover_30-05-2012.pdf>>

Madame English,

Veillez trouver ci-joint copie d'une lettre de Me David Schulze, envoyée hier, par télécopieur, à Me Gover. Nous avons tenté à plusieurs reprises, sans succès, de vous la faire parvenir par télécopieur. Aussi nous avons décidé de vous l'envoyer par courriel.

Meilleures salutations,

Valérie Duro

Assistante juridique / Legal Assistant

DIONNE SCHULZE, s.e.n.c.

507 Place d'Armes, #1100

Montréal (Québec) H2Y 2W8

Téléphone : 514-842-0748

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LABRADOR-ISLAND TRANSMISSION LINK
Environmental Impact Statement
Innu Nation Comments
June 12, 2012

GENERAL COMMENTS

Assessment of Effects on Innu Aboriginal and Future Treaty Rights

The EIS has not addressed the effects of the proposed Project on Innu rights to harvest. These rights will continue forever under the terms of the Final Agreement. The rights are recognized in the Innu Rights Agreement in Principle, which describes the various categories of Innu lands, and the Innu rights within those lands. The Innu negotiated those rights in the Labrador Innu Settlement Area, which rights are exclusive in Labrador Innu Lands, in order that they could harvest in perpetuity.

In other words, the EIS has not answered the more fundamental questions:

- What is the Proponent's understanding of the asserted or established Aboriginal rights and treaty rights held by the Innu of Labrador?
- What are the potential adverse effects of the Project on the exercise of asserted or established Aboriginal rights and treaty rights of the Innu of Labrador?
- What measures are proposed to avoid, reduce or otherwise mitigate potential adverse impacts on the exercise of asserted or established Aboriginal rights and treaty rights of the Innu of Labrador?

The Innu Nation recognizes that the duty to consult and, where appropriate, accommodate may or may not be met through the environmental assessment, and other actions are often required. This leads to a fourth question:

- What is the nature and scope of the accommodation of Innu Nation rights required in order that the proposed Project may be approved by the Provincial and Federal Governments, and has that accommodation been made?

Innu Nation has attempted to address how these questions might be answered in the context of the Innu right to hunt caribou in our response to Sections 10.3.3.2 and 12.3. Though the Innu are currently not hunting caribou south of Lake Melville and the Churchill River due to the moratorium, the Innu right to hunt caribou in that area remains.

		decommissioned.
45.	<p>13.3.5.4 Construction Effects: Fish Abundance and Species Assemblage</p> <p><i>Increased accessibility of watercourses due to the establishment of access roads and ROWs will result in increased fishing pressure from the Project personnel and / or the general public. This may lead to reduced abundance of recreationally fished species in some locations, thereby also affecting species assemblages.</i></p> <p><i>These effects would likely be confined to the RSA since it is unlikely that fishing activity would be conducted more than 1,000 m from the watercourse crossing, and could last the life of the Project (i.e., far-future duration), depending on the type of access.</i></p> <p>13.3.7.2 Definition and Determination of Significance</p> <p><i>Restricting access of anglers and poachers to previously inaccessible fishing areas within the ROW will be accomplished by temporary decommissioning of roads, gates and / or strategic boulder placements for appropriate areas where important salmon and trout populations will be vulnerable; if permanent access along the ROW will not be maintained, then increased angling pressure will not be a long term issue.</i></p>	<p>The EIS appropriately identifies the key issue for fish and fish habitat, namely increased fishing pressure resulting from creation and maintenance of an access trail along the entire route of the LITL.</p> <p>Innu Nation does not share the Proponent's confidence that gates and strategic boulder placements will be effective at preventing access along the maintenance trail. The EIS acknowledge that preventing access will be "difficult if not impossible". The extent of effects on fish and fish habitat are also potentially not limited to the RSA where the LITL crosses navigable waters (e.g. the Kenamu River, St. Paul River, etc.) as it would be quite easy to access these areas with inflatable and small watercraft transported on an OHV.</p>
	14 MARINE ENVIRONMENT: ENVIRONMENTAL EFFECTS ASSESSMENT	Any issues or concerns are addressed in response to other sections.
	15 EXISTING SOCIOECONOMIC ENVIRONMENT	
46.	<p>15.2.3 Archaeological Resources</p> <p>Sites of Cultural and Spiritual Importance</p> <p>15.5.7.4 Pakua Shipi</p> <p>Figure 15.5.7-4 Current Land and Resource Use - Pakua Shipi (2010 Interviews)</p>	<p>In our review of the Historic and Heritage Resources Component Study, Innu Nation noted that the study of Pakua shipi land use suffers from a number of serious deficiencies, which were detailed in our comments, and which can be briefly summarized as follows:</p> <ul style="list-style-type: none"> • the methods and reporting do not conform to best practice for indigenous use and occupancy map surveys; • data quality standards have not been met and, therefore, the data are not credible;

		<ul style="list-style-type: none"> • large polygons have been used, which do not provide the necessary accuracy, precision and reliability • more detailed, credible information is required in order to support claims of “current” land use by Pakut-shipu in areas (e.g. Mealy Mountains) where they have had no land use since the 1960s; • the temporal scope of the data is poorly defined; and • there is no discussion of data gaps or limitations
47.	Table 15.3.3-1 Region and Community Characteristics (2001 and 2006)	<p>It is important to note that though the population of Central and Southwestern Labrador decreased between 2001 and 2006, the population of the Innu communities increased, and again between 2006 and 2011. It is also quite likely that the general population did not decrease between 2006 and 2011 due to increasing economic activity.</p> <p>The Proponent is requested to update the census information in the EIS to reflect the 2011 census, and to adjust the analysis in the EIS accordingly. The Proponent is also requested to provide information projecting different scenarios for the growth of the Labrador population.</p>
48.	Table 15.3.5-1 Selected Crime Statistics, RCMP and RNC Newfoundland and Labrador, 2006 to 2009 Table 15.3.5-2 Provincial Court Offenders, Study Area Region / Policing Region, 2006 to 2009	<p>The increases in drug enforcement crimes in the Province are substantial, as are the increases in Labrador crimes (considering the stable population).</p> <p>The Proponent is requested to provide, to the extent available, a breakdown of crime statistics by category in Table 15.3.5-1 for Labrador or for regions within Labrador.</p>
49.	15.5.10 Cabins and Cottage Development Areas 15.5.10.1 Central and Southeastern Labrador <i>Seven cabins (one cottage and six remote cottages) are located within the transmission corridor in this region. The locations of these cottages in relation to the transmission corridor are shown in greater detail in Appendix B of the Communities, Land and Resources Use, Tourism and Recreation Component Study (AMEC 25 2010b).</i>	<p>Innu Nation has been unable to review these maps as they do not appear in Appendix B of the Communities, Land and Resources Use, Tourism and Recreation Component Study.</p>
50.	15.8 Visual Aesthetics 15.8.4 Analysis and Interpretation of the Pre-Project	<p>The Proponent appears to have misunderstood Innu Nation’s request for consideration of this location in the assessment of</p>



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COURTESY TRANSLATION

June 12, 2012

BY EMAIL TO: <Labrador-Island.TransmissionLink@ceaa-acee.gc.ca>
AND <pmarrie@gov.nl.ca>

Mr. Bill Coulter
Project Manager, Labrador-Island Transmission Link Project
Canadian Environmental Assessment Agency
1801 Hollis Street, Suite 200
Halifax, NS B3J 3N4

Re: Labrador-Island Transmission Link; your file no. CEAR 10-03-51746;
Our file no. 7550/001

Dear Sir,

Please find enclosed the submission of the Conseil des Innus d'Ekuanitshit in response to the call for public comments on the Environmental Impacts Statement submitted by Nalcor Energy for the above-mentioned project.

Yours,

DIONNE SCHULZE

David Schulze

cc: Chief Jean-Charles Piétacho
Conseil des Innus de Ekuanitshit
BY FAX: 418-949-2085

**COMMENTS ON THE ADEQUACY OF THE ENVIRONMENTAL
IMPACT STATEMENT ON THE LABRADOR-ISLAND TRANSMISSION
LINK**

CEAR 10-03-51746

Conseil des Innus d'Ekuanishit

Based on comments by
Dr. Fred Whoriskey,
Dalhousie University

June 12, 2012

1. INTRODUCTION

1.1 Context

Nalcor Energy submitted an Environmental Impact Statement (EIS) to the Canadian Environmental Assessment Agency in order to obtain the necessary authorization for the construction of a high voltage direct current (HVdc) transmission link. The purpose of the Labrador-Island Transmission Link is to transmit the energy produced to the Newfoundland and to proposed mining projects in Labrador.¹

The five-volume EIS was submitted to the public on April 16, 2012. Although the proponent provided no funding for the Conseil des Innus d'Ekuanitshit ("Council") to review EIS, Council nevertheless felt obliged to bear the cost of a review due to the level of concern expressed by the community. Prof. Fred Whoriskey of Dalhousie University was hired to review the EIS and comment specifically on the potential impacts most likely to affect the wellbeing of the Innu of Ekuanitshit.

Of particular concern to the community are the Atlantic salmon stocks that migrate through the Strait of Belle Isle before returning home to spawn up the rivers of the North Shore of Québec. Also, the woodland caribou herds, which travel throughout northern Québec and Labrador, are also of concern.

The objective of this review was to determine the quality of the studies, the adequacy of the methodology used, and to assess whether the protection of the salmon stocks and caribou are sufficient to ensure the continued survival if this project were to go ahead.

1.2 Innu of Ekuanitshit

Nalcor remains committed to its understanding that the "available data do not indicate contemporary traditional land use by the Innu of Ekuanitshit in or near the transmission corridor or Study Area" (EIS p.15-140). This artificially narrow understanding of the potential impacts of this project is convenient for the proponent and yet unrelated to the realities of Innu life or the principle of the ecosystem approach. Throughout the EIS of the Labrador-Island Transmission Link, it is acknowledged that there may be potential negative impacts on the caribou herds and other animal life, as well as marine life including salmon stocks. Given the Innu of Ekuanitshit's reliance on this wildlife their subsistence living, cultural practices and economic security, the need to consult and accommodate this community is undeniable.

1.3 Environmental Impact Statement Overview

Certain shortcomings in the design and undertaking of this EIS have undermined the entire assessment. It is clear from the start that the scoping of this project is not in conformity with *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2 or with basic ecological principles. Scoping plays a critical role in ensuring cumulative impacts are properly taken into

¹ <http://www.cbc.ca/news/canada/newfoundland-labrador/story/2012/06/07/nl-alderon-muskrat-falls-607.html>

consideration. This is particularly true for mega-projects such as this one that cover an enormous amount territory.

Additionally, the decision to rely predominantly on literature reviews to determine potential impacts provides a significantly less reliable foundation upon which to determine impacts than if proper scientific studies had been undertaken. These studies would have established baseline information critical to assessing harm and implementing mitigation measures. Often the literature consulted is regarding foreign environments of little relevant to Labrador and Newfoundland. Moreover, literature gaps resulted in having the proponent speculate as to potential impacts providing even less reliable data. This approach flies in the face of the precautionary approach.

2. ATLANTIC SALMON

While these anadromous fishes spawn in rivers, they spend most of their lives at sea. Recent studies are demonstrating a growing understanding of the critical importance of the Strait of Belle Isle plays in fish migration.² As the Atlantic salmon fished by the Innu of Ekuanitshit pass through the Strait of Belle Isle, the transmission link would have a direct effect on the Innu of Ekuanitshit.

The majority of Atlantic salmon populations from Lake Ontario to the Bay of Fundy are listed as either threatened or endangered.³ The future survival of wild Atlantic salmon, amongst other species, is in a precarious state. Various dimensions of this proposed transmission link have the potential to cause significant harm to the Atlantic salmon population. Although the comments provided below will focus on the operational and management phase of the transmission link, it is essential that the construction phase be conducted in the least harmful manner. Specifically, no construction should occur during the migratory period for the Atlantic salmon through the Strait of Belle Isle.

Recommendation #1 – Do not undertake construction of the transmission link during the Atlantic salmon migration period through the Strait of Belle Isle.

2.1 Electromagnetic Fields

Nalcor acknowledges the project activities would cause both harmful underwater noise and electromagnetic (EM) emissions potentially altering fish migration patterns and behaviours (EIS 14-7). As salmon contain magnetite, which is believed to help them migrate long distances with accuracy, they are deemed to be one of the species most vulnerable to the affects of EM emissions (EIS 14-41). For the Innu of Ekuanitshit who rely on the successful return of the

² See for example: <http://www.asf.ca/research_videos.php> and <<http://thechronicleherald.ca/heraldmagazine/100191-great-big-sea-ns-companies-plumb-depths-of-3-trillion-market-for-ocean-tech>>

³ COSEWIC Wildlife Database. See: <http://www.cosewic.gc.ca/eng/sct1/SearchResult_e.cfm?commonName=atlantic+salmon&scienceName=&Submit=Submit>

Atlantic salmon to spawn up the rivers along the North Shore, the prospect of having the migration altered is of significant concern.

This admission of possible dangers to salmon populations in the EIS is followed by a wholly inadequate assessment of the potential impacts on the basis of limited and out-of-date scientific literature. More needs to be done to determine the potential threat EM emissions pose to Atlantic salmon stocks and other vulnerable species.

In determining possible impacts on migration and fish behaviour, the proponent should determine and list the migratory routes of potentially affected species. The failure to establish this basic baseline information makes effective monitoring impossible.

In summarizing the potential negative impacts of the transmission link, Nalcor states the following:

There is a low to moderate degree of confidence that the level of effect will not be greater than predicted because there is greater uncertainty with respect to some of the residual effects on the Fish relative to those discussed for the other two KIs. (EIS 14-45)

While the meaning of this sentence is unclear, it would be significantly more reassuring if the proponent had a high degree of confidence with regard to the predicted effects on fish populations.

With regard to considering the cumulative impacts, Nalcor chose to exclude the Emera Maritime Link because the projects do not overlap (EIS 14-49). In the case of creating electromagnetic fields (EMF), the fact that together these lines would alter both entrances to the Gulf of the St. Lawrence could have important cumulative impacts. Therefore it is inappropriate to exclude the Emera Maritime Link from this assessment.

Recommendation #2 – Undertake meaningful analysis of the potential impacts of electromagnetic fields on Atlantic salmon migration patterns.

Recommendation #3 – Determine baseline conditions against which effective monitor can occur with regard to impacts from the electromagnetic fields.

Recommendation #4 – Include the proposed Emera Maritime Link in the cumulative impacts assessment when determining impact of electromagnetic emissions.

2.2 Water Crossings

Hundreds of water crossing are expected to be necessary for the construction of access infrastructure. These water crossing are said to include “fording, culvert installation or bridge installations” (EIS 3-48). As acknowledged by Nalcor, improperly designed, installed or maintained culverts are notoriously harmful to fish stocks (EIS 13-41). A commitment by

Nalcor to install fish-friendly culverts is essential to allow for the free movement of the fish upstream to allow for spawning.

In order to protect Native fishing rights, the Courts ordered the State of Washington to repair or remove its problematic culverts that impede salmon spawning grounds.⁴ Having to retrofit construct in this manner should be avoided right from the start to avoid costly litigation and costly repairs.

Recommendation #5 – Commit to using and properly installing fish-friendly culverts wherever water crossing is inevitable.

2.3 Herbicide Use in Riparian Zones

Nalcor's assurance that the toxic herbicides used near aquatic life will be applied "in a careful manner, following manufacturers' instructions and in accordance with the Pesticides Control Regulations 1996" is a feeble commitment indeed. In order to protect wildlife, additional commitments must be made to using the least harmful methods, including alternatives to toxic herbicides for vegetation management, particularly in riparian zones.

Recommendation #6 - Commit to the least harmful vegetation management control strategies above and beyond the most basic legal requirements.

3. WOODLAND CARIBOU

As noted above, the caribou are also a critical source of food for the Innu and an integral part of their traditional and contemporary culture. It is clear that there are many potentially harmful effects that could arise as a result of this project, such as from the extensive use of herbicides, the increased human access, and habitat fragmentation.

3.1 Access Roads

No information is provided with regard to the location of the access roads that will be required to transport personnel, equipment and materials. The only information that is provided is a prediction of the number of additional kilometres of road that will need to be built (EIS 3.4.3.1). As these roads will cause additional habitat fragmentation and will allow for increased human access to hunt and fish wildlife, more precise information is required.

Nalcor acknowledges that "OHV access by the public along the ROW will likely be an issue throughout the Operations and Maintenance Phase of the Project". Although it states it will develop "access control measures... to manage public OHV use of the ROW and Project roads and trails", specifics must be provided regarding what control measures are envisioned to determine their effectiveness.

⁴ *United States v. Washington (Culverts Opinion)*, No. C70-9213, Subproceeding No. 01-1, 2007 WL 2437166 (W.D. Wash., 22 August 2007).

Recommendation #7 – Provide specific information with regard to the length and location of access roads for construction and operations.

Recommendation #8 – Commit to replanting access roads no longer required post-construction.

Recommendation #9 – Provide additional information regarding the access control measures for new roads.

4. CONCLUSIONS

Due to the scale of this project and its capacity to cause significant, long-lasting harm to the environment and the Innu way of life, it is inappropriate that Nalcor refused to provide funding to the Conseil des Innus d'Ekuanitshit to review the Environmental Impact Statement. The continued denial by the proponent of the potential direct impact this project, along with the proposed Lower Churchill Hydroelectric Project, would have on Ekuanitshit is dishonest. These two projects threaten various wildlife species critical to Innu culture and sustenance. However, due to limited time and funding this review focused on the two most vulnerable and important species likely to be harmed by this project.

The Atlantic salmon upon which the Innu of Ekuanitshit rely migrate through the Strait of Belle Isle. Similarly, the woodland caribou herds fundamental to Innu life migrate through the transmission link zone. Therefore the terrestrial, freshwater and marine components of this project have the capacity to impact the Innu of Ekuanitshit's lives and wellbeing. The recommendations enumerated above are designed to mitigate the harm of this project, should it be approved. It should be stated, however, that despite these recommendations, the Conseil des Innus d'Ekuanitshit oppose this project due to the inevitable negative impacts it would have on the environment.

FACSIMILE**TO:**

Mr. David Schulze

FROM:

Gilbert Bennett

COMPANY:

Dionne Schulze Attorneys

DATE:

12/19/2012

FAX NUMBER:

514-842-9983

PAGES INCLUDING COVER:

9

PHONE NUMBER:

514-842-0748

SENDER'S REFERENCE NUMBER:

L010-D021-200-140148-00004

RE:

Joint Review Panel Recommendation 15.5

YOUR REFERENCE NUMBER:☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE**NOTES/COMMENTS:**

Cc Chief Jean-Charles Pietacho
Fax: 418-949-2085

The original will follow by mail.

This facsimile message is privileged and contains confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this in error, please notify us immediately by telephone and return the original transmission to us by mail without making a copy.

Kathy Winsor
Executive Assistant, Nalcor Energy
Phone: 709-737-1805 / Fax: 709-737-1952



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Rec. No. L010-D021-200-150148-00004

December 19, 2012

Mr. David Schulze
Dionne Schulze s.e.n.c
507 Place d'Armes # 1100
Montreal, QC H2Y 2W8

Dear Mr. Schulze:

I am writing regarding your request for further information on the Joint Review Panel Recommendation 15.5 – Lower Churchill Project Monitoring and Community Liaison Committee.

In its response to the JRP report, the Government of Newfoundland and Labrador (Government) confirmed its commitment to ensuring consultation with affected Aboriginal groups, communities, and relevant stakeholders to address public concerns and communicate monitoring results. Government also confirmed Nalcor will establish a committee to provide feedback and advice to both Nalcor and Government on the effects of the Project.

Consistent with Government's response, Nalcor Energy is establishing a Community Liaison Committee (CLC) for stakeholders in the Upper Lake Melville region. The purpose of the CLC is to promote open communication with area stakeholders and Aboriginal groups and provide them with an avenue to bring forward feedback on community, environmental, economic or other matters relating to the development of the Lower Churchill Hydroelectric Generation Project. The CLC is governed by Terms of Reference, a draft of which is enclosed with this letter, which outline in more detail the purpose, objectives, membership, roles and responsibilities of the members.

Nalcor wishes to take this opportunity to emphasize that the CLC is not the only avenue for consultation; we are open to other mechanisms or approaches that may be more effective or useful to Ekuanitshit. The mechanisms that are currently available include:

- (i) Direct engagement with Nalcor representatives on issues of concern, either in the form of conference calls or meetings as required;

CIMFP Exhibit P-04215

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Mr. David Schulze
Dionne Schulze s.e.n.c.
December 19, 2012
Page 2

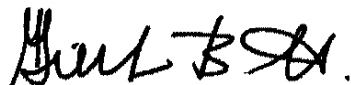
- (ii) participating in, and providing comments through, the permitting process established by Government; and
- (iii) participation in the CLC.

As indicated above, Nalcor would also consider suggestions from Ekuanitshit for alternate consultation mechanisms. If Ekuanitshit would like to send a representative to participate in the quarterly CLC meetings, they are welcome to do so. Participation on the committee is voluntary and any costs associated with participation in the CLC is the responsibility of the participant. CLC meetings will be conducted and recorded in English, as will as all related material. The meeting minutes and agendas will be available online following the meetings; a dedicated website is currently under construction and will be established shortly. If a member of Ekuanitshit wishes to attend the CLC, I invite them to contact my office at (709)737-1805.

Up-to-date information on construction-related activities, schedule, and employment and business opportunities is also available on the Project website.

To summarize, while Ekuanitshit is welcome to participate in any of the Project's consultation and community engagement activities, alternate approaches such as direct engagement on specific issues may be more useful and productive for the community. We would be pleased to discuss this further – either to discuss the specific issues on which the community wishes to engage, or the mechanics of how best to engage. We look forward to hearing from you.

Sincerely,



Gilbert J. Bennett, P. Eng.
Vice-President, Lower Churchill Project

Enclosure – CLC Terms of Reference

cc. Chef Jean-Charles Piétacho
Rosanne Williams



**LOWER CHURCHILL HYDROELECTRIC GENERATION PROJECT
COMMUNITY LIAISON COMMITTEE
TERMS OF REFERENCE
DRAFT**

Lower Churchill Project

The Lower Churchill Project is comprised of two proposed installations on the lower Churchill River - Gull Island and Muskrat Falls for a combined generating capacity of over 3,000 megawatts.

Background – Community Liaison Committee

Nalcor Energy (**Nalcor**) is committed to open communication and ongoing consultation with the public. To better facilitate this and understand local interests as they relate to the Lower Churchill Hydroelectric Generation Project (**Project**), Nalcor is establishing a Community Liaison Committee (**Committee**) in the Upper Lake Melville region. The purpose of the Committee is to promote open communication with area stakeholders and provide them with an avenue to bring forward feedback on community, environmental, economic or other matters relating to the development of the Project. The Committee will facilitate communication between Nalcor and area residents, Aboriginal groups, municipal representatives and community stakeholders.

1. Purpose

The Committee is an advisory group that provides feedback, knowledge, and suggestions to Nalcor on Project-related issues.

The purpose of the Committee is to ensure the healthy, two-way flow of information between Nalcor and the constituent communities and organizations represented on the Committee. Nalcor will provide the Committee with timely and accurate information about the Project. Committee Members will serve as a sounding board for Nalcor, providing a representative cross-section of community views and feedback on the Project.

It will not be a decision making forum, and the Committee will interact with Nalcor in relation to the Project.

2. Objectives

2.1. The objectives of the Committee are:

- (a) to facilitate open communication between Nalcor and area residents, Aboriginal groups, municipal representatives and community stakeholders of the Upper Lake Melville region;
- (b) to bring forward feedback from area stakeholders about the Project to Nalcor;
- (c) to act as a liaison between area stakeholders and Nalcor;
- (d) to help Nalcor better understand local interests of the residents and organizations of the Upper Lake Melville region.

3. Guiding Principles

3.1. The following principles will guide the operations of the Committee:

- (a) Respect and Dignity: the Committee will uphold the highest level of integrity, recognizing and respecting the opinion, knowledge, culture and abilities of Members.
- (b) Honesty and Trust: the Committee will be factual and sincere when sharing Project information and addressing priorities, interests and concerns.
- (c) Open Communication: the Committee will encourage the public to express opinions and foster a supportive environment where all ideas can be shared respectfully.

4. Membership

4.1. Composition. The Committee shall be composed of a maximum of 13 members (**Members**) invited from Nalcor, local communities, Aboriginal groups and the community at large as follows:

- (a) One Member from each of the communities of Happy Valley-Goose Bay, North West River, Sheshatshiu, and Mud Lake (collectively, the **Communities**, and each a **Community**), appointed as follows:
 - i. a resident of Happy Valley-Goose Bay appointed by the Town of Happy Valley-Goose Bay.
 - ii. a resident of Northwest River appointed by the Town of Northwest River.
 - iii. a resident of Sheshatshiu appointed by the Sheshatshiu Band Council.
 - iv. a resident of Mud Lake appointed by the Mud Lake Improvement Committee.
- (b) One Member from each of Innu Nation, Nunatsiavut Government, and NunatuKavut Community Council (collectively, the **Aboriginal Communities**, and each an **Aboriginal Community**), appointed as follows:

- i. a Labrador Innu resident in one of the Communities appointed by Innu Nation.
 - ii. a Labrador Inuit resident in one of the Communities appointed by the Nunatsiavut Government.
 - iii. a NunatuKavut Member resident in one of the Communities appointed by the NunatuKavut Community Council.
 - (c) Four Members-at-Large. Members-at-Large shall be appointed by a majority decision of the Members representing the Communities, Aboriginal Communities, and Nalcor. Appointments shall be made from a list of residents of the Communities who have responded to a public Expression of Interest (EOI) to serve on the Committee. Consideration for broad representation from all Communities shall be given when Members-at-Large are appointed.
 - (d) Up to two Members appointed by Nalcor; and
 - (e) A Secretary to the Committee appointed by Nalcor.
- 4.2. Vacancy. If a Community or Aboriginal Community does not appoint a Member to the Committee, the position will remain vacant until an appointment is made. Vacant positions will not affect the operation of the Committee or be considered in the total number of Members for the purpose of calculating a quorum of the Committee. At the end of each calendar year, the Committee may call for an EOI to fill any vacancies in the Member-at-Large positions.
- 4.3. Term of Membership. Each Nalcor, Community or Aboriginal Community Member shall be appointed at the discretion of the appointing entity. Members-At-Large will be appointed for a two-year term and may be reappointed for successive terms.
- 4.4. Chairperson and Vice-Chairperson. The Committee will elect the Chairperson and Vice-Chairperson for a two-year term from among all voting Members. At any time, either the Chairperson or Vice-Chairperson shall be a Member representative of Nalcor. The Chairperson shall preside over the meetings of the Committee and the Vice-Chairperson will be the Chairperson's designate in the event the Chairperson cannot attend a Committee meeting.
- 4.5. Continuity. Members-At-Large, the Chairperson or the Vice-Chairperson whose term has expired shall continue to serve until a vote has been held to appoint a successor.
- 4.6. Secretary. The Secretary will be a non-voting member of the Committee.
- 4.7. Funding. Nalcor will be responsible for the costs associated with the effective operation of the Committee, including funding for any required support resources and the cost of hosting Committee meetings. No funding will be made available for invited groups or other individuals to attend a meeting.

- 4.8. Participation by Members. Participation on the Committee is voluntary and members will not be compensated for their time. Committee Members will be reimbursed by Nalcor only for expenses incurred to attend Committee meetings from their residences within the Communities. Expense eligibility and reimbursement will be in accordance with Nalcor's corporate travel policies.

5. Term of the Committee

- 5.1. Term. The Committee shall operate in accordance with these Terms of Reference throughout the construction phase of the Project and for the first 10 years that the Project is in operation, at which point Nalcor, in consultation with the Committee, the Communities, the Aboriginal Communities, and the Government of Newfoundland and Labrador, shall determine whether the term of the Committee should be extended.

6. Meetings

- 6.1. Meetings. The Committee shall meet at least four times per year on a quarterly basis, with additional meetings scheduled as required and as agreed by the Members.
- 6.2. Location. Meetings shall be held at a suitable location in Happy Valley-Goose Bay as determined by Nalcor. Meetings may be held by teleconference or by other electronic means as appropriate and as agreed to by the Members.
- 6.3. Scheduling. The date and time of each meeting will be scheduled annually by a decision of the Committee at the beginning of each calendar year.
- 6.4. Agenda. The Secretary shall be responsible for preparing and distributing meeting agendas. Any Member can request a matter to be placed on the Agenda for the next meeting by communicating the necessary information to the Secretary no later than five business days prior to the meeting at which the matter is to be discussed.
- 6.5. Designates. Community, Aboriginal Community and Nalcor can send a designate in their place and should notify the Secretary in advance of the meeting.
- 6.6. Quorum. The quorum for a meeting of the Committee is 50% of all Members, and shall include one Nalcor Member. Any decision of the Committee will be determined by a majority of the Members present.
- 6.7. Minutes. The minutes of each meeting of the Committee shall be prepared by the Secretary or designate and distributed to the Members within 15 business days of that meeting.

- 6.8. Recommendations. The Committee may make recommendation to Nalcor for its consideration.
- 6.9. Technical Resources. If required, Nalcor subject matter experts will be made available to the Committee.

7. Roles and Responsibilities of Committee Members

- 7.1. Roles and Responsibilities. The Members shall:
- (a) bring forward feedback from area stakeholders about the Project to Nalcor;
 - (b) provide feedback and offering suggestions or recommendations to Nalcor including potential ways to mitigate impacts on individuals and communities and ways to ensure Project-related community relations and communications efforts are being effectively implemented;
 - (c) act as a liaison between area stakeholders and Nalcor;
 - (d) disseminate information to the Communities or Aboriginal Communities as may be required by the Committee; and
 - (e) facilitate achieving the objectives of the Committee.

8. Roles and Responsibilities of the Chairperson or designate

- 8.1. The Chairperson or designate will:
- (a) guide development of meeting agendas based on input from the Committee, ensuring that agenda items support the Committee's objectives;
 - (b) facilitate discussion to ensure a balance of views and concerns is maintained;
 - (c) ensure the roles and responsibilities of Committee members is maintained; and
 - (d) ensure Committee meeting protocols are maintained.

9. Roles and Responsibilities of Nalcor

- 9.1. Nalcor shall:
- (a) provide accurate, timely and comprehensive information to the Committee, including information relevant to Project mitigation, impacts monitoring, adaptive management, and social and economic impacts;
 - (b) respond in a timely manner to questions and reasonable requests for information from the Committee;
 - (c) distribute relevant input received from the Committee in relation to the Project to the Project team, where appropriate;
 - (d) provide administrative or other support or resources to the Committee, as requested or required;

- (e) make publically available information related to the operation of the Committee;
and
- (f) disseminate minutes and other information from the Committee to the public and other stakeholders.

10. Expectations of Committee Members

10.1. All Members are expected to be:

- (a) aware of Nalcor's Values, business code of conduct, safety policies and guidelines and operate the Committee in a safe manner;
- (b) respectful of the views and opinions of the other Committee Members; and
- (c) respectful of the confidentiality of other Members.



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July 8, 2013

TRANSLATION

BY FAX: 709-737-1952

Mr. Gilbert J. Bennett
Vice-president, Lower Churchill Project
Nalcor Energy
500 Columbus Drive
PO Box 12800
St. John's, NL A1B 4K7

Subject: Hydroelectric power generation project on the Lower Churchill River, our file 7550-001;
Provincial authorizations permitting the construction of power transmission lines between Labrador and the island of Newfoundland, our file 7550-005

Mr. Bennett,

Introduction

This is a follow up to your letter of December 19, 2012 regarding the post-assessment authorizations for the Muskrat Falls hydroelectric generating station and the meetings of the Project Monitoring and Community Liaison Committee ("CLC").

We did not consider it appropriate to respond earlier to this letter while your attorneys were arguing in Federal Court that some such actions could constitute fulfilment by the federal government of its duty to consult and accommodate.

Liaison Committee



Mr. Gilbert J. Bennett
Nalcor Energy
July 8, 2013
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In addition, we have noted from the minutes of the first meeting of the CLC that the Nunatsiavut Government, the Innu Nation tribal council and the NunatuKavut organization have all chosen not to participate. It would not be appropriate for the Conseil des Innu de Ekuanitshit to participate in their absence. In any case, our client cannot accept your suggestion that such participation should take place at its expense.

The question of the Red Wine Mountain caribou herd

As you know, the Comprehensive Study Report made public by the Canadian Environmental Assessment Agency (“CEAA”) on June 27, 2013 concluded that “the Project, when cumulative environmental effects are taken into account, is likely to cause significant adverse environmental effects on the RWMH [Red Wine Mountain Herd]” (p. 63). The caribou, along with the salmon, have always been at the heart of the Innu of Ekuanitshit’s concerns about this project.

We would remind you that Nalcor had already suggested that there would also not be any effect on the herd as a result of the construction of the Gull Island and Muskrat Falls generating stations, however, the Joint Review Panel (“JRP”) came to the opposite conclusion.

The JRP thus recommended (7.6) that “if the Project is approved, the provincial Department of Environment and Conservation ensure that adequate resources are available so that all reasonable efforts to ensure the recovery of the Red Wine Mountain caribou herd are taken” (p. 118).

Furthermore, the JRP recommended (7.10) that Nalcor “should carry out the following monitoring programs: [...] monitor the response of the Red Wine Mountain caribou herd including any population changes through the construction phase and in the early part of the operation phase; [and] monitor wolf predation of caribou, particularly the Red Wine Mountain herd” (p. 125).

We are not aware of any such programs and we would note that in its addendum to the Environmental Impact Statement on the transmission lines between Labrador and the island of Newfoundland, Nalcor explains that it has not yet decided on the content of its follow-up study, merely mentioning parameters to be monitored that might be included in the study.



Mr. Gilbert J. Bennett
Nalcor Energy
July 8, 2013
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The required engagement

Your letter indicates an openness to suggestions from the Innu of Ekuanitshit on alternative consultation mechanisms and raises the possibility of direct engagement with Nalcor on specific issues.

We would invite you to read the attached letter that we sent today to Mr. Bill Coulter of the CEAA. Our client expects a meeting with those responsible for the federal environmental assessment of the power transmission lines between Labrador and the island of Newfoundland to discuss the cumulative environmental effects on the Red Wine Mountain caribou herd.

We have also attached a letter to your Environment and Regulatory Compliance Manager, Ms. Marion Organ, regarding the provincial authorizations permitting the construction of the transmission lines.

You will note that we expect that your company will participate fully in the meeting to be convened with the CEAA and, as we stated to Ms. Organ, we would not have any objection if Nalcor preferred to qualify its participation at such a meeting as a direct engagement mechanism on a specific issue in the context of the permits issued for the construction of the hydroelectric generating station at Muskrat Falls, as outlined in your letter of December 19, 2012.

Our expectation, as outlined in the attached letters, is that independent experts would be retained, mandated by the community of Ekuanitshit, and paid for by your company, by your shareholder the province or by the federal government.

Please note that we also require the disclosure of all data relevant to the status and the future of the Red Wine Mountain caribou herd, including the disclosure of all current or anticipated projects in its habitat.

Conclusion

You are aware that our client's experience with your company has not been a happy one.

We now offer you the possibility of turning the page and demonstrating, first of all, respect to the Innu of Ekuanitshit, and second of all, seriousness with regard to the protection of the Red Wine Mountain caribou herd.



Mr. Gilbert J. Bennett
Nalcor Energy
July 8, 2013
Page 4

In anticipation of receiving your response, please accept, Mr. Bennett, our best regards.

DIONNE SCHULZE

[S]

David Schulze

c.c: Chef Jean-Charles Piétacho
Conseil des Innus de Ekuanitshit
PAR TÉLÉCOPIEUR : 418-949-2085

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Rec. No: L010-E023-203-150148-00001

26-Jul-2013

Dione Schulze – Attorneys
507 Place d'Armes #1100
Montreal Quebec
H2Y 2W8

Attention: Mr. David Schulze

**Subject: Reply to your letter dated July 8th, 2013 concerning the Labrador-Island
Transmission Link Project (Transmission Project)**

Dear: Mr. Schulze

In response to your letter to regarding the Transmission Project, on behalf of Nalcor Energy – Lower Churchill Project, I would like to provide the following response.

The Project has been copied on correspondence from the Canadian Environmental Assessment Agency (CEAA) indicating that they would be meeting with Conseil des Innus de Ekuanitshit in relation to the Comprehensive Study report that has been produced by CEAA. The Project was also copied on correspondence from the Province of Newfoundland and Labrador addressed to the Conseil des Innus de Ekuanitshit regarding the Red Wine Mountain Caribou herd. The Project will defer to the Federal and Provincial authorities in leading the dialogue regarding this important issue to all parties concerned. We have and will continue to provide Provincial and Federal regulatory authorities with information related to the Project for their review and consideration, and will also consult with aboriginal groups in accordance with the consultation guidelines and protocols established for the Project.

Related to the project specific information available on the Transmission Project at this time, I would like to confirm that no new information is currently available beyond that provided through the environmental assessment process. More specifically and in relation to caribou, Nalcor has provided Ekuanitshit with an extensive body of material including

Mr. David Schulze
26-Jul-2013

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component studies, the environmental impact statement, and also supplemental information to the EIS.

I would like to confirm that as new information is obtained and becomes available the Project will make this information available to yourselves and the Provincial and Federal authorities for further consultation and engagement, including any appropriate meetings, at that time.

Based on the above and the nature of the meeting on July 30th I would like to thank you for your invitation to participate but a representative from the Project will not be in attendance.

Regards
Sincerely,



Ms. Marion Organ
Environment and Regulatory Compliance Manager
Lower Churchill Project



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**COMMENTS OF THE INNU OF EKUANITSHIT
ON THE COMPREHENSIVE STUDY REPORT**

Labrador - Island Transmission Link Project
CEAR No. 10-03-51746

David Schulze
DIONNE SCHULZE

July 27, 2013



Preface

These submissions are not to be taken as agreement by the Innu of Ekuanitshit as to the adequacy of their consultation and accommodation with respect to this project, nor with the accuracy of the comprehensive study report (CSR) issued by the Canadian Environmental Assessment Agency (the Agency).

Introduction

The Woodland caribou has been recognized as a threatened species pursuant to the *Species at Risk Act*, S.C. 2002, c. 29 (SARA), since it came into force in 2003: Sched. 1, Part 3. This means “that is likely to become an endangered species if nothing is done to reverse the factors leading to its extirpation or extinction”: s. 2(1).

Environment Canada’s recovery strategy for Woodland caribou under SARA has specifically recognized that among the “activities that are likely to result in the destruction of critical habitat” is “any activity resulting in the fragmentation of habitat by human,” including “hydroelectric corridors”: *Recovery Strategy for the Woodland Caribou* (*Rangifer tarandus caribou*), *Boreal population, in Canada*, p. 36.

The Government of Canada’s decision on the environmental assessment of the Labrador-Island Transmission Link Project is therefore its opportunity for something to be done to reverse the Woodland caribou’s decline towards extirpation or extinction.

Protection for the Red Wine Mountain Herd under provincial law

In 2002, the Government of Newfoundland also recognized Woodland caribou as threatened: *Endangered Species List Regulations*, NLR 57/02, Sched. B.

This designation meant that it was “likely to become endangered if nothing is done to reverse the factors limiting its survival,” where being endangered meant it would face imminent extirpation or extinction”: *Endangered Species Act*, SNL 2001, c. E-10.1, s. 7.

In 2004, Newfoundland’s biologists concluded that recovery of the Red Wine Mountain Herd, along with that of the other two sedentary woodland caribou herds in Labrador (the Lac Joseph and Mealy Mountains herds), “is ecologically and technically feasible.”

It added that the herd’s “inherent capacity... to recover is excellent” if challenges posed by hunting, resource development and extraction activities “can be managed or overcome”: I. Schmelzer, et al., *Recovery strategy for three Woodland caribou herds* (*Rangifer tarandus caribou*; *Boreal population*) in *Labrador* (Department of Environment and Conservation, Government of Newfoundland, 2004), pp. v-vi.



Even after the release of the provincial recovery strategy, however, environmental groups noted its shortcomings:

- it contained “no requirements to maintain roadless areas for caribou”: Canadian Parks and Wilderness Society/Sierra Club of Canada, *Uncertain Future: Woodland Caribou and Canada’s Boreal Forest; A report on government action*, May 2006, p. 11;
- it “failed to adequately identify mitigation strategies for future industrial impacts”: p. 17;
- “proposed roads that could affect caribou were not addressed by mitigative strategies”: p. 17.
- “threats to the survival of the species, including any habitat loss, are not adequately addressed (SARA, Section 41 (1))”; and
- “a schedule of studies to identify critical habitat is not provided (SARA, Sec. 41)”: Sierra Club of Canada, *A Review of Labrador’s Draft Recovery Plan for Woodland Caribou*, April 2005, pp. 10-11.

But the intervening years demonstrated that the most serious shortcoming in the provincial Recovery Strategy was inaction. While it provided for “an accompanying Action Plan, to be drafted within the next 2 years,” to “be updated as new information becomes available, and revised every five years until recovery has been achieved” (Schmelzer 2004, p. vi), none has ever been adopted.

More particularly, the promised “process of designating critical habitat” (p. 11) has never been completed. Such a designation would have required the provincial Minister of Environment and Conservation to “release to the public a statement outlining how the habitat will be protected”: *Endangered Species Act*, s. 25.

According to the Agency’s comprehensive study report on this project:

If the Project is approved, Newfoundland and Labrador will require Nalcor to obtain a Section 19 Economic Activity Permit under the provincial *Endangered Species Act*. As part of this permit, Nalcor will be required to prepare and submit to the provincial Minister of Environment and Conservation for approval a Species at Risk Project Impacts Mitigation and Monitoring Plan. Approval of this plan will be a precondition to the issuance to Nalcor of the required Economic Activity Permit under section 19 of the *Endangered Species Act*.

p. 35

The reference is to the following power:



19. (1) The minister may, with the approval of the Lieutenant-Governor in Council, issue a permit to a person to engage in an activity affecting a designated species, the residence of a specimen of a designated species or critical or recovery habitat, where, in the opinion of the minister,

(a) the impact on the designated species is incidental to the carrying out of an activity that is economically beneficial to the province;

(b) there is no reasonable alternative; and

(c) the activity will not prevent the recovery or survival of the designated species.

It is difficult if not impossible to understand on what basis the provincial Minister of the Environment and Conservation could reach a reasonable conclusion under s. 19(c) that this project would not prevent “survival of the designated species,” given that the Minister still has not identified the Red Wine Mountain herd’s critical habitat.

Protection under federal law

In 2012, Environment Canada concluded: “Recovery of all boreal caribou local populations across Canada is technically and biologically feasible.” See: *Recovery Strategy for the Woodland Caribou*, p. vi (emphasis added).

Note that the Minister had previously told the Federal Court that this recovery strategy would be posted by the summer of 2011 and conceded that by then, he had already failed to respect the time limits set out in SARA: *Adam v. Canada (Environment)*, 2011 FC 962, para. 61, 29. In fact, the strategy should have been published by June 5, 2007: SARA, s. 42(2).

According to the federal government, recovery of a species at risk has the following meaning:

2.1 What is Recovery?

This is a topic of much discussion. Formally:

In the context of species at risk conservation, recovery is the process by which the decline of an endangered, threatened or extirpated species is arrested or reversed, and threats removed or reduced to improve the likelihood of the species persistence in the wild.

A species will be considered recovered when its long-term persistence in the wild has been secured.



Department of Fisheries and Oceans, Habitat Program Services Branch, *Practitioners Guide to the Species at Risk Act (SARA) for Habitat Management Staff – Draft*, March 2006¹, p. 58 (emphasis added)

The Government of Canada is therefore committed to the “long-term persistence in the wild” of the Red Wine Mountain herd.

When recovery is deemed feasible, SARA provides that critical habitat must be identified in the recovery strategy or the action plan. In order to postpone the identification of critical habitat from the recovery strategy to the action plan stage, a schedule of studies must be specified in the strategy to collect the information required: s. 41(1)(c.1).

For the Red Wine Mountain herd, the recovery strategy identified “the geographic boundary within which critical habitat is located”: Figure J-98. However, it explicitly provided that more detailed identification of the critical habitat would be postponed until range plans and action plans are complete: p. vii. In the recovery strategy, Environment Canada has committed to completing “one or more action plans under this recovery strategy by December 31, 2015”: p. 43. It has committed to completing range plans within three to five years, that is, by 2017.

The federal government’s duties under CEAA

The geographic boundary within which critical habitat of the Red Wine Mountain herd is located, according to the federal Woodland caribou recovery strategy, encompasses the Churchill River between Churchill Falls and Happy Valley – Goose Bay: Figure J-98. This is a significant portion of the project area in Labrador.

The federal recovery plan for Woodland caribou states that in face of “habitat alteration as a result of human land-use activities,” it is “urgent” to “protect key areas for boreal caribou through appropriate habitat management and protection mechanisms (e.g. legislated protected areas, no development zones, mixed use zones, and conservation agreements)”: p. 26.

The responsible authorities (RAs) under the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 (CEAA), “must identify the adverse effects of the project on the listed wildlife species and its critical habitat”: SARA, s. 79(2).

Then, “if the project is carried out,” the RAs “must ensure that measures are taken to avoid or lessen those effects and to monitor them. The measures must be taken in a way that is consistent with any applicable recovery strategy and action plans”: SARA, s. 79(2).

1

<http://www.dsao.net/Resources/DFO%20fact%20sheets/March%202006%20Practitioner%27s%20Guide%20to%20SARA%20for%20HMP.pdf>



As the federal government has admitted, “under CEAA, in order for the project to proceed, mitigation measures have to be implemented so that the project is not likely to cause significant adverse environmental effects,” but under SARA, mitigation measures “must be taken to avoid or lessen all adverse environmental effects, not only the significant ones”: *Practitioners Guide to the Species at Risk Act (SARA) for Habitat Management Staff – Draft*, p. 58.

In another guide, the federal government has explicitly stated that: “Recovery actions may be undertaken at any point in the process, and should not be delayed until the strategy and action plan have been developed.” See: National Recovery Working Group, *Recovery Handbook; Recovery of Nationally Endangered Wildlife*, 2005-2006 ed., p. 4.

This is in line with the national program for the Recovery of Nationally Endangered Wildlife (RENEW), initially established by the Wildlife Ministers’ Council of Canada in 1988. Among its five national objectives, the second is that: “2. No species will be allowed to become threatened or move from threatened to endangered status.”

Of course, the responsible authorities must also consider the “cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out”: *CEAA*, s. 16(1)(a).

It is precisely this requirement that led the Agency to conclude “that, taking into account cumulative effects, the Project is likely to cause significant adverse environmental effects on the RWMH, even if the Project itself will only minimally contribute to these effects”: *CSR*, p. 40.

We would point out that it is impossible to reconcile this conclusion with the Agency’s conclusion “that the Project is not likely to cause significant adverse environmental effects on the current use of land and resources for traditional purposes by Aboriginal peoples, taking into account the implementation of the mitigation proposed”: *CSR*, p. 53.

The proponent Nalcor has admitted that the Red Wine Mountain herd is in decline (*CSR*, p. 40) and the Agency has concluded that this project is likely to be a crucial factor in accelerating that decline. Given that the caribou hunt is one of the most important current uses of the land and resources for traditional purposes by Aboriginal peoples, it is impossible to understand how the extirpation of an entire herd would be anything but a significant adverse effect on them.

The Red Wine Mountain herd and decision-making under CEAA

Significantly, the provincial Recovery Strategy in 2004 foresaw exactly the issue identified by the Canadian Environmental Assessment Agency in its Comprehensive Study Report into this project:



Potential threats may arise from proposed industrial developments, particularly hydro-electric operations and commercial forestry (Chubbs et al 1993), and the associated road development and changes in human access and use these entail. For example, the development of the facility in Churchill Falls, and the subsequent creation of the Smallwood Reservoir flooded portions of the ranges of both the Lac Joseph and Red Wine Mountains caribou herd ranges. The proposed development on the lower Churchill River could affect the range of the RWMH caribou. [...]

p. 35 (emphasis added)

More recently, the Report of the Joint Review Panel (JRP) on the Lower Churchill Hydroelectric Generation Project concluded “that any adverse effect of the Project on individual animals within the Red Wine Mountain caribou herd would result in significant adverse effects”: p. 9.

The JRP therefore recommended (7.6) that if the Project were to be approved, the provincial Department of Environment and Conservation should “ensure that adequate resources are available so that all reasonable efforts to ensure the recovery of the Red Wine Mountains caribou herd are taken”: p. 30.

In its response, released on March 15, 2012,² the Government of Newfoundland promised that an updated recovery strategy for the herd would be published during the course of the year. That deadline has come and gone and the province’s promise has gone unfulfilled.

As for the proponent of this project, Nalcor Energy, the province’s Crown corporation, it blithely stated in the addendum to its environmental impact statement that the transmission lines would have no impact on the viability of the Red Wine Mountains herd since its fate was already sealed and the herd’s decline was inevitable.

Recall that under *SARA*, if the project is carried out, the RAs “must ensure that measures are taken to avoid or lessen those effects and to monitor them... in a way that is consistent with any applicable recovery strategy and action plans”: *SARA*, s. 79(2).

The federal Woodland caribou recovery strategy sets out that:

A strong relationship exists between habitat disturbance and whether a local population is stable, increasing or decreasing. As the quantity and/or severity of disturbance increases, there is increasing risk that a local population will be in decline (Environment Canada, 2011b), as further described in Appendix E.

² http://www.env.gov.nl.ca/env/Response_to_Panel_Report.pdf



This recovery strategy identifies a minimum of 65% undisturbed habitat in a range as the disturbance management threshold, which provides a measurable probability (60%) for a local population to be self-sustaining. This threshold is considered a minimum threshold because at 65% undisturbed habitat there remains a significant risk (40%) that local populations will not be self-sustaining.

p. 34

As pointed out by Ekuanitshit's expert, this is quite a different proposition from the Agency's suggestion in the CSR that, under the strategy, "habitat recovery objectives" for Woodland caribou "include that 65-percent of critical habitat for each herd remains undisturbed, providing a measurable probability (60-percent) for a local population to be self-sustaining": p. 31.

Far from there being a "measurable" probability of 60% that the herd will be self-sustaining if 65 per cent of that critical habitat remained untouched, the recovery strategy actually identifies that level of habitat protection as the minimum required to maintain the risk of extirpation at no more than two out of five (40 per cent).

Moreover, all that is known at present is that the project by itself will not disturb more than 35 per cent of the area within the geographic boundary identified for the Red Wine Mountain herd's critical habitat: Recovery Strategy, Figure J-98. For now, it is impossible to know how much of the herd's actual critical habitat will be disturbed by the project, since that critical habitat has not yet been identified pursuant to the action plan and the geographic boundary takes in areas such as the Churchill Reservoir or the Town of Happy Valley – Goose Bay.

It is obvious that at this point that the only reasonable conclusion to which the federal Minister of the Environment could come, based on a rational reading of the CSR, is that the project is likely to cause significant adverse environmental effects that cannot be justified in the circumstances. The project will clearly create adverse effects for "a non-self-sustaining population" of a threatened species when that herd is already "declining in number": CSR, p. 40.

The only reasonable way for the Minister to conclude that this project is justified would be for her to take into account the implementation of mitigation measures sufficient to reverse that decline, but they have yet to be identified: the measures described in the CSR as planned by Nalcor and those suggested by the Agency are clearly insufficient.

Nalcor proposes "monitoring potential impacts" and developing a follow-up program "through collaboration with the provincial Department of Environment and Conservation (Wildlife Division) [to] be informed by the Labrador Woodland Caribou Recovery Team": CSR, p. 18. The Recovery Team is an organization from which the Québec Innu are excluded and is the same entity that produced the provincial recovery strategy in 2004 but has yet to produce the action plan it promised by 2006.



As for the Agency, it has recommended more follow-up, specifically monitoring of “off-highway vehicle use within the ranges of the RWMH,” of “caribou use of the Project area within the ranges of the RWMH” and of “caribou crossing of the project ROW [right-of-way]”: CSR, p. 40.

The hope that monitoring will protect the caribou is based on the notion that hunting is the primary risk. Instead, the primary risks come from habitat destruction and from wolf predation caused by the construction, as pointed out by Ekuanitshit’s expert in the accompanying document and as confirmed by the province’s most recent study.

Caribou habitat in Labrador can be directly lost through direct habitat alteration such as that caused by hydroelectric development, timber harvest, mineral exploration and development, natural processes such as fire or through alteration to the seral stage, which can promote the presence of moose and an increased predator presence.

Isabelle Schmelzer, “Range use, life history and trends in abundance of forest-dwelling threatened caribou populations in Labrador: An overview; Draft Document,” Wildlife Division, Department of Wildlife and Conservation, Government of Newfoundland, September 2012, p. 23

It is important to note that these are precisely the adverse effects raised by the Innu of Ekuanitshit at a meeting held at their request on May 23, 2012 with representatives of the federal and provincial governments.

It is also important to note that the Wildlife Division’s draft document was disclosed to Nalcor in 2012, but the proponent never disclosed it to Ekuanitshit, whose representatives only received it from the province in May 2013 and at their specific request after Newfoundland disclosed its existence.

Proposed measures

Clearly, the Red Wine Mountains herd is in urgent need of the range plans that are meant to “outline how a given range will be managed to ensure that critical habitat is protected from destruction”: Recovery Strategy, p. 38. Such a plan would “involve identifying and assessing current projects/activities as well as any foreseeable future projects/activities, and should include a cumulative effects analysis”: p. 40.

However, Environment Canada does not expect a range plan till 2017, according to its recovery plan, which was published five years late. It is relying principally on the province (p. 39), whose own action plan was promised for 2006, but has yet to be released.



Given the urgency of the threat to the Red Wine Mountains herd posed by this project and the decade of delay in adopting specific plans under the federal and provincial endangered species legislation, the Minister of the Environment Canada must exercise her powers under *CEAA* to ensure the implementation of the appropriate mitigation measures and follow-up programs.

More particularly and as recommended by Ekuanitshit's expert, the federal government must ensure:

- a follow-up program that will immediately begin verifying the accuracy of the environmental assessment of this project by identifying and assessing current and future projects within the geographic boundary in which the herd's critical habitat is located, as well as their cumulative effects on the herd;
- the reduction or control of the adverse environmental effects of the project through creation of a network of interconnected permanently protected areas within the herd's current range that is large enough to support its populations and limit disturbance;
- restitution for any damage to the environment caused by the project's effects through replacement or restoration of herd habitat;
- further follow-up through periodic determination of the effectiveness of any measures taken to mitigate the adverse environmental effects of the project.

Without such measures, it would be contrary to both *CEAA* and *SARA* for the federal government to exercise any power that would permit the project to be carried out in whole or in part.

Re: Suivi: Demande d'approbation d'ouvrage en vue d'installer la ligne de transport des ch... Page 1 of 3

COURTESY TRANSLATION

David Schulze

From: Sent: To:

Cc:

David Schulze

December-09-13 9:55 PM

stephen.corbett@tc.gc.ca

Jean-Charles Pietacho; Yves Bernier; Flanagan, Jason **Subject:** Re: Follow-up : Application for approval of work to install the transmission line from the Muskrat Falls to the Churchill falls, as well as a number of temporary bridges

Attachments: 2013-01-18_LT-J. J Flanagan.pdf; TC 2012 12 4.pdf; lettre le 24 aout 2012 - Conseil des Innus d'Ekuanitshit.pdf; Lettre M. Jason Flanagan_Transports Canada_30 aoQt 2012.pdf; Ltr_Shawna Powell_25 juillet 2012.pdf

Mr. Corbett,

As you may have noticed, our client has left the message copied below unanswered. The reason is quite simple: we have waited 18 months for a meaningful answer to our letters of July 25th, 2012 and August 30th, 2012.

Under these circumstances, my client is not prepared to devote his resources to meeting the arbitrary and artificial delays detailed in your so-called "Consultation Protocol" before having the demonstration that our comments will at least receive a response that considers the concerns expressed.

We do, however, attach our previous correspondence in the hopes that your department, keen on imposing harsh 45-day deadlines on an indigenous community of 500 people, will find within your extensive apparatus the means to prepare a meaningful response. In the absence of such an answer, we will maintain our refusal to participate in a process which your conduct up to this point indicates is not only useless but disrespectful to our client.

David Schulze

----- Forwarded Message

From: "Flanagan, Jason" <jason.flanagan@tc.gc.ca> Date: Thu, 4 Jul 2013 15:58:21 -0300

To: Jean-Charles Pietacho <chef.conseil@ekuanitshit.ca>, Yves Bernier <dir.sge@ekuanitshit.ca>, David Schulze <dschulze@dionneschulze.ca>

Subject: Follow-up with the Innu people of Ekuanitshit: two riprap spurs – Application for approval of work as part of the Lower Churchill Hydroelectric Power Generation Project in Labrador

We are following up with our letter dated on May 24th, 2013 (please see attached file), regarding the construction of two rip raps.

Please indicate if the *Conseil des Innus d'Ekuanitshit* is interested in continuing discussions of this project or if you have any questions or concerns

09/12/2013

Re: Suivi: Demande d'approbation d'ouvrage en vue d'installer la ligne de transport des ch... Page 2 of 3

We would appreciate a response by July 14, 2013, at which point Transport Canada will proceed with our approval process under the *Canadian Navigable Waters Act (Loi sur la protection des eaux navigables)*.

Thank you,

Jason

Re: Follow-up : Application for approval of work to install the transmission line Page 2 of 3

J. Jason Flanagan, M.Sc.

A/Senior Aboriginal Consultation Officer I Agent principal/I en consultations
autochtones Atlantic Region I Region de l'atlantique
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----- End of Forwarded Message

----- Forwarded Message

From: David Schulze <dschulze@dionneschulze.ca>

Date: Tue, 25 Jun 2013 23:16:05 -0400

To: "Flanagan, Jason" <jason.flanagan@tc.gc.ca>, Jean-Charles Pietacho <chef.conseil@ekuanitshit.ca>, Yves Bernier <dir.sge@ekuanitshit.ca>

Subject: Re: Suivi: Demande d'approbation d'ouvrage en vue d'installer la ligne de transport des chutes Muskrat aux chutes Churchill, et d'un certain nombre de pants temporaires

Mr Flanagan,

Am I mistaken or have you still not answered our January 18th letter?

David Schulze

From: "Flanagan, Jason" <jason.flanagan@tc.gc.ca>

Date: Wed, 17 Apr 2013 14:33:30 -0300

To: Jean-Charles Pietacho <chef.conseil@ekuanitshit.ca>, Yves Bernier <dir.sge@ekuanitshit.ca>, David Schulze <dschulze@dionneschulze.ca>

Subject: Suivi: Demande d'approbation d'ouvrage en vue d'installer la ligne de transport des chutes Muskrat aux chutes Churchill, et d'un certain nombre de ponts temporaires

Dear Chief Pietacho and Council members,

According to the attached consultation protocol, we are following up on our letter dated on March 1st, 2013 (also attached), regarding the project to install the transmission line from the Muskrat Falls to the Churchill

Re: Suivi: Demande d'approbation d'ouvrage en vue d'installer la ligne de transport des ch... Page 3 of 3

falls, as well as a number of temporary bridges

Please indicate if the *Conseil des Innus d'Ekuanitshit* is interested in continuing discussions of this project or if you have any questions or concerns

We would appreciate a response by May 1st, 2013, at which point Transport Canada will proceed with our approval process under the *Canadian Navigable Waters Act (Loi sur la protection des eaux navigables)*.

Thank you,

Jason

J. Jason Flanagan, M.Sc.

A/Senior Aboriginal Consultation Officer I Agent principal/I en consultations autochtones

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----- End of Forwarded Message

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IMPORTANT NOTE: This message is confidential and may be subject to professional privilege; it is intended exclusively for the recipient(s) to whom it is addressed. Should you not be such an intended recipient, please inform the sender of this message, and destroy this message without opening any attachments and without reading further.

09/12/2013



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COURTESY TRANSLATION

February 17, 2014

VIA FAX : 709-729-5518
AND VIA EMAIL : ivystone@gov.nl.ca

Ms. Ivy Stone
Environmental Assessment Division
Department of Environment and Conservation
4th floor, West Block, Confederation Building
P.O. Box 8700, St John's NL A1B 4J6

Object: Environmental Assessment of the Labrador-Island Transmission Link Project – Species At Risk Impacts Mitigation and Monitoring Plan; our file 7550-005

Ms. Stone,

We hereby acknowledge, on behalf of our client the Conseil des Innus de Ekuanitshit, the receipt of your email concerning the above-mentioned document on January 27, 2014.

Where the Labrador-Island Transmission Link Project is concerned, the status of the Red Wine Mountain Caribou Herd is the central concern for the Innu of Ekuanitshit. In fact, an entire chapter of the Mitigation and Monitoring Plan, distributed in October 2013, is dedicated to the caribou – even though it largely seems to restate what the proponent had already set out in its impact study.

The federal Minister of the Environment has concluded that the project, when combined with other activities and existing projects, is likely to cause significant and adverse cumulative environmental impacts on the Red Wine Mountain Caribou Herd. This continues to be the case even when the proposed mitigation measures, as described in the comprehensive study, are accounted for.

You suggest that once Nalcor Energy has presented their Mitigation and Monitoring Plan for the at-risk species registered under the Newfoundland *Endangered Species Act*, indigenous groups will have 30 days to review the documents and submit their comments to the Wildlife Division.



Ms. Ivy Stone
Department of Environment and Conservation
February 17th 2014
Page 2

This proposal is not acceptable to the Innu of Ekuanitshit and, as their representative, we will require an extension of the consultation period so that the steps outlined below can be included.

Note that we have never accepted the 30-day time limit to respond, which was unilaterally imposed by the Province of Newfoundland in the « Labrador-Island Transmission Link Project Aboriginal Consultation Guidelines for Regulatory Approval Applications » document, dated July 2, 2013.

This time limit flies in the face of a scientific approach and is arbitrarily imposed, which is amply demonstrated by the fact that the guidelines impose the same month-long timeframe to carry out the consultation and development of a Mitigation and Monitoring Plan for several at-risk species, as it does for consultation related to the issue of a simple permit for the drilling of a fresh water well.

We expect, in the least, that the Newfoundland government will apply its « Aboriginal Consultation Policy on Land and Resource Development Decisions », adopted in April of 2013, even though our client never accepted this policy which was imposed by the province in a unilateral manner.

In fact, the project proponent, Nalcor Energy, has not respected any of its obligations with regards to this Policy, with the exception that it has transmitted the proposed Mitigation and Monitoring Plan. More specifically, we expect that Nalcor identify, in partnership with the Innu of Ekuanitshit, the means by which to apply the policy and guidelines on consultation.

Once you will have forwarded the Mitigation and Monitoring Plan to the Conseil des Innus de Ekuanitshit, our client will require the following process for its consultation:

- ✓ a French translation of the parts of the Plan which concern Caribou in Labrador and the Red Wine Mountain Herd in particular;
- ✓ disclosure, by your minister, of the most recent data on the Red Wine Mountain Herd, as well as information on all other projects which might impact its habitat;
- ✓ the necessary resources to have the final version of Nalcor's proposed Plan reviewed by the community's biologist;
- ✓ the opportunity of an exchange between community representatives and the community biologist on the one side, and representatives of your ministry on the other, including ministry biologists.



Ms. Ivy Stone
Department of Environment and Conservation
February 17th 2014
Page 3

Best regards,

DIONNE SCHULZE

[SIGNED]

David Schulze

cc: Chief Jean-Charles Piétacho
Conseil des Innu de Ekuanitshit
BY FAX: 418-949-2095

Mr. Patrick Marrie
Environmental Assessment Division
Department of Environment and Conservation
BY EMAIL: <pmarrie@gov.nl.ca>

Mr. Bas Cleary
Director, Environmental Assessment Division
Department of Environment and Conservation
BY EMAIL: <clearyb@gov.nl.ca>



Government of Newfoundland and Labrador
Department of Environment and Conservation
Environmental Assessment Division

March 24, 2014

Mr. David Schulze
Dionne Schulze - Attorneys
507 Place d'Armes #1100
Montreal Quebec H2Y 2W8

Dear Mr. Schulze:

Re: Reply to your letter dated February 17, 2014 concerning the *Species at Risk Impacts, Mitigation and Monitoring Plan* for Labrador-Island Transmission Link Project (Transmission Project)

I am writing in response to your letter of February 17, 2014 regarding the *Species at Risk Impacts, Mitigation and Monitoring Plan*.

Nalcor Energy must obtain a Section 19 permit under NL's *Endangered Species Act* in order to ensure that appropriate avoidance and mitigation measures are in place to protect species at risk to the greatest extent possible. The development of an acceptable *Species at Risk Impacts, Mitigation and Monitoring Plan* (the "Plan") is expected to satisfy NL's requirements for the issuance of a Section 19 permit.

One draft of the Plan has already been referred to Aboriginal governments / organisations for review, and given the substantive changes required to the Plan since that time, a further iteration of the Plan will also be referred for Aboriginal consultation, as per the Project's Aboriginal Consultation Guidelines. If the Conseil des Innus de Ekuanitshit has questions during its review of the Plan, please do not hesitate to contact Ms. Kirsten Miller, Senior Wildlife Biologist – Habitat Management/GIS, (Wildlife Division) at (709) 637-2029 or via email at kirstenmiller@gov.nl.ca.

Your letter also asserted, on behalf of the Conseil des Innus de Ekuanitshit, that the projected 30-day timeframe for Aboriginal consultation on this next iteration of the Plan will be insufficient.

As outlined in the Transmission Project's Aboriginal Consultation Guidelines, Aboriginal consultation periods provide the opportunity for Aboriginal governments / organisations, such as the Conseil des Innus de Ekuanitshit, to comment on applications for regulatory approvals required for the Transmission Project and to provide important information that forms part of Government's decision making process, including enabling Government to consider the projected adverse impacts of activities on settled or asserted Aboriginal rights and to consider mitigation measures if appropriate. However, such a consultation process must be practical and

must strive for a balance between various interests in land and resource development decision-making processes.

As such, whenever an Aboriginal government / organisation requests additional time to review or provide comment on any planned activities, the Government of Newfoundland and Labrador will consider each request on its own merits, rather than revising the entire Aboriginal consultation process.

Accordingly, once the Aboriginal consultation period has commenced for the Plan, should the Conseil des Innus de Ekaunitshit at any time during that 30-day period advise Government that it requires additional time to review the Plan, the Government of Newfoundland and Labrador will consider that request at that time.

Your letter requested a French translation of that part of the Plan that concerns caribou in Labrador, specifically the Red Wine Mountain Herd(RWMH). While the official language of the Government of Newfoundland and Labrador is English, a French translation can be provided for your convenience, and the department will arrange for same. This translated section will be sent to your client concurrently with the complete Plan by Nalcor Energy when it commences Aboriginal consultation on the Plan in the near future.

With respect to the provision of the most recent data on the RWMH, the department can provide certain types of data, such as overall herd range, winter ranges, calving/post-calving ranges, and population estimates. However, the department is unable to provide recent specific location data. We trust you understand the sensitivity and concern related to conservation efforts of making public the specific locations of threatened animals under the Endangered Species Act. Please note that there are currently no other projects undergoing provincial environmental assessment (EA) within the RWMH range.

Please note that participant funding was made available to Aboriginal governments / organisations during the EA process for this Project, and that the proponent is understood to have also made offers of financial support during the EA process. There is no further funding available at this time.

Thank you for bringing your concerns to our attention.

Sincerely,



Ivy Stone

Environmental Assessment Division

c.c. Chief Jean-Charles Piétacho, Conseil des Innus de Ekuanitshit (BY FAX: 418-949-2085)
Brian Harvey, Labrador and Aboriginal Affairs Office
Kirsten Miller, Wildlife Division, Department of Environment & Conservation

Ms. Ivy Stone

Department of Environment and Conservation

March 26, 2014

Page 1

DIONNE SCHULZE
S.E.N.C.
AVOCATS- ATTORNEYS

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dschulze@dionneschulze.ca

March 26, 2014

BY FACSIMILE: 709-729-5517
AND BY EMAIL: ivystone@gov.nl.ca

Ms. Ivy Stone
Environmental Assessment Division
Department of Environment and Conservation
P.O. Box 8700
4th Floor, West Block, Confederation Building
St. John's, Newfoundland, NL A1B 4J6

Subject: Environmental assessment of the Labrador-Island Transmission Link Project –
Mitigation and monitoring plan for designated endangered species: File No. 7550-005

Dear Ms. Stone,

We received yesterday your letter of March 24, 2014, in response to our letter of February 17 concerning the above-mentioned project.

We took considerable care in preparing our letter. We regret to see, however, that you have not done the same.

First of all, we are at a loss to explain why it took you no fewer than 35 days to express the opinion that a 30-day period is deemed sufficient to consult and accommodate our client with regard to the mitigation and monitoring measures proposed for endangered species.

Department of Environment and Conservation

March 26, 2014

Page 2

You thus suggest that, to make a useful contribution to the development of such measures, in a process conducted in English, the elected representatives of a community operating in Innu and French, with no budget for this purpose, would need five days fewer than the Government of the Province itself took to send a simple letter about the process surrounding this participation.

We are inclined to believe that you responded after more than 30 days simply because you had other priorities. If that is your explanation, however, it would be our duty to inform you that the Innu Council of Ekuanitshit also must attend to other matters, apart from your project and its harmful impact on endangered species, and must do so with a small fraction of the resources at your disposal.

It is for this reason, moreover, that our client never agreed to the 30-day deadline set unilaterally by Newfoundland in its “Labrador-Island Transmission Link Project Aboriginal Consultation Guidelines for Regulatory Approval Applications”, issued on July 2, 2013. We see that you are still unable to justify imposing such a deadline.

Second, your letter of March 24 contains errors of fact, which distorted the analysis leading to the positions you adopt therein, and which prevent us from accepting your response in its present form.

Among other things, you rejected our client’s request for funding, stating that it is your understanding that the Innu Council of Ekuanitshit already obtained funding at the environmental assessment stage. This is inaccurate. Our client did not receive anything from your government, or from the promoter, Nalcor Energy, which is owned by the Province.

You know, or should know, that the funding received by our client was provided by the federal government under the federal environmental assessment regime. You claim that you yourselves followed a separate provincial process, resulting in a different decision, made several months before the federal government’s decision.

At any rate, we clearly asked you for funding for a post-assessment phase. The very limited budget available to our client for the purposes of the federal environmental assessment was neither designed nor sufficient to consult with and accommodate our client in implementing the mitigation measures required by the Province.

You also claim that the promoter offered our client funding at the environmental assessment stage, but this statement is without any basis. We note, however, that Nalcor Energy previously made this claim in connection with the environmental assessment of the transmission link, and it is thus possible that the promoter misled you in this regard.

Department of Environment and Conservation

March 26, 2014

Page 3

We wish to inform you that Mary Hatherley of Nalcor's legal department informed the undersigned by e-mail on July 1, 2011, that the promoter would not provide any funding to our client for the purposes of the environmental assessment of the transmission link. She wrote, "Nalcor does not contemplate the negotiation of a land and resource use study or similar formal arrangement with Ekuanitshit at this time." Her employer never reversed this position.

Whatever the case may be, the funding denied was not for consultation purposes but to prepare a study on the Innu of Ekuanitshit, for the purposes of the impact study that Nalcor was required to table.

Furthermore, in connection with the previous assessment of Phase I of the project, dealing with the construction of hydro-electric power plants on the lower Churchill River, it was Nalcor that rejected the last offer by the Innu Council of Ekuanitshit to reach an agreement on the preparation of a study of the community. Preparing such a study would have served only to complement the impact study required of the promoter, and would not have constituted a consultation.

In another vein, we thank you for your commitment to provide a French translation of the mitigation and monitoring plan for designated endangered species.

We also thank you for your offer to disclose information about the Red Wine mountain caribou herd, subject to the adequacy of the information that you actually disclose. However, this information will be of very limited usefulness, unless you or Nalcor Energy provide our client with the necessary resources to have the information analyzed by its own expert.

You will understand that it is not the responsibility of the Innu of Ekuanitshit to spend their own funds to help the Province and its Crown corporation to improve a project that the Innu have neither requested nor approved, when Environment Canada has already said that the project may have cumulative and significant adverse effects on the Red Wine mountain caribou herd.

We are thus obliged to reiterate the request by the Innu Council of Ekuanitshit that your government or the project promoter take the following steps to ensure genuine consultation:

- Once the French translation is supplied, provide the necessary capacity to have the plan reviewed by the community's consulting biologist.
- Allocate and pay the costs of discussions between the community's representatives and its consulting biologist.
- Allocate and pay the costs of discussions between the community's representatives and those of your department, including the participation of experts for both parties.

Department of Environment and Conservation

March 26, 2014

Page 4

It seems to us that the time has come for your department to decide whether it wishes to offer our client a genuine consultation and accommodation process, by adopting the approach proposed above, or whether it prefers to provide complex documents without making available the resources needed for their analysis, while requiring responses by unrealistic deadlines.

Finally, we must express our surprise and disappointment at your statement that the consultation process must “strive for a balance between various interests in land and resource development decision-making processes”.

There is no support for this approach in the “Aboriginal Consultation Policy on Land and Resource Development Decisions” adopted by the Government of Newfoundland in April 2013. Rather, this policy states that “consultation should be conducted with the objective of helping ensure that land and resource development decisions minimize or, where reasonably practicable, eliminate adverse impacts on asserted rights” of Aboriginal peoples.

Moreover, the consultation that you claim to wish to hold concerns endangered species. Yet the *Endangered Species Act*, which you are responsible for applying, prohibits any economic activity that prevents the recovery or survival of designated endangered species (paragraph 19(1)(c)). Even an activity that affects only one species or its residence may not be permitted unless there is no alternative (paragraph 19(1)(b)).

The House of Assembly of Newfoundland and Labrador has thus expressly prohibited striking the balance that you propose. Rather, it has prescribed that seeking the recovery and survival of endangered species must take precedence over any other activity. We expect your decision-making process to meet this requirement of your own legislation.

Yours sincerely,

DIONNE SCHULZE

(signed)
David Schulze

cc: Chief Jean-Charles Piétacho
Innu Council of Ekuanitshit
BY FACSIMILE: 418-949-2095

Patrick Marrie
Environmental Assessment Division
Department of Environment and Conservation
BY EMAIL: pmarrie@gov.nl.ca

Ms. Ivy Stone

Department of Environment and Conservation

March 26, 2014

Page 5

Bas Cleary
Director, Environmental Assessment Division
Department of Environment and Conservation
BY EMAIL: clearyb@gov.nl.ca

Kirsten Miller
Senior Wildlife Biologist
Department of Environment and Conservation
BY EMAIL: kirstenmiller@gov.nl.ca



Government of Newfoundland and Labrador
Department of Environment and Conservation
Environmental Assessment Division

April 17, 2014

Mr. David Schulze
Dionne Schulze - Attorneys
507 Place d'Armes #1100
Montreal, Quebec H2Y 2W8

Dear Mr. Schulze:

Re: Reply to your letter dated March 26, 2014 concerning the *Species at Risk Impacts, Mitigation and Monitoring Plan* for Labrador-Island Transmission Link Project (Transmission Project)

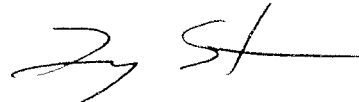
I am writing in response to your letter of March 26, 2014 regarding the *Species at Risk Impacts, Mitigation and Monitoring Plan* (the "Plan"). Thank you for your comments. The province would like to reiterate several points made in our letter to you of March 24, 2014.

1. Relative to the 30 day Aboriginal consultation period for the Plan, the Conseil des Innus de Ekaunitshit is welcome to, at any time during the 30-day period request additional time to review the Plan. Government will make an expedited decision on such a request;
2. The participant funding program you referenced, which was administered by the federal government during the EA review of the LITL Project, was jointly funded by the province and the federal government, and the province has previously communicated its views on funding for post EA phases of this Project;
3. The Government of Newfoundland and Labrador is committed to the management, conservation and recovery of the caribou herds in Labrador, and to do so in collaboration with the Aboriginal resource users. In fact, as you may know, on February 26, 2014, in a joint letter to the Ungava Peninsula Caribou Aboriginal Round Table (UPCART)'s Co-Chairs Sarah Leo and Adame Delisle Alaka, Deputy Ministers responsible for Environment and Wildlife from the Government of Quebec and from the Government of Newfoundland and Labrador requested UPCART to collaborate with both governments in drafting a plan "to ensure the persistence of the George River Caribou Herd". The Deputy Ministers also requested that a liaison committee be established to allow for sharing of views/concerns. Chief Jean-Charles Piétacho was copied on this letter, as the representative of the Conseil des Innus de Ekuanitshit on the UPCART.
4. Nalcor Energy is required to develop an acceptable Plan before obtaining a Section 19 permit under the NL *Endangered Species Act*. The Plan must satisfy NL's requirements for appropriate avoidance, mitigation and monitoring measures to protect species at risk to the greatest extent possible for the issuance of a Section 19 permit. Should project

impacts prevent the recovery or survival of a designated species the Minister may, with the approval of the Lieutenant-Governor in Council, amend or revoke a Section 19 permit (Section 19 (4)). As previously indicated, one draft of this Plan has already been referred to Aboriginal governments / organizations for review, and given the substantive changes required to the Plan since that time, a further iteration of the Plan will also be referred for Aboriginal consultation, as per the Project's Aboriginal Consultation Guidelines. If the Conseil des Innus de Ekuanitshit has questions during its review of the Plan, please do not hesitate to contact Ms. Kirsten Miller, Senior Wildlife Biologist – Habitat Management/GIS, (Wildlife Division) at (709) 637-2029 or via email at kirstenmiller@gov.nl.ca.

Once again, thank you for bringing your concerns to our attention. Should you have any further questions, please don't hesitate to contact me.

Sincerely,



Ivy Stone

Environmental Assessment Division

Cc. Chief Jean-Charles Piétacho, Conseil des Innus de Ekuanitshit (BY FAX: 418-949-2085)
Brian Harvey, Labrador and Aboriginal Affairs Office
Kirsten Miller, Wildlife Division, Department of Environment & Conservation



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April 17, 2014

BY FAX: 709-729-5518
AND BY EMAIL: ivystone@gov.nl.ca

Ms Ivy Stone
Environmental Assessment Division
Department of Environment and Conservation
PO Box 8700
4th Floor, West Block, Confederation Building
St. John's, NL A1B 4J6

Dear Ms Stone:

Subject: Environmental Assessment of the Labrador-Island Transmission Link Project – Mitigation and Monitoring Plan for Endangered Species; Our file 7550-005

This is to acknowledge receipt by our client of your letter of April 17, 2014. Unfortunately, it only makes a pretence of responding to our letter of March 26, 2014, regarding the above-mentioned plan.

We devote a great deal of time and energy to drafting our communications to your department and would be grateful if you would stop dodging the requests we make on behalf of our client, the Conseil des Innus de Ekuanitshit.

First, we previously informed you that a 30-day deadline would not be sufficient to allow for the consultation and accommodation of our client with regard to the proposed mitigation and monitoring measures for endangered species. We refuse to do as you suggest and wait until the start of an inadequate consultation period before telling you that the period in question is indeed inadequate.

We demand that you immediately state your position on extending the deadline in anticipation of the upcoming release of your Mitigation and Monitoring Plan for Endangered Species. We will interpret the lack of a positive response on your part within the next 30 days as your denial of our client's request.

Second, we have asked your government on many occasions to provide appropriate financial support for our client's participation in the current phase of what you refer to as consultations. Your insistence that the province indirectly contributed to the \$10,000 that the Canadian Environmental Assessment Agency provided to our client in an earlier phase more than a year ago is pointless.

We demand that you immediately state your position on the question of whether the province will require that Nalcor Energy fund our client's participation.

We feel this is necessary under the following terms of the Aboriginal Consultation Policy on Land and Resource Development Decisions, adopted in April 2013: “proponents are required to provide reasonably necessary capacity-funding to facilitate the provision by Aboriginal organizations of pertinent information on potential impacts of project-specific activities on asserted Aboriginal rights and any required financial accommodation.”

In the absence of a positive response on your part within the next 30 days, we will assume that the province is absolving itself and the proponent, which is its own Crown corporation, of all responsibility for our client’s participation in a process that you nonetheless insist on describing as consultation and accommodation.

Third, your allusion to the Ungava Peninsula Caribou Aboriginal Round Table is irrelevant to the content of your letter, as you well know. The Round Table is currently focusing on the dramatic decline of the George River herd and the uncertain fate of the Leaf River and Torngat Mountain herds.

If you are now suggesting that the known negative impact of the Labrador-Island Transmission Link Project on the Red Wine Mountain caribou herd be included in the work of the Round Table, then we ask that you immediately so notify all the participants.

The absence of any such communication on your part will be taken as confirmation that you mention the Round Table solely to avoid providing a serious response to our client’s concerns about the Red Wine Mountain herd.

Yours truly,



^{IN}
E SCHULZE

David Schulze

cc: Chief Jean-Charles Piétacho
Conseil des Innu de Ekuanitshit
BY FAX: 418-949-2095

Patrick Marrie
Environmental Assessment Division
Department of Environment and Conservation
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June 16, 2014

BY FAX: 709-729-0870
AND BY EMAIL: mdrake@gov.nl.ca

Martha Drake
Provincial Archaeologist
Department of Tourism, Culture and Recreation
Provincial Archaeology Office
2nd Floor, West Block, Confederation Building
St John's, NL A1B 4J6

Dear Ms. Drake:

Subject: Hydroelectric power plant project in the Lower Churchill River –
Historical Resources Management Program
O/F 7550-001

On behalf of our client, the Conseil des Innus de Ekuanitshit, we hereby acknowledge receipt of the June 3, 2014 email sent by Nalcor Energy concerning the above document.

The Innu of Ekuanitshit are so accustomed to using the land concerned by Nalcor's proposed program that the name "Ekuanatshiu Ministuk" (Ekuanitshit Island) has been given to an island downstream from Muskrat Falls by the Innu of Sheshatshiu: Robert Comtois, *Occupation et Utilisation du Territoire par les Montagnais de Mingan*, Conseil Attikamek-Montagnais, 1983, p. 53.

Our client therefore expects considerable consultation and accommodation in this regard.

Note that Nalcor's email asked our client to send you its "observations" within 30 days of receipt of the message.

We would like to emphasize that our client never agreed to the 30-day deadline unilaterally established by Newfoundland in its Labrador-Island Transmission Link Project

Aboriginal Consultation Guidelines for Regulatory Approval Applications of July 2, 2013.

In addition, you should know that the Conseil des Innus de Ekuanitshit represents a population of fewer than 600 people, all of whom speak Innu as a first language and French as a second language. The Council does not have an archaeologist on staff.

We expect that, at the very least, your department will apply the Aboriginal Consultation Policy on Land and Resource Development Decisions adopted by the Government of Newfoundland and Labrador in April 2013, even though our client has never accepted this policy, which was also unilaterally imposed.

The project proponent, Nalcor Energy, has not met any of its obligations under this policy, except for sending the proposed program. More particularly, we still expect Nalcor to identify with the Innu of Ekuanitshit how the consultation policy and guidelines are to be applied.

This would necessarily include the obligation on the part of the proponent to provide capacity funding to facilitate the transmission, by Ekuanitshit, of relevant information on the potential impact of activities under the Historical Resources Management Program on the rights asserted by the community, as required by the policy of April 2013.

You will understand that it is not the responsibility of the Innu of Ekuanitshit to disburse their own funds to help the province and its Crown corporation with a project that the Innu have neither asked for nor approved and that could potentially lead to the destruction of their archaeological sites.

To initiate a real consultation process concerning the permit that Nalcor is asking you to issue, it would be appreciated if you could send to the Conseil des Innus de Ekuanitshit, as soon as possible, a French translation of the parts of the proposed historical resources assessment and restoration program which deal with Muskrat Falls.

Second, we would like to receive your suggestions as to how Ekuanitshit will receive the capacity required to have the proposed program reviewed by the community's archaeologist consultant.

With these elements in hand, we could then plan for community representatives to hold discussions with its expert and subsequently with the representatives of your office.

Yours truly,

DIONNE SCHULZE



David Schulze

cc: Chief Jean-Charles Piétacho
Conseil des Innu de Ekuanitshit
BY FAX: 418-949-2085

Brian Harvey
Director of Aboriginal Affairs
Executive Council, Government of Newfoundland and Labrador
BY EMAIL: brianharvey@gov.nl.ca

Peter Madden, MAsc, MBA
Regulatory Compliance Lead
Lower Churchill Project, Nalcor Energy
BY EMAIL: petermadden@nalcorenergy.com



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25 June 2014

FAX: 709-729-5518

E-MAIL: ivystone@gov.nl.ca

Ms. Ivy Stone
Environmental Assessment Division
Department of Environment and Conservation
P.O. Box 8700, 4th Floor, West Block, Confederation Building
St. John's, NL A1B 4J6

Subject: Environmental Assessment of the Labrador-Island Transmission Link Project –
Mitigation and Monitoring Plan for Endangered Species
Our File: 7550-005

Dear Ms. Stone:

This is in reply to your letter of 17 June 2014, itself a reply to our letter of 22 May regarding the Subject Plan.

Deadlines

In order to make any discussion about the Mitigation and Monitoring Plan for Endangered Species meaningful, we have asked that, when you send it to our client, you include dates when you and your biologists would be available for a meeting on that subject in Ekuanitshit.

You have instead indicated that, for the time being, your government is open only to a teleconference “during the designated 30-day review period.” Should our client “propose a date and time at any time during the following 30 days” after the Plan is sent, you would be prepared to “ensure the availability of relevant officials for such a teleconference.” It is only in the event that “the teleconference reveal[s] that further discussions are warranted [that] a face-to-face meeting may be arranged.” On a practical level, and in order to be able to respond to your proposal, we would greatly appreciate your indicating how you expect to provide the necessary interpretation services, or whether you plan to designate French-speaking government officials to take part in such a teleconference. As you know, Innu is our client's first language and French the second.

Furthermore, please be advised that, at this time, we cannot make the commitment that, in the 30 days following receipt of the Plan, our client will be able to consider it, obtain an opinion on it from their consultants and hold a teleconference with your Department.

Should this not be possible, the responsibility would rest, not with our client, but with your government, as it has persisted in imposing this deadline on our client without their consent, while aware that our client deemed it unrealistic.

On another matter, we are amazed that you have made no provision to involve the Environment Canada officials responsible for the recovery program under the *Species at Risk Act*. Kindly indicate how the federal department will take part in assessing the Mitigation and Monitoring Plan as it applies to the Red Wine Mountains herd.

In addition, to prepare for our client's reading of the Plan, we would remind you that we are still waiting for your Department to disclose the latest data on the Red Wine Mountains herd and any other project likely to affect its habitat, data that we first requested in our letter of 17 February 2014 and in at least three subsequent letters.

Finally, you persist in assuring us that "timelines for the post-EA consultation with Aboriginal organizations are not arbitrary." Were this the case, all you would need to do is show us the reasoning that led your government to impose the same one-month deadline for — on the one hand — consultation regarding issuing an everyday permit for drilling a well for drinking water and — on the other hand — consultation on developing a mitigation and monitoring plan for a dozen-odd species at risk. If you cannot share your reasoning with us, you will be unable to convince us, and we do not think it worthwhile to continue the discussion.

Funding

We have already conveyed to you that what our client deduces from your refusal to provide any financial assistance enabling them to respond to the document you intend to send them: namely, that the Newfoundland government believes that it is the responsibility of the Innu of Ekuanitshit to spend their own money to participate in the planning of the mitigation measures required to reduce the adverse effects of a project that they did not want and that will be carried out by a company of which your government is the sole shareholder.

We note that you have made no attempt to explain how such an approach could uphold the honour of the Crown.

Effects

We were deeply shocked by the assertion in your letter that, because "the Red Wine Mountain Herd (RWMH) was federally listed under the *Species at Risk Act* (SARA) in 2001 [and] provincially listed under the Newfoundland and Labrador *Endangered Species Act* (NL ESA) in 2002" and because "[h]arvesting animals from this herd has been prohibited since then," your government "does not,

therefore, see activities associated with these Projects as directly affecting the ability of the Ekuanitshit to harvest from the RWMH.”

You are aware that the Innu of Ekuanitshit have hunted the Red Wine Mountains caribou herd since time immemorial. We are dismayed that you could have so little respect for the Innu of Ekuanitshit that you go so far as to specifically dismiss the Project’s effect on this hunt — the effect they have identified as their greatest concern.

Neither the Innu nor the courts have accepted that this prohibition could apply to the exercise of constitutionally-protected Aboriginal rights. Further, even if it could have this effect (which we do not concede), the fundamental right of the Innu would not necessarily be extinguished thereby: this legislative restriction therefore can neither limit the claims of the Innu which your government is obligated to take into account, nor limit the duty to consult and accommodate that emanates therefrom.

Your refusal to consider the Project’s effect on harvesting caribou by the Innu of Ekuanitshit is therefore a legal error that threatens to vitiate the entire exercise you call a consultation.

Moreover, you know perfectly well that the transmission line project proposed by the company with your government as sole shareholder has been recognized as likely to result in significant cumulative adverse environmental effects on the Red Wine Mountains caribou herd.

Our client notes that, although your government is prepared to ban the hunting of the Red Wine Mountains caribou that the Innu have practised for millennia, it has yet to take any steps to protect the caribou habitat from the adverse effects of the industrial projects of which your government is the proponent.

You will recall that, in our letter of 26 March, we had to point out that, under the very *Endangered Species Act* that you now claim to invoke, working for the recovery and survival of a species at risk must take precedence over all other activity, and hence any economic activity that would prevent this is prohibited.

We now look forward to your government’s application of this binding rule to the Mitigation and Monitoring Plan that Nalcor Energy will be sending you, since the survival of the Red Wine Mountains caribou herd remains the paramount issue for the Innu of Ekuanitshit.

Form of the Mitigation Plan

In our letter of 22 May, we made it clear to you that if the Plan to be tabled did not contain at least the minimum elements required in the guidance document entitled “Guidance for the Development of Caribou Mitigation and Monitoring Plans for South Peace Northern Caribou – April 17, 2013,” published by your counterparts in the British Columbia Ministry of Environment¹, we did

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http://www.env.gov.bc.ca/wld/speciesconservation/nc/documents/South_Peace_Northern_Caribou_Mitigation_and_Monitoring_Plan_Guidance.pdf

not expect our client to be prepared to ask their expert biologist to help them comment on the plan.

We are not sure what conclusion you wanted our client to draw from the assertions you made in response, where you informed us “that an early draft of the Plan was referred to Aboriginal governments/organizations for review. The Province determined that as substantive changes were required to that first draft of the Plan, a further iteration of the Plan would be referred for Aboriginal consultation, as per the Project’s Aboriginal Consultation Guidelines, once the proponent had made the required revisions.”

In both cases, this is information that is patently obvious and that we have had since the end of January 2014.

We therefore reiterate our request that you obtain a mitigation plan from Nalcor that contains, at the very least, the elements required by the guidelines developed in British Columbia for the South Peace Northern Caribou.

Absent a response to this request within thirty (30) days of your receipt of this letter, we shall assume that you have denied our request without cause.

Form of communication

We would like to thank you for finally acknowledging in your letter of 17 June that the Ungava Peninsula Caribou Aboriginal Round Table had nothing to do with preserving the Red Wine Mountains caribou herd (the subject of our correspondence), despite your repeated references to it in your previous letters.

We only regret the time and effort that were necessary to bring you to acknowledge what is self-evident.

Yours truly,

DIONNE SCHULZE



David Schulze

cc: Chief Jean-Charles Piétacho

Conseil des Innu de Ekuanitshit
FAX: 418-949-2085

Mr. Brian Harvey
Director of Aboriginal Affairs
Executive Council - Labrador and Aboriginal Affairs
E-MAIL: brianharvey@gov.nl.ca

Kirsten Miller
Senior Wildlife Biologist
Department of Environment and Conservation
E-MAIL: kirstenmiller@gov.nl.ca



Government of Newfoundland and Labrador
Labrador & Aboriginal Affairs

July 7, 2014

Mr. David Schulze
Dionne Schulze - Attorneys
507 Place d'Armes #1100
Montreal, Quebec H2Y 2W8

Dear Mr. Schulze:

Re: Hydroelectric Power Plant Project in the Lower Churchill River – Historic Resources Management Program.

I am writing in response to your letter of June 16, 2014 regarding the Historic Resources Management Program for the Labrador-Island Transmission Project ("the Transmission Project"). Thank you for your comments. I would like to take this opportunity to respond to each of your points as follows:

1. All post-Environmental Assessment (EA) regulatory authorizations for the Transmission Project are in accordance with the Transmission Projects' Aboriginal Consultation Guidelines. Relative to the 30 day Aboriginal consultation period for the Plan, the Conseil des Innus de Ekaunitshit is welcome to, at any time during that 30-day period, advise Government it requires additional time to review the Plan. The Province is willing to consider these requests for additional time on a case-by-case basis;
2. The Province's view on funding is well known by the Conseil des Innus de Ekaunitshit and has been previously communicated to you and your client in correspondence dated March 24, 2014, April 17, 2014 and May 16, 2014. Further Provincial technical staff and regulatory officials are available to respond to any inquiries and requests during the Aboriginal consultation process. The Environmental Impact Statement (EIS) for the Transmission Project noted that the available information on the land use by the Conseil des Innus de Ekaunitshit showed that land and resource use and occupation was well south and/or west of the Project area.
3. The operational language of Newfoundland and Labrador is English. We will endeavour to provide unofficial translations into French of correspondence, including transmittal letters, when possible for the benefit of your clients but are unable to provide translations into Innu-aimun.

Once again, thank you for bringing your concerns to our attention. Should you have any further questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, consisting of a large, stylized 'B' followed by a horizontal line and a small flourish.

Brian Harvey
Director

c.c. Chief Jean-Charles Piétacho, Conseil des Innus de Ekuanitshit (BY FAX: 418-949-2085)
Martha Drake, Provincial Archaeologist

COURTESY TRANSLATION

From: David Schulze
To: [Harvey, Brian](#)
Cc: [Appleby, Christopher](#); [Drake, Martha](#); ["Jean-Charles Piétacho"](#); ["Hunter, Karen"](#)
Subject: Hydroelectric Power Plant Project in the Lower Churchill River – Historic Resources Management Programme – Our file 7550-001
Date: Tuesday, July 08, 2014 12:15:22 PM
Attachments: [2014-06-16 LT M Drake.pdf](#)

Mr Harvey,

We hereby confirm receipt of the email below and of your letter from July 7th, 2014.

On the merits, we wish to mention that we have communicated with Ms. Drake regarding what you describe as the Lower Churchill River hydroelectric power generating facility project. Yet, your letter deals with what you describe as the Labrador-Island Transmission Link Project.

Your confusion is not surprising considering that the two are in fact one single project despite that your government insisted on distinguishing these two phases of one same project.

Yet, in your letter you rely on a series of decisions taken by your government in the course of the second phase, while we had communicated with Ms. Drake regarding the first phase and Nalcor had done the same in its email to our client dated July 3rd.

We thus invite you to read our letter from July 16th with greater attention (see the attached copy). Kindly address the process mentioned in our letter and submitted to Ms. Drake, instead of a distinct process which we have not mentioned and which does not include the permit to be granted by Ms. Drake.

In addition, please note that Chief Piétacho does not read English and will only become aware of the content of your letter once you have had the courtesy of providing a French translation thereof.

David Schulze

-----Original Message-----

From: Hunter, Karen [mailto:KarenHunter@gov.nl.ca]
Sent: Tuesday, July 08, 2014 9:32 AM
To: David Schulze
Cc: Harvey, Brian; Appleby, Christopher; Drake, Martha
Subject: Hydroelectric Power Plant Project in the Lower Churchill River - Historic Resources Management Program

Good morning,

Please find attached a response from Brian Harvey, regarding correspondence sent to Martha Drake on June 16, 2014 on the Hydroelectric power plant project in the Lower Chuchill River - Historical

Resources Management Program.

I will be sending the original in the mail today. Any questions please do not hesitate to call.

Thank you,
Karen Hunter
Secretary to Deputy Minister
Labrador and Aboriginal Affairs
P.O. Box 8700, 6th Floor East Block
Confederation Building, St. John's, NL
A1B 4J6
Tel: 729 - 6401
Fax: 729 - 4900

From: Valerie Duro
Sent: Monday, June 16, 2014 3:41 PM
To: mdrake@gov.nl.ca
Cc: brianharvey@gov.nl.ca; petermadden@nalcenergy.com
Subject: Hydroelectric Power Plant Project in the Lower Churchill River – Historic Resources Management Programme – Our file 7550-001

Ms. Drake,

Please find attached a letter from Me David Schulze.

Regards,

Valérie Duro Parajuriste /
Paralegal **DIONNE**
SCHULZE, s.e.n.c.
507 Place d'Armes, #1100
Montréal (Québec) H2Y 2W8
Téléphone : 514-842-0748
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Government of Newfoundland and Labrador
Department of Environment and Conservation
Environmental Assessment Division

July 16, 2014

Mr. David Schulze
Dionne Schulze - Attorneys
507 Place d'Armes #1100
Montreal, Quebec H2Y 2W8

Dear Mr. Schulze:

Re: Reply to your June 25, 2014 letter concerning the *Species at Risk Impacts, Mitigation and Monitoring Plan* for Labrador-Island Transmission Link Project (Transmission Project): Your File 7550-005

This is in response to your letter of June 25, 2014 regarding the *Species at Risk Impacts, Mitigation and Monitoring Plan* (the "Plan"). For purposes of this response the issues you have noted have been addressed in order.

Deadlines

The Province has previously explained timelines for the post-EA consultation with Aboriginal organizations and has indicated our willingness to consider a request for additional time to review any monitoring and mitigation Plan circulated for review by the Proponent.

Please note that the operational language of the Government of Newfoundland and Labrador is English. French translations of letters are provided as a courtesy and convenience. If interpretation service is needed from English to French during any planned teleconference with you and your client, the Province is willing to cover half that cost.

Please note that Federal officials with Environment Canada look to the Province's wildlife experts to manage listed caribou herds in this province. Please contact the Canadian Wildlife Service if you require further information on this matter.

It has been previously indicated to you that the Province is not prepared to release specific location data for any caribou in the Province. Please indicate what information, besides location data, you would like and our biologists will endeavor to provide it.

Funding

The Province's view on funding was communicated to you and your client in correspondence dated March 24, 2014, April 17, 2014 and May 16, 2014.

Effects

As previously indicated to you and your client, the maintenance of viable caribou herds in Labrador is important to the Province. To that end, the issuance of a Section (19) permit, and the associated Impacts, Monitoring and Mitigation Plan (the Plan), will address mitigation measures to ensure that effects of this Project on the caribou in Labrador will be minimized.

You indicated that your client does not accept any prohibition on hunting RWMH even for the purposes of conserving and protecting the herd. That is an unfortunate position and please be informed that the Province will continue to enforce existing wildlife regulations to ensure that herd is protected for future generations.

Form of the Mitigation Plan

As indicated previously, it is our understanding that the Proponent will be issuing a revised Plan for government and Aboriginal review in the very near future.

Once again, thank you for bringing your concerns to our attention.

Sincerely,



Ivy Stone
Environmental Assessment Division

Cc. Chief Jean-Charles Piétacho, Conseil des Innus de Ekuanitshit (BY FAX: 418-949-2085)
Brian Harvey, Labrador and Aboriginal Affairs Office
Kirsten Miller, Wildlife Division, Department of Environment & Conservation

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AVOCATS - ATTORNEYS

dschulze@dionneschulze.ca

July 28, 2014

BY FAX: 709-729-4900

AND BY EMAIL: brianharvey@gov.nl.ca

Brian Harvey
Director, Aboriginal Affairs
Executive Council – Labrador and Aboriginal Affairs
Government of Newfoundland and Labrador
6th Floor, East Block, Confederation Building
St. John's NL A1B 4J6

Dear Mr. Harvey:

Re: Lower Churchill Hydroelectric Development Project – Historic Resources Assessment and Recovery Program, Our file: 7550-001

This is further to your letter of July 28, 2014, regarding the archaeological permit that was the subject of both our letter to Martha Drake of June 16, 2014, and our email to you of July 8, 2014.

Unfortunately, rather than clearing up the confusion, your letter only added to it.

It is true, as you point out, that our letter of June 16 contained a minor error. We did in fact refer to the “Labrador-Island Transmission Link Project Aboriginal Consultation Guidelines for Regulatory Approval Applications” of July 2, 2013, rather than to the “Lower Churchill Hydroelectric Generation Project Aboriginal Consultation Guidelines for Regulatory Approval Applications” of July 2, 2012. However, the two documents – that you yourself signed – are almost identical.

However, as you know:

- ☐ the permit application of May 9, 2014, on which your government claims to be consulting our client was entitled “Title of Project: Lower Churchill Hydroelectric Development Project Historic Resources Assessment and Recovery Program: 2014”;

- ☐ the permit sought is for the reservoir upstream from the Muskrat Falls dam;
- ☐ the subject line of our letter of June 16 was “Lower Churchill Hydroelectric Development Project Historic Resources Assessment and Recovery Program.”

We therefore fail to understand how our very minor error would have led to the fundamental error you committed in your letter of July 7, 2014, that of basing yourself on the environmental assessment of what you claim to be a different project, i.e., the Labrador-Island Transmission Link Project.

There is every reason to believe that your letter of July 7 was the result of an extremely superficial reading of the file, rather than the “full and fair consideration” promised in step 5 of your guidelines.

Your letter of July 28 makes the situation even worse, stating that your “government sees no reason not to issue the permit.”

In our letter of June 16, we indicated to the provincial archaeologist of Newfoundland that the territory covered by Nalcor’s proposed program had been so heavily used by the Innu of Ekuanitshit that an island downstream from Muskrat Falls had been named “Ekuanatshiu Ministuk” (Island of Ekuanitshit) by the Innu of Sheshatshiu.

That information comes from the report prepared by Robert Comtois for the Attikamek-Montagnais Council in 1983 entitled *Occupation et Utilisation du Territoire par les Montagnais de Mingan*, which was cited by Nalcor Energy in its responses to the requests for information in the environmental assessment of the above-referenced project.

The historical and archaeological research commissioned by Nalcor for the purposes of the environmental assessment of the project in question also shows heavy use of the project area in the 19th century by the “Mingan Indians” (see Nalcor Energy, Environmental Impact Statement for the Lower Churchill Hydroelectric Generation Project, Component Studies: Socio-Economic Environment, Cultural Heritage Resources Report 5 of 9, *Historic Resources (Labrador Study)*, January 26, 2001).

It therefore appears to us that the data available as part of the very environmental assessment on which you base yourself should have given you ample reason to hold further consultations before making a decision on the permit.

In addition, you base yourself on the joint review panel’s conclusion “that the Project’s impact on Quebec Aboriginal land and resource uses, after implementation of the mitigation measures proposed by Nalcor and those recommended by the Panel, would be adverse but not significant.”

Let me remind you that the Panel “concluded that the Project would cause significant adverse effects on culture and heritage after mitigation” (Report, p. 16).

Let me also remind you of the measures proposed by Nalcor and recommended by the Panel, on which you base your response:

- ☐ “Nalcor committed to make use of best practice archaeological interpretation and analysis methods and to engage local communities in the development of initiatives” (p. 15);
- ☐ “The Panel recommended that Nalcor involve all affected groups in searching for, documenting and commemorating historical and archaeological resources” (p. 15);
- ☐ Nalcor should “give consideration to inviting participation by interested Aboriginal communities in Quebec” in the “management and protection of historic and archaeological resources” through a program that “the Panel recommends that Nalcor, in collaboration with the Provincial Archaeology Office, establish and support” (Recommendation 11.1);
- ☐ this program will involve the Aboriginal groups “in (a) the documentation and interpretation of known historic and archaeological sites and artifacts and (b) the process to be followed in the case of inadvertent discoveries of previously unknown sites and artifacts during construction, including notification of the three groups” (*id.*).

As you know, or should know, none of these commitments or recommendations has been implemented with respect to the Innu of Ekuanitshit. The conditions you cite to justify issuing the permit therefore do not exist.

Thank you for reminding us in your letter that “the province’s technical and regulatory experts are available to respond to inquiries and that the timelines can be extended, upon request, at any time during a consultation.”

We therefore request as follows:

- ☐ that a conference call be held between your archaeologists, those of the proponent Nalcor and the contact persons to be identified by the Innu Council of Ekuanitshit, with the necessary interpretation services;
- ☐ more specifically, that explanations be provided on how the known historic use of the sites by the Innu of Ekuanitshit will be integrated into the work conducted pursuant to the permit and the dissemination of the results of the archaeological work;
- ☐ and of course, that the issuance of the permit be deferred pending the outcome of such a process.

Yours sincerely,

[original signed]
David Schulze
DIONNE SCHULZE

c.c.: Chief Jean-Charles Piétacho
Innu Council of Ekuanitshit
BY FAX: 418-949-2085

Martha Drake
Provincial Archaeologist
Department of Tourism, Culture and Recreation
Provincial Archaeology Division
BY EMAIL: mdrake@gov.nl.ca

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Federal Court of Appeal



Cour d'appel fédérale

Date: 20140822

Docket: A-196-13

Citation: 2014 FCA 189

**CORAM: GAUTHIER J.A.
MAINVILLE J.A.
BOIVIN J.A.**

BETWEEN:

COUNCIL OF THE INNU OF EKUANITSHIT

Appellant

and

**THE ATTORNEY GENERAL OF CANADA, in
his capacity of legal member of the Queen's
Privy Counsel for Canada**

and

**The Honourable Keith ASHFIELD, in his
capacity of MINISTER OF FISHERIES AND
OCEANS CANADA**

and

**The Honourable Denis LEBEL, in his capacity of
MINISTER OF TRANSPORT CANADA**

and

**The Honourable Joe OLIVER, in his capacity of
MINISTER OF NATURAL RESOURCES
CANADA**

and

NALCOR ENERGY

Respondents

[81] I will now address the second issue regarding the Crown's duty to consult.

B. *Did the judge err in finding that the Crown had not breached its duty to consult the Innu of Ekuanitshit on aspects of the Project likely to have a prejudicial effect on their Aboriginal rights and to seek accommodation measures?*

(1) Standard of review

[82] The judge noted in his reasons that issues relating to the existence and content of the duty to consult attract a standard of correctness. He further asserted that a decision as to whether the Crown met its duty to consult is reviewable on a reasonableness standard, as it is a mixed question of fact and law. In the present instance, the parties acknowledge that the Crown recognized its duty to consult from the outset. The issue is therefore not whether the Crown has a duty to consult but rather whether the efforts of the Crown met the requirements of its duty to consult. As Justice Binnie writes in *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 S.C.R. 103 at paragraphs 48 and 77 [*Little Salmon*]: “the standard of review in that respect, including the adequacy of the consultation, is correctness”, but nonetheless it “must be assessed in light of the role and function to be served by consultation on the facts of the case and whether that purpose was, on the facts, satisfied”.

[83] It is through that lens that the following issues will be examined.

(2) The Crown's duty to consult

[84] The Crown's duty to consult Aboriginal peoples, if any, and its duty to accommodate, even prior to a decision on asserted Aboriginal rights and title, was recognized in 2004 by the

Supreme Court of Canada in *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74, [2004] 3 S.C.R. 550 [*Taku River*] and *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511 [*Haida Nation*]. The Crown's duty to consult is grounded in the principle of the honour of the Crown and this duty "arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it" (*Haida Nation* at para. 35; *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, [2010] 2 S.C.R. 650 at paras. 31, 40 and 41 [*Carrier Sekani*]). It requires the government to undertake a meaningful consultation in good faith with the Aboriginal people concerned on matters that may adversely affect their rights and to accommodate those interests in a spirit of reconciliation (*Haida Nation* at paras. 20 and 25; *Carrier Sekani* at para. 31). The duty to act honourably derives from the Crown's assertion of sovereignty and the fact that Canada's Aboriginal peoples were here when the Europeans arrived (*Haida Nation* at para. 25). Subsection 35(1) of the *Constitution Act, 1982*, which recognizes and affirms existing Aboriginal rights and title, enshrines this principle (*Taku River* at para. 24). Thus, the honour of the Crown is always at stake in its dealings with Aboriginal peoples (*R v. Badger*, [1996] 1 S.C.R. 771; *R v. Marshall*, [1999] 3 S.C.R. 456).

[85] The Crown's duty to consult cannot be defined in isolation, and the extent of the duty will vary with the circumstances. On the basis of the proportionality test, the nature and scope of the duty of consultation is "proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title, and to the seriousness of the potentially adverse

effect on the right or title claimed” (*Haida Nation* at paras. 39, 43-45; *Taku River* at paras. 29 to 32; *Carrier Sekani* at para. 36).

(a) *The decision of the Supreme Court of Canada in Tsilhqot’in Nation*

[86] It should first be mentioned that the Supreme Court of Canada handed down its decision in *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44 [*Tsilhqot’in Nation*] after this Court heard the present matter. The parties were however provided with an opportunity to submit additional written submissions regarding the impact of *Tsilhqot’in Nation*. The case at bar will therefore be examined taking into account the principles set out by the Supreme Court of Canada in *Tsilhqot’in Nation*.

[87] *Tsilhqot’in Nation* focuses on the existence and characteristics of Aboriginal title as well as on the Crown’s duty to consult. This Supreme Court of Canada decision clarifies the existing principles regarding the manner in which the Crown must deal with the potential existence of Aboriginal title where planned actions could adversely affect that Aboriginal title. In *Tsilhqot’in Nation*, after reviewing the evidence over a 339-day trial spanning a five-year period, Justice Vickers of the British Columbia Supreme Court found that the Tsilhqot’in people were in principle entitled to a declaration of Aboriginal title on a portion of the claim area. The Supreme Court of Canada, for its part, granted a declaration of Aboriginal title over the area at issue.

[88] The Supreme Court of Canada further determined that the Crown had breached its duty to consult in relation to certain forestry activities on Aboriginal title lands that occurred without any meaningful consultation with the Tsilhqot’in (*Tsilhqot’in Nation* at paras. 95-96).

(b) *The case at bar*

[89] In this case, the federal government agreed in 1979 to negotiate land claims with the Innu of Ekuanitshit for the purpose of concluding a treaty on the basis of the traditional occupation of the lands. Although the land claims of the Innu of Ekuanitshit remain unresolved, the traditional occupation of the lands in question has been accepted as a background by the federal government and by Nalcor, even though Nalcor at first denied this traditional occupation, but later reversed its position.

[90] Given the use and occupation of their traditional lands, it is understandable that the Innu of Ekuanitshit were wary when Nalcor presented the hydroelectric Project in issue. In the context of a land claim that had been accepted for negotiation by the government, it is reasonable to think that this Project could a priori affect the yet to be established rights of the Innu of Ekuanitshit over the lands claimed. This is indeed what led the judge to state at paragraph 104 of his reasons that “the [appellant] has a strong prima facie case for land use rights in the Project area”. Pursuant to established principles of case law, the Crown therefore had a duty to consult the Innu of Ekuanitshit and that consultation had to be carried out at a level higher than the bare minimum of the spectrum.

[91] As I previously noted, the appellant does not dispute the fact that the Crown did consult the Innu of Ekuanitshit. This is not a situation in which the Crown denied its duty to consult or made a decision that may affect the rights of an Aboriginal group without consultation (*Haida Nation*; *Mikisew Cree*; *Tsilhqot'in Nation*). The issue raised by the appellant and which must be

decided is rather whether the consultation process carried out so far by the Crown was adequate and proportionate not only to the strength of the claim but to the seriousness of the adverse impact the contemplated government action would have on the claimed right (*Haida Nation* at para. 39; *Tsilhqot'in Nation* at para. 79).

[92] At this stage it is appropriate to examine the unfolding of the process used by the government in its consultation with the Innu of Ekuanitshit. I have already indicated that the federal government acknowledged from the outset its duty to consult. In order to fulfill this duty, the federal government began by establishing its framework for consultation, which set out five dialogue phases between the government and the Aboriginal people prior to the Project being executed. The five phases are the following:

[TRANSLATION]

- Phase I: Initial participation and consultation on the draft Joint Review Panel Agreement, the appointment of the Joint Review Panel's members and the Environmental Impact Study Guidelines;
- Phase II: Joint Review Panel Process leading up to the hearings;
- Phase III: Hearings and drafting of the Joint Review Panel's environmental assessment report;
- Phase IV: Consultation on the Joint Review Panel's environmental assessment report;
- Phase V: Issuance of regulatory permits.

(A. B., Vol. 12, Tab 22 at 4049)

[93] This consultation framework provided the Aboriginal people with the opportunity to present their perspective on the following matters:

[TRANSLATION]

- Their traditional knowledge with respect to the environmental effects of the Project;
- The effect that environmental change caused by the Project may have on the current use of lands and resources for traditional purposes;
- The nature and scope of their recognized or asserted Aboriginal rights or treaty rights, the potential impacts of the Crown's activities in relation to the Project on those rights and the appropriate measures to avoid or mitigate those impacts.

(A.B., Vol. 12, Tab 22 at 4040)

[94] In this context, the government identified the Aboriginal groups that could be affected by the Project. The Innu of Ekuanitshit were among the groups identified by the government and the judge noted in his decision that the appellant's participation was active and began early in the consultation process, in particular through the environmental assessment process.

(c) *Environmental assessment process*

[95] In the case at bar, the appellant submits that the judge erred when he stated that the environmental assessment process provided under the *CEAA* allowed the Crown to include it in the consultation in order to partially meet its constitutional duties.

[96] Within the framework of the environmental assessment process of the Project, the Joint Review Panel was tasked with inviting Aboriginal groups to explain their use of the territory and how the Project would impact them. In carrying out its mandate, the Joint Review Panel was to consider a number of factors following the environmental assessment in accordance with subsections 16(1) and 16(2) of the *CEAA* and sections 57 and 69 of the *Environmental*

Protection Act of Newfoundland and Labrador, including [TRANSLATION] “the comments of Aboriginal groups and peoples, the public and interested parties received by the Panel during the (environmental assessment)...” (A.B., Vol. 3 at 909).

[97] The Joint Review Panel’s mandate with respect to considerations touching on Aboriginal rights did not include making any determinations or interpretations of:

- the validity or strength of any Aboriginal group’s claim to Aboriginal rights and title or treaty rights;
- the scope or nature of the Crown’s duty to consult Aboriginal persons or groups;
- whether Canada or Newfoundland and Labrador has met their respective duty to consult and accommodate in respect of potential rights recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- the scope, nature or meaning of the Labrador Inuit Land Claims Agreement.

[98] In other words, the Joint Review Panel could not determine the strength of the Innu of Ekuanitshit’s claim to Aboriginal rights or the scope of the duty to consult but was to consider the Project’s impacts on their claimed rights.

[99] In *Taku River*, the Supreme Court held that participation in a forum created for other purposes, such as a social and environmental impact assessment process, may nevertheless satisfy the duty to consult if, *in substance*, an appropriate level of consultation is provided. This principle was recently explicitly reiterated in *Little Salmon* at paragraph 39 and in *Carrier Sekani* at paragraphs 55 to 58. The Supreme Court of Canada, per Justice Binnie, further teaches that, under the appropriate circumstances, the environmental assessment process provided under the *CEAA* may be applied by the federal government to carry out consultations and fulfill its duty to

consult Aboriginal peoples (*Quebec (Attorney General) v. Moses*, 2010 SCC 17, [2010] 1 S.C.R. 557 at para. 45).

[100] An invitation on the part of the Crown to an Aboriginal group to participate in an environmental assessment is not necessarily sufficient to discharge the Crown of its duty to consult (*Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69, [2005] 3 S.C.R. 388). The Aboriginal group must be consulted “as a First Nation” and not “as members of the general public” (*Little Salmon* at para. 79). In the case at bar, it would be inaccurate to claim that the appellant did not participate as a First Nation in the environmental assessment process. More specifically, the appellant provided feedback on the contents of Nalcor’s impact study, it was invited to make submissions on the draft agreement on the establishment of a Joint Review Panel and to appoint members. The appellant also received financial assistance from the Participant Funding Program of the Environmental Assessment Agency, which provided it with an opportunity to file its written submissions on Nalcor’s impact study. The appellant also presented its oral submissions in Sept-Îles in 2011 (judge’s reasons at paras. 114-116).

[101] Following Phase IV of the consultation process regarding the “consultation on the Joint Review Panel’s environmental assessment report”, the Joint Review Panel issued its Report. The findings of the Joint Review Panel regarding the Innu of Ekuanitshit and the territory covered by the Project are determinative in this case. Under its mandate, the Joint Review Panel found, among other things, that contemporary land use by the Innu of Ekuanitshit in the Project area

was seasonal, sporadic, and of short duration, and that the impacts, although negative, would not be significant. The Joint Review Panel conveyed this in the following terms:

In addition to caribou hunting, the Panel noted that other use of lands and resources by Quebec Aboriginal groups in the Project area appeared to be seasonal, sporadic and of short duration, including incidental harvesting along the Trans Labrador Highway.

The Panel also noted that many land and resource use locations reported to be frequented by Aboriginal persons living in Quebec are outside the Project area and would remain unaffected and accessible.

Based on the information on current land and resource use identified through the environmental assessment process, there are uncertainties regarding the extent and locations of current land and resource use by Quebec Aboriginal groups in the Project area. The Panel recognizes that additional information could be forthcoming during government consultations. To the extent that there is current use of the land in the Project area, the Panel concludes that the Project's impact on Quebec Aboriginals land and resource uses, after implementation of the mitigation measures proposed by Nalcor and those recommended by the Panel, would be adverse, but not significant. (A.B., Vol. 3 at 756)

[Emphasis added.]

[102] It is important to note that this finding of the Joint Review Panel is not disputed by the appellant.

[103] The government's acceptance to negotiate comprehensive land claims and Nalcor's acknowledgement of the traditional use of the lands claimed supports the finding that, at first glance, a project such as Nalcor's could have adverse impacts on claimed rights and title.

However, the factual background and the evidence with respect to the appellant's current use of the land in the Project area are important elements in assessing the strength of the rights but also in identifying the true impact and seriousness of the potentially adverse impacts of the Project on the appellant's rights.

[104] As I have noted above, the assessment of whether the duty to consult was met must be carried out on the basis of two inextricably linked elements, namely, the strength of the claim and the severity of the impact of the proposed Project. The Joint Review Panel, after holding its hearings, concluded that the appellant's current interests in the Project area were seasonal, sporadic and of short duration. Furthermore, if the use and occupation of the lands claimed for traditional purposes is not challenged by either the federal government or Nalcor, I would add that the evidence in the record adduced by the appellant in support of the interest of the Innu of Ekuanitshit in the Project zone remains, on the whole, limited.

[105] In *Tsilhqot'in Nation*, the evidence revealed, a priori, the existence of a strong Aboriginal title and the existence of that Aboriginal title in the designated area had previously been established by a court following an adversarial debate with regard to proof of title. Once the existence of Aboriginal title has been established, it stands to reason that the level of consultation and accommodation is necessarily higher (*Tsilhqot'in Nation*). In the case at bar, the issue of Aboriginal title was not directly raised by the appellant.

[106] Even if it were granted that the Innu of Ekuanitshit exercised traditional use of the land in the Project area, as was noted by the Joint Review Panel in its findings, which are not disputed, the interest the Innu of Ekuanitshit could claim and the seriousness of the adverse impact the proposed Project would have on their claimed rights remain limited.

(d) *Premature challenge*

[107] Unsatisfied with the way the consultation was proceeding, the appellant did not wait until the end of the process before applying to the Federal Court for judicial review alleging the insufficient nature of the consultation during the phases prior to Phase V of the consultation framework. The judge concluded that it was premature to determine whether there had been adequate consultation in light of the fact that the consultation was not finished and Phase V of the consultation process had yet to begin. Nevertheless, the judge analyzed the way the consultation had unfolded up to phase V and concluded that it had been adequate. Before this Court, the appellant is challenging the merits of the judge's decision.

[108] With respect, I find it difficult to conclude that the judge erred in finding that the appellant had been adequately consulted prior to the government's order being issued. Phase V of the consultation framework confirms that the consultation process between the Crown and the Aboriginal people continues up to the issuance of licences by Transport Canada and Fisheries and Oceans. These licences will authorize Nalcor to undertake certain activities, including the construction of dams that could have consequences on the navigable waters under the *Navigable Waters Protection Act* or on fish habitat under the *Fisheries Act*. But we are not at that point yet. As confirmed and acknowledged by the lawyers of the Attorney General of Canada, the federal government's consultation has not been completed and will remain ongoing until the final phase, namely, the issuance of licences.

[109] Also, as explained in *Haida Nation*, the consultation process may lead to a duty to accommodate Aboriginal concerns by adapting decisions or policies in response (see in this regard *Taku River* at para. 42). The Joint Review Panel found that certain studies should be carried out at a later stage in order to better appreciate the concerns of Quebec Aboriginal peoples, including the appellant. There is no doubt that the Joint Review Panel, and as a consequence the respondents in this matter, examined the issue regarding the extent to which the appellant's concerns should be accommodated at the approval stage of the Project and the circumstances under which the appellant 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).

[110] In view of the foregoing and taking into account the following: (i) the unfolding of the environmental assessment process, (ii) the consultation process implemented by the government, (iii) the appellant's participation in the process, (iv) the consultation carried out at each stage and (v) the Joint Review Panel's finding on contemporary use and the impacts of the Project, elements that are not disputed by the appellant, it is difficult for me to conclude that the government failed to comply with the established principle of the honour of the Crown. I would

like to note, however, that the Crown must continue to honourably fulfill its duty to consult the Innu of Ekuanitshit until the conclusion of the process.

(e) *Evidence and essential issues*

[111] Secondary to its main argument regarding the Crown's duty to consult, the appellant further contends that the judge erred by failing to take into account the evidence on several essential issues. I will address each of the issues raised by the appellant in turn.

[112] The appellant first notes that the Innu of Ekuanitshit are not named in the government's response to the Joint Review Panel Report as it only refers generally to [TRANSLATION] "Aboriginal groups in Quebec" (A.B., Vol. 2 at 484-531). At the outset, the appellant argues that it is impossible to conclude that the concerns of the Innu of Ekuanitshit were taken seriously or accommodated. However, the appellant's complaint in this regard cannot be accepted. Several Aboriginal groups from Quebec and Labrador participated in the environmental assessment process. In particular, the Appendix of the Joint Review Panel Report lists all of the participants in the public hearings held by the Joint Review Panel. The Innu of Ekuanitshit are listed among the participants. Furthermore, Chapters 9 and 10 of the report contain an analysis of the use of the lands by all of the Aboriginal groups concerned as well as an analysis of their established or asserted rights and titles.

[113] The appellant further claims that the Joint Review Panel had suggested a more in-depth consultation that never materialized. However, a careful reading of the Joint Review Panel's findings at pages 185 and 186 of its report (A.B., Vol. 3 at 755-756) in fact shows that the Joint



Government of Newfoundland and Labrador
Labrador & Aboriginal Affairs Office

August 22, 2014

Mr. David Schulze
Dionne Schulze - Attorneys
507 Place d'Armes #1100
Montreal, Quebec H2Y 2W8

Dear Mr. Schulze:

Thank you for your letter of 28 July 2014 regarding the Historic Resources Assessment and Recovery program and for your comments on the proposed Government authorization.

The role of the Provincial Archaeology Office (PAO) is to fully and fairly consider the comments of the Innu of Ekuanitshit, and assess Nalcor's permit application as it relates to the appropriateness of the proposed methodology of the proposed historic resources assessment and recovery and to the credentials of the archaeologists who are to carry out the work. In this respect, the PAO is satisfied, after considering the comments of the Innu of Ekuanitshit, that the proposed archaeological activities, as detailed in the 2014 Stage 2/3 Historic Resources Impact Assessment - Muskrat Falls Reservoir & L'Anse au Diable permit applications, meet the requirements of the *Historic Resources Act* and are in keeping with best practices as identified in the Joint Review Panel's recommendations.

In your letter you wonder how the historic use of the sites by the Innu of Ekuanitshit will be integrated into the work being proposed, and how results of that work will be disseminated. If you have any additional information that could further inform or assist in the archaeological assessment of the Project site, please provide such information at your client's earliest convenience. Otherwise, regarding the dissemination of the results of the proposed works, Nalcor officials have advised that they will distribute the results of the archaeological investigation to all Aboriginal governments/organizations upon its completion.

In your letter you refer to the Joint Review Panel (JRP) Report's Recommendations (*Recommendation 11.1 – Involvement of Aboriginal Groups in the management and protection of historic and archaeological resources.*)

At the time, the Provincial response was as follows:

The Government of Newfoundland and Labrador accepts the intent of this recommendation, that aboriginal groups be involved in the management and protection of historic and archaeological resources.

Consequently, the Proponent and the Province:

- consulted potentially impacted Aboriginal governments/organizations on the permit application, which provides a comprehensive execution plan and description of the methodology to be utilized; and,
- will make Historic Resources reports available to Aboriginal governments/organizations and the public upon request.

Nalcor officials have also advised that they have presentation materials that can be provided to any Aboriginal government or organization upon request.

Please note that the JRP suggested that Nalcor give consideration to inviting participation by interested Aboriginal communities in Quebec. Nalcor officials have advised they will certainly consider fulfilling any specific request made by any Aboriginal government / organization.

In your letter you have requested that a conference call be held between the PAO, the Proponent and the contact persons to be identified by the Innu Council of Ekuanitshit, along with the necessary interpretation services. The Province is willing to consider covering half of the cost of any required interpretation services. Please provide an estimate of these costs as soon as possible. Please contact me within the next 10 days at (709)729-1487 or brianharvey@gov.nl.ca to set a mutually agreeable time for such a teleconference.

This being said, we see no further reason to delay the issuance of the permit. As I have noted earlier, the Province welcomes any further information that the Innu of Ekuanitshit can provide. Any additional information that is provided during the proposed teleconference will be used to further inform the archaeological process. For clarity, the PAO will stipulate this on the actual permit.

Sincerely,



Brian Harvey

Director

c.c. Chief Jean-Charles Piétacho, Conseil des Innus de Ekuanitshit (BY FAX: 418-949-2085)

Martha Drake, Provincial Archaeologist

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September 25, 2014

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Ms Ivy Stone
Environmental Assessment Division
Department of Environment and Conservation
PO Box 8700
4th Floor, West Block, Confederation Building
St. John's, NL A1B 4J6

Dear Ms Stone:

Subject: Environmental Assessment of the Labrador-Island Transmission Link Project:
Endangered Species Act – Mitigation and Monitoring Plan for Endangered
Species, Nalcor document No. ILK-PT-MD-0000-EV-PL-0001-0; Our file 7550-
005

Introduction

This is further to the receipt on September 10, 2014, of the new draft “Mitigation and Monitoring Plan for Endangered Species” (MMP) prepared by the proponent Nalcor Energy, which your email of January 27, 2014, promised our client, the Conseil des Innus de Ekuanitshit “in the near future.”

As you promised, the proponent provided us with a French translation of Part 8 of the plan, which deals with caribou, and we thank you. We have never been informed, however, as to why you refuse to provide our client with a translation of the ten other parts of the plan.

Please be advised that this letter is not our client's final response to the MMP put forward by Nalcor; rather, it is intended to set forth the information and positions we would need to know in order to usefully comment on the plan. We would be ready to give the plan to the community's consulting biologist and begin discussion within the community as soon as we receive full answers to the questions set forth below.

Subjects the Mitigation and Monitoring Plan does not cover

In our letters of May 22 and June 25, we asked for a commitment from you to ensure that the MMP to be submitted by Nalcor contained at least the minimum elements required in the Guidance for the Development of Caribou Mitigation and Monitoring Plans for South Peace Northern Caribou – April 17, 2013, disseminated by your counterparts in the British Columbia Ministry of Environment.

In your letters of June 17 and July 16, you failed to respond to this request, and in our letter of July 25 we informed you that we therefore found that you had refused, without reason, to obtain from Nalcor Energy a mitigation plan that contained the elements required by the guidelines developed in British Columbia.

We note that our conclusion was correct, since the MMP is indeed lacking the most important elements of the guidelines developed for the South Peace River, and no explanation is given.

Specifically, Nalcor's plan does not:

- Quantify the residual impact(s) of activities on caribou and caribou habitat. Residual impacts are defined as those impacts remaining after measures to avoid, minimize, and restore on-site have been fully considered;
- Propose offsetting measures to address residual impacts that meet the requirements of the principle that development activities and associated mitigation (including offsetting) can be demonstrated to result in a net neutral or positive effect on the viability of the herd within 10 years of receiving approval.

Nalcor's promise not to break the law

We would like to remind you that in our letter of May 22, 2014, we pointed out Nalcor's astonishing commitment to comply with the law, a promise, one would hope, a Crown corporation would not need to make.

Nalcor repeats that commitment several times in the new version of the MMP:

- "Mobile storage tanks will comply with the Transportation of Dangerous Goods regulation SOR/200834, as well as the Storage and Handling of Gasoline and Associated Products Regulations, 2003, under the Environmental Protection Act";
- "Nalcor will comply with laws and regulations pertaining to fish and wildlife, forest fires, forest travel, smoking and littering";

- “Construction activities will be conducted in accordance with municipal by-laws regarding noise”;
- “Blasting activities will be designed and undertaken in compliance with provincial and federal regulations”;
- “Work activities will occur in a manner that does not deliberately harass wildlife”;
- “Project personnel will adhere to appropriate speed limits applicable to the size and class of the access roads”;
- “Transmission line maintenance and repair personnel will adhere to appropriate speed limits applicable to the size and class of the access roads”.

In its MMP, the only areas where Nalcor says it could exceed “requirements of the applicable regulations” are the use of herbicides and mechanical methods for vegetation removal—section 8.5.

But curiously, when Nalcor raises the possibility that required buffer zones to prevent the movement of herbicides into adjacent waterbodies might not be adequate, the proponent proposes nothing and explicitly leaves it to the province to set new buffer widths by regulation. The plan states: “If these buffers are not adequate, LCP looks to the Province to provide appropriate regulations with respect to buffer widths”—section 7.13.

One must conclude that Nalcor does not intend to exceed the mitigation measures required by the applicable legislation and regulations.

According to the Canadian Environmental Assessment Agency, Nalcor informed the Department of Fisheries and Oceans (DFO) at the time of the environmental assessment that it was prepared to comply with the *Fisheries Act* and Regulations but could not commit to following DFO guidelines unless it deemed them technically and economically feasible:

Requesting Organization: Canadian Environmental Assessment Agency
Information Request No.: CEAA-16

....

In response to a question from DFO, Nalcor committed “to comply with applicable legislation and regulations, including the Fisheries Act, and where technically and economically possible relevant DFO guidance will also be adhered to. However, and consistent with DFO’s acknowledgement that it is not always possible for Nalcor to implement all mitigation measures recommended by DFO, in those instances where recommended mitigation measures cannot be

implemented Nalcor will provide a rationale and consult with DFO for advice.”

Nalcor would therefore not be bound by DFO guidelines such as:

- *Guidelines for Protection of Freshwater Fish Habitat in Newfoundland and Labrador* issued in 1998;
- *Guidelines for the Use of Explosives in or near Canadian Fisheries Waters* issued by DFO the same year;
- *Land Development Guidelines for the Protection of Aquatic Habitat* 1993.

Nalcor subsequently confirmed this approach in its Environmental Protection Plan (EPP), in which it does not commit to systematically following DFO guidelines, stating only that “[s]tream crossing will follow DFO Standard Operating Procedures (SOP), where feasible”—Document number LCP-PT-MD-0000-EV-PL-0010-01, “LCP HVdc Overland Transmission and HVdc Specialties Environmental Protection Plan,” p. 37 (emphasis added).

Since Nalcor has explicitly refused to make a commitment to follow guidelines issued by the federal government, we can assume that it will not make a commitment to follow guidelines issued by the province either.

For example, the EPP does not provide that heavy equipment will be kept outside the high water mark in all cases (“Heavy equipment will be kept outside the high water mark of all bodies of water, where possible”—section 11.6, p. 67. Yet, your department’s *Environmental Guidelines for General Construction Practices* makes it an absolute requirement (“Heavy equipment such as bulldozers, front end loaders, backhoes and cranes must be kept outside the high-water mark of all drainage courses and bodies of water”)—section 13.3.2.

We must therefore conclude that Nalcor does not consider itself to be bound by guidelines such as:

- *Environmental Guidelines for General Construction Practices*;
- *Guidelines for Culverts*;
- *Guidelines for Diversions, New Channels, Major Alterations*; *Environmental Guidelines for Fording*;
- *Environmental Guidelines for Water Course Crossings*, all issued by your department; or
- *Environmental Guidelines for Construction and Mineral Exploration Companies* issued by the Department of Natural Resources.

Nalcor’s qualified commitments

Plan content

In our letter of May 22, 2014, we pointed out that the version of the MMP sent by Nalcor on October 17, 2013, contained several commitments that were so qualified as to be of little or no practical value.

In section 8.5 of the new MMP, among the measures intended to protect the woodland caribou, we find the same empty phrases as in the first version:

- “Biodegradable lubricants and hydraulic fluids will be used where practical, when working near waterbodies”;
- “development of new access will be minimized, to the extent practical”;
- “Haul distances for construction material will be limited to the extent practical”;
- “blasting will be delayed where practical until wildlife have been allowed to leave the area of their own accord”;
- “Nalcor will use non-residual herbicides and mechanical methods for vegetation removal, where practical”;
- “If necessary, access control measures will be applied in certain areas associated with facilities and/or ongoing activities to prevent disturbance of individual caribou.” (emphasis added)

With respect to caribou, the new plan adds a vague, qualified commitment to section 8.7:

- “The Project footprint will be minimized to the extent possible, including access and other disturbances on the landscape being kept within existing areas of disturbance where possible” (emphasis added).

Conditional measures with indefinite scope are proposed in other areas as well:

- “For known Harlequin Duck nesting areas, a 100 m buffer of natural vegetation will be maintained along the river’s edge during their breeding, nesting and staging times (May through September). A 30 m buffer will be maintained outside the sensitive nesting season. Clearing and construction within these buffers during this time will not occur unless otherwise authorized”—pp. 21-22, 43;
- “Additionally, the final ROW [right-of-way] alignment within the transmission corridor has been sited to avoid known breeding sites and limit vegetation clearing at the edge of rivers, to the extent practical”—p. 22;
- “Disturbance[s] to wetland habitats (i.e., secondary habitat) are likely to be limited as construction activities will generally avoid these areas where possible”—p. 27;
- For bird species of concern, section 7.13 provides, among other things, the following:
 - “Use existing roads, quarries and other disturbed areas, where possible”;
 - “Schedule activities related to transmission line construction around sensitive periods or areas, to the extent practical”;
 - “Use existing right-of-way corridors for construction of transmission lines where possible”;
 - “Where possible, the bulk of clearing shall take place during the non-breeding

season.”
(emphasis added)

At no time does Nalcor explain the criteria that would be used to determine if measures are sufficiently practical, possible or necessary to be planned and in fact implemented.

Even when it tries to be precise, the MMP offers generalities that make it impossible to know what measures would really be taken:

- 1) A cautionary period (late winter) – February 3 to April 15
 - If Project activities are to occur within 1 km of the known 90% kernels for the wintering period and caribou are known to be present in these areas based on satellite telemetry or other reports, LCP and NLDEC-WD will develop appropriate mitigation which may include restricting, delaying or minimizing an activity.
- 2) A critical period (calving/immediately post-calving) – May 30 to June 30
 - If Project activities are to occur within 1 km of the known 90% kernels for the calving/immediately post calving period and caribou are known to be present in these areas based on satellite telemetry or other reports, LCP and NLDEC-WD will develop appropriate mitigation such as restricting, delaying or minimizing an activity.

Section 8.7, Scenario 3 – Caribou present during sensitive time periods (emphasis added)

In fact, the French translation is misleading, since what Nalcor promises in the original is that with your department, it will develop appropriate measures, which could include restricting, delaying or minimizing an activity (“develop appropriate mitigation which may include restricting, delaying or minimizing an activity”), without, however, providing any guarantee to that effect.

In practical terms, the MMP provides for no specific mitigation, even when construction is to occur “within 1 km of the known 90% kernels for the calving...period”: if measures are taken, only a curtailment of Nalcor’s construction activities is promised and activities would be delayed only “as appropriate.”

Other mitigation measures mentioned in section 8.7 for less “sensitive” periods are not much more specific, even if caribou are nearby:

- **Scenario 4 – Blasting**
 - Prior to blasting, the OSEM [On-Site Environmental Monitor] will conduct a visual survey;
 - If caribou are within 3 km of the site, blasting will be delayed until caribou have left the area;
 - Methods to encourage caribou to leave the area may be implemented in consultation with NLDEC-WD;
 - Note, if LCP can demonstrate the planned blasting activity will not likely result in

a behavioural response by caribou, the 3 km radius may be reduced.

- **Scenario 5** – Other Project activities (e.g., grubbing, grading and leveling, laydown and storage of equipment and material in existing areas, generators to support the activity, vehicle and heavy equipment use, handling and transfer of fuel and other hazardous material, waste disposal, sewage disposal and hazardous waste disposal, localized and low intensity blasting, tower erection and conductor stringing)
 - As these activities would not be audible beyond a short distance, if caribou are observed within 500 m of such an activity, the OSEM will determine if the activity will be delayed or curtailed;

(emphasis added)

Nalcor does not say:

- to whom it would have to “prove” that blasting within less than 3 km would “not likely result in a behavioural response by caribou,” or how;
- according to what criteria its employee, the On-Site Environmental Monitor (OSEM), will decide that activities such as localized and low intensity blasting or tower erection do not need to be delayed or curtailed, even if caribou are within 500 m.

Nalcor had already refused in its EPP to commit to delay blasting during sensitive time periods for important wildlife areas—p. 119 (“If possible, blasting will be done outside of sensitive time periods for important wildlife areas”).

In that regard, we wish to express our surprise and disappointment at the approval of the EPP on August 29, 2014, since the plan raises the same problems as the MMP, as we pointed out in previous correspondence. Section 7.13 of the EPP, under the heading “Mitigation and Monitoring,” uses the expression “where possible” three times and “to the extent practical” or “where practical” no less than six times, making the same vague, qualified commitments as in the draft MMP.

Nalcor’s continuing refusal to make real commitments

Nalcor’s refusal to make real commitments and its preference for conditional measures are not new: they were already noted by the CEAA during the same environmental assessment that concluded that the project “is likely to result in significant cumulative adverse environmental effects on the Red Wine Mountains Caribou Herd.”

The CEAA asked Nalcor how the mitigation measures that the proponent was proposing under certain conditions would in fact be considered to be practical or feasible and who would make that decision:

Requesting Organization: Canadian Environmental Assessment Agency
Information Request No.: CEAA-16

Many mitigation measures proposed by Nalcor are qualified by the disclaimers “to the extent practical”, “if practical”, “to the extent feasible” and “if technically and economically feasible”.

...

- To enable reviewers to understand the probability that proposed mitigation will in fact be implemented, Nalcor should describe the guidance that it will provide to its staff and contractors in determining under which circumstances mitigation (e.g., related to water, birds, caribou, rare plants etc.) would be considered “practical” or feasible”.
- It should be clarified who will be responsible for determining whether mitigation is “practical” or feasible” (e.g., Nalcor, contractors, regulatory agencies)?

To which the proponent responded:

Response:

Nalcor has applied qualifiers to its proposed mitigation strategies in order to accurately communicate that it cannot commit to universally apply all mitigation strategies in all circumstances. However, these approaches are technically and economically feasible under many circumstances, and in those cases, Nalcor is prepared to implement these approaches. From the perspective of environmental assessment, however, implementation of these steps is not necessary in order to prevent an environmental effect from becoming significant....

Responsibility for determining whether mitigation is practical or feasible will depend on the nature of the mitigation. In the case where the activity is permitted what is practical or feasible will be determined by the regulatory agencies. For these activities the permit application will outline the proposed methodology, the rationale for not applying the preferred mitigations strategies if applicable and alternative mitigations....

For those mitigations which are not associated with activities that require regulatory approval, Nalcor will determine whether mitigation is practical or feasible and will document the request by a contractor to modify a standard mitigation and the rationale....

Regardless, all mitigations, activities and associated environmental effects will be monitored and followed up on a regular basis. The results of the monitoring activities will be provided to the appropriate regulatory body....

(emphasis added)

Nalcor did not commit to implementing all the mitigation measures set forth in its environmental impact assessment and it would only be when a permit is issued for activities requiring mitigation that Nalcor would leave it to governments to state in the permit what mitigation measures were feasible or practical.

On the other hand, if measures were not included in a permit, Nalcor explained that it did not commit to implementing them unless the company deemed them technically and economically feasible.

This qualified commitment is reflected in Nalcor's stated conviction that even if the mitigation measures are not implemented, the environmental impact of its project would not be significant. That conclusion has since been contradicted by the CEAA, which concluded that the project "is likely to result in significant cumulative adverse environmental effects on the Red Wine Mountains Caribou Herd," even taking into account the mitigation measures.

Minister's obligations

As the proponent has stated, its MMP is required by sect. 19 of Newfoundland's *Endangered Species Act*. This is confirmed in the authorization by its shareholder, the province, for the construction by Nalcor of a transmission line between Labrador and Newfoundland under the *Environmental Protection Act*:

The proponent is required to prepare and submit to the Minister of Environment and Conservation for approval a Species at Risk Project Impacts Mitigation and Monitoring Plan to provide protection for listed species, to the greatest extent possible, through avoidance measures and mitigation of the impacts resulting from authorized activities, as well as to monitor the effects of authorized activities on listed species at risk. Approval of this plan by the Minister will be a precondition to an Economic Activity Permit which may be issued under Section 19 of the Endangered Species Act subject to approval by the Lieutenant-Governor in Council.

Environmental Assessment Bulletin, June 21, 2013, Reg. 16181 (emphasis added)

However, Nalcor has clearly stated that it does not promise to provide the greatest possible protection for endangered species. Unless such measures are imposed by a permit, it promised to implement the mitigation measures it proposed only to the extent it deems them technically and economically feasible.

The Minister of Environment and Conservation has considerable power under subsection 19(2) of the *Endangered Species Act* and may, among other things, attach conditions he or she deems appropriate to the permit—subsect. 19(2).

Since Nalcor refuses to set out the specific criteria it would apply to justify its failure to implement the mitigation measures it promised, it is up to your department to impose all the mitigation measures by the permit it issues and to decide if and under what circumstances a qualified commitment will be tolerated.

On the basis of the proposed Mitigation and Monitoring Plan, we can conclude that your department must at least consider the following measures and decide if and under what conditions Nalcor could be exempt from implementing them:

- use “[b]iodegradable lubricants and hydraulic fluids...when working near waterbodies”;
- keep “access and other disturbances on the landscape...within existing areas of disturbance”;
- refrain from creating new roads and access trails;
- limit traffic along the transmission line ROW, including the use of gates and other control measures;
- impose “[h]aul distances for construction material”;
- delay blasting “until wildlife have been allowed to leave the area of their own accord”;
- “use non-residual herbicides and mechanical methods for vegetation removal”;
- limit the removal of vegetation along rivers;
- apply “access control measures... in certain areas associated with facilities and/or ongoing activities to prevent disturbance of individual caribou”;
- avoid Harlequin Duck nesting sites;
- avoid clearing during bird nesting and breeding season;
- avoid disturbing wetlands;
- avoid work during sensitive seasons for bird species of conservation concern.

In addition, with regard to the presence of caribou, your department must establish:

- for the cautionary period in late winter, criteria for activities to be restricted, delayed or minimized if they are to occur “within 1 km of the known 90% kernels and caribou are known to be present”;
- for the critical calving/immediately post calving period in the spring for activities to be restricted, delayed or minimized if they are to occur “within 1 km of the known 90% kernels for the calving/immediately post calving period and caribou are known to be present”;
- for blasting planned for when caribou are within 3 km of the site, the conditions under which Nalcor would be allowed to seek permission to go ahead;
- for all other project activities when caribou are observed within 500 m, the criteria for restricting, delaying or minimizing activities.

We would like to point out that in requesting a statement of these criteria, we are in no way agreeing that the proposed measures are adequate; rather, the criteria are the minimum elements required so that the real impact of the MMP proposed by Nalcor can be known.

Finally, since Nalcor has already stated that it would not be required to comply with the guidelines issued by the federal and provincial governments, they must be included by reference as permit conditions.

A non-exhaustive list follows:

- *Guidelines to Avoid Disturbance to Seabird and Waterbird Colonies in Canada* (issued by Environment Canada);
- *Guidelines for the Use of Explosives in or near Canadian Fisheries Waters* (DFO);
- *Guidelines for Protection of Freshwater Fish Habitat in Newfoundland and Labrador* (DFO);
- *Land Development Guidelines for the Protection of Aquatic Habitat* (DFO);
- *Environmental Guidelines for General Construction Practices* (NLDEC);
- *Environmental Guidelines for Fording* (NLDEC);
- *Guidelines for Culverts* (NLDEC);
- *Guidelines for Diversions, New Channels, Major Alterations* (NLDEC);
- *Environmental Guidelines for Water Course Crossings* (NLDEC);
- *Environmental Guidelines for Construction and Mineral Exploration Companies* (NLDNR).

The regional planning advocated by Nalcor

In the MMP, Nalcor acknowledges the cumulative effects of the hydro-electric facility being built at Muskrat Falls and the transmission lines between Labrador and Newfoundland, on which the facility will depend. The proponent sees the solution in regional planning with the participation of First Nations:

Because many developments are likely to occur concurrently within the Caribou range, careful coordination and planning of all resource development and management activities at a regional level is necessary. Such a planning initiative would require participation and commitment by all stakeholders with leadership from the provincial government. For example, in Labrador, the Forest Ecosystem Strategy Plan for FMD 19, prepared by the province and Innu Nation, establishes a precedent for sustainable resource development in the District and may serve as a model for developing an integrated, cumulative environmental effects management framework for the region. The LCP will work closely with all stakeholders and will be able to assist in such aspects as monitoring and controlling access.

(emphasis added)

A little further in the MMP, the following commitment appears:

Nalcor will continue its participation on the Labrador Woodland Caribou Recovery Team (LWCRT) as an observer regarding the RWMH and support of related research such as the telemetry monitoring program....

It is important to remember two facts about the Labrador Woodland Caribou Recovery Team (LWCRT). First, its work was carried out without representation from the Innus whose reserves are in Quebec, in spite of their title and ancestral rights in Labrador, agreed to by the government of Canada for negotiation purposes decades ago.

Second, with regard to a recovery strategy for the three herds of woodland caribou in Labrador, including the Red Wine Mountains Herd, the LWCRT's work has produced no tangible results in the last ten years.

The strategy developed by the LWCRT was published by your department in July 2004 and, as the strategy itself stated, was to be followed in two years by an action plan and reviewed every five years. On the ground, the strategy was supposed to lead to the identification of the critical habitat and recovery habitat for the three herds.

A decade later, there is still no action plan, the essential habitat has not been identified and the strategy has never been reviewed. In its response to the March 15, 2012, Joint Review Panel on the Gull Island and Muskrat Falls Hydroelectric Complexes, the government of Newfoundland promised that an updated strategy would be published in the same year—which should have made it possible to adopt an action plan and identify the critical habitat—but that promise was not kept, although work has started.

Next steps

For each of the vague, qualified commitments made by Nalcor in its MMP identified below, we would need:

- details of the criteria that Nalcor will apply to justify its failure to implement mitigation measures;
- or a description by your department of the criteria for the same purpose it intends to impose in the requested permit.

Since Nalcor has already stated that it is not bound by your government's guidelines, or those of the federal government, we would need to know which of those guidelines you intend to make binding by including them in the permit.

Because we fully endorse Nalcor's position that regional planning is essential for the protection and recovery of endangered species, we would appreciate it if you would tell us how the Innus of Ekuanitshit will be included in forest ecosystem management for District 19 and the work of the Labrador Woodland Caribou Recovery Team.

Finally, we would appreciate it if you would tell us the real date on which the strategy for the recovery of the three Labrador woodland caribou herds will be adopted, including identification of their critical habitat, which will be protected.

Yours truly,

A handwritten signature in black ink, appearing to read "David Schulze". The signature is written in a cursive style with a large, looping 'D' and a trailing flourish.

David Schulze

Encl.: Information Request Responses – Labrador Island Transmission Link; I.R. No. CEAA-16

cc.:

Chief Jean-Charles Piétacho Conseil des Innu de Ekuanitshit BY FAX: 418-949-2085	Michael J. Alexander Regional Director General – Atlantic Fisheries and Oceans Canada BY FAX: 709-772-6306
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TRANSLATION

September 25, 2014

BY FAX: 709-772-6306

BY EMAIL: maurice.landry@tc.gc.ca

Mr. Michael J. Alexander
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Mr. Maurice Landry
Regional Program Director – Atlantic
Transport Canada
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Moncton, NB E1C 5H7

Re: Environmental Assessment of the Labrador-Newfoundland Island Power Line Project, CEAR No. 10-03-51746;
Mitigation and monitoring plan for species listed under the *Endangered Species Act*, Nalcor document No. ILK-PT-MD-0000-EV-PL-0001-0;
Or file #7550-005

Sirs,

Introduction

This letter is addressed to you in your capacity as the responsible authorities for the above-mentioned project within the meaning of the *Canadian Environmental Assessment Act* (CEAA) and because of your responsibilities under the *Species at Risk Act* (SARA).

Please see the attached letter which responds, on behalf of our client the Innu Council of Ekuanitshit, to the Environmental Assessment Division of the Newfoundland Department of Environment and Conservation, following our reception on September 10, 2014, of the latest version of the "Listed Species Mitigation and Monitoring Plan" proposed by the proponent Nalcor Energy in order to comply with the provincial *Endangered Species Act*.

We would like to remind you that the responsible authorities for this project under the CEAA received letters dated September 18, 2013, signed by the federal Minister of Environment, instructing them, pursuant to subs. 37(1.3) of the CEAA, to work with Nalcor and the province to ensure the implementation of the mitigation and follow-up measures described in the comprehensive study report, including the development of the above-mentioned plan.



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Fisheries and Oceans Canada

Mr. Maurice Landry
Transport Canada

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The mixed measures proposed by Nalcor

As you will know, Nalcor informed the Department of Fisheries and Oceans (DFO) during the environmental assessment that it was prepared to comply with the *Fisheries Act* and its regulations, but that it did not undertake to comply with the DFO guidance documents unless it considered such measures economically and technically feasible:

Requesting Organization: Canadian Environmental Assessment Agency
Information Request No.: CEEA-16

...

In response to a question from DFO, Nalcor committed “to comply with applicable legislation and regulations, including the Fisheries Act, and where technically and economically possible relevant DFO guidance will be also be adhered to. However, and consistent with DFO’s acknowledgement that it not always possible for Nalcor to implement all mitigation measures recommended by DFO, in those instances where recommended mitigation measures cannot be implemented Nalcor will provide a rationale and consult with DFO for advice.”

Nalcor would therefore not be bound by DFO guidance documents such as

- *Guidelines for Protection of Freshwater Fish Habitat in Newfoundland and Labrador* issued in 1998;
- *Guidelines for the use of explosives in or near Canadian fisheries waters* issued by DFO in the same year;
- *Land Development Guidelines for the Protection of Aquatic Habitat* de 1993.

This approach has since been confirmed by Nalcor in its Environmental Protection Plan (EPP), in which it does not commit to systematically following DFO guidelines. Rather, it provides, minimally, that “[s]tream crossings will follow DFO Standard Operating Procedures (SOP), where feasible”: Document n° LCP-PT-MD-0000-EV-PL-0010-01, « LCP HVdc Overland Transmission and HVdc Specialties Environmental Protection Plan » p. 37 (our emphasis)¹.

The CEEA asked Nalcor who would make determinations regarding the practicality and feasibility of mitigation measures and how those determinations would be made:

¹ http://muskratfalls.nalcorenergy.com/wp-content/uploads/2014/08/LIL_HVdc-Transmission-HVdc-Specialties-Environmental-Protection-Plan.pdf



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Requesting Organization: Canadian Environmental Assessment Agency
Information Request No.: CEEA-16

Many mitigation measures proposed by Nalcor are qualified by the disclaimers “to the extent practical”, “if practical”, “to the extent feasible” and “if technically and economically feasible”.

...

- To enable reviewers to understand the probability that proposed mitigation will in fact be implemented, Nalcor should describe the guidance that it will provide to its staff and contractors in determining under which circumstances mitigation (e.g., related to water, birds, caribou, rare plants etc.) would be considered “practical” or feasible”.
- It should be clarified who will be responsible for determining whether mitigation is “practical” or feasible” (e.g., Nalcor, contractors, regulatory agencies)?

To which, the proponent replied:

Response:

Nalcor has applied qualifiers to its proposed mitigation strategies in order to accurately communicate that it cannot commit to universally apply all mitigation strategies in all circumstances. However, these approaches are technically and economically feasible under many circumstances, and in those cases, Nalcor is prepared to implement these approaches. From the perspective of environmental assessment, however, implementation of these steps is not necessary in order to prevent an environmental effect from becoming significant.

...

Responsibility for determining whether mitigation is practical or feasible will depend on the nature of the mitigation. In the case where the activity is permitted what is practical or feasible will be determined by the regulatory agencies. For these activities the permit application will outline the proposed methodology, the rationale for not applying the preferred mitigations strategies if applicable and alternative mitigations. [...]

For those mitigations which are not associated with activities that require regulatory approval, Nalcor will determine whether mitigation is practical or feasible and will document the request by a contractor to modify a standard mitigation and the rationale. [...]

Regardless, all mitigations, activities and associated environmental effects will be monitored and followed up on a regular basis. The results of the monitoring activities will be provided to the appropriate regulatory body. [...]

(our emphasis)



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Thus, Nalcor did not commit to implementing all the mitigation measures mentioned in its environmental impact assessment. Rather, Nalcor would rely on government issued permits to determine what measures were feasible or practical.

If, on the other hand, the measures were not included in any permit, Nalcor explained that it did not undertake to implement them unless the company considered them technically and economically feasible.

However, in its draft *Impact Mitigation and Monitoring Plan* for Listed Species (IMMP), it proposes a series of mitigation measures of indefinite and mixed scope:

- “For known Harlequin Duck nesting areas, a 100 m buffer of natural vegetation will be maintained along the river’s edge during their breeding, nesting and staging times (May through September). A 30 m buffer will be maintained outside the sensitive nesting season. Clearing and construction within these buffers during this time will not occur unless otherwise authorized”: pp. 21-22, 43;
- “Additionally, the final ROW [right-of-way] alignment within the transmission corridor has been sited to avoid known breeding sites and limit vegetation clearing at the edge of rivers, to the extent practical”: p. 22;
- “Disturbance[s] to wetland habitats (i.e., secondary habitat) are likely to be limited as construction activities will generally avoid these areas where possible”: p. 27;
- for bird species of special concern, section 7.13 includes the following:
 - “Use existing roads, quarries and other disturbed areas, where possible”;
 - “Schedule activities related to transmission line construction around sensitive periods or areas, to the extent practical”;
 - “Use existing right-of-way corridors for construction of transmission lines where possible”;
 - “Where possible, the bulk of clearing shall take place during the non-breeding season.”

(our emphasis)

With respect to the protection of Woodland Caribou, the IMMP makes other mixed undertakings in sections 8.5 and 8.7:

- “Biodegradable lubricants and hydraulic fluids will be used where practical, when working near waterbodies”;



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Transport Canada

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- “new access will be minimized, to the extent practical”;
- “Haul distances for construction material will be limited to the extent practical”;
- “blasting will be delayed where practical until wildlife have been allowed to leave the area of their own accord”
- “Nalcor will use non-residual herbicides and mechanical methods for vegetation removal, where practical”
- “If necessary, access control measures will be applied in certain areas associated with facilities and/or ongoing activities to prevent disturbance of individual caribou”
- “The Project footprint will be minimized to the extent possible, including access and other disturbances on the landscape being kept within existing areas of disturbance where possible.”
(our emphasis).

At no time does Nalcor provide us with information on the criteria by which these measures will be considered sufficiently practical, feasible, or necessary to be planned and effectively implemented.

Nalcor has also already refused, in its EPP, to commit to refrain from blasting during sensitive periods in areas of importance for wildlife: p. 119 (« If possible, blasting will be done outside of sensitive time periods for important wildlife areas »).

The requirements of the *Species at Risk Act*

According to the *Recovery Strategy for Woodland Caribou* (*Rangifer tarandus caribou*), *Boreal population, in Canada* issued in 2012 by Environment Canada under SARA, it is “urgent” to:

- Develop range plans (see Section 7.4) that outline range-specific population and habitat management activities with measurable targets to achieve recovery goal.
- Undertake coordinated land and/or resource planning to ensure that development activities are planned (type, amount, and distribution) and implemented at appropriate spatial and temporal scales (e.g. consider sensitive periods/areas such as calving).
- Plan to maintain habitat within and between boreal caribou ranges, to maintain connectivity where required.

Table 5

However, it is normally provinces which must develop and adopt range plans to protect critical habitat: section 7.4. The strategy explains: “Range plans may be stand-alone documents, or part of other planning documents including action plans.”



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In July 2004, Newfoundland issued its own recovery strategy for three woodland caribou herds in Labrador, including the Red Wine Mountain herd. The province promised that an action plan would follow within two years, that the strategy would be reviewed every five years and that, in the field, critical and recovery habitat would be identified for the three herds.

However, in ten years the Newfoundland government has still not succeeded in adopting an action plan, identifying critical habitat or reviewing its strategy. In its March 15, 2012 response to the Joint Review Panel's report on hydroelectric developments in Gull Island and Muskrat Falls, the province promised to update the strategy within the year, which would allow for the adoption of an action plan and the identification of critical habitat. This promise went unkept as work began on Muskrat-Falls and the power line between Labrador and Newfoundland Island.

In its IMMP, with respect to caribou, Nalcor only states that “[t]he Project footprint will be minimized to the extent possible, including access and other disturbances on the landscape being kept within existing areas of disturbance where possible”: section 8.7.

Even when the construction is “within 1 km of the known 90% kernels for the calving,” no specific mitigation measures are planned for the protection of woodland caribou. If action is taken, only a reduction in Nalcor's construction activities is promised and activities will only be delayed when “appropriate”: Subsection 8.7, Scenario 3.

During less “sensitive” times for caribou, Nalcor anticipates that even if caribou are in close proximity to an activity, it could carry on other activities within 3 km if it can prove that this will “not likely result in a behavioural response by caribou”, including:

grubbing, grading and leveling, laydown and storage of equipment and material in existing areas, generators to support the activity, vehicle and heavy equipment use, handling and transfer of fuel and other hazardous material, waste disposal, sewage disposal and hazardous waste disposal, localized and low intensity blasting, tower erection and conductor stringing

IMMP, Section 8.7, Scenario 4

It should be noted that Nalcor does not explain to whom the required proof will be provided or how.

In addition, even when caribou are present within 500 metres, Nalcor anticipates that its employee, the on-site environmental monitor, may decide that activities such as localized blasting will not require any interruption or reduction: Section 8.7, Scenario 5.



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It should be recalled that the federal Minister of the Environment has already determined in her decision of September 18, 2013 that the proposed Labrador-Island Power Line project “combined with other existing projects and activities, is likely to result in significant cumulative adverse environmental effects on the Red Wine Mountain Caribou Herd.”

Since woodland caribou are a listed wildlife species under SARA, it is now the responsibility of your departments to “ensure that measures are taken [...] in a way that is consistent with any applicable recovery strategy and action plans” to avoid or lessen and monitor “the adverse effects of the project on the listed wildlife species and its critical habitat”: SARA, s. 79.

Your obligation is now to avoid and lessen any adverse environmental effects on the Red Wine Caribou Herd, whether you consider it significant or not: DFO, *Practitioners Guide to the Species at Risk Act (SARA) for Habitat Management Staff*, November 2007, section 7.3.

Indeed, Nalcor admits in its IMMP that it could:

- build access roads and other disturbance factors in undisturbed areas frequented by caribou;
- continue operations even when construction is “within 1 km of 90% kernels for the calving”;
- blast even if caribou are within 3 km of an activity;
- Continue other activities such as localized and low-intensity blasting or tower erection even when caribou are present within 500 metres.

It is therefore clear that Nalcor sees the potential for adverse effects on caribou even if the proposed IMMP were approved by the province and that you must act to avoid these effects.



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Your departments' obligations

Nalcor has made it clear that it is not committed to providing the largest protection possible to threatened species. Unless these measures are imposed by a permit, it has committed to implementing mitigation measures only to the extent that it considers them technically or economically feasible.

Since Nalcor refuses to set out the specific criteria it would use to justify its failure to implement the mitigation measures it has promised, it will be up to your departments to impose all mitigation measures by way of the permits issued and to decide whether and under which circumstances a mixed commitment will be tolerated.

We would like to emphasize that in asking you to state these criteria, we do not accept the adequacy of the proposed measures: rather, they represent the minimum elements that would be necessary so that the true effects of Nalcor's proposed IMMP can be known.

In addition, since Nalcor stated during the assessment that it will not be bound by either your government's or the provincial government's guidelines, they must be included by reference as permit conditions.

A non-exhaustive list would include the:

- *Guidelines to avoid disturbance to seabird and waterbird colonies in Canada* (issued by Environment Canada)
- *Guidelines for the use of explosives in or near Canadian fisheries water* (DFO)
- *Guidelines for Protection of Freshwater Fish Habitat in Newfoundland and Labrador* (MPO);
- *Land Development Guidelines for the Protection of Aquatic Habitat* (MPO).

Finally, Nalcor admits in its IMMP that it does not exclude the possibility of causing adverse effects on caribou ranging from the construction of access roads in undisturbed areas frequented by caribou to localized blasting when caribou are present within 500 metres.

Your obligation under SARA is now to avoid and lessen such negative impacts on the Red Wine caribou herd, even if the plan were approved by the province. We would appreciate it if you could inform our client as soon as possible of the steps your departments will take to meet this obligation.



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Mr. Michael J. Alexander
Fisheries and Oceans Canada

Mr. Maurice Landry
Transport Canada

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Sincerely,

DIONNE SCHULZE

[Original signed by]

David Schulze

cc:

Chief Jean-Charles Piétacho
Council of the Innu de Ekuanitshit
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Mr. Michael J. Alexander
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Mr. Maurice Landry
Transport Canada

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Page 10

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Curtesy Translation

October 8, 2014

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Re: Environmental Assessment of the Labrador-Island Transmission Link Project –
Species At Risk Mitigation and Monitoring Plan; our file 7550-035

Ms. Stone,

Introduction

This letter is sent in response to your letter dated October 3, 2014. Through this letter you responded, after a 70-day delay, to our initial letter dated July 25, 2014 regarding the above-mentioned Plan, which you committed to transmit to our client, the Conseil des Innus de Ekuanitshit.

This correspondence related to the procedure for developing the Plan that our client finally received in its revised version on September 10, 2014 from the promoter Nalcor Energy. Our September 25 letter dealt with the proposed plan itself. However, we still have not received your response on this matter.

In accordance with the situation outlined in our last letter and given the evident deficiencies in the proposed Mitigation and Monitoring Plan, consultation of our client may only commence once you have submitted the information we have requested.



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Procedure for the subsequent steps

Interpreter Services

We fail to understand why you are telling us that “[e]n ce qui concerne les services d’interprétation pendant toutes téléconférences prévues avec vous et votre client, le gouvernement provincial confirme son intention d’assumer la moitié des coûts” [[i]n the matter of interpretation services during any scheduled teleconferences with you and your client, the provincial government confirms its intention to assume half of the costs].

You are already aware that the Conseil des Innus de Ekuanitshit will not contribute towards any costs of interpretive services required so that you may understand their representatives when they address you in their second language.

We are, nevertheless, prepared to hold a meeting with your minister in person, or by teleconference, and will entrust you to take the measures you deem necessary so as to be able to understand the Innu of Ekuanitshit, and make yourselves understood by them.

If, however, you would rather pay the costs for an interpreter to translate Innu directly into English we do not believe that our client would object.

Environment Canada’s Participation

With respect to the Red Wine Caribou Herd, you wrote, “Le gouvernement fédéral n’a donc pas compétence et il serait inutile que des représentants fédéraux participent à une discussion sur la protection et la gestion du troupeau sur des terres qui pourraient faire l’objet de répercussions négatives dans le cadre du Projet de transmission” [“The federal government does not have jurisdiction, and it would be useless for federal officials to be involved in a discussion about the protection and management of the Herd on lands that could be adversely affected by the Transmission Link Project.”]

By virtue of the *Canadian Environmental Assessment Act* (CEAA), the protection of the Herd was a condition for the authorization of energy transportation lines between Labrador and the Island of Newfoundland. Additionally, given that the woodland caribou is a listed wildlife species within the meaning of the *Species at Risk Act* (SRA), it is therefore the responsibility of the authorities as set out in the CEAA to “ensure that measures [are] taken in a way that is consistent with any applicable recovery strategy and action plans” to avoid or lessen and control “the adverse effects of the project on the listed wildlife species and its critical habitat.”

According to the 2012 *Recovery Strategy for Woodland Caribou, Boreal population, (Rangifer tarandus caribou) in Canada* issued by Environment Canada under the SRA, it is



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“urgent” to:

- Develop range plans (see Section 7.4) that outline range-specific population and habitat management activities with measurable targets to achieve recovery goal.
- Undertake coordinated land and/or resource planning to ensure that development activities are planned (type, amount, and distribution) and implemented at appropriate spatial and temporal scales (e.g. consider sensitive periods/areas such as calving).
- Plan to maintain habitat within and between boreal caribou ranges, to maintain connectivity where required.

Table 5

This sense of urgency does not seem to be shared by the government of Newfoundland. If the SRA stipulates that your government ought ordinarily to have developed and adopted range plans so as to protect the Herd’s critical habitat (section 7.4), then it must be conceded that your ministry has failed to fulfill its obligation in this regard, despite having had over a decade to do so.

Your own reintroduction strategy, published in July 2004, for three woodland caribou herds in Labrador, including the Redwine Mountain Herd, ought to have been followed by a plan of action, the identification of the Herd’s critical habitat as well as the reintegration habitat, yet no concrete results were obtained.

In its response dated March 15, 2012 to the report of the Joint Commission of Inquiry Respecting the Gull Island and Muskrat Falls Hydroelectric Projects, your government committed to update the strategy within the year, which would have allowed for the adoption of an action plan and for the identification of a critical habitat. This commitment was not fulfilled, yet work was initiated on the Muskrat Falls Project and the transmission link.

To your request that we provide you with “une raison quelconque pour laquelle des représentants du gouvernement fédéral devraient prendre part à cette discussion” [any reason for federal government officials to take part in this discussion], we would respond that we do not have faith in your minister to protect the Herd, as you tolerate the destruction of its habitat by your Crown Corporation, and you refrain from meeting your obligations under the SRA, the least of which would require you to identify the Herd’s critical habitat.

Given the circumstances, we feel that the federal government’s involvement is critical to ensure compliance with the SRA. Our client therefore reserves the right to invite specialists from the Canadian Wildlife Service to attend all scheduled discussions with your department.



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Proposed Content of the Plan

In our letters dated May 22, June 25, and July 25 of this year, we asked you to commit to include in the plan, at a minimum, the minimal elements required by the guideline published by your counterparts in the British Columbia Ministry of the Environment, entitled “Guidance for the Development of Caribou Mitigation and Monitoring Plans for South Peace Northern Caribou – April 17, 2013.”

You now claim that: “Les spécialistes de la faune de Terre-Neuve-et- Labrador se sont inspirés de l’exemple de la Colombie-Britannique... afin d’enrichir leurs connaissances spécialisées pour les plans de surveillance et d’atténuation des effets du Projet de transport d’énergie” [Newfoundland and Labrador wildlife experts have drawn on the example of British Columbia ... to enhance their expertise for monitoring and mitigation plans of the Transmission Link Project.]

We simply cannot understand your answer because as far as we know the plan in question was developed by Nalcor Energy. How could “Newfoundland Wildlife experts” have been inspired by “the example of British Columbia ... for the monitoring and mitigation plans of the Transmission Project” if they did not prepare them?

Regardless, we would be grateful if you could explain how the plan in question is inspired “by the example of British Columbia”, as we cannot see any evidence of this influence.

Finally, and as we mentioned in our letter of September 25, we have not found, in the Plan produced by Nalcor, the following elements which are required by the guidelines developed in British Columbia for the South Peace River Northern Caribou:

- the quantification of the residual impacts of the activities on caribou and caribou habitat must be taken into account, residual impacts being defined as those remaining after measures to avoid, minimize, and restore on-site have been fully considered;
- proposed offsetting measures addressing residual impacts, related to the principle that the proposed development activities and associated mitigation (including offsetting) must result in a net neutral or positive effect on the viability of South Peace Northern Caribou within ten (10) years of receiving approval.

In accordance with our letter dated June 25 of this year, we consider that you have refused without valid reasons to obtain from Nalcor a mitigation plan which includes this quantification and these measures. If you do not agree with this conclusion, kindly explain the reasons behind this omission.



Ms. Ivy Stone
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October 8, 2014
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Effects of the Project

We acknowledge your letter's enumeration of the occurrences where "des représentants officiels de la province [auraient] consulté les Innus de Ekuanitshit, ainsi que d'autres gouvernements et organismes autochtones dont les membres chassent les troupeaux de caribous au Labrador" [official representatives of the province [have apparently] consulted the Innu of Ekuanitshit, as well as other governments and Aboriginal organisations, whose members hunt the herds of Caribou in Labrador].

However, these were not consultations of the Innu of Ekuanitshit related to the Red Wine Mountain Caribou Herd. We are further astounded by the affirmation, contained in your letter dated June 17, 2014, to the effect that your government does not see any matter worthy of consultation related to the effects of the project on this Herd.

We do not see how you can claim, on one hand, that your information sessions on the project to ban the hunting of this flock amount to a consultation and deny, on the other hand, that the destructive effects of your own State company's project on the same herd may give rise to an obligation to consult our client.

Data on the Herd

Once we have received a full response to our letter dated July 25 of this year, we will ask the community counsel biologist to comment the proposed plan, and she will then be able to request the specific information she needs, such as the one you offered.

Regards,

DIONNE SCHULZE

[Signed]

David Schulze

c.c. :

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Ms. Ivy Stone
Department of Environment and Conservation
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COURTESY TRANSLATION

November 19, 2014

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Re : Environmental Assessment of the Labrador-Island Transmission Link Project –
Species At Risk Impacts Mitigation and Monitoring; our file 7550-005

Ms. Stone, Mr. Cleary,

Introduction

This letter is a follow up of your letters dated October 17 and 29, 2014, in which you claim to respond to the preoccupations of our client the Conseil des Innu de Ekuanitshit regarding the above-mentioned Plan.

The Plan's Approval

You noticed in Ms. Stone's email from last November 12 that your arbitrary 30-day time limit for indigenous groups to send comments on the Mitigation and Monitoring Plan had expired and therefore you claimed that [translation] "The above-mentioned is acceptable."

Yet, Ms. Stone's letter from October 29 had set another arbitrary 12-day time limit for our client to share their comments on your letters, bringing the time limit to November 10 at the latest.



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You have neither justified this time limit to us, nor enquired as to whether it was suitable to our client; we also notice that the final document was given to you by Nalcor Energy no earlier than Friday, November 7, less than three business days before you decided to approve it.

We assume that the time limit imposed in your October 29 letter was established in accordance with an already-made decision to approve the Plan during the week of November 10. If you disagree with this conclusion, kindly provide us any documentary evidence to indicate that rejecting the proposed Plan remained an option during the week of November 10.

The Questions Remain Unanswered

Assumptions

Considering how difficult it is to obtain clear answers to our questions from your department, we expose below what we assume are the answers to the questions that remain unanswered.

In the absence of a precise response to the contrary in the 30 days following this letter, the Newfoundland Government will be presumed to have admitted that our assumptions are valid. You will note that the time limit hereby awarded is more than double that which was awarded to us in your October 29 letter.

If you disagree with our conclusions, kindly indicate so explicitly and provide reasons.

Interpretation Service

You have rejected the request to hold a meeting between your department and the representatives of the Conseil des Innu de Ekuanitshit because our client was unwilling to contribute half the costs of the services of a French interpreter.

You have rejected our proposal that you attend said meeting with an interpreter proficient at translating directly between the Innu language and English.

We thus understand that your department refuses to hold meetings with our client without the services of a French-English interpreter and it refuses to bear more than half of the associated costs.

You understand very well that in these circumstances, no meeting will take place, or you do not suggest any measures to address the situation.

The Environmental Protection Plan



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In our September 25 letter, we had mentioned our disappointment with your approval of the Environmental Protection Plan (EPP) on August 20, 2014, when said plan raised identical issues than those we had reported before that date with regard to the Mitigation and Monitoring Plan (MMP).

We note that you offer no explanation as to:

- why the same issues were discussed in two distinct documents subject to two distinct decisions;
- or why you have omitted to take into consideration our comments on the MMP before approving the same problematic aspects of the EPP;
- or why you have omitted to mention the overlap between the two Nalcor documents and your two regulatory decisions to our client.

We assume that for every element of the Mitigation and Monitoring Plan that was already addressed in the EPP, your decision was already made.

Please note that our client does not have unlimited resources to respond to the deluge of documents that you relay for consultation purposes and that the Species At Risk Mitigation and Monitoring Plan had been carefully selected for a response, because it deals with the most important issues for the Innu of Ekuanitshit.

Your management of this aspect of a process you want to qualify as consultation was thus not only ineffective and clumsy, it also cost our client's time and energy needlessly.

Protection Plans

We had reminded you, in our September 25 letter, of your government's failure to adopt protection plans concerning the critical habitat of three woodland caribou herds, including the Mount Red Wine herd, by distribution ranges.

We also note that you admit that the [translation] "habitat use analysis carried out to inform the party on the critical habitat of the recovery plan is still ongoing" and that you have not determined a date for the completion of your work.

Yet, critical habitat protection plans are required by section 7.4 of the *Recovery Strategy for the Woodland Caribou, Boreal population* (Rangifer tarandus caribou) in Canada issued in 2012 by Environment Canada and by the *Species At Risk Act*.

We now have proof that your government is willing to authorize the construction of the Muskrat Falls hydroelectric plant as well as the transportation link from the plant to the Straight



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of Belle-Isle, without these protection plans.

We assume that no such plan will be adopted, and that the critical habitat of the Red Wine herd will not be identified between now and the completion of the work on the transportation link.

Environment Canada's Participation

When we requested a meeting with the participation of Canadian Wildlife Service's boreal caribou specialists, you replied that [translation] "federal representatives are always welcome to multilateral meetings concerning caribou protection in Labrador."

Because no such meeting was planned, you made an empty affirmation that only serves to distract the reader.

If we are wrong in this regard, kindly invite our client to a meeting with your department and the Environment Canada's specialists.

The Example of the Plan for the Northern Caribou South of Peace River

The Mitigating and Monitoring Plan about which you sought our comments was issued and signed by the proponent Nalcor Energy.

On several occasions, we asked for your commitment that the Plan include at least the minimum requirements under the directives entitled "Guidance for the Development of Caribou Mitigation and Monitoring Plans for South Peace Northern Caribou – April 17, 2013" issued by the British Columbia Environment ministry.

In her October 3 letter, Ms. Stone claimed that [translation] "Newfoundland and Labrador wildlife specialists" were apparently "inspired by the example set by British Columbia to increase their specialized knowledge on plans aiming to monitor and mitigate the effects of the Transmission Link Project."

You have not responded to our question as to how your department's specialists could have been inspired by anything considering that the Plan's conceptors were Nalcor employees. You also have not indicated how the Plan project in question was inspired from the example set by British Columbia, but you simply highlighted the measures that are similar in both plans.



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We assume that the Plan's conceptor is Nalcor and that you are unable to say if the proponent has taken into account the Plan for the Northern Caribou South of Peace River or not. At most, your own officials can claim to have consulted it before you rendered a decision. Your statements preceding this topic were irrelevant to the real facts surrounding the elaboration of the Plan that you have approved.

We already noted in our October 8 letter that you had refused, without valid reasons, our request to require Nalcor to quantify the residual impacts on the caribou's activities and on its habitat, as well as our suggestion of compensation measures aimed at addressing these residual impacts.

Nalcor's Lack of Commitment to Apply the Relevant Guidelines

In our September 29 letter, we raised Nalcor's refusal to commit to fully abide by the various directives and guidelines issued by federal and provincial ministries in charge of environmental protection.

Indeed, Nalcor had informed the Canadian Environmental Assessment Agency that it would follow the ministry of Fisheries and Oceans (MFO) policy papers only if it deemed its measures feasible economically and technically. In its EPP, Nalcor planned to keep its heavy equipment above high tide line only "if possible," while your department's *Environmental Guidelines for General Construction Practices* make it a strict requirement.

We asked your department to enforce, as mitigating measures imposed by the permit, abidance with the relevant guidelines, including the following:

- *Guidelines to avoid disturbance to seabird and waterbird colonies in Canada* (issued by Environment Canada);
- *Guidelines for the Use of Explosives In or Near Canadian Fisheries Waters* (MFO);
- *Guidelines for Protection of Freshwater Fish Habitat in Newfoundland and Labrador* (MFO);
- *Land Development Guidelines for the Protection of Aquatic Habitat* (MFO);
- *Environmental Guidelines for General Construction Practices* (NLDEC);
- *Environmental Guidelines for Fording* (NLDEC);
- *Guidelines for Culverts* (NLDEC);
- *Guidelines for Diversions, New Channels, Major Alterations* (NLDEC);
- *Environmental Guidelines for Water Course Crossings* (NLDEC);
- *Environmental Guidelines for Construction and Mineral Exploration Companies* (NLDNR).



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You have not responded to this request. We assume that your only reason not to follow up on this request is your statement that [translation] “the province is satisfied with the mitigation and monitoring measures described in the Plan.” In other words, your government would be satisfied with the suggested measures even if these guidelines were not followed.

Yet, you also invoke Nalcor's response to the access to information request CEAA-16 which posits the following position:

For those mitigations which are not associated with activities that require regulatory approval, Nalcor will determine whether mitigation is practical or feasible and will document the request by a contractor to modify a standard mitigation and the rationale. [...]

Regardless, all mitigations, activities and associated environmental effects will be monitored and followed up on a regular basis. The results of the monitoring activities will be provided to the appropriate regulatory body. [...]

We therefore conclude that your department gives Nalcor the discretion to follow the above-mentioned guidelines or not and that you refuse to set the parameters of that discretion with no other motive than the trust you have in the proponent.

Such trust is necessarily unfounded in a proponent which has consistently denied its project's very same adverse impacts on wildlife as those ultimately confirmed by the environmental assessment.

The Work's Tangible Impact

In our September 29 letter, we highlighted the numerous aspects of the project in which Nalcor left a door open to the possibility of environmentally damaging construction work, and particularly on wildlife.

In your October 17 letter, we notice your deplorable resignation to Nalcor's approach and your failure to force Nalcor to determine the criteria of its decisions susceptible to result in acts that would normally be prohibited:

- You allow the disturbance of wetland habitats with construction activities if Nalcor determines that these activities cannot be avoided.
- You allow land clearing and construction during bird nesting and reproduction season if Nalcor determines it is unavoidable. While a better protection is discussed in certain buffer zones (for the known Rusty Blackbird nests, and for nesting, reproduction, and



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migration stop periods of Harlequin Ducks), these specific cases can still be subject to special authorizations.

- You allow (Scenario 3) construction activities at a distance of less than one km from zones used 90% by caribou in winter, or of less than one km from zones used at 90% by farrowing caribou, despite that their presence has been confirmed in these zones by telemetric data. You stipulate that Nalcor and your department will then implement [translation] “the necessary mitigating measures,” but these are not defined anywhere.
- You allow dynamite blasting [translation] “even if caribou are present at a distance of less than 3 km,” leaving Nalcor to [translation] “determine whether the decibel amount may affect the caribou.”
- You allow a long list of other activities that could be undertaken at a distance of less than 500 meters from caribou (Scenario 5) if Nalcor determines that they would have no incidence. This list includes, according to the Plan: [original in English] “e.g., grubbing, grading and leveling, laydown and storage of equipment and material in existing areas, generators to support the activity, vehicle and heavy equipment use, handling and transfer of fuel and other hazardous material, waste disposal, sewage disposal and hazardous waste disposal, localized and low intensity blasting, tower erection and conductor stringing.”

We notice that you have not responded to our request to delimit Nalcor's discretion to decide whether is it economically or technically feasible to avoid such works.

Yet, you do not provide any reason for this omission, apart from the trust you bestow on the proponent to protect wildlife. We assume you have no other reason not to have follow up with our request.

The Labrador Woodland Caribou Recovery Strategy Team

In his October 17 letter, Mr. Cleary stated, [translation] “If Ekuanitshit Innu wish to be involved with [the Labrador Woodland Caribou Recovery Strategy Team], the Wildlife Division could certainly keep them informed of future meetings and would be open to discussing their participation to its activities.”

We assume that no team meeting is scheduled for the moment. If such a meeting is indeed scheduled, your department has not invited the Innu of Ekuanitshit to attend.

Moreover, we note that you do not commit to allow their participation, but only to discussing their participation. We thus assume that you reserve the right to refuse to let them



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participate and are not ready to provide the conditions which would lead to a different decision.

Conclusion

We do not appreciate having lost so much time and energy commenting such an inadequate Mitigation and Monitoring Plan when you have done so little to improve it.

The process your government insists on qualify as consultation turned out to be a complete failure due to your behaviour: you do not empower our client, you impose arbitrary time limits to respond to a great volume of documents, you do not provide real answers to its interrogations and do not motivate your refusals to integrate the requested measures, you have made decisions with regards to some significant questions in the context of another permit without notifying our client, and you have erected an arbitrary and unreasonable barrier to the possibility of holding a meeting.

At the same time, you fail to oppose a proponent who has clearly expressed its disbelief in the adverse impacts of its project, despite that these impacts were ascertained in the environmental assessment. You unjustifiably trust it to protect the environment and wildlife and you hurry to grant it the permits it requests.

We would be happy to receive your response to this letter, be it only to offer you one last change to regain some credibility in our client's eyes, since our client now has no reason to believe in the usefulness of the exchanges initiated by your department.

Best regards,

DIONNE SCHULZE

[signed]

David Schulze



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c.c. :

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Indigenous Consultation Report

Muskrat Falls Project

Submitted to:

Commission of Inquiry Respecting the Muskrat Falls Project

Submitted by:

Nalcor Energy

Submitted on:

August 21, 2018



and organizations, where appropriate, to facilitate project-related consultation. Additionally, it was Nalcor's practice, when required or requested, to provide translation of oral presentations in the Indigenous language spoken by the specific group.

Consultation activities for the purpose of issues scoping and the collection of Aboriginal Ecological Knowledge have occurred through the use of various methods such as studies, funding mechanisms and direct consultation with the communities. Sources of Aboriginal Ecological Knowledge included, but were not limited to, land use surveys and interviews, reviews of existing published and unpublished literature and through the provision of information to Nalcor.

Nalcor also conducted an assessment of contemporary traditional land use for a number of Indigenous groups who reside in, and/or claim Aboriginal rights and/or title to the area within or near the transmission corridor for the LITL Project.¹¹

4.2 Consultation Summaries by Indigenous Community or Group

4.2.1 Innu Nation

Consultation and negotiation between Nalcor and Innu Nation has been ongoing since 1998. Innu Nation claim Aboriginal rights and title to much of Labrador. The Innu Nation land claim area overlaps the Generation Project area. This longstanding relationship first included Process Agreements between Newfoundland and Labrador Hydro (Nalcor's predecessor) and Innu Nation. These Agreements established and funded mechanisms for ongoing consultation and negotiations related to both projects. A Memorandum of Understanding (MOU) was signed between Nalcor and Innu Nation in 2009 and in 2011, the membership of Innu Nation ratified an IBA, which defined how members of Innu Nation would participate in and benefit from the Generation and LITL Projects.

The IBA is the outcome of several periods and processes of discussion and negotiation over 10 years between Innu Nation and Nalcor and its predecessors. On September 26, 2008, Innu Nation and the Government of Newfoundland and Labrador announced the signing of the Tshash Petapen Agreement (which translates as the "New Dawn Agreement"), which resolved key issues relating to matters between the Province of Newfoundland and Labrador and Innu Nation surrounding the Land Claim and Self-Government Agreement-in-Principle (AIP), the Lower Churchill IBA and Innu redress for the Upper Churchill Hydroelectric Development. These three agreements were ratified by the Innu on June 30, 2011, and signed by the parties on November 18, 2011. The IBA and the Redress Agreement come into effect immediately upon signing. The AIP will form the basis for ongoing treaty negotiations between the Innu, Canada and Newfoundland and Labrador.

¹¹ More detailed information on contemporary traditional land use by these groups and organizations is available in the Socioeconomic Environment: Aboriginal Communities and Land Use Component Study (Nalcor Energy, 2011) at (Appendix I) and Environmental Impact Statement, Labrador Island Transmission Link, Existing Socioeconomic Environment, Volume 3, Chapter 15, Section 15.5.7, p. 15-117-15-151 (Nalcor Energy, 2012), (Appendix J).

4.2.3 *Nunatsiavut*

Although neither of the Projects cross through or near land areas covered by the Labrador Inuit Land Claims Agreement (LILCA), Nalcor was committed to open discussions with the Nunatsiavut Government and the continued provision of project information to the Labrador Inuit. Nalcor began meeting with the Nunatsiavut Government and other Inuit organizations and individuals to provide project information and receive and consider Inuit views on the Projects and its potential environmental effects and benefits in March 2008.

As with all stakeholders, Nalcor engaged directly with Nunatsiavut Government, through the release of information and distribution of information products. The information provided included updates, baseline study descriptions, permits and authorizations - as per the Provincial Aboriginal Consultation Guidelines. Information regarding methylmercury mitigation and effects management strategies and schedules, as well as general information about the Lower Churchill Project was also shared. This provided stakeholders with a significant amount of information pertaining to the Projects.

This “information out” and an “information in” perspective provided stakeholders with information on the Generation and LITL Projects, allowing them to review and consider this information and formulate their questions and issues, and then giving them the opportunity to provide their perspectives to Nalcor for consideration in project planning and the EA for both Projects. The details of Nalcor’s consultation with Nunatsiavut Government can be found in Section 5.0 of the Consultation Assessment Report, and in Chapter 7 of LITL EIS. Nalcor’s understanding of the contemporary land use is detailed in the LITL Component Study at pages 20-27.

An overview of the key questions and issues raised by Nunatsiavut regarding Generation and LITL are addressed later in this report in Section 5.0.

4.2.4 *Québec Innu and Naskapi*

There are 11 Innu communities and one Naskapi community in Québec. The land claim areas of several of these First Nations extend into Labrador, although these have not been accepted for negotiation by the Government of Newfoundland and Labrador.

Nalcor also initiated, and continues to seek opportunities to engage in appropriate consultation with the Naskapi Nation of Kawawachikamach, Québec.

To date, Nalcor has been engaged in consultation activities with six Québec Innu communities and one Québec Naskapi community to provide information on the Generation and LITL Projects, and to attempt to identify and discuss the nature of any associated interests and issues. The following lists the seven Québec Aboriginal groups that have been consulted:

- Pakua Shipi (Saint- Augustin);
- Unamen Shipu (La Romaine);

- Nutashkuan (Natashquan);
- Ekuanitshit (Mingan);
- Uashat mak Mani-Utenam (Sept-Îles);
- Matimekush-Lac John (Schefferville); and
- Kawawachikamach (Naskapi community).

Consultation and information sharing initiatives have varied between groups, as discussed above, based on their respective locations, nature and level of their interests, and their responses. Consultation for the purposes of issue scoping and gathering of Aboriginal Ecological Knowledge, has included face-to-face meetings, written correspondence, the provision of Project-related information (including brochures and fact-sheets prepared specifically for this purpose and translated into French), and/or the negotiation and implementation of proposed community engagement agreements through various meetings, conference calls, telephone calls and emails. Sources of Aboriginal Ecological Knowledge included, but were not limited to, land use surveys and interviews, reviews of existing published and unpublished literature, and through the provision of information to Nalcor by the group or community.

In May 2009, several groups (i.e., Pakua Shipu, Unamen Shipu, Nutashkuan, Ekuanitshit, Uashat mak Mani-Utenam, Matimekush-Lac John) were provided with a copy of Nalcor's proposed Aboriginal Community Engagement Agreement, and were invited to review the draft agreement to indicate their response to the terms of the agreement.

In 2010, Nalcor moved forward with planning and attempting to carry out an Indigenous consultation program focused specifically on the LITL Project and its EA.

Almost a year after the initial proposal was tabled, an agreement was successfully finalized with the community of Pakua Shipu on April 29, 2010. The parties developed a jointly agreed upon workplan and work scope for the exchange of information, identification of community concerns and the collection of contemporary land use information pertaining to the LITL Project.

Nalcor's continued consultation efforts, seeking to negotiate consultation agreements so as to identify issues and concerns and to continue to collect land use information, resulted in a second phase Community Engagement Agreement being signed with the Innu of Pakua Shipu, with the objective of continuing consultation in January 2011. Under this agreement, additional information was collected on the LITL Project related issues and concerns, and on any land and resource use in or near the proposed transmission corridors and associated traditional knowledge.

On June 17, 2011, an agreement was signed with representatives of Unamen Shipu allowing for the exchanges of LITL Project information and the collection of land and resource use data.

In addition, although there was no formalized consultation agreement put in place with Naskapi Nation of Kawawachikamach, Nalcor provided this community with Project-related information and opportunities to identify any interests, issues and concerns. Formal consultation agreements were not

finalized with the remaining Québec Innu communities (Nutashkuan, Ekuanitshit, Uashat mak Mani-Utenam and Matimekush-Lac John). Nalcor, however, continued to engage in (or offer) consultation with these groups respecting the LITL Project through the provision of information and, with the agreement of the community, through community meetings, workshops, conference calls, phone calls, and emails, to identify any interests and particular issues and concerns.¹⁵

For more details on the consultation with Québec Innu and Naskapi, see; EIS, Generation, Volume 1, Part A, Sections 8.2.4, 8.3.4 and 8.3.5.2; Project-Related Consultation Activities with Québec Innu and Naskapi Communities, Sections 6 through 13 of CAR; Section 5 through 11 of the LITL, Aboriginal Communities and Land Use Component Study; and EIS, LITL, Chapter 7, Section 7.3¹⁶

An overview of the key questions and issues raised by the groups and communities in Quebec regarding Generation and LITL will be addressed later in this report in Section 5.0.

5.0 SUMMARY OF INDIGENEOUS ISSUES AND CONCERNS:

5.1 Issues Identification

Key issues identified through consultation with the public, including Indigenous groups and communities, were considered in the Generation and LITL Project design and planning and in the development of guidelines, policies and programs, as well as the identification of topics to be addressed in the EIS.

Nalcor identified issues and areas of concern from several sources: direct engagement, correspondence, JRP process submissions, public statements, existing literature, commissioned reports, land claims documentation and similar process EAs and submissions.

Some of the recurring issues identified through consultation with Indigenous groups and communities included:

- Consultation regarding the Churchill Falls project;
- Project effects on the Innu spiritual connection to the land;
- Effects of wage employment on traditional values;
- Availability of country foods (e.g., loss of access, contamination);
- Effects of employment on social problems such as alcohol and drug addiction;
- improved communication on the benefits of the Project to Innu;
- Long term benefits; and

¹⁵ See Chapter 7, EIS LITL, pp.7-10 to 7-14 as found in Appendix M.

¹⁶ For more details on the consultation with Québec Innu and Naskapi, see EIS, Generation, Volume 1, Part A, Sections 8.2.4, 8.3.4 and 8.3.5.2 as found in Appendix K; Project-Related Consultation Activities with Québec Innu and Naskapi Communities, see Sections 6 through 13 of CAR as found in Appendix L; Sections 5 through 11 of the LITL, Aboriginal Communities and Land Use Component Study as found in Appendix I; EIS, LITL, Chapter 7, Section 7.3 as found in Appendix M.



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 2

Commissioner: Honourable Justice Richard LeBlanc

Tuesday

18 September 2018

MR. PENUNSI: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: (Innu-aimun spoken.)

MS. ANDREW: From –

MR. PENUNSI: (Innu-aimun spoken.)

MS. ANDREW: From what he's saying he said, like, he didn't see the actual going on, like, what's – what was going on in that area. But he said some were nearby this where they had the shaking tent that was performed in –near the area, he said. That's from what he's saying is hearsay.

MR. LUK: It's near the area of Muskrat Falls? Is ...?

MS. ANDREW: Yeah, the Muskrat Falls. Yeah.

MR. LUK: Now, you told my colleague, the Commissioner – I mean the lawyer for the Commissioner – about seeing English trappers come in to the land. Can you talk a bit about what it was like for Innu trappers when that happened?

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: (Innu-aimun spoken.)

MS. ANDREW: He can also remember the Innu from Quebec because there was no boundaries, borders anywhere that time. He can see Pukutshipit and Unemeinshipit and all those Quebec North Shore people. They seen them – sometimes they come and trade furs with the Hudson's Bay, I guess. And that's why now they saw them in the country while they were travelling. And those were the people besides the English they seen, other than the other people there, just another Innu people from Quebec.

MR. LUK: Has he ever heard stories about Inuit people being on the land?

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: (Innu-aimun spoken.)

MS. ANDREW: From their – from his experience of all those years he said he have never seen any Inuit people using the Mista-shipu. He never seen any Inuit people there, he said.

MR. LUK: Thank you very much, Mr. Penunsi, for taking the time to answer my questions.

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: (Innu-aimun spoken.)

THE COMMISSIONER: All right, thank you very much.

I appreciate your coming here today and giving us your evidence, Mr. Penunsi. Thank you.

I think what we'll do at this stage is break now as opposed to calling our next witness. And we'll come back at 1:30 this afternoon and we'll start at 1:30.

MR. LUK: Mr. –

THE COMMISSIONER: All right, yes, go ahead.

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: Mm-hmm.

MR. LUK: Could I just ask one follow-up question to the last bit of testimony by Mr. Penunsi, Mr. Commissioner?

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: (Innu-aimun spoken.)

THE COMMISSIONER: I'm not going to make this a practice but, yes, you can.

MR. LUK: Thank you.

MR. PENUNSI: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

THE COMMISSIONER: So there's one other question that's going to be asked of the witness.

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: Mm-hmm.

MR. LUK: Good morning, Mr. Penunsi.

I just have one question; I hope it's simple. You named some Quebec North Shore communities from where you saw people. I thought I heard one community. Could you just name those communities again, please?

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: (Innu-aimun spoken.)

MS. ANDREW: From his experience he said there was a lot of people he met, like, Quebec North Shore people. But he can't name, like, where they're from because it was in the country and they were just hunting, trapping, going to sell their furs. It was just like a great meet in the country and some of them, like, they didn't say where they're from or – but they knew that these are Quebec North Shore people. That's how the experience he had with them.

MR. LUK: Thank you.

MS. ANDREW: (Innu-aimun spoken.)

MR. PENUNSI: Mm-hmm.

THE COMMISSIONER: Okay, so we'll take a break now. And we'll return this afternoon at 1:30 and we'll start then.

Thank you.

MS. ANDREW: (Innu-aimun spoken.)

CLERK: All rise.

MR. PENUNSI: Mm-hmm.

Recess

THE COMMISSIONER: All right, good afternoon.

CHIEF PIÉTACHO: (Inaudible.)

THE COMMISSIONER: Mr. Learmonth?

MR. LEARMONTH: Jean-Charles Piétacho, who is present in the witness box. Could Mr. – Chief Piétacho be sworn?

THE COMMISSIONER: Okay. So Ms. Andrew, you continue to be affirmed to translate for us today.

MS. ANDREW: Mm-hmm.

THE COMMISSIONER: And I'll just ask Mr. Piétacho to stand please.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

THE COMMISSIONER: Okay, and go ahead.

CLERK: Take the Bible with your right hand.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CLERK: Do you swear that the evidence you shall give –

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

CLERK: – to this Inquiry –

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

CLERK: – shall be the truth, the whole truth –

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

CLERK: – and nothing but the truth, so help you God?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

CLERK: Please state your full name for the record.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)
Jean-Charles Piétacho.

THE COMMISSIONER: Okay, you can be seated, Sir.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: Good afternoon, Chief Piétacho.

Could you advise the Indigenous group that you are representing? The name of the group that you are representing?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said he's from Ekuanitshit. (Innu-aimun spoken)?

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mingan, Quebec. There's 700 Innu group in his community. That's why he's here.

MR. LEARMONTH: And where in Quebec is your – are your people – is the reservation that you live on?

MS. ANDREW: (Innu-aimun spoken) –

MR. LEARMONTH: Where is it, like, geographically in Quebec?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said Mingan is 200 miles from Seven Islands and is about a two-hour drive from Seven Islands to Quebec.

MR. LEARMONTH: And that's east of Seven Islands, is it?

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah.

MR. LEARMONTH: No, sorry, west, I should say. West.

MS. ANDREW: West, west. That's right.

MR. LEARMONTH: West of Sept-Îles, or Seven Islands, yes.

Chief, I understand that you were band manager from 1975 to 1991. Is that correct?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yes.

MR. LEARMONTH: Yes, and then you were elected Chief in 1991, and you've been elected on numerous occasions since then, and you're still the Chief. Is that correct?

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yes.

MR. LEARMONTH: Yeah.

And I further understand that your father Pinip Piétacho was councillor and chief and that he served as – in that capacity for about 30 years. Is that correct?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Thirty years altogether, he said.

MR. LEARMONTH: Thirty years.

And before your father Pinip was – served in that capacity, I understand that your grandfather, Peter Piétacho, was Chief of your – the Ekuanitshit people. Is that correct?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yes.

MR. LEARMONTH: All right.

Chief Piétacho, what I'm gonna ask you to do today is to give an account, or a statement, of the history of your people's connection with the Churchill River. What use did you make of the Churchill River? Did you travel to the Churchill River? A full explanation of what the history is of your involvement, or connection with the Churchill River, could you provide us that, please?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: Can I just stop you for a minute. Maybe it would be better, for the translator, if – or, translator, if you could advise the witness to speak just for – in fairly short terms, and then you can do a translation, it might be a lot easier to –

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: So if he pauses every once in a while that will give you a chance to remember what he is saying.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: From his experience as a Innu from his grandfather, to his father and the one that he has adopted by another Innu –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: – he did travel – (inaudible) travelled the Churchill River, as a – river to go, where they wanted to go, to go hunting, to go

trapping. Like, they use many rivers, they said, but the Innu people used to use rivers to go from there to there to all of the country where they were.

MR. LEARMONTH: Okay.

When during the year did you and your ancestors, travel to the area of the Churchill River? Was it in the summer, the spring, fall, winter? Can you give some explanation for that?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: They get ready by fall, which is in September, that's when they get ready. All the Innu people that are in their community, that's when they mostly use all the rivers that were there.

MR. LEARMONTH: You'd paddle in a canoe? Your people would paddle in canoes from the Mingan River to the Churchill River, is that correct?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

When they travel they usually travel on canoes, and some of them were like – there were many on the canoes and some of them travel on a different canoe going – like, they go another way, some go the other way using the Churchill River.

MR. LEARMONTH: So some would take different routes and travel up different rivers to get to the Churchill River?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Uh-huh.

MS. ANDREW: Yup, yup.

MR. LEARMONTH: And what percentage generally of the people in your community would go to Labrador on an annual basis, a

yearly basis? Was it everybody, or was it just a small group or a medium-size group of people?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

He's saying that many of his people – like, he said there are many rivers. They use different rivers, and half of those – his people come this way using the Churchill River. And that's when they come to Labrador, those people, a lot of them, he said.

MR. LEARMONTH: What size of canoes would the people travel to Labrador in?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said, I'm out in the canoes, they have been – may have been 11 feet, and they were – 11?

CHIEF PIÉTACHO: Fourteen.

MS. ANDREW: Fourteen feet, he said, and there were a lot of (Innu-aimun spoken).

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm. Okay.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: They're families; one family, like man and woman and children and a lot of supplies on that canoe.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: And maybe sometimes a pet or a dog.

MR. LEARMONTH: So how many people could travel in one of these canoes?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm. Okay.

Some of families, the Innu families, maybe there's four families going to Labrador and then there's another family going another way.

MR. LEARMONTH: Hmm. Yeah.

I understand that when you got to where you're going you would live in a shaputuan? Is that correct?

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yup.

MR. LEARMONTH: Yeah.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yup.

MR. LEARMONTH: And the shaputuan would hold, roughly, 15 people. Is that right?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah, 15.

MR. LEARMONTH: Fifteen. All right.

After travelling from the Mingan River to the area of Churchill River, and after setting up your camp, your shaputuan, what activities would you involve yourself in? What would you do when you got there?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's explaining about the shaputuan, he calls. He said it's a big – like a big tent you go through it, and then there's a lot of families going in the shaputuan, but then there were tents there. Oh, there was one family living in it and then the shaputuan was many families, he said.

MR. LEARMONTH: So many families, up to a maximum of 15, would live in the shaputuan and there were also tents where a smaller group of people would live? Is that correct?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah, he said, maybe 15. And the shaputuan is big. It may have been 15 or more, like, families living in it.

MR. LEARMONTH: Yeah.

And what was the shaputuan made of? What materials, wood, moss? What – how would it be constructed?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's explained that the shaputuan was made like a canvas. They used canvas, he said. And sticks and canvas. And he's talking about, like, maybe 60 years in time.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He explains that, like, they used sticks. And some of the people used to use birch as a cover, like, their tents or the shaputuan. They used birch, he said.

MR. LEARMONTH: And would there be a source of heating in the shaputuan?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: They used to make a, like a – they put rocks around it and they heated it up with rocks. That's where the heat come from, from that fireplace.

MR. LEARMONTH: Inside the shaputuan?

MS. ANDREW: Yeah, inside the shaputuan.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Then they used a woodstove later on.

MR. LEARMONTH: And what did you do for food?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: The people, the Innu people, started hunting, the way of life was always the hunting and the caribou was the main food in the Innu people.

MR. LEARMONTH: In addition to caribou, were there other animals that were taken?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: And other food source was the porcupine, the beaver and the partridge, the fish and the rabbit. That's the way of the food back then.

MR. LEARMONTH: Yeah. And what heard of caribou would you be hunting? Would it be the – I think it's Red Wine or the George River? Would he be able to advise on that?

MS. ANDREW: Yeah.

(Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's saying that, like there wasn't no boundaries back then. And the Innu people killed caribou, we didn't look, like – which is just the caribou or the – what do you call those? The north – the Mealy Mountains. We cannot say that because caribou is only

caribou for us, he said. We cannot say where we get this, we just got to taste it, he said. It's the – it's what the Innu people done. Like they – when they hunt, the just hunt caribou. They don't say this is coming from that or that, he said.

MR. LEARMONTH: Yeah, there's no –

MS. ANDREW: Like God gave us the caribou to hunt them so we hunt them, he said.

MR. LEARMONTH: Yeah. So there's no distinction between different herds? A caribou is a caribou, is that right?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah, there is no distinctions.

MR. LEARMONTH: Yeah, all right.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: And you would also, in addition to taking animals for food, you would also fish. Is that correct?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah, the Innu fished like all kinds of fish, he said, in the country and in the other rivers there. They did get all kinds of fish for their food, is what the Innu use, he said.

MR. LEARMONTH: Would the fishing take place in the Churchill River as well as other rivers?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah, many people use Churchill River as a source of food. Like they put their nets out and that's where they get their fish and as they travel they get all kinds of fish coming from their community, from here to Churchill River, he said.

MR. LEARMONTH: In addition to the fish and wild game, would there be a, you know, a

gathering of berries – wild berries and other items of food, or would it be just on the meat and fish?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah, the Innu was very familiar in berry picking because Innu people like berry picking, so as they go along those rivers they pick berries as well, he said, because this is their really source of food that they had berries and fish and all that, what they can have all of that land.

MR. LEARMONTH: Yes.

Did you ever travel to the area of the Churchill River with your mother Agathe?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: From his experience he never had – he never travelled on Churchill road but he's saying that he heard his mother, parents and his family travel there all the time.

MR. LEARMONTH: All the time.

Did you ever travel yourself to the Churchill River and live as the way – in the way that you've just described or are you just getting this information from ancestors, elders and other members of your Indigenous group?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's saying that his parents and grandparents and his family was using Churchill River, like travelling and hunting. But, in this experience, he never experienced to go to Churchill River because, at that time, he was in a residential school and he couldn't go anywhere because of the residential school he was in, but his parents did travel over there, he said.

From his experience, he said, they travelled from – this is their parents saying that they travelled from Grand Lake here in Northwest River. There's a place there called (inaudible). I don't know what they call it in English, but that's how far my parents travelled, he said.

MR. LEARMONTH: All right.

So, the information you're giving was based on what your parents and grandparents told you, as well as elders in your community and other members of your group. Is that correct?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said that it's a – this is coming from the parents, his parents and his family. But there is a book –

MR. LEARMONTH: Yes.

MS. ANDREW: – like one of the Elders wrote it, he said. And he mentioned how the rivers he travel and what rivers and how much he went on to –

MR. LEARMONTH: Mm-hmm.

MS. ANDREW: – as far as Davis Inlet. That's how that old man write it in his book.

CHIEF PIÉTACHO: Mmm.

MR. LEARMONTH: Was that Comtois. Was that the author of the book?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah, that's the name of the person who wrote it, Mathieu Mestokosho.

MR. LEARMONTH: Yes.

CHIEF PIÉTACHO: Mmm.

MR. LEARMONTH: And I believe he described the traditional territory of the Innu of Ekuanitshit, including the Winokapau Lake?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

He says it's in French, he said, but it's – I think that's how he – it sounds like, he said.

MR. LEARMONTH: Yes.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: And to his knowledge –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: – did other Innu groups from Quebec travel to the area of the Churchill River and live as he has described his group as having lived when they went there in the fall? Were you the only group from Quebec that went to the Churchill River area or were there other groups that you are aware of?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He would like to explain that he said, like, I'm Innu, just Innu; I'm not from Quebec, I'm not from Newfoundland and Labrador and I don't see any boundaries. Like, there was no borders or boundaries back then, he said. Innu goes in and out where they wanted to go, he said. And he explains that, again, he's Innu and he's not from anywhere, just Innu, he said.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: And he's saying that there were other people, like Quebec, like from Seven Islands, they're, as a people, are using that Churchill River.

CHIEF PIÉTACHO: Mmm.

MS. ANDREW: And it mentions that that person who wrote the book mentioned that in the book, he said. He mentions other people, other Innu people, who used that river he said.

MR. LEARMONTH: And to his knowledge, to your knowledge, were there Innu from – that lived in Labrador that your group would come into contact with when you went there in the fall of the year?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said that there were a lot of Innu people meeting together in the country. Sometimes they would be there, like, with them. Sometimes they go to get supplies at the stores

where – at maybe the Hudson’s Bay. They would go there and, like, all Innu people were just – they weren’t separate, there were no – like I said, there were no boundaries, he said. It’s just a get together and they’d go to the country. They see each other again. That’s what it was like, he said.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: And at the – I take it that in the spring of the year, after spending the fall and winter in Labrador, that your group would return to your home. Is that correct?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: And he’s saying that the Innu people, like, they – when they travel they tend to be in the country for a year. Sometimes they don’t come back in the community for a year; they stay out there, so they live out there. And he was mentioning a river; he calls it the, in Innu, (inaudible).

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: That’s where they travel right to the norths, he said. I don’t know what the location of that river, but I didn’t ask him for English.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Oh, he’s saying that it’s almost, like, up in (inaudible) that way, that –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: – a little bit, like, maybe in the middle of (inaudible) and the place they were in.

MR. LEARMONTH: Yes.

MS. ANDREW: It’s called (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: So some of the groups would – of your groups would stay in Labrador – what’s now Labrador, I realize there was no boundary at the time, but I’ll just refer to it as Labrador. You would – some of the members of the group would stay for a full year; whereas others would go up in the fall of the year and then come back in the spring of the next year. Is that correct?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: In the springtime they would travel back because it’s easier in the springtime, he said, to go back to the – in their hometown.

MR. LEARMONTH: All Right, so I thought he said that some people would stay for a full year, but I take it he didn’t mean, like, 365 days. It –

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: He’s saying that they stay out there one year and when they want to come

back, it's usually the springtime they come back. That's what he's saying.

CHIEF PIÉTACHO: Uh-huh.

MR. LEARMONTH: All right, thank you.

Now, while you were in – your people were in Labrador, in the manner that you described, did you also – was there also trapping of animals – I mean, to get furs for – that you could sell when you returned to your home?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Uh-huh.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Uh-huh.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said that the people, like his people, would come and come here in Labrador to hunt and to fur. It was like this all the time, he said they go and they hunt and they trap.

CHIEF PIÉTACHO: Uh-huh.

MS. ANDREW: And like he said, we never heard Labrador, in those days – his grandfather never heard of Labrador. It was just –

MR. LEARMONTH: Yes, I know there were no boundaries. Yeah.

MS. ANDREW: Yeah. There was nothing there, they were just going in and fur and kill what they have to kill, and stay in the land. That's what their –

CHIEF PIÉTACHO: Hmm.

MS. ANDREW: – intentions were when they were in that land.

MR. LEARMONTH: And when they would return home in the spring, would the people bring with them the furs that they had from the animals that they had trapped and then sell them in Ekuanitshit?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Hmm. Yeah, they would come and sell their fur; there was a store there, he said.

MR. LEARMONTH: Yeah, I believe there was a – the Northwest Company had an outlet there, is that correct?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: There was a French guy who used to sell – I mean, buy fur and then this Northwest –

CHIEF PIÉTACHO: Uh-huh.

MS. ANDREW: – Northwest –

MR. LEARMONTH: Now, this way of life gradually came to an end, I understand. Is that correct?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah. It was always the way of life, he said, in their community. And as the children started school and everything was going in their community, that's when it was gradually – like, they don't go there anymore.

MR. LEARMONTH: And when did that end? When did this way of life end?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's saying that he can say, like as – there were doing reservations that's when it started, like, I say 1950s, he said, that year. But in their – in what he's saying, he said (inaudible) never agreed going into reservation. He always thought that it was – they were against it, going into reserve and that's what he's saying.

MR. LEARMONTH: Yes.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's saying that when he was around three or five years old, he –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: – himself – they wanted to separate us. Some wanted to be taken to Natashquan and some wanted to go to (inaudible). They wanted to be separated – they wanted to take us and separate us and take us to that – these reserves because they were already making reserves, he said. And at that time the people say: We disagree, we cannot go, we disagree on this. That's what he's saying.

MR. LEARMONTH: And when would that have been? Perhaps Chief Piétacho can tell us his age?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's saying that he was born in 1953. (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

Yeah. And maybe fives years back, that's when they wanted to take us to other reserves – they want to separate us and divided us to the other reserve, he said.

MR. LEARMONTH: Yeah.

And I presume that the residential school, the fact that children were taken from their parents and put into residential schools, would have deprived those children of the – how to learn the way of life that their parents and ancestors had lived? Is that correct?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He say that his uncle, when he was in his age two, like, he was taken to residential school – his uncle, he's talking about his uncle – and he was taken by – there was a boat there, he said.

CHIEF PIÉTACHO: Hmm.

MS. ANDREW: They got into a boat – a lot of kids were in there and they were taken away. And at that time he's five, six years old, he said, and the plane came again and took us – all the Innu children, they were taken to the airport, and they were sent off to go to school.

MR. LEARMONTH: Okay.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: That would have been in what year? Just to be clear.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: You were born in '53, so you would have been very young at that point when these children were taken off – taken away and put in a plane, taken to a residential school? What year would that have been, roughly?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's saying that he thinks that it's 1950 when his uncle was taken and other kids there. He's saying that his uncle mentioned that they built a school? A school. But they didn't know that they were building the school for the other generation. That was them, right? He was six-, seven-years old when they were taken to that school.

MR. LEARMONTH: And how far away from the Ekuanitshit community were these residential schools? Was it a long distance?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said it's near Seven Islands.

MR. LEARMONTH: Yes.

MS. ANDREW: It's called right now – the settlement is called Mani-utenam.

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: That's where the resident school was.

MR. LEARMONTH: All right.

Do you have any information on the effect or impact that the construction of Churchill Falls power plant, in or about 1969, had on the way of life that the Ekuanitshit people had in the Churchill area – Churchill River area? Did it have any effect on the hunting and the trapping and the gathering, the construction of the Churchill Falls power plant?

Can you give us any information on that?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: There was a lot of impact on the Innu people, on his people, and that flooding of the Churchill, he said, because there was – they used the river and that there was a portage –

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: – trails there that they used, and it had a great effect on them, on the Innu people from his community, and that's when everything changed, he said, from, like, the Innu

going in there and coming out. That's the (inaudible) effect on them, he said.

CHIEF PIÉTACHO: Mm-hmm.

MR. LEARMONTH: Okay.

Those are my questions, Commissioner.

THE COMMISSIONER: All right.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: Do we have any cross-examination? Province of Newfoundland and Labrador?

MR. RALPH: No questions.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: Nalcor Energy?

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. SIMMONS: No questions.

MS. ANDREW: (Innu-aimun spoken.)

THE COMMISSIONER: The Concerned Citizens Coalition?

MR. BUDDEN: No questions, thank you.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: Edmund Martin?

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. SMITH: No questions, Mr. Commissioner.

THE COMMISSIONER: Kathy Dunderdale?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. E. BEST: No questions, Commissioner.

MS. ANDREW: (Innu-aimun spoken.)

THE COMMISSIONER: Provincial – Former Provincial Government Officials '03 to '15.

MR. T. WILLIAMS: No questions, Commissioner.

THE COMMISSIONER: Julia Mullaley and Charles Bown?

MR. FITZGERALD: No questions, thank you.

THE COMMISSIONER: Robert Thompson?

MR. COFFEY: No questions.

THE COMMISSIONER: Consumer Advocate?

MR. PEDDIGREW: No questions, Commissioner.

THE COMMISSIONER: The Innu Nation?

MR. LUK: No questions, Commissioner.

THE COMMISSIONER: The Nunatsiavut Government?

MR. GILLETTE: No questions, thank you Commissioner.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: The NunatuKavut Community Council?

MR. COOKE: No questions, Commissioner.

THE COMMISSIONER: Grand Riverkeeper Labrador and Labrador Land Protectors? Not there?

MS. O'BRIEN: Commissioner, counsel for the – for that group has been in touch with us. She's detained in court but she advises she has no questions for this witness.

THE COMMISSIONER: Okay.

Former Nalcor Board Members?

MR. GRIFFIN: No questions, Commissioner.

THE COMMISSIONER: Manitoba Hydro International?

MS. VAN IDERSTINE: No questions, thank you.

THE COMMISSIONER: Okay. The Conseil des Innus de Ekuanitshit?

MR. SCHULZE: I would have a few questions with the Commissioner's permission.

I wondered – I apologize for not asking before – would it be possible to show the witness Exhibit P-00053, or any map of the whole project? That's where I found one quickly. Is that feasible?

THE COMMISSIONER: What don't you come up – over to the table, and we'll see if we can't – can we get the P-00053?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: In P-00053, you're looking for the map?

MR. SCHULZE: Yes, page 8.

THE COMMISSIONER: Page 8.

MR. SCHULZE: Oh, thank you.

Page 8, Mr. Commissioner, and I apologize for starting sitting down.

Can the witness see this? I'm – oh – I think everyone can see it except the witness. Or –

THE COMMISSIONER: No, the witness has a screen there.

MR. SCHULZE: – does he have it there – thank you.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah.

MR. SCHULZE: Excellent, thank you very much. And maybe go down a bit more so that we can see – that's perfect, thank you.

So Chief Piétacho, you said that you did not go to Churchill River with your parents and grandparents, but did you go on the land with your parents and grandparents as a child?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah, he went to the land, but he didn't go to that area, he said.

He says he went with his grandfather, his parents, but on the local area, not to that land, he said.

MR. SCHULZE: Okay, but when you described life, going from the community in the fall, being – living in the Shaputuan, is that from your own childhood?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah, he's – coming from his parents, his grandparents.

MR. SCHULZE: Okay.

And Chief Piétacho, you mentioned the creation of the reserve as having an effect on people from your community travelling onto the land and up to the Churchill River.

Could you explain a bit more to the Commission why the creation of the reserve changed the life of the people?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said that, to this day, he never agree with, like, borders or boundaries. Innu is the land and the people have great effect on the – when the Churchill River was (inaudible), some of his people, his grandchildren – I mean, grandparents and the parents, they didn't go there anymore because of what's happening there.

And he's saying that of all this, I guess, it's the reserve too that the people were affected by the put in – they were put in reserves and it's – to them it felt like some kind of a prison to them. Not to go there, you have boundaries there. It is all the – all this connection with all of this affected their people and their grandfathers, their parents.

And, again, he said, I have no boundaries. I, still today, I have no boundaries. I'm Innu. I can go anywhere I want. There is no Labrador. To him, Labrador is just new thing, he said. It's just new.

MR. SCHULZE: And do people from Ekuanitshit – do they, now, in these years – in recent years or even this year – to your knowledge, do they hunt or do they fish in the area of the Churchill River?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said that his people still hunt on the Churchill area. They come and hunt and they fish, and the main thing is caribou. But there's government policies that they cannot hunt there anymore. And it's all this government policies, he said, that they stop but they cannot stop. He said, they continue on doing it. They continue to hunt there –

CHIEF PIÉTACHO: Hmm.

MS. ANDREW: – because they don't see Labrador as a boundary. It's just Labrador. To them it's just Innu land.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said he was born in (inaudible). He was born in – he wasn't born in the country or anything like that and he's very proud that he was born in (inaudible). And to this day he said, if I wasn't taken to residential school I would still be living on the land. I would still be hunting. I would still be doing what my ancestor did, he said.

And he said that he respect the land, he respect all the people and like, to this day, he said, he visit 67 portage trails that the Quebec Innu and the Innu youth, he said, I have seen them and I am very proud that I have seen them all he said and he respect everything, everything about the land itself including all the Big Land.

MR. SCHULZE: I'll try and make my last questions quite short.

Is it possible now for an Innu to live – to earn a living from trapping?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said the (inaudible) people, like, were first, but it's different now because the furs has gone down over – they might not want to fur hunting but it's the land. They want to go out there and live on the land. Because he respects the land, he said, and he would rather be on the land, to live there, to go there. But now there's all kinds of government regulations, he said, that we cannot go to this land or to that land. We cannot hunt there.

All this really have an impact on the Innu people now, he said, but definitely, he said, he would love to be on the land; not just because of fur trading but hunting and just being there. He really likes it when he's out there and he loves the country, he said.

MR. SCHULZE: Hmm.

My last question is just to do it, connected to the map, because we talked about the Churchill River and the Churchill River Valley, but I just ask for the map so that you could also look at the route that the transmission line takes. So that's the line from Muskrat Falls to where it's marked Forteau at the bottom.

To your knowledge, either about Ekuanitshit or about other communities to the east, is the area of transmission line also an area where Innu who – from Quebec, what we call Innu from Quebec – is it an area where Innu from Quebec also hunt or fish or carry out other activities?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm. (Innu-aimun spoken.)

MS. ANDREW: He said that he's gonna state again that, like, he is not a Quebec Innu, he is not a Big Land Innu, but he's just an Innu, he said. I just want to state that and I want you to understand that, he said. And, yes, there was a lot of impact on the Churchill River, especially on the hydro lines there.

MR. SCHULZE: Hmm.

MS. ANDREW: The people hunt up there. They use that land too, he said, his people. And used to go in and out and some of the things that were in it –

MR. SCHULZE: Hmm.

MS. ANDREW: – like, they're gone and they'll never be seen again. Some of the animal – some of the stuff that was there that they were using, it would be gone. And, he said, he just want to

express that he's Innu, not from anywhere else, just in that land.

MR. SCHULZE: Now – thank you, I understood that.

I just – maybe I'll, just one – just so to be clear. You understand – your understanding, Chief Piétacho, is that if we look at that area of the line, it's areas where, for instance, people from Natashquan or Uniam-Mitshu-shipu or Pakuashipi would go to hunt.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: Mm-hmm.

Yeah.

MR. SCHULZE: Thank you.

THE COMMISSIONER: You're (inaudible), Mr. Learmonth?

MR. LEARMONTH: No.

THE COMMISSIONER: I feel like I have to ask you a question.

So, Ms. Andrew, you might translate – you can tell –

MS. ANDREW: (Innu-aimun spoken.)

THE COMMISSIONER: – Chief Piétacho that –

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: Okay.

THE COMMISSIONER: So while you never, yourself, experienced hunting or trapping in Labrador – in what is now Labrador, what we recognize as Labrador – you're indicating that your parents, your grandparents did hunt in this area?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MR. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said that his parents used that area all the time when they were there, when they were travelling, and he's saying that, to this day, he don't hunt there. Whenever his people want to hunt in Labrador, they get, like get arrested and they got to go to court. And he said, to this day – another day, he's going to court for that, for his people because of people hunting in that area, where there's no hunting, I guess.

THE COMMISSIONER: So, what did your parents or grandparents call – what was the name they put on the river, the Churchill River?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's saying that his parents and grandparents called that river Mishta-shipu. It was always Innu people called that Mishta-shipu. There was never any name, he said. And in history there's another place, it's called (Innu-aimun word) which is Innu to they travelled there and they stayed there and that's how far they travelled down that Grand Lake area there.

THE COMMISSIONER: Mm-hmm.

MS. ANDREW: That's where that place is he said and this is the river where our people used and hunt there, he said.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He wants to add on too, he said that the today the elders that passed on, they wouldn't recognize that border and how it's separated now.

CHIEF PIÉTACHO: Mmm.

MS. ANDREW: He said they would not recognize that because the land is –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: – just a land for the Innu to hunt and to do trapping there.

THE COMMISSIONER: All right, good. Thank you very much.

Thank you, Sir.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Oh, okay. He's saying that – he saying thank you very much and he said he wish I could speak to you in English.

THE COMMISSIONER: Tell him he did very well, I'm glad he could speak in his native language.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: Thank you, Ms. Andrew, as well, for your –

MS. ANDREW: Yeah –

THE COMMISSIONER: – assistance today.

MS. ANDREW: – okay.

THE COMMISSIONER: And I don't think we need translation further today. So, thank you very, very much.

MS. ANDREW: Okay. Thank you very much.

THE COMMISSIONER: I think we'll take a break here now for 10 minutes and we'll come back with our last witness for the day.

CLERK: All rise.

Recess

THE COMMISSIONER: All right, Mr. Learmonth, your next witness.

MR. LEARMONTH: Todd Russell.



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 10

Commissioner: Honourable Justice Richard LeBlanc

Wednesday

3 October 2018

MR. SCHULZE: Okay.

I wanna put it to you, we learned something fairly simple from this agreement, which is that there's a consultation agreement between the province and Innu Nation at a certain level of funding – sorry never mind the funding. There's a consultation agreement with Innu Nation. There's a consultation agreement with Labrador Metis Nation and there is not one with Quebec Innu. Isn't that what this document tells us?

MR. GOVER: This was a document written in 2007. The actual process, there was an agreement negotiated with Innu Nation. The agreement was never signed. Parties acted as if the agreement was in effect. It outlined the two differences that I've indicated.

There were no agreements with any other Indigenous organization that were consulted, and save for the two differences noted for Innu Nation, the process was the same.

MR. SCHULZE: Okay.

I was going to get to this later, but isn't it a fact that Nalcor had been actively engaged with Innu Nations since at least 2000 and that your government's first approach to my client was in 2008?

MR. GOVER: There has been, you know, a significant involvement of Nalcor with Innu Nation. The first approach to your government in 2008, like I said, this occurred during the time where I could not testify to what overtures would or would not have been made to Quebec Innu, during that period of time.

MR. SCHULZE: Okay. Well, I'll put it to you that there is absolutely no documents showing that your government made any approach to my client before 2008, and you're telling me you don't know of anything that would contradict that. Am I correct?

MR. GOVER: Like I said, up 'til 2005 I probably would have been aware of it, from 2005 to 2010 I was working on the Innu land claim. Things transpired in the government and in this particular department that I was unaware of, so all I can say is that if – I can't say anything about, you know, contact prior to 2008.

MR. SCHULZE: Okay.

MR. GOVER: I really can't say.

MR. SCHULZE: And you'd agree with me, we knew Innu Nation received millions of dollars in funding from Nalcor as part of that relationship as of 2000 and –

MR. RALPH: Excuse me.

MR. SCHULZE: – Ekuanitshit did not.

MR. RALPH: We're still not getting there, Mr. Commissioner.

MR. SCHULZE: No, it –

MR. RALPH: We're still not getting to about –

THE COMMISSIONER: I think –

MR. RALPH: – discussions regarding –

THE COMMISSIONER: Well, in –

MR. RALPH: – exactly what consultation was done –

THE COMMISSIONER: Right.

MR. RALPH: – I suggest.

THE COMMISSIONER: Right.

But I think the consultation – and it's not lost on me that, in order to consult, you have to have money. So I think this question relates more – I'm trying to give you as much latitude as I can, because I'm assuming you're understanding what I'm saying and you're doing what I'm telling you to do. If you don't, I'm going to tell you to sit down pretty soon.

But anyway, let's just – so go ahead with your question, and the witness has just answered. He can't answer the question about other contacts, so just go ahead.

MR. SCHULZE: That was exactly the reason for my question. Consultation, if it's to be of any quality, requires some capacity.

In any case, if you stay with – in Exhibit P-00295 on that – this is not just a statement about something that didn't happen. We – in the last bullet point under Quebec Innu, we see what happened: "The Draft Guidelines were provided to the Quebec Innu groups in December 2007, and a period of public review was correspondingly extended to late-February 2008." I believe there's also a reference to a meeting in Quebec City around the same time.

Can you tell me –

MR. RALPH: I'm sorry to interrupt. I beg your pardon.

Can we put this in context? I'm not sure who wrote this document or where it was going in terms of briefing note. I think it's important in order for Mr. Gover to actually address it appropriately.

THE COMMISSIONER: I think if he looks at the last line on the page it says it's prepared by "Brian Harvey, CS/Jamie Chippett, CS" and then 14 April 2008.

MR. RALPH: That's fine. Thank you.

THE COMMISSIONER: Okay?

MR. SCHULZE: And I think you told us this morning that Brian Harvey was then doing what exactly?

MR. GOVER: Well, Brian – the CS to me would indicate that these were Cabinet Secretariat officers, so Brian Harvey, at one time, was serving as Cabinet Secretariat officer. He is currently the director of Indigenous policy and Indigenous Affairs Secretariat. And perhaps, prior to going to Cabinet Secretariat, he did do a stint with Indigenous Affairs as a senior analyst.

Jamie Chippett is currently the deputy minister of Municipal Affairs and Environment, and he also began his career in Indigenous Affairs.

MR. SCHULZE: Okay.

So my question was: I put it to you that other than communicating draft guidelines for the environmental assessment, and a meeting along the same lines in early 2008, I put it to you that –

other than the environmental assessment itself, that was the entire extent of the province's engagement with Ekuanitshit or any other Quebec Innu group about this project up 'til the JRP report.

Do you know of anything else?

MR. GOVER: My understanding was, on May 1, 2008, all Indigenous organizations were communicated as to what the consultation process would be for this project. The consultation project – the consultation was not only a provincial consultation but a federal consultation, because it was a harmonized process including the JRP. The steps that were communicated, to the best of my knowledge, were the same steps for everybody.

MR. SCHULZE: Okay so what you're telling me is – and I'm just going – just pretty much repeating my question. My understanding is when you're asked to say how did the province engage with the Innu of Quebec about this project, what you can say is we sent them some letters, we told them what the environmental assessment process would be and then we did the environmental assessment process with –

MR. GOVER: I do not –

MR. SCHULZE: – the funding program you mentioned.

MR. GOVER: I do not believe that was the case. Nalcor was directed to –

MR. SCHULZE: I'm not asking about Nalcor right now, just the province.

MR. GOVER: But the – but consultation was delegated to Nalcor to – certain aspects of the consultation were delegated to Nalcor to carry out on behalf of the Government of Newfoundland and Labrador. And my understanding is Nalcor approached Indigenous organizations and said we'd like to acquire some knowledge from you, and if Indigenous organizations said we need some funding to provide land use and occupancy information or information about our rights or to provide Indigenous traditional knowledge, negotiations would occur.

MR. SCHULZE: And did you have any role in that?

MR. GOVER: No. That was the delegation to Nalcor.

MR. SCHULZE: And did the province ever turn its mind to the adequacy of what Nalcor did?

MR. GOVER: Nalcor, I – Nalcor, I guess, periodically advised us. I mean, we weren't – it wasn't a solid wall in the sense of, like – that Nalcor went off and did Indigenous consultation and kept it secret from the government. But the people that worked on this, you know, from the government's point of view, we had confidence that they were making reasonable overtures to all Indigenous organizations with respect to these issues.

MR. SCHULZE: Okay.

So let's loop back though. You're confirming that in fact pre – I forget what the magic word we're using is – pre-sanction or pre-authorization of this project?

THE COMMISSIONER: Pre-sanction.

MR. SCHULZE: Pre-sanction. Provincial consultation of the Innu of Quebec including my client the Innu of Ekuanitshit consisted of letters that said this is what the environmental assessment process would be, the delegation of the procedural aspects to the proponent and then the environmental assessment process that – under the statute, the provincial – federal and provincial statutes. That's the provincial consultation of the Quebec Innu, am I correct?

MR. GOVER: I don't know. I would have to get the letter, but as I indicated earlier, this document says draft guidelines were provided to Quebec groups in 2007, so I presume that these would have been – like I said, I'm not the author of this document, but I presume these would have been the environmental impact statement guidelines.

MR. SCHULZE: Right.

MR. GOVER: So this was sent to the Quebec Innu groups to say what – do you have any

comments on this, do you want to see anything included on this? Because these are the instructions to the proponent, Nalcor Energy, to prepare the environmental impact statement.

MR. SCHULZE: Yeah.

MR. GOVER: So that would have been a consultation. And then Nalcor would have been, after the guidelines were issued to them, engaged in compiling the EIS, and that's when they would have approached Indigenous organizations, as I indicated. I also – I mean, I would have to check that. Wasn't their consultation on the terms of reference for the Joint Review Panel?

MR. SCHULZE: Yes, but it – all you're doing really is answering my question with an implicit yes. The consultation amounts to the environmental assessment process. Nothing else. Am I correct?

MR. GOVER: No. The Indigenous consultation was integrated in the environmental assessment process. Indigenous organizations had a process that was distinct from the larger public process. If Indigenous organizations wished to participate in the larger public process, they were free to do so. But they had their own, independent, separate process.

MR. SCHULZE: What was distinct about the process?

MR. GOVER: In the sense that they're – that when the public provides comments to the Government of Newfoundland and Labrador, we do not write them back. The comments go in, and the decision comes out.

With respect to the concerns of Indigenous organizations, when they wrote comments in, there was a written reply. And if the Indigenous organization was not satisfied with the reply, they could request a meeting or a conference call, I believe, within a week to have further discussions on the matter.

MR. SCHULZE: That's it?

MR. GOVER: And I mean, we topped up the Indigenous funding envelope so that people would have capacity funding to participate in the

MR. SCHULZE: My question was: What was the province doing other than waiting for people to go to the Joint Review Panel?

MR. GOVER: But the Joint Review Panel was part of the process that was set up. We –

MR. SCHULZE: So the answer is nothing.

MR. GOVER: No, the point was that there had to be a – that there was – that it was considered that there needed to be a process that was not a Nalcor process, that was not a government process, that was where people independent of the government and of Nalcor heard from Indigenous organizations, collected their concerns, assessed their concerns and conveyed their recommendations to the Crowns for action.

MR. SCHULZE: Okay.

Mr. Gover, with all due respect –

THE COMMISSIONER: Excuse me, just –

MR. SCHULZE: – I don't ask –

THE COMMISSIONER: Just one second now.

MR. RALPH: Commissioner, this doesn't seem to be fair questioning. As Mr. Gover said, he's never seen this document before. You know, he has no idea really of who in government would've known about that particular paragraph.

Maybe my hon. friend is aware of – my learned friend is aware of the documents which suggest that we – that the Government of Newfoundland and Labrador was aware of these findings by Nalcor and did or didn't address them, but I don't think it's fair. Mr. Gover said he's never seen this document before. He wouldn't know about these findings before, so I don't know if he would know if the government did or didn't react to those findings from Nalcor.

THE COMMISSIONER: All right, but Mr. Ralph, I don't think that was the question. So just – let me just – to answer Mr. Ralph first now, I'll hear from you, Mr. Simmons.

So I don't think that was the question. I think the question was – and you can correct me if I'm wrong – was that you're trying to determine

what the government was doing to ensure that what Nalcor was concluding was correct. Am I getting it?

MR. SCHULZE: Yes. Thank you, Mr. Commissioner.

MR. RALPH: My point is that how would Mr. Gover know the answer to that question? I mean, perhaps he has documents there that show that he knows the answer to that question. I don't think there's any – he hasn't been demonstrated that he would have knowledge of the issue is my point.

THE COMMISSIONER: Right. Okay, let me hear from Mr. Simmons.

MR. SIMMONS: Mr. Commissioner, the only point I wanted to make is if we scroll down a little bit on this document, we'll see there is a source cited for the statement that's been made there. So it's not something that's unsupported, there is a cross-reference there which refers to a document in Appendix O, so – and the witness wouldn't have been aware of that without that being visible on the screen.

THE COMMISSIONER: Okay, go ahead, Mr. Schulze.

MR. SCHULZE: My only – actually, my submission on this objection is I've moved on. I'm not actually on that document anymore. My question to Mr. Gover was: What did the province do, other – when there were issues raised like the insufficiency of the environmental impact statement, what did the province do other than wait for the Joint Review Panel? And I haven't had an – I haven't been told there was anything.

MR. GOVER: We were – that's why we had a Joint Review Panel, because government wanted somebody independent of itself and of Nalcor to hear from Indigenous folks to make an unbiased, objective assessment and convey that to the government. And once we got the report we would act on the report, which is what we did.

MR. SCHULZE: Excellent. Let's go to Exhibit P-00041 then, please, page 24 of the PDF.

were meant to be my client's opportunity to fill in that information gap that your government had been informed of by its unbiased review panel.

You're telling me that was it? There was, I believe, 60, 90-day period for comment. That was it? That's how we were gonna fill in the missing information?

MR. GOVER: Other information could be forthcoming to the government during the consultation process. There was consultation on the Joint Review Panel, any Indigenous group could've made whatever comment they wanted to make on the Joint Review Panel report, including saying: The panel noted a lack of information, we'd like to fill in that information, here it is.

MR. SCHULZE: Okay, have you read Ekuanitshit's submissions? Because I believe that was in there. Did you propose any means to do it – your government propose how they would do that?

MR. GOVER: In what sense?

MR. SCHULZE: You have an independent, objective review panel.

MR. GOVER: Yes.

MR. SCHULZE: It says there's missing information.

MR. GOVER: Yes.

MR. SCHULZE: You're telling me the process to fill in the missing information –

MR. GOVER: Yes.

MR. SCHULZE: – was that everybody got 60 or 90 days to comment on this report.

MR. GOVER: That's right.

MR. SCHULZE: Did you write a letter saying we're very concerned about this missing information, we're proposing funding and a process by which to collect it? I'd submit – put it to you, you did – your government did not.

MR. GOVER: I would agree with you on that statement.

MR. SCHULZE: Okay.

MR. GOVER: That was – the process was set in place May 1, 2008, and the funding was allocated during the course of the EA.

MR. SCHULZE: So there was no funding and no process for that other than what these committees might cobble together themselves, based on a letter that simply asked them to make submissions on a 389-page report. Is that what you're –

MR. GOVER: As I –

MR. SCHULZE: – telling the –

MR. GOVER: – indicated earlier –

MR. SCHULZE: Is that what you're telling the Commission?

MR. GOVER: – the funding was allocated – the allocation was specifically referenced by previous counsel –

MR. SCHULZE: Mm-hmm.

MR. GOVER: – of who got what, and how it got there and what it was, or – and so we would have been happy to receive any information that any group wanted to convey to us to fill in gaps that were identified by the Joint Review Panel.

MR. SCHULZE: I'm gonna take your answer as a very long yes to my question, Mr. Gover.

Could we now go to Exhibit 00309, Madam Clerk?

MR. LEARMONTH: Tab 22.

MR. SCHULZE: If you could go to page 3, please. Actually, we'll need to – I don't know if you've seen this.

Do you see at the bottom of this – the page 3 where it says "Approved by: S. Dutton, DLAA." I assume DLAA is Department of Labrador and Aboriginal Affairs?

MR. SCHULZE: Well, I put it to you that not only did the Government of Newfoundland say that the timelines wouldn't allow them to identify the habitat – critical habitat before the decision, but the project is finished and it's still not identified. Isn't that the case?

MR. GOVER: See this is one of the difficulties, when you're into these kinds of issues, of asking me these questions. As I indicated earlier, this would be better answered by people who have expertise in wildlife or expertise in environmental assessment. So what the status is with respect to this recommendation and its response, as of today, I wouldn't be able to testify to from my own knowledge. I'm just not possessed of that knowledge.

There's a great many issues in environmental assessment that has to be considered over a great many species. And as was indicated earlier here today, you know, various departments were assigned various responsibilities with respect to these recommendations.

So unfortunately, I really wish, Sir, that I could be helpful to you. I'm trying to actually be as helpful as I can to you. Because, you know, I do appreciate the, you know, the concerns of the Ekuanitshit and, you know, I want to be as helpful as I can but I just, I cannot provide an answer, really, as to the status of the response to this recommendation today because it's beyond my knowledge.

MR. SCHULZE: Okay, that's fair enough.

Thank you. I appreciate that you made that clear.

Maybe – I'm just going to take you, then, to recommendation 12.7. That's on page 21, Madam Clerk. And maybe you'd want to just read it, the recommendation and response, and tell us whether you're comfortable answering a question on it.

MR. GOVER: “The Panel recommends that, if the Project is approved, Nalcor initiate an employment outreach program” – to – “interested Aboriginal groups in Quebec; such a program could include” – blah, blah, blah. Okay, response: “Recognizing the priorities of the IBA and ... Benefits Strategy, the Government of Newfoundland and Labrador recognizes that

Nalcor will take appropriate measures to meet its human resource requirements for the Project, and further recognizes that employment opportunities are open to Aboriginal people living in Quebec.” Okay.

MR. SCHULZE: Yeah, my understanding is, in fact, not made clear by this response. In fact, based on Newfoundland law and the agreement and strategy, first priority for work on the project went to Innu of Labrador, second to residents of Labrador, third to other residents of the Province of Newfoundland. So, the employment opportunities open to Aboriginal people living in Quebec would put them fourth, would it not?

MR. GOVER: I wouldn't disagree with what you said. I do believe the benefits strategy was slightly different for the generation project and the Labrador-Island Transmission Link project, but, in substance, I would think that that is correct, that preference went to those people who were residents in the province. And certainly for the generation project, my recollection would be, priority for Labrador Innu pursuant to the IBA, then priority for Labradorians, priority for other residents of the province and then other people.

I believe that's correct but these are – this is not secret, the documents containing these priorities are posted on the Nalcor website.

MR. SCHULZE: Okay. Well, this maybe – is a good moment to move to a related – a question a bit related to that through, geography.

For instance, have you been to Pakuashipi, Mr. Gover?

MR. GOVER: No.

MR. SCHULZE: Okay, but you know where it is?

MR. GOVER: Yes.

MR. SCHULZE: Okay, so you'd agree with me it's closer to the transmission lines than anywhere on the Island of Newfoundland and closer to a good deal of the transmission lines than Sheshatshiu is.

MR. GOVER: That could be, I mean, I recognize that the closest Innu community to both the generation project and the transmission line would be at Pakuashipi and – but the exact different distance between, say Sheshatshiu and the transmission line, I don't know.

MR. SCHULZE: Okay, but so – I guess what I'm trying to understand here is that we have this recognition by the Government of Newfoundland there are employment opportunities but then the actual employment opportunity is they can take a place fourth in line even though they are closest to the project. Why isn't that in the response?

MR. GOVER: That they're closest to the project, geographically?

MR. SCHULZE: Why isn't it in the response, saying –

MR. GOVER: Okay –

MR. SCHULZE: – you know, tough luck, the people who live nearest to the project are actually fourth in line?

MR. GOVER: Because let's look at this. This is project being built in the Province of Newfoundland and Labrador, financed by the ratepayers and taxpayers of the Province of Newfoundland and Labrador. It's only natural the Government of Newfoundland and Labrador would expect, argue, fight for tooth and nail, the primary benefits of the project to be delivered to the taxpayers and residents of Newfoundland and Labrador.

I'm sorry if that is not satisfactory to you but that is that. I will be paying for this project and paying for this project and to the extent that people in the province benefit from the project – hooray!

MS. KLEER: I have a question.

Can we clarify if this document is in relation to just the generation projects or is it in relation to the generation projects and the transmission line, because these recommendations are from the Joint Review Panel, am I correct?

MR. GOVER: Like I said, there was a – my understanding is there was a slightly different benefit priority for the transmission line. But no doubt, I mean, no doubt that the both benefit priorities would have accorded benefits – priority of benefits, the preference for benefits – to people living in the province from employment and Newfoundland and Labrador companies for contracting, subject to the IBA that we had with Innu Nation.

Now, there was a gender and equity diversity plan, which Nalcor had to comply with which provided for employment for underrepresented peoples, which included Indigenous peoples.

There was no prohibition on employing anybody from the Province of Quebec or anyone from the Province of Alberta, as long as there was an opening that they can be employed at and they were qualified to do the job.

MR. SCHULZE: And I'll, Mr. Commissioner, I'll take my friends point that this panel report is about just the generation project because the environmental assessment was split.

I really only have one last question then.

THE COMMISSIONER: Okay.

MR. SCHULZE: I just want to make sure I – you had talked about – when you were talking about the process you said: You know, the procedural aspects of consultation were delegated to Nalcor and then if issues weren't resolved the province would be expected to resolve them and, generally, this works out very well.

So, should I assume from that that the province was satisfied with what Nalcor did in its procedural – in its execution of the procedural aspects of consultation with the different Aboriginal communities?

MR. GOVER: The fact the project was released from environmental assessment on March 12, 2012, indicates the province was satisfied with all aspects of the project.

MR. SCHULZE: Okay. Thank you.



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 49

Commissioner: Honourable Justice Richard LeBlanc

Thursday

29 November 2018

MR. JANZEN: Do the guidelines make any distinction between the level of consultation to be afforded to different Aboriginal communities, under this heading 4.8?

MR. BENNETT: Oh, it requires that we undertake consultation to gather this information.

MR. JANZEN: And you – so you would agree that it doesn't make any – they don't make any distinction between the level of consultation that would be required in the guidelines?

MR. BENNETT: No, the guidelines don't necessarily distinguish.

MR. JANZEN: And – you would – we could go to the document but if you – would you agree that the same criteria are essentially found in the transmission link guidelines from May 2011?

MR. BENNETT: I would expect that they're generally the same.

MR. JANZEN: I agree. The – document is P-01352, and it's at page 43, but I think that we can – we can skip that for now.

So you mentioned earlier that you did not have any experience working with Indigenous peoples directly before coming to Nalcor? And I guess that would mean that you also did not have experience in collecting and interpreting Indigenous traditional knowledge?

MR. BENNETT: Not me directly, no.

MR. JANZEN: Or negotiating agreements with Indigenous communities –

MR. BENNETT: I –

MR. JANZEN: – that would relate to the collection and interpretation of traditional knowledge?

MR. BENNETT: Prior to my time at Nalcor, no.

MR. JANZEN: Or negotiating agreements to study historic and contemporary land use prior to coming to Nalcor?

If we can next please, just go to P-01355, Madam Clerk? This is part of the environmental impact statement filed for the Lower Churchill and prepared by Nalcor, February 2009 – at page 267. And at section 9.0, page 267, it says that, "Aboriginal traditional and community knowledge was considered in the preparation of the EIS in accordance with the EIS Guidelines."

And you would – would you agree with me that the Aboriginal traditional knowledge considered in the preparation of the EIS did not include traditional knowledge from the community of Ekuanitshit?

MR. BENNETT: It'd be helpful to look at this section of the EIS that refers to that. But I would acknowledge that considerable additional information was gathered during the environmental assessment process and the – I guess, the outcome of the increased level of detail that the Joint Review Panel was looking for is documented in at least the response to information request, JRP 151. Consultation assessment –

MR. JANZEN: Okay we'll look at that in a second –

MR. BENNETT: Okay.

MR. JANZEN: – but I think if we go down to the knowledge base, 9.1, lower down on the page. I think it says that they're – okay I'll quote – that the: "... two important sources of information have been relied upon: local community and Aboriginal Traditional Knowledge" – in parentheses – "(the latter as communicated through Innu Nation)."

So the Aboriginal traditional knowledge considered in the EIS was communicated through the Innu with reserves in Labrador, not Innu with reserves in Quebec?

MR. BENNETT: That's what it says there, yes.

MR. JANZEN: Okay, so let's go to the P-01333, which is the JRP 151 information response that you just referred to, Mr. Bennett. And page 143 please, Madam Clerk.

At the bottom of page 143 it outlines the consultations with the Labrador – with Innu

MR. JANZEN: If we could please go to P-01334, Madam Clerk? Which is just some – it's a Consultation Assessment Report submitted by Nalcor to the Joint Review Panel in September 2010.

And we spoke about his work just a few moments ago. But there are a number of references in this Consultation Assessment Report done by Nalcor to works by Peter Armitage – a couple of maps cited – I counted something like 20 times.

I guess this is somebody whose opinion of Nalcor respects on these matters?

MR. BENNETT: Peter Armitage was an advisor or consultant that Innu Nation used fairly extensively in terms of their work.

MR. JANZEN: And Nalcor relied on that work in its submissions to the Joint Review Panel?

MR. BENNETT: We incorporated that work as we collected it from Innu Nation.

MR. JANZEN: Okay, so moving on, please, P-01335, Madam Clerk. So if we –

THE COMMISSIONER: Tab 15. One page.

MR. JANZEN: So I – this is a letter from you to the Chief of Ekuanitshit from May 2009. If we scroll to the first page – sorry, to the second page, please. It's a – we have a draft Community Consultation Agreement. On the covering page, you'd said please review and return two signed copies.

So in May 2009 – I guess just to take a step back, would you agree that the first time that Nalcor contacted Ekuanitshit in relation to the project was sometime in mid-2008?

MR. BENNETT: I can't confirm the date, but if we have the records, it's pretty straightforward to confirm.

MR. JANZEN: But it was certainly a couple years after the registration of the project?

MR. BENNETT: I'd acknowledge that, yeah.

MR. JANZEN: So you sent this draft consultation – Community Consultation Agreement to the Chief of Ekuanitshit and asked him to return two signed copies. I understand that the same agreement was sent to all the Innu communities with reserves in Quebec that – the communities listed in the EIS Guidelines. Is that right?

MR. BENNETT: I haven't looked at the others. But I know that we were trying to reach out. So it's not gonna surprise me that this document, or a draft along these lines, would have been shared with the other communities.

MR. JANZEN: If we could go to paragraph 8.8 of the agreement?

So that – it's just – it says that "The parties agree that compliance by Nalcor with the provisions of this Consultation Agreement completely fulfills the requirements of the *Environmental Impact Statement Guidelines* and discharges the obligations of Nalcor with respect to consultation with Ekuanitshit in respect of the *Environmental Impact Statement Guidelines*."

If we could continue scrolling, please, Madam Clerk, to APPENDIX "A"?

MR. BENNETT: APPENDIX "A" ...

MR. JANZEN: It's a work plan, and you'd agree with me, Mr. Bennett, that the work plan is blank?

MR. BENNETT: That was a – as I recall that was a topic for discussion, and I also seem to recall that this draft agreement was a first effort and not simply us saying this is it; take it or leave it.

You know, we both had – both parties had representation. I would have expected that there would have been further dialogue to reach something that was mutually acceptable given that we have an obligation to collect data.

So I think at the time we had individuals in our consultation team; we also had counsel, you know, drafting various agreements. And this was a – I guess an effort. And I don't believe that I just sent this fax out of the blue – that there

MR. BENNETT: Yes.

MS. O'BRIEN: (Inaudible.)

MR. JANZEN: And since I – I understand, for this phase, we're working with just up until sanction. You would agree with me that, from the time of the JRP report to sanction, Nalcor did nothing to address those uncertainties with respect to the Innu of Ekuanitshit?

MR. BENNETT: Yeah, I don't think there was any further planning information gathered after the JRP report.

MR. JANZEN: So you would agree with me that Nalcor didn't do anything to address those uncertainties from the time of the JRP report to the time of project sanction?

MR. BENNETT: I'm pretty sure that's the case.

MR. JANZEN: Okay.

Finally, you were asked some questions earlier this morning about the varying levels of consultation and accommodation that were afforded to the different Indigenous communities affected by the project, and you referred often to the guidelines – Nalcor was just following the guidelines. We also just saw earlier that the guidelines don't make any distinction between the Indigenous groups affected as to the level of consultation required. So –

MR. BENNETT: They – oh, I'm sorry.

MR. JANZEN: So I was – why such varying levels of consultation when it comes to a project like this? Does Nalcor get its instructions from the provincial government?

MR. BENNETT: In terms of the efforts that are undertaken, no.

I think that you – part of the – part of – our obligation is to develop an understanding of the issues, you understand the type of activities that are going on and the extent to which the Labrador Innu have used this land close in – in close proximity to their community today. So from a contemporary perspective, we could talk about historic – you know, very early history in

terms of the Innu across the region, but in terms of contemporary land use, the Innu of Labrador clearly had extensive use of this area –

MR. JANZEN: Sheshatshiu is right next to the project.

MR. BENNETT: That's correct.

MR. JANZEN: Natuashish is quite far from the –

MR. BENNETT: That's right, but –

MR. JANZEN: – project. I don't know –

MR. BENNETT: But if we focus on Sheshatshiu for a second, they're in very close proximity to the project.

MR. JANZEN: I don't –

MR. BENNETT: The other –

MR. JANZEN: Now, in terms of number of kilometres, I don't know whether Natuashish is –

MR. SIMMONS: Commissioner, I think Mr. Bennett should be allowed to finish the answer to his question before being interrupted.

THE COMMISSIONER: Okay.

MR. BENNETT: And the other – the point for the other – some of the other communities, and there is mapping in the Consultation Assessment Report that looks at this, but the types of land use, and the extent to which that land use happens, is a little bit different when you're looking at communities that are hundreds of kilometres away from the project footprint.

And that reality informed our understanding of the types of activities that would be going on in the region, and also began to inform our understanding of the effect of the project, looking at totality of area that various groups were using, and helped us gain an understanding of what we thought the effects would be and gave us an opportunity to communicate that.

And those types of activities, from our understanding, based on the information



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 2

Commissioner: Honourable Justice Richard LeBlanc

Monday

18 February 2019

Donc, Chef Piétacho, le commissaire tient à ce que je vous dise – il tient à ce que je vous dise que les documents qu’ils vous ont remis dans le cartable par Maître Learmonth sont des documents que nous, comme procureurs du Conseil, avons soumis à la commission. Ils vous sont disponibles en français – presque tous, mais pas forcément dans ce cartable-là.

THE COMMISSIONER: And could you also explain to Chief Piétacho how you’re gonna be asking your questions? You’ll ask in English, then in French and then it’ll be translated?

MR. SCHULZE: Donc, ce que je viens de – le commissaire, monsieur le commissaire vient de me donner la permission de poser mes questions en anglais, ensuite en français, et vous, vous pouvez répondre en Innu.

And maybe I’ll just – is that also clear to the translator – to Ms. Andrew?

MS. ANDREW: Yeah.

MR. SCHULZE: So I’ll ask in English and French, and Chief Piétacho will answer in Innu.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He wants to speak in French, he said, to you.

MR. SCHULZE: In answer to my questions, he would prefer to answer in French?

MS. ANDREW: That’s what he said, yeah.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: Okay, so we don’t have a French translator, so I’ll be depending on you – we’ll have a transcript and I speak French –

MS. ANDREW: (Innu-aimun spoken.)

THE COMMISSIONER: – so I’ll get enough, but we have – we’ll get it also transcribed afterwards, so you can just translate into English for those here who don’t understand.

MR. SCHULZE: Okay.

THE COMMISSIONER: Okay. Go ahead.

MR. SCHULZE: Donc le – ce que le juge LeBlanc, monsieur le juge LeBlanc dit, que lui il comprend le français. Moi je vais devoir traduire vos propos, et il y aura des notes sténographiques. Mais surtout – forcément, n’hésitez pas si vous préférez changer à l’Innu.

I said don’t hesitate if you prefer to switch to Innu.

The – there was a question about current use of the territory affected by the project.

Il y avait une question sur l’utilisation contemporaine du territoire affecté par le projet.

CHIEF PIÉTACHO: Mm-hmm.

MR. SCHULZE: Could you explain to the Commission what use now, in this – in the last few years and currently – what use does your community make of territory in Labrador?

Pourriez-vous expliquer à la commission, maintenant ou dans les dernières années, quelle utilisation fait la communauté du territoire au Labrador?

CHIEF PIÉTACHO: (Innu-aimun spoken.)

Mais vous savez que – on a continué à occuper le territoire peu importe la – je pense ce qui est important ici, là c’est – on parle toujours de frontières mais nous on a jamais – on s’est jamais occupé s’il y avait une frontière ou pas. On a continué à occuper le territoire tel quel, tel que le – nos aînés – les gens de la communauté ont toujours fait – je vais donner juste un exemple –

MR. SCHULZE: Je vais vous interrompre – c’est que c’est beaucoup à traduire d’un coup.

I’m just going to interrupt. So we’ve continued to use the territory, as we always did. There’s

resources, what capacity does the council have to respond to them?

Donc, si je peux vous demander, lorsque le Conseil des Innu d'Ekuanitshit reçoit des dizaines de documents ou de – en anglais, quels sont les ressources dont vous disposez pour y répondre?

CHIEF PIÉTACHO: On est très, très, très limité dans nos ressources, puis la personne auquel on se réfère souvent est déjà débordé ailleurs aussi par son travail, mais en plus on lui demande de faire comme vous le dites, (inaudible) l'essentiel mais – sauf que c'est pas évident. Et c'est encore comme ça aujourd'hui.

MR. SCHULZE: We are very, very, very limited. The person who receives them is already overwhelmed and tries to deal with it, but it is not – it's not easy, it's not obvious to deal with it, and that's still the situation today.

Maybe I'll just – before we take a break, I'll just ask one other question.

Avant que je prenne une pause, je vais juste poser une autre question

Could you explain, maybe just a bit more, the connection you see between this project and your community's concerns about the caribou?

Est-ce que vous pourriez juste expliquer un peu plus le lien que vous voyez entre ce projet et les préoccupations de votre communauté concernant le caribou?

CHIEF PIÉTACHO: Écoutez, tel que je l'ai exprimé dans la langue, l'animal le plus important sinon ce qu'il y a de plus sacré, pis qui – qu'on doit à notre survie, d'être ici encore c'est grâce à cet animal. Et une de nos préoccupations était qu'on prenne le temps, tout comme le saumon, tout comme les autres chasses qu'on voulait faire faire, mais la réponse reçue c'était des délais.

Dans un délai très court, parce qu'ils ont déjà donné des – au-delà peut-être de 1,900 permis de tous les façons. Ces permis-là ont été donné sans être consulté, au moins sans le savoir.

MR. SCHULZE: So, as I said before in my own language, **the animal that's the most important, the most sacred, to which we owe our survival is – along with the salmon – is the caribou.** What we wanted was to – that they take the time. And the answer we got was that the deadlines were very short because there had already been over 1,900 permits given out; permits on which we hadn't been consulted, or not adequately consulted.

Pardon, continuez. Please continue.

CHIEF PIÉTACHO: Nous avons toujours gardé un lien important jusqu'au jour où quelqu'un d'autre nous a dit je vais faire la gestion du caribou. Qu'on a jamais permis. On a toujours gardé ce lien malgré que maintenant c'est géré ailleurs et aujourd'hui la situation du caribou à travers le pays, à travers les provinces, est très critique.

MR. SCHULZE: So we've always maintained a connection, a very important connection to the caribou, in spite of the fact that we were told that other people would manage the caribou; that it's being managed elsewhere. And now we're in a critical situation concerning the caribou across the country and in other provinces as well.

Pardon, allez-y. Excuse me, go ahead.

CHIEF PIÉTACHO: C'est pour ça qu'on a demandé qu'on prenne le temps – comme eux ils ont pris le temps pour d'autres considérations ailleurs. Mais nous, l'important c'était vraiment le caribou, le saumon. Et ça n'a pas été considéré lorsqu'ils ont fait la construction de leurs lignes. Parce qu'il y a des impacts. Il y aura des impacts.

MR. SCHULZE: So that's why we asked that we take the time, because the important thing for us was really the caribou and the salmon. But it wasn't taken into consideration, for instance, when they planned the transmission lines. And there will be impacts.

CHIEF PIÉTACHO: Et je pense que la moindre des choses est si ce qu'on dit ici, ce qu'on a essayé d'expliquer – nous, les Innu d'Ekuanitshit – puisse être un jour comprise et éviter qu'on répète ce qu'on a fait dans ce projet.

MR. SCHULZE: And I think that what – the least we can ask for is that – is if what we said here – the Innu of Ekuanitshit can be taken into account one day and that we don't repeat what was done with this project.

Pardon, continuez. Go ahead.

CHIEF PIÉTACHO: Oui, j'avais – peut-être – est-ce que vous avez d'autres questions?

MR. SCHULZE: Moi, j'ai posé mes questions.

CHIEF PIÉTACHO: Oui.

MR. SCHULZE: I've asked my questions.

CHIEF PIÉTACHO: Peut-être, en dernier lieu; c'est aberrant de constater – nous, les Innu d'Ekuanitshit et les Innu de toutes les régions – qu'on soit obligés d'être ici pour – je me sens comme celui qui est le fautif ou je sais pas comment – pourquoi je dois réexpliquer ce qui normalement aurait dû être respecté? Puis là je vais pas faire de joke – c'est en anglais, ça, joke – regardez.

MR. SCHULZE: Juste un instant.

In the – finally, I'd like to say, it is – it's incongruous to see that the Innu of Ekuanitshit and the Innu of all the regions that were obliged to be here – I feel almost like I'm at fault, like I'm the person who is at fault here, when I ask myself why do we have to repeat what should've been understood already.

Pardon, continuez.

Excuse me. Continue.

CHIEF PIÉTACHO: J'allais dire, y'a deux (inaudible). Souvent on se fait dire qu'on est contre le développement. On n'est pas contre le développement – c'est le type de développement qui se fait sur le territoire sans réel consultation, accommodement, et encore bien moins obtenir notre consentement.

MR. SCHULZE: We often are told that we're against development. We're not against development. It's the kind of development that's carried out without consultation, without accommodation, and without our consent.

CHIEF PIÉTACHO: Ce qui est aberrant, celui qui devait être – qui se dit qu'a des obligations fiduciaires envers nous dans la région de Québec où je viens, dans un dossier amené à la cour, je suis seul avec mes aînés à me défendre. Et de l'autre côté je vois la province de Québec, les sociétés, le gouvernement du Canada, qui normalement devrait, comme il se dit, défendre nos droits, et il est dans l'autre partie.

MR. SCHULZE: Juste un instant.

What is also – aberrant, inconceivable, is that the party that says it has fiduciary obligations – if I look in the region of Quebec, I'm by myself in a court case, with my Elders. On the other side, I see Quebec, and the corporations and Canada.

CHIEF PIÉTACHO: Pis là, là – c'est triste ce que je vais dire. Ça peut être considéré comme une farce, comme on dit, mais c'est très triste. Moi – on se défend. On se protège. Nous, maintenant, les Innu, que ça soit dans la langue seconde, peu importe, anglais ou français – néanmoins – mais c'est triste, là, c'est – dans un dossier aussi important que les projets qui se font en territoire – c'est Ottawa qui a émis des permis, qui cautionne des projets, et c'est là que je veux le dire, je vais amener ce point-là: le fédéral au lieu de nous protéger, ne le fait pas, mais accepte ce qui se fait sur le territoire. Et fédéral – regardez ça, là – l'aberration des fois, là. Le fédéral a défendu une grenouille dans un projet immobilier dans la région du Québec, et nous les Innu – qu'est-ce qu'il a fait pour nous?

MR. SCHULZE: Okay. So –

CHIEF PIÉTACHO: Je termine –

MR. SCHULZE: – it's sad, what I'm going to say. It's almost a joke. But we defend ourselves; we protect ourselves, whether it's in English or in French – in our second language. But in a file, in an – on an issue as important as the projects on our territory, it's Ottawa that's – that issues the permits that authorizes these things, instead of protecting us, and accepts what's done on our territory. The federal government defended a frog against a – the residential development in Quebec, but not the Innu.

Continuez. Pardon, go ahead.



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Volume 58

Commissioner: Honourable Justice Richard LeBlanc

Thursday

20 June 2019

Panel. Is it correct that the Department of Environment was responsible for coordinating this response?

MR. GOEBEL: The department, as far as I remember at the time, put together the responses, but the responses – because the recommendations were to other departments and other agencies – would gather those responses from those agencies and compile this all. And then it went from our department to – I’m not sure, another agency for, you know, for the final response to the recommendations.

MS. MORRY: Sure.

THE COMMISSIONER: So what – so just so I understand that. What agency would you have – would Department of Environment sent this to to have it finalized before it was released?

MR. GOEBEL: Well, it goes up the line, you know, from – I guess from, you know, where I as a person would have this across my desk having come from technicians and officials to the deputy minister, and then from there it would go to, well, to government, I guess, to the minister or to the –

MS. MORRY: Sure.

Mr. Chippett, I think –

MR. CHIPPETT: Sure.

MS. MORRY: – would you like to clarify?

MR. CHIPPETT: So, you know, not having been there but knowing how the process worked and some of the prep over the last few days. Environment coordinated a response – just as Martin had said – complied, provided to a deputy minister’s steering committee for some review, including from departments that weren’t lead on any items, so to get the whole government view. And then it would’ve been submitted through a Cabinet submission. And it was actually submitted at the same time that the recommendations on environmental assessment release for the generation project were submitted to the Cabinet of the day.

MS. MORRY: Thank you.

And so this official response came out in April 2012, I understand.

MR. CHIPPETT: That’s correct, and I believe it was the same date that the project was released with terms and conditions.

MS. MORRY: Right.

So in order get a sense of how these recommendations and responses were tracked within government, Dr. Squires, I wanted to put you to **Exhibit P-04229**, which is at tab 73 of binder 5.

MR. GOEBEL: Here you go.

MS. MORRY: So, Dr. Squires, what is this document and where did it come from?

DR. SQUIRES: This document is a listing of the 83 recommendations that came out of the Joint Review Panel report. The origin of this document starts with how government prepared the response to the report. So what I can understand and read from departmental records is that early on as government was preparing to respond, a table, such as this, was established that identified lead departments and support departments; who was going to respond to the Joint Review Panel – each particular recommendation. I have seen examples of those in 2011, for example, leading up to the preparation of a response.

That morphed into the table that you see in front of you now. The headings were very much the same. The status was – a column was added. It appeared to be subsequent to the response being provided. So you can see versions of this as early as October of 2012 where departments started to, kind of, fill in the current status of these recommendations.

My understanding is that Labrador Affairs Secretariat was asked by Cabinet Secretariat to prepare this table and update it in both 2012 and 2014. They did so, and I imagine based on the experience of preparing the response and the coordinated effort that that took with multiple departments, that it was a similar approach to updating the table. That was, certainly, the approach I followed when I was asked to update the table very recently.

MS. MORRY: Right. And so just to expand on that slightly, you were – this – you were asked to update this table by, well, the Commission and via the Government of Newfoundland and Labrador's legal counsel. And so is it correct that this is the most up-to-date version of this document?

DR. SQUIRES: That's correct. So the information you see there to the left of the Status column was not changed. That's been longstanding and reflects the government's response to the Joint Review Panel. The dates that you see on the right, some of them were pre-existing. I didn't delete the, you know, the statuses that were put there at those times; I simply added to them. We sent this to a number of departments, as I said, that would be represented as lead departments: Natural Resources; Tourism, Culture, Industry and Innovation; Fisheries and Land Resources, so a number. They responded with their updates, and we added them in.

If there was a reason to reflect an earlier date than June of 2019, I did that. So an example of that would be if an environmental effects monitoring plan, for example, was approved subsequent to 2014 but between then and 2019, I added – I reflected the date the minister approved it.

MS. MORRY: Sure. Okay, thank you very much.

Now – so perhaps we can move through – this document largely speaks for itself, Commissioner, in terms of providing an update on all these individual recommendations. But I did want to just make note of a couple as we move through this. So perhaps if I – if we could look at page 5. Recommendation 6.5 is "Pilot study for methylmercury mitigation through soil removal."

Now, I note that the November 2012 status says "No action required by Province." But there are several subsequent actions. So what is the current status of that recommendation?

DR. SQUIRES: Certainly.

So for that one in particular, the November 2012 status was the only one in the table before I

received it. I reflected the subsequent items as being items that had – that were completed as related to methylmercury and our addressing of those issues.

MS. MORRY: Sure. And my colleague, Ms. Nagarajah, is going to address some of that in more detail later.

And at page 23 of the document – or, excuse me, page 22, actually. There's a few items here relating to dam safety and stability. Now, could you just describe some of the updates that are on page 22 there –

DR. SQUIRES: Okay.

MS. MORRY: – and how they came to be?

DR. SQUIRES: So, you're speaking of 14.1.

MS. MORRY: Yes. Yeah.

DR. SQUIRES: The updates from November and May – November 2012 and May 2014 – were present in the table before I received it. The required emergency preparedness plan that was a condition – part of a condition of release from the environmental assessment process, that was approved, and so I've reflected the fact that that document was prepared and approved by the minister in this table. We also reflected the fact that we – the department as a whole has done some work to prepare for flooding on the Lower Churchill.

So – but you read it there in June 2019 – the first bullet referencing June 2019 is around the work done on flood forecasting and flood warning completed by the Water Resources Management Division. There's obviously a lot of detail that goes in there and that website references quite a lot of work, but that's a high-level summary.

And what was provided by Advanced Education, Skills and Labour was an indication that in recent activities, they've certainly been involved in responding and preparing to respond to any emergencies.

MS. MORRY: Thank you.

Mr. Chippett, did you want to comment on that?

Environmental Monitoring Plan, there's a Methylmercury Monitoring Plan: these are all components that were required by the Environmental Assessment Division that were conditions of the release of the project and that Nalcor has to monitor and measure.

MS. NAGARAJAH: Okay.

Mr. Chippett?

MR. CHIPPETT: Well, just to pick up on Martin's last point. From the environment side, I guess, of our department now, an awful lot of the conditions or responses to the JRP recommendations show up in the authorizing regulation for the environmental assessment release of the generation projects. So, for example, there are conditions for Nalcor to do a human health risk assessment, Martin mentioned the Aquatic Effects Monitoring Plan, there's a mercury plan that involves, for example, otters and osprey.

So there are a number of those plans that were conditions of release. And, you know, I think I can say confidently, we were fairly rigorous in monitoring and tracking and asking for completion of those conditions within the time frames that they were required.

MS. NAGARAJAH: Okay.

THE COMMISSIONER: So can I just –

MS. NAGARAJAH: Yes.

THE COMMISSIONER: So just before we move off this one here, I was interested in the comment made by one of you that, you know, this was actually directed at Fisheries and Oceans Canada and Nalcor. So the way I read the recommendation, it says: "The Panel recommends that, if the Project is approved and before Nalcor is permitted to begin impoundment, Fisheries and Oceans Canada require Nalcor to carry out a comprehensive assessment" in all these areas.

So can I assume for a moment that because Nalcor has been directed to do this, this is part of the release of the EA? Is that what you're

saying, Mr. Chippett, that it was part of the release conditions for the EA?

MR. CHIPPETT: I'm not sure if it's directly in this language but, for example, in terms of the food web and fish downstream and so on, there's a requirement in the conditions for Nalcor to have an Aquatic Effects Monitoring Plan which would overlap with the intent of that –

THE COMMISSIONER: Right.

MR. CHIPPETT: – recommendation.

THE COMMISSIONER: So that would mean that, at least with regards to those things that are referred to in the EA release conditions, you're saying that the department conducts robust review and (inaudible).

Okay, tell me what would happen if the EA – if there's a dispute or uncertainty of some type between the wording of the EA release conditions and those things that are committed to by the Government of Newfoundland and Labrador, in particular, with regards to the JRP recommendations. What – who's monitoring that?

MR. CHIPPETT: So I think as my colleague, Dr. Squires, said earlier the first compilation of putting all the recommendations and so on together was our responsibility. And then at two separate times – I know in 2012 and in 2014 – Labrador Affairs had the responsibility for monitoring the response to each of the JRP –

THE COMMISSIONER: Okay.

MR. CHIPPETT: – recommendations.

THE COMMISSIONER: So aside from the monitoring the Department of Environment is doing now, if I understand this right, with regards to the EA release conditions there's also monitoring done by Labrador Affairs to make sure that these conditions or these recommendations and the responses are being monitored.

MR. CHIPPETT: So I'm not sure how much that had been monitored after 2014. So there are two discreet points in the records where in 2012

and 2014 those updates were done. Obviously, Dr. Squires has gone through, in the last week or so, to do a new update. And, for example, as the deputy of Municipal Affairs and Environment, as I was looking through the record it was, well, how many of the JRP things are, you know, perfectly captured in the EA release? And I think we came up with a number of, you know, 15 or 16 out of the 30 that involved our department.

And there are other ones, of course, that were complete right at the point of government issuing and authorizing regulation or providing the written response. So there were a number that were complete right from the get-go.

THE COMMISSIONER: Right.

So can I – or is it possible, because this is something that I would like to have – is it possible to get some up-to-date analysis from Labrador Affairs, whoever else is monitoring the completion of these recommendations? Is it possible to do the same thing that was done, in other words, for 2012, 2014, so that I can get that so that I can see that these have been covered?

DR. SQUIRES: Certainly that was the attempt that –

THE COMMISSIONER: Okay.

DR. SQUIRES: – what we recently done in recent weeks –

THE COMMISSIONER: Right.

DR. SQUIRES: – to give you that update.

THE COMMISSIONER: Right.

DR. SQUIRES: We can certainly dig deeper if that's something that you –

THE COMMISSIONER: That's my wish. And how long do you think it would take?

DR. SQUIRES: We – the update you have in front of you, we did over the course of the last five or six days. So we can do that – if we had another week to pull that together –

THE COMMISSIONER: Okay.

DR. SQUIRES: – we could go deeper again.

THE COMMISSIONER: That would be great.

A week or two, I'm not – it doesn't need to be pushed like that, but I would like to have some confirmation of what monitoring has been done with regards to those things that are not included in the release conditions, because I understand those are being monitored by Department of Environment. So those things that are not being included in those release conditions, or there's uncertainty about it, I would like to have some sort of a review of that and what's been happening up to date on that monitoring.

MS. NAGARAJAH: I think, Commissioner, that the intent of the exhibit that we put in this morning – so that's P-04229.

THE COMMISSIONER: Yeah, I'm not sure, in looking at that exhibit last night, that it responds to all of the conditions of the release from the JRP but –

DR. SQUIRES: Okay.

THE COMMISSIONER: – at least not to the extent that it should, so I'd like it a little bit more clarified, like you did in – or like was done in 2012, 2014. I'd like to get one now for 2019.

DR. SQUIRES: Okay.

THE COMMISSIONER: If that's possible.

DR. SQUIRES: With a provincial perspective?

THE COMMISSIONER: Yes.

DR. SQUIRES: Okay.

THE COMMISSIONER: Okay?

MS. NAGARAJAH: Okay, so I'm going to move on to – so, Madam Clerk, can you please pull up Exhibit P-04119. Mr. Goebel, that's at tab 5 of your binder 1.

And I'm just going to scroll down to page 5. Are you on page 5?

branch, the staff that I work with, and then we did up something broader. We were asked to do something broader, where we approached the government departments that would be represented as lead, and support departments on the table and ask them if they could provide some additional updates that we could add.

MR. COOKE: And was that precipitated by the fact that you knew you were coming to the Inquiry and that this evidence would be necessary and requested?

DR. SQUIRES: From my understanding, it was a request of the Commission.

MR. COOKE: Yes, indeed, yes.

So let me ask you this before we get into the document itself. When – do you have any idea when it was last updated prior to you doing it very recently?

DR. SQUIRES: Certainly.

So, I was asked to provide an update on the status of the recommendations of the Joint Review Panel. Staff at our – in the environmental assessment division were aware of this table. The last copy they had was from May of 2014. That was from the Labrador Affairs Secretariat, so we went back to them and asked them if they had any further updates to provide, and this is the last version that they had and we started with that as a starting point.

MR. COOKE: Okay. So, from May 2014 then, to June 2019 – five years – your understanding is that this was not updated during that period.

DR. SQUIRES: At least not by the Labrador Affairs Secretariat.

MR. COOKE: Okay.

DR. SQUIRES: They didn't have a copy.

Now –

MR. COOKE: And you're not aware anyone else did?

DR. SQUIRES: No.

MR. COOKE: Okay.

DR. SQUIRES: Now whether they had their own internal tracking mechanisms for the statuses of recommendations, I'm not aware.

MR. COOKE: Let's take a look at the document itself, and can I take you to page 4. Okay. And, I believe it's 6.2, Environmental Flow Standards, and just starting with the, I guess, the column regarding what the response was in the – to the JRP. And in this one it says that the NL government accepts the intent of the recommendation, and then further that the federal government will work with the appropriate parties as required.

And, I think, maybe Dr. Squires you'd given evidence on the different accept; I don't know if reject is the word but –

DR. SQUIRES: Do not accept.

MR. COOKE: Do not accept, yes. I guess that's a –

DR. SQUIRES: Or doesn't –

MR. COOKE: – nice way of saying reject or accepting the intent. And what I took your evidence – and correct me if I'm wrong – is that when they accept intent, they're saying the idea behind it is a good idea, but perhaps the way to get there, we think, might be a bit different then what the JRP thought. Is that a fair characterization?

DR. SQUIRES: That is fair.

MR. COOKE: Okay.

And so when we look in terms of the status: November 2012, no update; May 2014, no update; June 2019, no update – “and understand it was work completed by Nalcor with DFO.” And you see that. So what was the basis for that June 2019 update? Who provided you with that information, and what information did they provide you?

DR. SQUIRES: The Water Resources Management Division is that acronym there; they would have provided that update. So when you read the environmental flow standards, Joint



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Commissioner: Honourable Justice Richard LeBlanc

Tuesday

25 June 2019

I'll ask you the same question, as I will for all of these, to what degree do you believe Nalcor has complied with this particular response?

MR. BENNETT: Community land use and resource use monitoring program – that monitoring program is not one that's jumping out at me in terms of being front and centre. All of our obligations for environmental effects monitoring are contained either in a commitment or in our authorizing regulation from the province. But this one is not jumping out at me.

MR. BUDDEN: So you're unable to say whether Nalcor has, in fact, responded as is anticipated in this response.

MR. BENNETT: Yeah, that one I don't have a clear view on.

MR. BUDDEN: Okay.

Some of the other counsel may return to that as – if it falls within their particular areas of –

MR. BENNETT: Right.

MR. BUDDEN: – interest, but for now let's move on, perhaps, to page 29 and number 67.

And this one's a little bit of a long one, but I think it's important, so I would ask you to read this one for us.

MR. BENNETT: No problem. So, this is recommendation 14.1, Emergency preparation for the possibility of a dam failure.

“The Panel recommends that, if the Project is approved, Nalcor be required to:

“prepare and provide to affected communities updated maps that more clearly show areas that would be flooded following a dam failure; prepare, in consultation with the relevant communities and appropriate authorities, an Emergency Preparedness Plan, for response in the event of catastrophic dam failure, and emergency response procedures and community evacuation procedures related to a dam failure and subsequent flooding; the Plan should be reviewed every five years; work with each

community that has been identified as being at risk of flooding in the event of a dam failure to develop evacuation plans, to be completed prior to filling of the reservoirs; work with emergency response providers and assist as appropriate in the event of an evacuation; implement a flood warning system for Mud Lake and Happy Valley-Goose Bay to be approved by the provincial Department of Environment and Conservation; and conduct seismographic monitoring in the Project area prior to construction.”

And the response from the province: “The Government of Newfoundland and Labrador accepts the intent of this recommendation. It is appropriate that the proponent be directed to ensure that comprehensive emergency preparedness planning is undertaken in consultation with communities ... as potentially at risk from a catastrophic dam failure. The Water Resources Management Division is responsible for the administration of dam safety under the authority of the *Water Resources Act* and will require the proponent to prepare Emergency Preparedness Plans (including inundation maps) for various dam failure scenarios. The Water Resources Management Division and other appropriate government departments must review and approve these documents prior to the filling of the reservoirs.”

MR. BUDDEN: Okay. So there's a bit there – so, let's break it up a bit. The first one is, what comprehensive – yeah, back to the response, please, Madam Clerk – what comprehensive emergency preparedness planning has been undertaken in consultation with communities identified as potentially at risk from a catastrophic dam failure?

MR. BENNETT: So we have an emergency preparedness plan that spanned the construction of the facilities and will take us, with revision, into operations once we go into operations.

MR. BUDDEN: Okay.

MR. BENNETT: So the plan for construction, including impoundment to full supply level, is contained within our emergency preparedness

plan. That plan has been – we have consulted with local communities and the province with respect to that plan.

MR. BUDDEN: And to your knowledge, has the community consultation – have there been complaints directed at Nalcor, to your knowledge, that that consultation wasn't thorough, or fulsome or complete? Or did the community seem satisfied, at least, with the consultation?

MR. BENNETT: There has been discussion about Nalcor's responsibilities vis-à-vis the responsibilities of communities in their obligation to undertake emergency planning for their communities. I'd say there's been some – there have been some rubs on that. I think we're working through those. And I think at this point each community has its own emergency plan, and we fit into that plan. So there has been a long conversation about emergency planning with communities in the Upper Lake Melville area.

MR. BUDDEN: Okay.

The – it goes on to require, quote, "... will require the proponent to prepare Emergency Preparedness Plans (including inundation maps) for various dam failure scenarios." Has that been done?

MR. BENNETT: The inundation mapping has been completed. It's been done a couple of times now. It's been published and circulated.

MR. BUDDEN: Okay. When would that have happened, Mr. Bennett?

MR. BENNETT: I know the first one was done during the environmental assessment process.

MR. BUDDEN: Of course.

MR. BENNETT: And they have been updated since then.

MR. BUDDEN: Okay. So as of the protest date, say, back in the fall of 2016, firstly, would these consultations have taken place by that point, or did they fall after that point?

MR. BENNETT: No, I believe that there were versions of the inundation mapping existing, because I believe some of the documentation that I'd seen during some of those events actually referred to it.

MR. BUDDEN: Okay.

So to answer my question, those consultations and what the other responses call for here would've taken place prior to the fall of 2016. Is that what you're saying?

MR. BENNETT: Some of them have. Yes.

MR. BUDDEN: Okay.

As of 2016, do you believe that Nalcor would've been in compliance with this particular response?

MR. BENNETT: In terms of the province's response to it, EPP for construction, yes; the inundation mapping, yes, that was done; an emergency preparedness plan for Nalcor and its responsibilities, yes. Engagement with the communities would be ongoing.

MR. BUDDEN: Okay.

Perhaps the next one, which is number 68 – I think that one's a little briefer. Perhaps you could read this one, again, and the answer.

MR. BENNETT: Okay. So this is "Recommendation 14.2 – Compensation for losses in the event of a dam failure"

"The Panel recommends that, if the Project is approved, the Government of Newfoundland and Labrador require Nalcor to assume liability on a 'no fault' basis for any loss of life and financial losses incurred because of the destruction of property and belongings and disruption of activities caused by flooding as a result of one or more dams failing on the lower Churchill River. Nalcor should provide guarantees in the form of insurance, bonds or other appropriate measures that individuals, businesses and institutions suffering damage would receive full compensation, the amount to



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26 June 2019

MR. JANZEN: Okay. So, there would not be a separate riparian compensation plan.

MR. BENNETT: I don't believe there to be a separate plan. I stand to be corrected, but the riparian habitat is an important aspect of fish habitat compensation plan. And I believe that compensation activities in river deltas and spawning habitat is actually incorporated in the habitat compensation plan.

MR. JANZEN: Okay. If we could, please go to page 18, Madam Clerk – same document. And Recommendation 11.1. And maybe I'll ask you to just, again, you can – to read the recommendation, Mr. Bennett, please.

MR. BENNETT: This is recommendation 11.1: "The Panel recommends that, if the Project is approved, Nalcor, in collaboration with the Provincial Archaeology Office, establish and support a program to involve all three Labrador Aboriginal groups in (a) the documentation and interpretation of known historic and archaeological sites and artifacts and (b) the process to be followed in the case of inadvertent discoveries of previously unknown sites and artifacts during construction, including notification of the three groups. Nalcor should also give consideration to inviting participation by interested Aboriginal communities in Quebec. Nalcor should share with Aboriginal groups the results of its work on the monitoring of historic and archeological resources to be compiled and provided annually to the Provincial Archaeology Office."

And the province accepted "the intent of this recommendation, that aboriginal groups be involved in the management and protection of historic and archaeological resources."

MR. JANZEN: And was – what was Nalcor's follow-through on this recommendation?

MR. BENNETT: So, our follow-through on this recommendation is that we have, through permits received from the province, undertaken collection and preservation of historic and archaeological sites. That was done pursuant to a permit issued by the province. The province had circulated that permit application in

conformance with their consultation process prior to granting approval on that permit. My understanding is that any artifacts and historic resources that were collected have been turned over to the province.

MR. JANZEN: And so, in response to the specific recommendation to give consideration to inviting participation by Aboriginal communities in Quebec, the answer is that there was no direct engagement by Nalcor with the Quebec Aboriginal communities?

MR. BENNETT: We had that consultation effort – that was undertaken by the province in the permit approval process.

MR. JANZEN: So, the permits would have been forwarded perhaps to the Aboriginal communities by the province, but Nalcor didn't engage directly with any of the Quebec Aboriginal communities?

MR. BENNETT: We didn't. And I think the –

MR. JANZEN: Sorry.

MR. BENNETT: – it feels like we did not.

MR. JANZEN: Did you say "we did" or "we didn't"?

MR. BENNETT: We did not. My recollection is that with any of these draft permit applications, we have a specific environmental management committee that's provided for in the Impacts and Benefits Agreement that we have with the Innu of Labrador and that other consultation in relation to permit applications is addressed by the province in their permit approval process.

MR. JANZEN: Okay.

So if I can maybe sort of summarize from those – the recommendations related to those, the plans and then the historic and archeological resources, it's fair to say that that the permits were perhaps forwarded to the Quebec Aboriginal communities by the province, the plans were forwarded to the Aboriginal communities by the province, but there was no direct engagement by Nalcor with the Quebec Aboriginal communities –

MR. BENNETT: So –

MR. JANZEN: – in relation to any of the recommendations that we’ve just covered.

MR. BENNETT: – so I would say that the draft plans and permit applications were provided for input by the province pursuant to their consultation process that they’ve laid out for plans and permits in relation to the project. I’d acknowledge that historic and archeological sites, in general, are of significant interest to Aboriginal groups and many stakeholders, and the Provincial Archeology Office has a keen interest in understanding how those resources are collected and preserved. And that we looked at this and said, okay, permits are gonna be required and that the province, consistent with the intent of the recommendation, had a process for dealing with the – I’m gonna say the management protection of those resources.

MR. JANZEN: And maybe just one more question before it would maybe be a (inaudible) time to take a break, is that all of those permits and plans, again, they would’ve been forwarded in English to the Quebec Aboriginal communities.

MR. BENNETT: That’s correct.

MR. JANZEN: So maybe that would be a good time to take a break, Commissioner?

THE COMMISSIONER: Yes, okay.

All right, so we’ll break now until 2 o’clock. Come back at 2 o’clock and continue.

MR. JANZEN: Thank you.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: All right.

All right, when you’re ready.

MR. JANZEN: Thank you, Commissioner. And I just have a few more questions related to two other recommendations of the Joint Review Panel. So, Madam Clerk, if we could go back to P-00051, please. And to Recommendation 7.10, which is on page 14 of the exhibit.

CLERK: (Inaudible.)

MR. JANZEN: Page 14 of the exhibit.

And so this is a recommendation that “Nalcor should carry out the following monitoring programs,” and then there’s a long list of monitoring programs to be carried out. And maybe I’ll just ask you, Mr. Bennett, if you could read the response to the – just the response.

MR. BENNETT: Okay. So: “The Government of Newfoundland and Labrador accepts the intent of this recommendation. The Department of Environment and Conservation will continue to advise monitoring programs regarding issues under provincial jurisdiction. The Department of Environment and Conservation will work cooperatively with the federal government and Aboriginal groups to advise Nalcor on the requirements of a scientifically defensible monitoring program.”

MR. JANZEN: Okay. And from the province’s matrix of responsibilities related to the JRP follow-up, I understand that this was done through various environmental effects monitoring plans. Is that correct?

MR. BENNETT: Yes, if we could just have a quick look over the list again.

Wetlands, caribou, waterfowl – (inaudible) – yeah, those – these requirements would be captured in a variety of environmental effects monitoring programs, and the requirement for those programs flows from the authorizing regulation, which release a project from environmental assessment.

MR. JANZEN: And – pardon me – the involvement of the Quebec Innu communities in the development of those monitoring plans, that would’ve followed the same process we discussed related to the other plans this morning where Nalcor would’ve developed the plan,

forwarded it to the province, and then it would've been distributed to the Quebec Innu communities?

MR. BENNETT: (Inaudible.)

MR. JANZEN: Is that right?

MR. BENNETT: That's right. The province engages in consultation in relation to those plans.

MR. JANZEN: If I look at the second bullet, it says: "monitor the response of the Red Wine Mountain caribou herd including any population changes through the construction phase and in the early part of the operation phase."

Could you tell me what – or tell the Commissioner what monitoring is in place for the Red Wine Mountain caribou herd?

MR. BENNETT: My recollection on Red Wine caribou is because they're an endangered species, that there is a – really testing my memory there now, but there's a permit – I think the permit is granted under the *Endangered Species Act*. It's called a section 19 permit that has specific terms and conditions in relation to monitoring for an endangered species. It's captured under provincial legislation.

My recollection is that between that permit and the caribou effects monitoring program, those two requirements outline what we're supposed to do in relation to caribou, and more particularly, endangered caribou.

MR. JANZEN: If we could go to P-04332, please, Madam Clerk?

THE COMMISSIONER: All right. That's going to be at tab 139 in book 5.

MR. JANZEN: Thank you, Commissioner.

And the very last page, page 39, please? And it's the third from the bottom.

So, this document was released earlier this week. I understand it to be a status update prepared by Nalcor in relation to various commitments made throughout the environmental assessment processes. And I wasn't – I may – I couldn't – I

didn't find, specifically, a commitment related to the – from the Red Wine Mountain caribou herd corresponding to the language that we just looked at, but I wondered whether this might be it. It says that "Each year an annual report will be submitted to" – Newfoundland Department of Environment and Conservation Wildlife Division I believe is what that stands for –

MR. BENNETT: Yes. That's right.

MR. JANZEN: – "that will include the following components: analysis of woodland caribou distribution, movement and habitat selection in the range of the RWMH and MMH, based on telemetry collar data; Discussion of any mortality events involving collared caribou," and "Georeferenced information on all caribou sightings." And I was curious to – that this is – the status for this commitment is marked "Completed" in the third column of that table.

MR. BENNETT: Yes, my recollection of this particular issue is that the requirement for monitoring was during the periods when we had active construction intersecting with the Red Wine caribou range. And the terms and conditions of that monitoring effort were outlined in the effects monitoring plan.

MR. JANZEN: Okay, so I'll just go back to the P-00051, the second bullet. It says: "monitor the response ... including any population changes through the construction phase and in the early part of the operation phase."

MR. BENNETT: So it's important to differentiate between the recommendation from the panel and what the province ultimately does with that in their monitoring requirements that are provided to us or that are captured in our monitoring plan. So if the province accepted the intent of this recommendation, which if we scroll down, I think they did.

MR. JANZEN: Yes, I think that's right.

MR. BENNETT: Right, so they have indicated that there may be latitude in how the JRP recommendation is actually framed and, ultimately, becomes our obligation.

MR. JANZEN: So am I to interpret this correctly, then, that the – that monitoring is no longer ongoing?

MR. BENNETT: As I understand it, our active construction in relation to reservoir clearing and construction of the transmission line, which has a similar issue for the Red Wine herd, has been completed and that our focus on site today is on the construction site. And I think the obligations for Red Wine caribou monitoring from the province were tied to the other construction activities that I just mentioned, as opposed to the work on the site.

MR. JANZEN: Okay, so I'm – I just – is the monitoring ongoing or the monitoring is complete –

MR. BENNETT: I believe –

MR. JANZEN: – or do you not know?

MR. BENNETT: – so I believe that the monitoring is complete and it's consistent with my understanding of the completion of the other construction activities that I described.

MR. JANZEN: Okay, so Nalcor is not involved in any further monitoring of the Red Wine Mountain caribou herd, to the best of your knowledge?

MR. BENNETT: I'm not aware of any other monitoring other than what's outlined in this report. There may be some other initiatives that are under way by our corporate environmental management team, but insofar as the project obligation goes, I'm going to accept that this work – which was done by the environmental team responsible for the project activities and the project monitoring plans – I accept their indication that that work is complete and that the final report has been provided to the province.

MR. JANZEN: Thank you.

Madam Clerk, if we could please go back to P-00051 and Recommendation 7.6, which is, I believe, at page 12 of the Exhibit.

And so I'll just note that this is a recommendation that was accepted by the province. And maybe, Mr. Bennett, if you would

like to read what the recommendation was, please.

MR. BENNETT: Ask if we could just scroll up a little, please? Here we go.

So in relation to Recommendation 7.6, Recovery of the Red Wine Mountain caribou herd: "The Panel recommends that, if the Project is approved, the provincial Department of Environment and Conservation ensure that adequate resources are available so that all reasonable efforts to ensure the recovery of the Red Wine Mountain caribou herd are taken. In addition, the Department should require Nalcor to play an enhanced role in the recovery process for the Red Wine Mountain caribou herd by putting resources into the process for research and recovery efforts and to participate actively in the overall effort to ensure the recovery of the caribou herd."

MR. JANZEN: Thank you.

Now I don't see this particular recommendation as being time-limited. Do you? It doesn't refer to a particular phase of the project.

MR. BENNETT: No, nor does it make it open-ended. And I would say that the requirement for us to play that role is at the department's discretion.

MR. JANZEN: Could you describe what resources Nalcor has put into the recovery process, for research and recovery efforts? And how it has participated in the overall effort to ensure the recovery of the caribou herd?

MR. BENNETT: So, I'm not fully up to speed on everything that the province, Department of Environment and Conservation – or today, Municipal Affairs and Environment is undertaking in relation to the Red Wine Mountain herd.

I know that the – based on my historic understanding through the environmental assessment process, the Red Wine herd is in serious trouble and that the population is – the last number I heard was significantly fewer than 100 animals in that herd.



Endangered Species Act, SNL 2001, c E-10.1

Current version: in force since Dec 1, 2005

Link to the latest version : <http://canlii.ca/t/89s1>

Stable link to this version : <http://canlii.ca/t/jz25>

Citation to this version: Endangered Species Act, SNL 2001, c E-10.1, <<http://canlii.ca/t/jz25>> retrieved on 2019-08-05

Currency: This statute is current to 2018-11-15 according to [Statutes and Regulations Web site](#) of the House of Assembly

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SNL2001 CHAPTER E-10.1

ENDANGERED SPECIES ACT

Amended:

2004 cL-3.1 s27; 2004 c36 s11

CHAPTER E-10.1

AN ACT RESPECTING THE PROTECTION OF ENDANGERED SPECIES

(Assented to December 13, 2001)

*Be it enacted by the Lieutenant-Governor and House of
Assembly in Legislative Session convened, as
follows:*

Short title

1. This Act may be cited as the *Endangered Species Act* .

2001 cE-10.1 s1

[Back to Top](#)**Definitions****2. In this Act**

(a) "conservation officer" means a person appointed by the minister under [section 31](#) and a person appointed under the *Wild Life Act* or the *Forestry Act* to administer and enforce those Acts;

(b) "COSEWIC" means the Committee on the Status of Endangered Wildlife in Canada and includes its successor;

(c) "critical habitat" means habitat that is critical to the survival of a species;

(d) "designated" means the designation of a species under [section 7](#);

(e) "designated species" means a species that has been designated under [section 7](#);

(f) "land" means land and all waters on and airspace above that land;

(g) "land owner" means the owner of an interest in land;

(h) "management plan" means a management plan within the meaning of [section 24](#);

(i) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;

(j) "recovery habitat" means habitat that is necessary for the recovery of a species;

(k) "recovery plan" means a recovery plan within the meaning of [section 23](#);

(l) "residence" means a specific dwelling-place, such as a den, nest or other similar place, that is occupied or habitually occupied by one or more individuals during all or part of their life cycles, including breeding, rearing young or hibernating;

(m) "species" means a species that is wild by nature;

(n) "specimen" means an individual of a species, subspecies or population, whether it is alive or dead; and

(o) "SSAC" means the Species Status Advisory Committee established under [section 6](#).

Economic activity

19. (1) The minister may, with the approval of the Lieutenant-Governor in Council, issue a permit to a person to engage in an activity affecting a designated species, the residence of a specimen of a designated species or critical or recovery habitat, where, in the opinion of the minister,

- (a) the impact on the designated species is incidental to the carrying out of an activity that is economically beneficial to the province;
- (b) there is no reasonable alternative; and
- (c) the activity will not prevent the recovery or survival of the designated species.

(2) The minister may, with the approval of the Lieutenant-Governor in Council, attach conditions to a permit which may include

- (a) the deposit of a monetary bond in a form and in an amount satisfactory to the minister to ensure compliance with the permit and conditions and to enable the minister to repair any damage caused by non compliance; and
- (b) requiring the permit holder to restore habitat or individuals of a designated species affected by the activity.

(3) The minister may, with the approval of the Lieutenant-Governor in Council, revoke a permit issued under subsection (1) if in the opinion of the minister the conditions of the permit have not been met or will not be met.

(4) The minister may, with the approval of the Lieutenant-Governor in Council, amend or revoke a permit issued under subsection (1) if in the opinion of the minister it is necessary to ensure the survival or recovery of a designated species.

2001 cE-10.1 s19

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Annual report

20. The minister shall, before April 15 of each year, release to the public a written report about permits issued under [sections 18](#) and [19](#), containing:

- (a) the number and nature of permits issued in the preceding year and the number and nature of ongoing permits;

Responsibility Matrix and Status of Recommendations of the Joint Review Panel

Joint Review Panel Recommendations		Directed to	Lead Dept.	Other Depts.	Comments	Status
1	4.1 Government confirmation of projected long-term returns	Province/ Nalcor	NR-Energy	IBRD FIN	NL Gov accepts principle that a review is required prior to sanction but does not accept Panel's assumption that information Nalcor provided was inadequate.	Nov. 2012- Complete June 2019- NR agrees with the recommendation with respect to any future sanction decision on developing Gull Island, if and when development is to occur. Any such decision would also consider the findings of the Commission of Inquiry Respecting the Muskrat Falls Project (Inquiry).
2	4.2 Independent analysis of alternatives to meeting domestic demand	Province/ Nalcor	NR-Energy	CCEE	NL Gov does not accept this recommendation. Fed Gov does not accept this recommendation.	Nov. 2012- Complete June 2019- NR notes that there are no changes as Muskrat Falls was sanctioned and is nearing completion without accepting this recommendation.
3	4.3 Integrated Resource Planning	Province/ Nalcor	NR-Energy	ENVC-LM	NL Gov accepts	Nov. 2012- Nalcor notes that no further consideration of Integrated Resource Planning would be required if a decision is made to proceed with Muskrat Falls. With a long-term surplus energy available to island ratepayers, other supply options would not be required for many. The current sanction decision is supported by an updated generation expansion plan, which outlines the least cost supply alternative for the Island system. May 2014- ENVC notes that no formalized land use planning has taken place. Integrated resource planning may not be required given a decision was made to proceed with the project and Crown titles have been issued. NR notes that given Muskrat Falls is proceeding, no further consideration is required. November 2018- NR notes that Newfoundland and Labrador Hydro filed a <i>Reliability and Resource Adequacy Study</i> (available online at www.pub.nf.ca/applications/NLH2018ReliabilityAdequacy/application/From%20NLH%20%20-%20Reliability%20and%20Resource%20Adequacy%20Study%20-%20November%202018%20-%202018-11-16.PDF) with the Board of Commissioners of Public Utilities (PUB) in November 2018. The filing incorporates stakeholder engagement, feedback from customers, supply and demand forecast, public hearings, and generation alternatives which are prominent elements of Integrated Resource Planning.
4	4.4 Project sequencing and applying lessons learned	Nalcor	NR-Energy		NL Gov accepts. Fed Gov will work with the appropriate parties as required.	Nov. 2012- Nalcor notes that it will incorporate applicable learnings from Muskrat Falls into its planning for Gull Island. These learnings will also be applied during the construction phase if Gull Island is sanctioned. May 2014- NR notes that there are no changes. June 2019- Nalcor notes that there are no changes. Although the Gull Island project has been released from the EA process, it has not been sanctioned and NR notes that there are two on-going processes which will inform the lessons learned for Gull Island, which are: 1) the Muskrat Falls Inquiry (final report due on or before Dec. 31/19); and 2) Public Utilities Board (PUB) review of the Rate Mitigation Options and Impacts reference question (final

Responsibility Matrix and Status of Recommendations of the Joint Review Panel

						report due on or before Jan. 31/20).
5	4.5 Full clearing of the Muskrat Falls reservoir	Nalcor	NR-Forestry	NR-Energy	NL Gov agrees with principle of maximizing the utilization of forest resources. Gov supports partial harvesting of flood zone. Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- DNR continues to explore options for developing the resource in central Labrador. Two failed EOI's have occurred in the last 4 years. No new opportunities currently exist however a new EOI is proposed to be advertised in the near future. Gov continues to support partial harvesting.</p> <p>May 2014- DNR continues to explore options for developing the resource in central Labrador. Three failed EOI's have occurred in the last 6 years. No new opportunities currently exist however DNR continues discussions with an interested proponent on the utilization of the wood from the Lower Churchill Project. Other interests in this wood supply also exist and DNR has requested proposals. Gov continues to support partial harvesting.</p> <p>June 2019- Timber harvesting is complete. There are no industrial forestry developments in Labrador established at this time that can utilize this timber. The timber from the project still remains in the storage yards and is available, however wood condition is poor for saw logs. FLR is still exploring options for wood use for bioenergy projects.</p>
6	4.6 Preparation approach for Gull Island reservoir	Province/Nalcor	NR-Forestry	NR-Energy	NL Gov agrees with principle of maximizing the utilization of forest resources. Gov supports partial harvesting of flood zone. Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- DNR continues to explore options for developing the resource in central Labrador. Two failed EOI's have occurred in the last 4 years. No new opportunities currently exist however a new EOI is proposed to be advertised in the near future. Gov continues to support partial harvesting.</p> <p>May 2014- DNR continues to explore options for developing the resource in central Labrador. Gov continues to support partial harvesting.</p> <p>June 2019- There are no proposed harvesting activities at this time for the Gull Island reservoir.</p>
7	4.7 Utilization of merchantable timber	Nalcor	NR-Forestry	IBRD LAAO	NL Gov accepts the intent and principle of utilizing all natural resources. The Government of NL will accept responsibility for the resource after it is harvested by Nalcor, processed and stored at the landing sites identified. Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- Complete – DNR preparing to advertise EOI upon a sanction of the project. Nothing specific required from IBRD unless engaged by DNR-Forestry.</p> <p>May 2014- DNR continues to work closely with a potential proponent from NS interested in the volume that will be cleared as part of the Lower Churchill Project. DNR continues to work closely with Nalcor on permit conditions and discussions surrounding challenging issues related to wood access from storage areas.</p> <p>June 2019- Timber harvesting is complete. There are no industrial forestry developments in Labrador established at this time that can utilize this timber. The timber from the project still remains in the storage yards and is available, however wood condition is poor for saw logs. FLR is still exploring options for wood use for bioenergy projects.</p>

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8	5.1 Use of best available technology	Nalcor	ENVC-PPD	IBRD CCEE	<p>NL Gov accepts the intent of this recommendation for Nalcor to implement mitigation commitments for the Project to operate as efficiently as possible and routinely replace equipment. Emissions from new and well-maintained heavy equipment are expected to meet all applicable standards and regulations.</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- NL Gov accepts the intent and notes that applicable emission standards for new equipment fall under federal jurisdiction. Nothing specific required from IBRD unless engaged by ENVC and/or the proponent. CCEE Framework contains five major objectives which IBRD supports through:</p> <ol style="list-style-type: none"> 1. Development of a roadmap for businesses to better identify programs that promote energy efficiency and/or action on climate change. 2. Review of business diagnostic tools to enhance support to businesses to improve energy management and to understand the carbon footprint of products and services. 3. Explore the development of incentives to increase action on energy efficiency and climate change in the private sector. 4. Strengthen the dialogue with business on the economic development opportunities and risks associated with climate change and energy efficiency. 5. Collaborate with industry to explore opportunities to improve the energy efficiency of heavy trucks. 6. Engage the Federal Government to ensure its funding programs for fuel-efficient technology on heavy trucks can support small trucking operations like those often found in NL with fuel emission best practices. <p>May 2014- ENVC has no further update.</p> <p>June 2019- Greenhouse Gas Emissions and Fuel Consumption reporting from 2013 to 2018 available at https://muskratfalls.nalcorenergy.com/environment/generation/</p>
9	5.2 Backing up intermittent renewable energy	Nalcor	NR-Energy		<p>NL Gov accepts the intent of this recommendation that Nalcor should make reasonable efforts to use power from the Project to back-up wind and other intermittent renewable sources of electricity.</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- Nalcor's development of future projects, including wind and other renewable energy projects, will be reported in future annual reports as these projects progress through Nalcor's planning process.</p> <p>May 2014- Any development of future projects, including wind and other renewable energy projects, will be reported in future annual reports as these projects progress through Nalcor's planning process.</p> <p>November 2018- NR notes that Newfoundland and Labrador Hydro filed a <i>Reliability and Resource Adequacy Study</i> (available online at http://www.pub.nf.ca/applications/NLH2018ReliabilityAdequacy/application/From%20NLH%20%20-%20Reliability%20and%20Resource%20Adequacy%20Study%20-%20November%202018%20-%202018-11-16.PDF) with the Board of Commissioners of Public Utilities (PUB) in November 2018. This study considers the contribution of wind to the province's energy asset mix.</p>
10	5.3 Displacement of high greenhouse gas energy sources	Nalcor	CCEE		<p>NL Gov accepts and notes that it was directed to Nalcor. Will cooperate where required.</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- CCEE notes that there have been no changes.</p> <p>May 2014- CCEE notes that there have been no changes.</p> <p>June 2019- Greenhouse Gas Emissions and Fuel Consumption reporting from 2013 to 2018 available at https://muskratfalls.nalcorenergy.com/environment/generation/</p>

Responsibility Matrix and Status of Recommendations of the Joint Review Panel

11	5.4 Atmospheric monitoring	Nalcor	CCEE	ENVC-WR	NL Gov accepts intent. With the existing 12 climate stations and 10 hydrometric stations in Labrador located outside Project area include one weather station operated by Water Resources Management Division who will provide technical assistance. Fed Gov will work with the appropriate parties as required.	Nov. 2012- CCEE notes that there have been no changes. May 2014- With respect to the displacement of greenhouse gas emissions in the various markets for Project power, Nalcor has indicated that it can report on displacement in NL and NS, but that it is not possible to determine greenhouse gas displacement in the open energy market. CCEE accept his approach to meeting the requirements of 5.4. April 2014- Atmospheric environmental effects monitoring plans approved by Minister and posted online. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html June 2019- The Water Resources Management Division (WRMD) continues to operate climate and hydrometric stations.
12	6.1 Timing of reservoir impoundment	Federal, Nalcor	DFO	ENVC-WR	Fed Gov accepts	Nov. 2012- No action required by Province. Nalcor has noted that this is federally enforced and they will work with DFO
13	6.2 Environmental flow standards	Province Federal Nalcor	ENVC-WR	ENVC-WR	NL Gov accepts the intent of the recommendation to develop environmental flow standards in consultation with Fisheries and Oceans Canada and others for the Lower Churchill River to promote ecologic functions and conserve riparian and fish habitat. Fed Gov will work with the appropriate parties as required.	Nov. 2012- WRMD has no update on this activity May 2014- WRMD has no update on this activity June 2019- WRMD has no updated on this activity and understand it was work completed by Nalcor with DFO.
14	6.3 Erosion and sedimentation prevention	Nalcor	ENVC-WR	NR-Mines	NL Gov agrees with the intent of this recommendation and will require the proponent to submit an Environmental Protection Plan (EPP)	Nov. 2012- WRMD issued a number of permits related to construction activities for a) the South Side Access Road, b) access for reservoir clearing and construction of HVac Transmission Lines and c) Bulk Excavation work at the Muskrat Falls site. These permits provide terms and conditions to minimize the erosion and sedimentation related to construction activities. Feb. 2013- EPP Approved by Minister on February 7, 2013. Posted on web page. www.mae.gov.nl.ca/env

Responsibility Matrix and Status of Recommendations of the Joint Review Panel

					<p>which will outline the proposed erosion and sedimentation prevention strategies.</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>assessment/projects/Y2010/1305/index.html</p> <p>May 2014- ENVC notes that permits now include dam and north spur stabilization related work.</p> <p>September 2014- Bank erosion and sediment quality and transport environmental effects monitoring plans approved by Minister and posted online. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html</p> <p>June 2019- NR Mines notes it did not provide any input as NR Mines deals only with coastal erosion and not fluvial.</p>
15	6.4 Mitigating entrainment effects	Federal	DFO	ENVC-Wildlife	Fed Gov accepts	Nov. 2012- No action required by Province
16	6.5 Pilot study for methylmercury mitigation through soil removal	Federal, Nalcor	DFO	ENVC-WR	Fed Gov agrees with intent but cannot do pilot study. Recommends University research may be more appropriate.	<p>Nov. 2012- No action required by Province. Nalcor notes that there were no requirements for Nalcor and the Federal Government had indicated they agreed with intent but it would be more a study for an academic setting.</p> <p>September 2014- Methlymecury environmental effects monitoring plan approved by Minister and posted online. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html</p> <p>March & August 2016- Workshops held. See www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html for more information.</p> <p>October 2016- Province and Indigenous leaders establish an Independent Expert Advisory Committee. www.releases.gov.nl.ca/releases/2016/exec/1026n01.aspx</p> <p>April 2018- Province release IEAC report. www.releases.gov.nl.ca/releases/2018/mae/0411n03.aspx</p>
17	6.6 Fish habitat compensation	Federal	DFO	ENVC-WR LAAO	Fed Gov accepts	Nov. 2012- No action required by Province
18	6.7 Assessment of downstream effects	Federal	DFO	ENVC-WR ENVC-Wildlife LAAO	Fed Gov accepts	Nov. 2012- No action required by Province
19	6.8 Published analysis of downstream effects over time	Nalcor	ENVC-WR	ENVC-Wildlife	NL Gov accepts the intent of this recommendation that Nalcor make project effects data on the downstream environment available to the	<p>Nov. 2012- WRMD continues to operate, in partnership with Nalcor and Environment Canada, 3 Real Time Water Quality monitoring stations downstream of Muskrat Falls at the following locations: a) on the Churchill River located 6.2 km downstream of Muskrat Falls b) Churchill River at English Point, and c) Lake Melville. This data is available on the ENVC website.</p> <p>May 2014- No further update at this time.</p>

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					parties/public and any interested academics/research organizations.	June 2019- WRMD continue to operate, in partnership with Nalcor and Environment Canada, Real Time Water Quality monitoring stations downstream of Muskrat Falls. Up to date information on methylmercury monitoring in the Muskrat Falls Reservoir, Churchill River, and Lake Melville is available at: www.mae.gov.nl.ca/methylmercury_mrf.html . Including, water sample data graphs and methylmercury data.
20	6.9 Development of the aquatic monitoring program	Federal	DFO	ENVC-WR ENVC-Wildlife LAAO	Fed Gov accepts	Nov. 2012- No action required by Province September 2014- Aquatic environmental effects monitoring plan approved by Minister and posted online. www.mae.gov.nl.ca/env_assessment/projects/Y2010_/1305/index.html
21	7.1 Wetland compensation plan	Nalcor, Federal	ENVC-Wildlife EC	LAAO	NL Gov accepts will work with Environment Canada (EC). Fed Gov accepts and will work with Nalcor, ENVC and Aboriginal Groups	Nov. 2012- To our knowledge, Nalcor has not submitted a Wetland Compensation Plan to ENVC-Wildlife or EC. Apr. 2014- ENVC notes Wildlife Division has not received a Wetland Compensation Plan. Nalcor has engaged an environmental firm and is working with Ducks Unlimited Canada to develop the plan. May 2019 - Draft plan submitted Nalcor Energy. Currently under review by multiple departments, including the Wildlife Division – FLR and the Water Resource Management Division – MAE.
22	7.2 Riparian compensation plan	Federal	ENVC-Wildlife DFO	LAAO	NL Gov accepts will work with DFO. Fed Gov accepts and will work with Nalcor, ENVC and Aboriginal Groups	Nov. 2012- To our knowledge, Nalcor has not submitted a Riparian Compensation Plan to ENVC-Wildlife or DFO. May 2014- ENVC notes Wildlife Division has not received a Riparian Compensation Plan May 2019 - Draft plan submitted Nalcor Energy. Currently under review by multiple departments, including the Wildlife Division – FLR and the Water Resource Management Division – MAE.
23	7.3 Recovery strategies for endangered species	Province, Federal	ENVC-Wildlife EC	ENVC-PNA	NL Gov accepts but does not accept proposed timelines. Fed Gov accepts but does not accept proposed timelines.	Nov. 2012- Provincially: Caribou: A recovery document is in place and is currently being updated to be released in 2012-2013. Olive-sided Flycatcher: A provincial Recovery Plan is currently being drafted with planned release in 2012. Critical habitat will not be identified in this document as there is not enough information available for such an assessment. Common Nighthawk: A recovery plan has been drafted. Critical habitat has not been identified in this document as there is not enough information available for such an assessment. Rusty Blackbird: A management plan has been drafted. Critical habitat has not been identified in this document as there is not enough information available for such an assessment. May 2014- ENVC notes the recovery and management plans for the birds have been drafted. The woodland caribou recovery plan update has been put on hold pending alignment with federal range planning initiatives, internal work priorities, the completion of habitat work and the completion of the upcoming status review by COSEWIC. An updated recovery/range plan is expected to be prepared in 2015. June 2019- Provincial recovery plans remain pending. The recovery plan for boreal caribou and George River Caribou Herd are currently being developed under the federal <i>Species at Risk Act</i> Section 11. Conservation Agreement and related indigenous engagement in Labrador.

Responsibility Matrix and Status of Recommendations of the Joint Review Panel

24	7.4 Compliance with species at risk legislation	Nalcor	ENVC-Wildlife		NL Gov accepts Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- Statement as previously provided applies</p> <p>Feb. 2013- EPP Approved by Minister on February 7, 2013. Posted on web page. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html</p> <p>May 2014- Statement as previously provided applies</p> <p>September 2014- Species at Risk environmental effects monitoring plan approved by Minister and posted online. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html</p> <p>November 2014- Required section 19, species at risk permit issued and posted online. www.flr.gov.nl.ca/wildlife/endangeredspecies/endangered_permits.html</p> <p>June 2019- No further action required. FLR states Nalcor has fulfilled obligations under the permit.</p>
25	7.5 Road construction and decommissioning	Province	NR-Forestry	ENVC-LM TW MIGA	NL Gov accepts Fed Gov will work with NR-Forestry as required.	<p>Nov. 2012- Road construction is not complete at this time. Site access road right of way clearing is complete. Road construction for reservoir clearing has not been started at this time. The Lands Branch will continue to work in collaboration with the Forest Services Branch on a case by case basis as required.</p> <p>May 2014- Road construction is complete from the TLH to the dam site (27km). Road construction for reservoir clearing has been changed significantly as communicated to DNR officials in June 2013. This will significantly affect access to wood storage yards.</p> <p>June 2019- Road construction is completed. No further action required by FLR.</p>
26	7.6 Recovery of the Red Wine Mountain caribou herd	Province, Federal	ENVC-Wildlife	ENVC-PNA LAAO	NL Gov accepts Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- A recovery document is in place and is currently being updated to be released in 2012-13.</p> <p>May 2014- ENVC notes the woodland caribou recovery plan update has been put on hold pending alignment with federal range planning initiatives, internal work priorities, the completion of habitat work and the completion of the upcoming status review by COSEWIC. An updated recovery/range plan is expected to be prepared in 2015.</p> <p>July 2014- Caribou environmental effects monitoring plan approved by Minister of ENVC and posted online. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html</p> <p>June 2019- NL government is developing a Boreal Caribou Recovery Plan as part of a federal <i>Species at Risk Act</i> - Section 11 Conservation Agreement which includes indigenous engagement in Labrador.</p>
27	7.7 Management of the George River caribou herd	Province, Federal	ENVC-Wildlife EC	ENVC-PNA LAAO	NL Gov accepts the intent EC will work with Province and Quebec	<p>Nov. 2012- The GRCH management plan is ongoing and stakeholder input will be incorporated into the management plan as the plan progresses. The Aboriginal consultations regarding harvest management are now complete. Further and continued consultations with all stakeholders (aboriginal and non-aboriginal) regarding future GRCH conservation measures will continue throughout the decline and recovery of the herd.</p>

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						<p>May 2014- ENVC notes all harvesting has been suspended on the GRCH. Population estimates are now below 20,000 animals. NL extended funding for the Labrador Caribou Initiative to, among other things, allow for a count of the herd in 2014. Engagement with the Ungava Peninsula Caribou Aboriginal Roundtable has been initiated seeking collaboration on a management plan. It is hoped that a management plan can be prepared by 2015. Continued consultations with all stakeholders (aboriginal and non-aboriginal) regarding future GRCH conservation measures will continue throughout the decline and recovery of the herd.</p> <p>July 2014- Caribou environmental effects monitoring plan approved by Minister and posted online. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html</p> <p>June 2019- No further action by FLR. Nalcor submitted the caribou environmental effects monitoring plan as required. The approved plan is posted online. There has not been any requirement for the plan to change.</p>
28	7.8 Effect of reservoir preparation activities on migratory birds	Nalcor, Federal	ENVC-Wildlife		Fed Gov does not accept	<p>Nov. 2012- No action required by Province. Nalcor notes that when possible it will conduct clearing outside of bird migratory season and will follow Federal government enforcement.</p>
29	7.9 Vegetation control	Nalcor	ENVC-PPD		<p>NL Gov accepts the intent of this recommendation that approval of the use of herbicides should only be granted after Nalcor has submitted an overall vegetation control plan and it is fully in keeping with the practices of Integrated Vegetation Management.</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- No action required at this time. Applicable licences will be required from ENVC once a vegetation control program is deemed necessary by the proponent.</p> <p>May 2014- ENVC notes no requests received to date from Nalcor for vegetation control.</p> <p>June 2019- Current permit issued to Nalcor Energy covers the area from the Muskrat Falls site to about 30 km towards the Upper Churchill site.</p>
30	7.10 Monitoring, follow-up and adaptive management for the terrestrial environment	Nalcor	ENVC-Wildlife		<p>NL Gov accepts intent</p> <p>Fed Gov accepts intent but will rely on Province to monitor</p>	<p>Nov. 2012- This statement was directed to the proponent. ENVC-Wildlife will continue to work with the proponent to provide input and reviews as appropriate.</p> <p>May 2014- No change to date, ENVC- Wildlife will continue to work with the proponent to provide input and reviews as appropriate.</p> <p>April 2014 to June 2016- Various environmental effects monitoring plan approved by Minister and posted online. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html. Only outstanding plan is for wetland and</p>

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						<p>riparian habitats.</p> <p>June 2019- No further action required by FLR. IIAS advise that all Environmental Effects Monitoring Plan and permits are provided to indigenous groups for review and comment as outlined by the Aboriginal Consultation Guidelines.</p>
31	8.1 Trapping compensation program	Nalcor	LAAO		<p>NL Gov accepts intent</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- Nalcor will be establishing a compensation program for all bona fide trappers along the lower Churchill River. The first draft is in development by Nalcor at this time. This program is not expected to be introduced until first flood, expected to be in 2014.</p> <p>May 2014- Consultation with trappers and government officials is ongoing in preparation of the plan. This plan will be implemented prior to the construction impoundment, which is scheduled for 2016.</p> <p>June 2019- Stakeholders expressing concern or an impact related to the project can contact Nalcor via phone, email or in person at the Project office. Contact information is available on the project website, social media and all public information produced for the project. Boating guides/trappers active in the lower Churchill River Valley that can substantiate a claim of loss of income due to the project will be compensated. To date, no claims have been received.</p>
32	8.2 Mud Lake ice bridge mitigation	Province, Nalcor	ENVC-WR	LAAO MIGA	<p>NL Gov accepts intent</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- WRMD has no update on this activity.</p> <p>May 2014- No change to note.</p> <p>September 2014 - The ice formation environmental effects monitoring plan approved by Minister and posted online at: www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html.</p> <p>June 2019- The WRMD monitors a series of hydrometric, climate, and snow monitoring stations in the Churchill River Basin and uses the information collected for monitoring the river for annual spring runoff and ice breakup events. Details, including background and current data, are available at: www.mae.gov.nl.ca/waterres/flooding/lc_flood_warning.html. This program includes monitoring ice thickness at the Mud Lake ice bridge crossing.</p>
33	8.3 Navigation during impoundment	Nalcor	ENVC-EA		<p>NL Gov accepts the intent of this recommendation and agrees that Nalcor should address transportation difficulties if impeded during reservoir impoundment periods and provide alternative transportation to minimize any inconvenience to</p>	<p>Nov. 2012- The recommendation has been directed to Nalcor for implementation in consultation with Mud Lake residents and appropriate authorities should reservoir impoundment impede transportation.</p> <p>May 2014- Navigation effects monitoring plan approved by Minister and posted online. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html</p> <p>June 2019- The WRMD monitors a series of hydrometric, climate, and snow monitoring stations in the Churchill River Basin and uses the information collected for monitoring the river for annual spring runoff and ice breakup events. Details, including background and current data, are available at: www.mae.gov.nl.ca/waterres/flooding/lc_flood_warning.html. This program includes monitoring ice thickness at the</p>

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					residents. Fed Gov will work with the appropriate parties as required.	Mud Lake ice bridge crossing
34	8.4 Lower Churchill navigation mitigation and monitoring plan	Federal	Transport Canada	ENVC-WR	Fed Gov accepts and notes it will direct Transport Canada	Nov. 2012- No action required by Province May 2014- Navigation effects monitoring plan approved by Minister and posted online. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html
35	8.5 Allowing local forestry operators to clear additional areas	Province	NR-Forestry		NL Gov accepts the intent of the recommendation to allow local forestry operators to clear additional areas. Fed Gov will work with the appropriate parties as required.	Nov. 2012- There are currently no forestry operators in the local area to take on such activities. However Forestry will notify Nalcor if the situation changes. May 2014- There are currently no forestry operators in the local area to take on such activities. However Forestry will notify Nalcor if the situation changes. June 2019- Harvesting activities in relation to the project are complete. No local operators were available to harvest any wood under this opportunity in the local area.
36	9.1 Noise and dust management	Nalcor	OHS	HCS	NL Gov accepts intent Fed Gov will work with the appropriate parties as required.	Nov. 2012- Ongoing. OHS inspections conducted at site week of September 24, 2012 resulted in stop work orders in relation to worker exposure to dust originating from crushing and drilling equipment. No orders were required regarding noise exposure. OHS mandate is worker protection and not environmental or public health. Feb. 2013- EPP Approved by Minister on February 7, 2013 which includes dust and other particulate management. Posted on web page. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html May 2014- As of April 8, 2014: OHS inspection conducted on March 4, 2014 resulted in an order to submit silica and noise sampling results for review.
37	9.2 Relocation of Canada yew	Nalcor	DNR-Forestry	LAAO	NL Gov accepts intent Fed Gov will work with the appropriate parties as required.	Nov. 2012- Department of Natural Resources – Forestry manages Canada Yew under the <i>Forestry Act</i> May 2014- Canada Yew continues to be managed by NR under the <i>Forestry Act</i> . June 2019- No permits were requested and FLR is not aware of any relocation of Canada Yew at any point during the clearing phases of the project. Canada Yew is largely uncommon in forests across Labrador. Canada Yew continues to be managed by FLR under the <i>Forestry Act</i> .
38	9.3 Community level land and resource use monitoring	Nalcor	LAAO	MIGA	NL Gov accepts intent Fed Gov will work with the appropriate parties as	Nov. 2012- The JRP recommended that Nalcor involve Aboriginal organizations in design/implementation of proposed community level land and resource use monitoring. The Province accepted the intent of this recommendation. Nalcor reports this program will be incorporated within the socio-economic and bio-physical Environmental Effects Monitoring Plans specific to project components. EEM Plans are currently under

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					required.	<p>development and will be submitted as necessary during construction of the Project, prior to initial effects of the Project on community level land and resource use.</p> <p>May 2014- The Socioeconomic EEM Plan will be submitted to ENVC this month for review and acceptance by the Minister. At that time the Plan will also be subject to the provincial Aboriginal Consultation guidelines. In addition, this Plan will be reviewed by the Innu Nation via the Environmental Management Committee. A component of this Plan is land and resource use monitoring.</p> <p>September 2014- Social effects monitoring plan approved by Minister and posted online. www.mae.gov.nl.ca/env/assessment/projects/Y2010/1305/index.html</p> <p>May 2019- Received the socio-economic benefits 2018 report on May 29, 2019. Available at http://muskratfalls.nalcorenergy.com/wp-content/uploads/2019/06/December-2018-LCP-Monthly-Benefits-Report-Final.pdf.</p> <p>June 2019- IIAS advise that all Environmental Effects Monitoring Plan and permits are provided to indigenous groups for review and comment as outlined by the Aboriginal Consultation Guidelines.</p>
39	11.1 Involvement of Aboriginal groups in the management and protection of historic and archaeological resources	Nalcor	TCR-PAO	LAAO	<p>NL Gov accepts intent</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- Through an Impact Benefit Agreement between Nalcor and the Innu, the Innu have been engaged in archaeological excavation and survey. The archaeological permit was provided to all Aboriginal groups for review and comment.</p> <p>May 2014- TCR notes that there have been no changes to date.</p> <p>June 2019- TCII notes the archaeological work was completed in 2017.</p>
40	11.2 Commemoration initiatives	Nalcor	LAAO	TCR	<p>NL Gov accepts intent</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- The JRP recommended that Nalcor undertake commemorative and educational efforts to preserve historical, archaeological, spiritual, and cultural sites and artifacts. Since sites and artifacts are largely Innu, the majority of these initiatives are contained within the Impacts and Benefits Agreement between Nalcor and Innu Nation. Determinations of how the above process will proceed is under development at Nalcor, however Aboriginal organizations will be involved in the identification of sites, artifacts, and intangible elements to be documented, how commemoration should occur and the implementation of specific commemorative initiatives at appropriate locations throughout the river valley.</p> <p>May 2014- Archaeological assessment and recovery is ongoing in the LCP project area. The assessments have been undertaken in close consultation with Innu Nation and the Provincial Archaeology Office (PAO). Artifacts recovered during the 2012 and 2013 field seasons have been catalogued and are currently in the handover process to the PAO. Discussions with relevant Aboriginal groups and the PAO regarding commemorative initiatives are planned as the assessment progresses. Nalcor with Innu Elders to present and discuss findings of the 2012/13 historic resources assessments. Additionally, the assessments were presented at the EMC AGM in Sheshatshiu. Both were held 19-Nov-2013.</p>

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						<p>May 2014- TCR notes that there are no changes to date.</p> <p>June 2019- TCII notes there are no updates; this is mainly a Nalcor initiative and the PAO has not been involved in recent years. IIAS notes that the Historic Resources Management Plan for Muskrat Falls was provided to the Innu Nation-Nalcor Energy Environmental Management Committee (EMC) for review and comment on June 20, 2012, Provision of annual Historic Resources Reports to EMC, Lower Churchill Project Lead Archaeologist Fred Schwartz held meetings with Innu Elders, all recovered artifacts turned over to The Rooms, and Annual Historic Resource Program Reports posted on website.</p>
41	11.3 Naming Project-related features	Province	LAAO	TCR	<p>NL Gov accepts</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- The JRP recommended that the Province develop an approach to the naming of Project-related features in consultation with local communities and Aboriginal organizations. Determinations of the specific approach to project-related naming is under development, however, the Province will work with Nalcor to develop an approach that recognizes the importance of place names in Aboriginal cultures. The Province and Nalcor intend to consult with Aboriginal organizations once this approach is affirmed.</p> <p>May 2014- Negotiators for the Innu AIP have advised that the Innu have proposed that the entirety of Chapter 16 – Place Names apply to the Lower Churchill Project Area (LCPA) as though the LCPA were LISA outside LIL. This has not yet been confirmed by the Province however provincial negotiators do not foresee any issues with accepting this proposal. Currently, there is an interim measure in the Place Names chapter which states for two years after the AIP is signed, no new or replaced place names in LISA will be approved by the Minister until the Innu Nation has first been consulted. While this date has passed, LAAO recommends to consult as per the interim measure. While the LCPA is not in LISA, it may be good governance to also consult the Innu on new or replaced names in the LCPA as it will likely be required when the Treaty is finalized. The Innu do have harvesting rights in that area.</p> <p>May 2014- TCR notes that there are no changes to date.</p> <p>June 2019- Negotiators for the Innu Final Agreement have accepted the Innu proposal to have the Place Names Chapter apply to the Lower Churchill Project Area (LCPA) as though the LCPA were Labrador Innu Settlement Area outside Labrador Innu Lands. Indigenous Affairs recommends consulting the Innu on new or replaced names in the LCPA even in the absence of a Final Agreement.</p>
42	12.1 Early candidate selection and training	Nalcor	AES		<p>NL Gov accepts intent subject to IBA and benefits agreement with Innu Nation</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- No action required by Province.</p> <p>May 2014- AES is participating with NR in the development of the Council of the Federation Canadian Energy Strategy, which is planned to be tabled to all Premiers in August 2014. It is proposed that the Strategy will cite the following goals and actions: Goal 5.1: Improve access to employment in the energy sector for all Canadians and increase participation of under-represented groups through developing partnerships among employers, communities and post-secondary and training institutions. Action 5.1.1: Identify mechanisms to increase energy industry investment in skill development and training programs including partnerships with governments.</p>

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						<p>Action 5.1.2: Assist under-represented Canadians, such as Aboriginal peoples, persons with disabilities and older workers, to access and benefit from labour market opportunities in the energy sector. As series of initiatives to implement these goals and actions will be rolled out by each PT individually.</p> <p>June 2019- AESL provided input into an Energy Plan progress report to Natural Resources in April 2015. The Benefits Strategy is available on the Muskrat Falls website, http://muskratfalls.nalcorenergy.com/wp-content/uploads/2013/04/Benefits-Strategy.pdf, as well as the July 2014 GEDP, https://muskratfalls.nalcorenergy.com/wp-content/uploads/2017/04/Nalcor-Energy-LCP-GED-Program-2014-Final.pdf.</p>
43	12.2 Workplace attachment for apprenticeship graduates	Nalcor	AES		<p>NL Gov accepts intent subject to IBA and benefits agreement with Innu Nation</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- No action required by Province.</p> <p>May 2014- AES has an Apprenticeship Wage Subsidy program which is designed to assist underemployed and unemployed apprentices in the skilled trades, by providing a financial incentive to employers to help offset salary costs of hiring apprentices. In turn, it also provides apprentices with the opportunity to gain critical work experience, especially those in their first and second years. To date, the program has supported 34 apprentices (April 2011 to present), with 13 funded in 2013-14.</p> <p>The Department also funds the Journeyperson Mentorship Program which helps industry or employers to hire Journeypersons to mentor apprentices; offsets the costs of hiring (salary) of Journeyperson mentors; and provides opportunities for apprentices to gain the work experience and hours they need to progress through their apprenticeship program. The program provides financial contributions to eligible employers to fund a journeyperson mentor to support apprentices on the job.</p> <p>June 2019- AESL continues to fund the Apprenticeship Wage Subsidy Program providing a wage subsidy to employers who hire apprentices. This program supports apprentices across all levels – First, Second, Third and Fourth year and provides a wage subsidy of 75 per cent, to a maximum of \$14 an hour, for all apprentices funded under the program, and is paid directly to the employers who hire the apprentice. The program assists apprentices to gain work experience in their skilled trade, and progress to journeyperson certification.</p> <p>AESL also provides \$200K yearly in annual funding to support the Office to Advance Women Apprentices. This program provides support to females to commence and maintain a career in the skilled trades. OAWA also administers a wage subsidy to support hiring of females in NL. Total budget for wage subsidy in 2018-19 was \$632K.</p>
44	12.3 Training to 'journeyperson' level in community of residence	Province Nalcor	AES		<p>NL Gov accepts intent subject to IBA and benefits agreement with Innu Nation</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- No action required by Province.</p> <p>May 2014- AES has been supporting workers in Labrador in completing job applications for MuskratFallsJobs.com to assist workers in gaining work experience in their field within Labrador</p> <p>While not specifically required by the Joint Panel, the Apprenticeship Trades & Certification Division will be working with Nalcor and the contractors, in coordination with the applicable unions, to obtain numbers of apprentices on site and to also assist wherever possible with additional training to help bring individuals to Journeyperson status.</p> <p>AES has met with the Carpenters union to discuss training options for both workers being accommodated on</p>

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						<p>site and those living in the nearby communities regarding preparation training for writing a Journeyperson certification exam.</p> <p>In addition continued dialogue is taking place with LATP to obtain updated information from them and work with them to provide direction and assistance wherever and whenever possible.</p> <p>June 2019- AESL employs an Apprenticeship Program Officer located in Labrador who works with stakeholders, including local employers, to monitor the progression of apprentices, identify training needs and provide support to apprentices seeking journeyperson certification. Further, AESL supports labour market relevant advanced-level training at College of the North Atlantic's Labrador West as demand dictates (e.g., Heavy Duty Equipment Technician, Industrial Electrician and Industrial Mechanic (Millwright)). AESL also supports specialized training for skilled trades occupations through a budget of up to \$1 million. Specialized training is for apprentices and journeypersons to acquire specialized skills outside the regular skilled trades training and to assist with securing employment on projects in NL.</p> <p>AESL regional staff continue to support workers in Labrador in completing job applications on the MuskraftFallsJobs.com site as required; however, the activity level has diminished recently. Nalcor releases monthly reports which are available on their website, outlining employment and recruitment activities: https://muskraftfalls.nalcorenergy.com/newsroom/reports/</p>
45	12.4 Address wage subsidy stigma	Nalcor	AES	IBRD	<p>NL Gov accepts intent</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- Nothing specific required from IBRD unless engaged by AES.</p> <p>May 2014- Enhancements have been made to wage subsidy programs by combining a number of wage subsidy programs into one (NL Works, NL Wage Subsidy, Graduate Employment Program and Wage Subsidy for Persons with Disabilities). This streamlining of the application process and removal of emphasis on specific client groups was intended to make applying for a subsidy easier and to remove some of the stigma associated with this employment benefit.</p> <p>June 2019- In April 2019, enhancements were made to the JobsNL Wage Subsidy program to increase the duration of the subsidy and to increase the percentage of subsidy. In addition, a completion bonus is now provided to the employer and employee if employment is retained 10 weeks after completion of the subsidy.</p>
46	12.5 Preparing for participation in wage economy	Nalcor	AES	LAAO	<p>NL Gov accepts intent subject to IBA and benefits agreement with Innu Nation</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- No action required by Province.</p> <p>May 2014- See Action Item 12.6 on LATP. In addition, the Department undertakes strategic initiatives to align labour supply and demand, including working with our education and training partners to help prepare people for job opportunities in the province and ensure the responsiveness of our post-secondary training institutions. As well, the Department supports employers through a variety of programs and services in accessing and keeping skilled workers and delivers employment and career supports to individuals.</p> <p>June 2019 – By August 2016, at least 1,100 individuals had obtained training, with 450 securing employment at the Muskrat Falls Project site. The Labrador Aboriginal Training Partnership (LATP) is now turning its efforts towards the Vale project site. As well, in September 2016, a maximum of \$3 million (over four years) was approved for the continuation of LATP and the LATP/Vale NL Aboriginal Employment Preparation Strategy.</p>

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47	12.6 Continuation of Labrador Aboriginal Training Partnership	Nalcor	AES	LAAO	<p>NL Gov accepts intent subject to Fed funding agreement</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- The funding agreement has not been completed and AES is actively engaged in trying to conclude.</p> <p>May 2014- Funding agreement between AES and LATP signed on March 14, 2013.</p> <ul style="list-style-type: none"> Provincial Government provided \$2,169,963 in funding to the Labrador Aboriginal Training Partnership Inc. (LATP) to facilitate training opportunities for Aboriginal learners related to the construction phase of the Lower Churchill Project (LCP). Commitment of this funding allowed LATP to leverage \$6.6M in federal funding through the Skills and Partnership Fund, through a separate agreement between LATP and the federal government. The Provincial Government funded its contribution through its Labour Market Development Agreement allocation. This training strategy has been built on the base of 287 trainees including a minimum of 237 individuals in specified programs and support for a maximum of 50 individuals in general postsecondary programs at both public and private institutions from March 4, 2013 to March 31, 2015. The investment supports the delivery of labour market relevant training programs including: Construction Craft Worker, Occupational Health and Safety Fundamentals, Environmental Monitor, Rebar, Tower Steel Assembler, Cement Truck Driver, Commercial Transport/Cement Truck Driver, and potentially Scaffolding, Construction Craft Worker/Concrete Finisher and Carpentry; Training providers are awarded contracts using a Request for Proposal process. To date, 130 persons have availed of training in three programs, Construction Craft Worker, Occupational Health and Safety Fundamentals and Environmental Monitor. Additionally, 24 clients have received approval from LATP to enroll in various postsecondary programs. The Rebar program is currently underway with the remainder of the programs beginning on April 28, 2014 and June 2, 2014. <p>June 2019 – By August 2016, at least 1,100 individuals had obtained training, with 450 securing employment at the Muskrat Falls Project site. The Labrador Aboriginal Training Partnership (LATP) is now turning its efforts towards the Vale project site. As well, in September 2016, a maximum of \$3 million (over four years) was approved for the continuation of LATP and the LATP/Vale NL Aboriginal Employment Preparation Strategy.</p>
48	12.7 Employment outreach to Quebec Aboriginal communities	Nalcor	LAAO		<p>NL Gov Recognizing the priorities of the IBA and the Benefits Strategy, the Government of NL recognizes that Nalcor will take appropriate measures to meet its human resource requirements for the Project, and further recognizes that employment opportunities are open to Aboriginal</p>	<p>Nov. 2012- The Province recognizes the priorities of the IBA and Benefits Strategy and that Nalcor will take appropriate measures to meet its human resources requirements for the Project. However, the Adjacency Principle applies to the Project's employment and business opportunities for the life of the Project. Therefore, residents of Labrador will be given priority for employment and business opportunities. Quebec Aboriginal organizations will not be offered any specific employment benefits, but all employment opportunities are open to Aboriginal people living in Quebec. Nalcor will report quarterly on its employment outreach programs.</p> <p>May 2014- LCP provides quarterly reports on employment and business metrics to NR, as per the Benefits Strategy.</p> <p>June 2019- Monthly Benefits Reports are prepared that present the persons hours of employment by indigenous affiliation. The March 2019 report which includes the project to date, can be found at http://muskratfalls.nalcorenergy.com/wp-content/uploads/2019/05/March-2019-LCP-Monthly-Benefits-Report-</p>

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					people living in Quebec. Fed Gov will work with the appropriate parties as required.	FINAL-.pdf.
49	12.8 Quantitative targets for goods and services	Province	IBRD		NL Gov accepts intent subject to IBA and benefits agreement with Innu Nation Fed Gov will work with the appropriate parties as required.	Nov. 2012- Nothing specific required from IBRD unless engaged by DNR in relation to IBA/Innu BA. IBRD is moving forward with the expansion of its Supplier Development Program. The committee tasked with implementation will liaise with the proposed Labrador Business Opportunities Committee (or similar) to identify collaborative initiatives that will maximize supplier development opportunities for provincial firms. May 2014- IBRD notes that the Labrador Business Opportunities Committee (Lower Churchill Project) has been formed. IBRD notes that there are no further changes to date. June 2019- Complete; TCII supported initiatives including the Northern Lights Conference and procurement initiatives with the St. Johns Board of Trade and Labrador North Chamber of Commerce.
50	12.9 Enhances supplier development program	Nalcor	IBRD		NL Gov accepts intent subject to IBA and benefits agreement with Innu Nation Fed Gov will work with the appropriate parties as required.	Nov. 2012- IBRD is moving forward with the expansion of its Supplier Development Program. The committee tasked with implementation will liaise with the proposed Labrador Business Opportunities Committee (or similar) to identify collaborative initiatives that will maximize supplier development opportunities for provincial firms. May 2014- The Labrador Business Opportunities Committee (Lower Churchill Project) has been established. It currently includes representation from IBRD, Nalcor, Labrador North Chamber of Commerce and the St. John's Board of Trade. This collaboration will facilitate the implementation of strategies and initiatives to help NL businesses identify supply opportunities and consider procurement approaches that could enhance their capacity to bid on supply and service contracts. In January 2014, the Committee hosted a Reception at Northern Lights in Ottawa, ON to help facilitate discussions and partnership opportunities among NL companies and national and international players regarding Northern opportunities. June 2019- Complete; TCII supported initiatives including the Northern Lights Conference and procurement initiatives with the St. Johns Board of Trade and Labrador North Chamber of Commerce.
51	12.10 Update quantitative targets at time of sanction	Nalcor	IBRD		NL Gov accepts intent subject to IBA and benefits agreement with Innu Nation Fed Gov will work with the appropriate parties as required.	Nov. 2012- Nothing specific required from IBRD unless engaged by DNR in relation to IBA/Innu BA. IBRD is moving forward with the expansion of its Supplier Development Program. The committee tasked with implementation will liaise with the proposed Labrador Business Opportunities Committee (or similar) to identify collaborative initiatives that will maximize supplier development opportunities for provincial firms. May 2014- IBRD notes that the Labrador Business Opportunities Committee (Lower Churchill Project) has been formed. IBRD notes that there are no further changes to date. June 2019- Complete; TCII supported initiatives including the Northern Lights Conference and procurement initiatives with the St. Johns Board of Trade and Labrador North Chamber of Commerce.

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52	12.11 Transparent bidding process	Nalcor	IBRD		NL Gov accepts intent subject to IBA and benefits agreement with Innu Nation Fed Gov will work with the appropriate parties as required.	Nov. 2012- Nothing specific required from IBRD unless engaged by DNR in relation to IBA/Innu BA. IBRD is moving forward with the expansion of its Supplier Development Program. The committee tasked with implementation will liaise with the proposed Labrador Business Opportunities Committee (or similar) to identify collaborative initiatives that will maximize supplier development opportunities for provincial firms. May 2014- IBRD notes that the Labrador Business Opportunities Committee (Lower Churchill Project) has been formed. IBRD notes that there are no further changes to date. June 2019- Complete; TCII notes that there are no further changes to date.
53	12.12 Modifications to the Benefits Strategy	Nalcor Province	NR-Energy		NL Gov does not accept	Nov. 2012- Complete June 2019- Nalcor is meeting its benefits commitments as noted in LCP quarterly reports on employment and business metrics to the NR, as per the Benefits Strategy, which are published on Nalcor's website.
54	13.1 Sheshatshiu social effects mitigation	Nalcor Province Federal	HCS	LGH LAAO AES	NL Gov accepts intent Fed Gov agrees with intent and will work with appropriate parties as required	Nov. 2012- No action to date. May 2014- Nalcor will be submitting a Socio-Economic Environmental Effects Mitigation Plan for the Lower Churchill Project to the Minister of Environment and Conservation. HCS will review the Plan submitted by Nalcor. September 2014- Social effects environmental effects monitoring plan approved by Minister and posted online. www.mae.gov.nl.ca/env_assessment/projects/Y2010_/1305/index.html
55	13.2 Social effects needs assessment and research	Province	HCS	LGH AES LAAO	NL Gov accepts intent Fed Gov will work with the appropriate parties as required.	Nov. 2012- LGH is moving forward with an RFP to have a needs assessment completed for the Lower Churchill project and other megaprojects in Labrador May 2014- Originally it was planned that LGH would conduct a RFP to hire a consultant to do this work. Upon further consideration and review of the commitment, it was determined that this work could be done through the Department's research partners. The Department, consultation with LGH and MUN, will assess further. June 2019- HCS anticipates commencing work on this matter in Summer 2019
56	13.3 Worksite measures to address addictions issues	Nalcor	HCS	LGH	NL Gov accepts intent Fed Gov will work with the appropriate parties as required.	Nov. 2012- No action required by Province. HCS and LGH will monitor addiction-related demands on services. May 2014- HCS and LGH continue to monitor addiction-related demands on services. June 2019- HCS and LGH continue to work together to monitor access to mental health and addiction services in the region. Since 2016, there has been a 98.9% reduction in the number of people waiting for counselling services in LGH with only a handful of people currently waiting. There are 12 Doorways locations offering rapid access to counseling in the region. Since Doorways began in August 2018, there have been over 3600 walk-in sessions. The Canadian Institute for Health Information, in 2017-18, noted there were 249 hospitalizations entirely caused by alcohol per 100,000 people in Canada. The average for Labrador-Grenfell Health for the same period was 507

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						hospitalizations per 100,000 people, far exceeding the national average. HCS and LGH continue to work to expand service options for all mental health and addiction issues, including an opioid dependency treatment hub in Happy Valley-Goose Bay and work towards the development of a provincial alcohol strategy.
57	13.4 Variety of work schedules	Nalcor	LRA		Gov NL accepts subject to IBA agreement with Innu Nation Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- LRA noted that this is between NALCOR and the RDC (representing the employees). It will be resolved as noted below as part of the IBA or through the Collective Agreement negotiation.</p> <p>May 2014- Three separate Special Project Orders (SPO) were issued for the three components of the Muskrat Falls Project (Generating Station, Reservoir Clearing and Transmission Line) on June 17, 2013. The SPOs sanction the collective agreement for each component of the project. Each agreement contains language reflecting the hiring protocol, gender and diversity commitments and work schedules. All contractors working on the project are bound by the terms and conditions of the collective agreement.</p> <p>June 2019- The Special Project Orders will remain in effect until completion of all construction components of the project, at which time, regulations will be repealed.</p>
58	13.5 Health and social services	Province	HCS	AES LGH	NL Gov accepts intent Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- No action required by Province. Upon Project approval, HCS and LGH will monitor human resource needs and address project-related increases in the demand for health services.</p> <p>May 2014- HCS and LGH continue to monitor human resource needs and address project- related increases in the demand for health services.</p> <p>June 2019- Generally, based upon population dynamics, there would likely be an increase in demand for health care services.</p>
59	13.6 Capacity agreement with Happy Valley-Goose Bay	Province	MIGA	IBRD	NL Gov accepts intent Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- On September 7, 2012 a letter was sent from the Town of Happy Valley-Goose Bay to the Associate Deputy Minister of Natural Resources requesting status of recommendations. A second letter from the Town reiterating its request re: the recommendations were sent to the Premier on October 30, 2012. In response, Ministers (MA, LA, TW) met with the Town on November 6, 2012 at which time a meeting was scheduled for November 14, 2012 with senior officials and the Town to discuss the establishment of baseline data on infrastructure capacity and use prior to the start of construction. Nothing specific required from IBRD unless engaged by MA and/or the proponent.</p> <p>May 2014- On April 11, 2014 the Premier met with the Mayor of Happy Valley-Goose Bay, along with the Minister of MIGA and the MHA for the Lake Melville District. At the noted meeting it was agreed that the Minister of MIGA and the Mayor would discuss the framework of a potential capacity agreement, with officials to subsequently negotiate the details. Senior Officials of MIGA and LAAO have prepared a decision note on May 16, 2014 for Cabinet Secretariat seeking direction to convey an offer to the Town of Happy Valley-Goose Bay.</p> <p>September 2015- A Capacity Agreement was signed with the Town on September 1, 2015. Under this agreement MAE provided \$750,000 (\$250,000 per year for 2015, 2016, and 2017) to the Town. This funding was assist the town in building capacity and preparing for potential social and economic opportunities in the event of the</p>

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						development of the Gull Island Project.
60	13.7 Funding for infrastructure mitigation	Nalcor	MIGA	IBRD	NL Gov accepts intent Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- On September 7, 2012 a letter was sent from the Town of Happy Valley-Goose Bay to the Associate Deputy Minister of Natural Resources requesting status of recommendations. A second letter from the Town reiterating its request re: the recommendations were sent to the Premier on October 30, 2012. In response, Ministers (MA, LA, TW) met with the Town on November 6, 2012 at which time a meeting was scheduled for November 14, 2012 with senior officials and the Town to discuss the establishment of baseline data to facilitate substantiation of any adverse impacts on infrastructure resulting from the Project.</p> <p>Nothing specific required from IBRD unless engaged by MA and/or the proponent.</p> <p>May 2014- The Senior Officials Working Group (SOWG) was formed in early 2013 in response to the recommendations stemming from the report of the JRP and is co-chaired by LAAO and the Town of Happy Valley-Goose Bay. The SOWG includes officials from MIGA, SNL, ENVC, and TW. Other departments and entities have been involved as required. In April 2013, the SOWG hired a consultant to complete a baseline data study that will be utilized to assist in determining impacts on the Town from the development of the Project. The report is intended to establish a baseline or benchmark for the Town and will provide the basis of future impact assessments related to the Lower Churchill Project. The baseline study was prepared to provide the SOWG with an assessment of existing infrastructure available in the Town to establish a baseline that may be used to measure impacts that the Project may have on the Town. A follow up report to the baseline study is planned for 2015 so that a comparison can be undertaken with the baseline report. This will determine whether adverse impacts have been identified and substantiated, and whether they are attributable to the Project, enabling further discussions around whether and what other resources might be required by the Town to offset those impacts. As noted for 13.6, Government is seeking direction on a capacity agreement with the Town.</p> <p>June 2019- since 2015 MAE has approved 15 Capital Works projects with a total value of \$35 million and a provincial investment of over \$15 million for the Town. MAE has also engaged a consultant to complete a survey of the Town’s landfill to assess impacts on its expected lifespan increased commercial activity associated with the Project.</p>
61	13.8 Low-income housing strategy	Nalcor	NLHC	MIGA AES	NL Gov accepts Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- NL Housing has engaged with Nalcor and the initial discussion was centered around a strategy to limit the impact of the project on the broader housing market in the region (particularly concerning the labour intensive construction phase).</p> <p>- Specifically Nalcor’s strategy to ensure housing for employees and contractors while limiting the impacts on the broader community.</p> <ul style="list-style-type: none">• Nalcor was exploring the possibility of building work camps.• Nalcor was engaging with the Federal Department of National Defence concerning the possibility of the utilization of current properties. <p>NL Housing continues to support housing and supportive housing initiatives in the area and is working closely with the Community Advisory Board (CAB) on homelessness to identify and address homeless and “at-risk” populations.</p>

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						<p>May 2014- NL Housing is currently engaged with a national consultant to conclude a study on homelessness across the province. HVGB is one of the areas that has been considered. It is expected that recommendations stemming from the report will be of benefit to homeless and at risk populations in that area.</p> <p>June 2019- NL Housing continues to support housing and supportive housing initiatives in the Happy Valley-Goose Bay area as well as other areas of Labrador. In addition, NL Housing uses a 'Housing First' approach to housing and homelessness and has strengthened homelessness prevention through the development of an eviction prevention framework. This framework will continue to evolve and be implemented further. In addition, NL Housing recently signed a new nine year agreement with the Federal Government related to the National Housing Strategy that will see an investment of approximately \$270 million across the province to address homelessness through the expansion, repair, and preservation of social and community housing. The National Housing Strategy has Federal targets that will aim to reduce homelessness in Canada, which will also be the case across Newfoundland and Labrador. NL Housing is currently finalizing an action plan with the Federal Government for how the funding in the first three years of the agreement will be delivered.</p>
62	13.9 Possible requirement for consumption advisories in Goose Bay or Lake Melville	Nalcor	HCS	LGH LAAO	NL Gov accepts intent Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- No action required by Province. HCS and LGH will work with Nalcor on consumption advisories if mercury assessment deem them to be necessary.</p> <p>May 2014- No action required by Province at this time. HCS and LGH will work with Nalcor on consumption advisories if mercury exposure and human health risk assessment deem them to be necessary.</p> <p>June 2019- No action required by Province at this time. HCS and LGH will work with Nalcor on consumption advisories if mercury exposure and human health risk assessment deem them to be necessary.</p>
63	13.10 Consumption advisory implementation	Nalcor Federal	HCS	LGH LAAO	NL Gov accepts intent Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- No action required by Province. HCS and LGH will work with Nalcor and others on consumption advisory communications and implementation.</p> <p>May 2014- No action required by Province at this time. HCS and LGH will work with Nalcor and others on consumption advisory and communications and implementation if mercury exposure and human health risk assessment deem them to be necessary.</p> <p>June 2019- No action required by Province at this time. HCS and LGH will work with Nalcor on consumption advisories if mercury exposure and human health risk assessment deem them to be necessary.</p>
64	13.11 Human health and mercury monitoring	Nalcor Province Federal	HCS	LGH LAAO	NL Gov accepts intent Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- No action to date.</p> <p>May 2014- Nalcor has submitted a Human Health Risk Assessment Plan to the Minister of ENVC which includes a plan to carry out baseline data collection, dietary survey and human biomonitoring.</p> <p>June 2016- Human Health Risk Assessment Plan approved by Minister on June 14, 2016. Posted on web page at: www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/1305_human%20health_risk%20assessment_2016.pdf</p>

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						<p>A condition of this release was that: <i>Should downstream methylmercury monitoring identify the need for consumption advisories as a result of the project, Nalcor shall consult with relevant parties representing Lake Melville resource users. Based on the location of the consumption advisories these users could include Aboriginal Governments and organizations as well as other stakeholder groups. Following consultation, Nalcor shall provide reasonable and appropriate compensation measures to address the impact of the consumption advisory.</i> www.mae.gov.nl.ca/env_assessment/bulletins/Y2016/20160614.pdf</p> <p>October 2016- Final Baseline Human Health Risk Assessment received October 18, 2016.</p>
65	13.12 Dietary surveys	Nalcor	HCS	LGH LAAO	<p>NL Gov accepts intent</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- No action to date. HCS and LGH will work with Nalcor on dietary surveys should consumption advisory be required.</p> <p>May 2014- Nalcor has submitted a Human Health Risk Assessment Plan to the Minister of ENVC which includes a plan to carry out baseline data collection, dietary survey and human biomonitoring.</p> <p>June 2016- Human Health Risk Assessment Plan approved by Minister on June 14, 2016. Posted on web page at: www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/1305_human%20health_risk%20assessment_2016.pdf A condition of this release was that: <i>Should downstream methylmercury monitoring identify the need for consumption advisories as a result of the project, Nalcor shall consult with relevant parties representing Lake Melville resource users. Based on the location of the consumption advisories these users could include Aboriginal Governments and organizations as well as other stakeholder groups. Following consultation, Nalcor shall provide reasonable and appropriate compensation measures to address the impact of the consumption advisory.</i> www.mae.gov.nl.ca/env_assessment/bulletins/Y2016/20160614.pdf</p> <p>October 2016- Final Baseline Human Health Risk Assessment received October 18, 2016.</p>
66	13.13 Research on mercury in country food	Province Federal	HCS	LGH LAAO	<p>NL Gov accepts intent but notes that it should be included with proponent led 13.11 and 13.12</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- No action to date. HCS and LGH will work with Nalcor on studies related to country food contamination and human exposure.</p> <p>May 2014- Nalcor has submitted a Human Health Risk Assessment Plan to the Minister of ENVC which includes a plan to carry out baseline data collection, dietary survey and human biomonitoring.</p> <p>June 2016- Human Health Risk Assessment Plan approved by Minister on June 14, 2016. Posted on web page at: www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/1305_human%20health_risk%20assessment_2016.pdf A condition of this release was that: <i>Should downstream methylmercury monitoring identify the need for consumption advisories as a result of the project, Nalcor shall consult with relevant parties representing Lake Melville resource users. Based on the location of the consumption advisories these users could include Aboriginal Governments and organizations as well as other stakeholder groups. Following consultation, Nalcor shall provide reasonable and appropriate compensation measures to address the impact of the consumption advisory.</i> www.mae.gov.nl.ca/env_assessment/bulletins/Y2016/20160614.pdf</p> <p>October 2016- Final Baseline Human Health Risk Assessment received October 18, 2016.</p>

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67	14.1 Emergency preparation for the possibility of a dam failure	Nalcor	FES	MIGA ENVC- WR	NL Gov accepts intent Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- On September 7, 2012 a letter was sent from the Town of Happy Valley-Goose Bay to the Associate Deputy Minister of Natural Resources requesting status of recommendations. A second letter from the Town reiterating its request re: the recommendations were sent to the Premier on October 30, 2012. In response, Ministers (MA, LA, TW) met with the Town on November 6, 2012 at which time a meeting was scheduled for November 14, 2012 with senior officials including LA, MA, TW, SNL, FES and the Town to discuss noted issues.</p> <p>May 2014- The Lower Churchill Hydroelectric Generation Project Undertaking Order (NL Regulation 18/12) provides that Nalcor Energy shall prepare and abide by the requirements of emergency preparedness and response plans. Fire and Emergency Services – NL (FES-NL) is in receipt of an updated version Project-Wide Emergency Response Plan from Nalcor. FES-NL has reviewed the Plan and is in the process of finalizing a date/time for a face to face meeting with Nalcor to discuss FES-NL feedback. This face to face meeting is a standard practice for FES-NL during the Plan review process. Although emergency preparation for the possibility of a dam failure is referenced in the Project-Wide Emergency Response Plan, there are further requirements of Nalcor to submit an Emergency Preparedness Plan to the Water Resources Management Division (WRMD) of ENVC prior to the construction of the upstream cofferdam and subsequent diversion of the Churchill River. Based on information from WRMD and the work schedule timeline from Nalcor, it is expected that the Emergency Preparedness Plan will be submitted to GNL in Q2 2015. Once this submission has been reviewed and undergoes any required edits, then WRMD, FES-NL and other emergency management partners will meet with downstream communities to discuss the Emergency Preparedness Plan, potential impacts and procedures that will be in place in the event of any issue with the integrity of the dam structure.</p> <p>July 2014- EPP Approved by Minister on July 7, 2014. Posted on web page. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html</p> <p>June 2019- The WRMD monitors a series of hydrometric, climate, and snow monitoring stations in the Churchill River Basin and uses the information collected for monitoring the river for annual spring runoff and ice breakup events. Details, including background and current data, are available at: www.mae.gov.nl.ca/waterres/flooding/lc_flood_warning.html. This instrumentation will also show changes in water levels due downstream of the project site.</p> <p>June 2019 - AESL would play a major role in providing Emergency Social Services (ESS) to residents. Recently, in May 2019, when water levels were being closely monitored, FES contacted AESL to ensure that AESL and its NGO partners (from an ESS perspective), was ready to respond in the event of an evacuation. AESL was also included in all email updates from FES regarding water level reports provided by WR.</p>
68	14.2 Compensation for losses in the event of a dam failure	Province	JUS	MIGA FES	NL Gov accepts intent Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- The Government of NL accepts the intent of this recommendation. However, it cannot require Nalcor to accept liability on a 'no fault' basis for any and all losses in the event one or all of the dams fail since it is possible that others, besides Nalcor, may be responsible. Government will ensure that all dams are regularly inspected and maintained by Nalcor and that Nalcor has insurance in place as per industry standards. Government will respond to any losses as appropriate but policy decisions may have to be made by Government to limit or control the remoteness of the damages which could be compensated in order to provide some control over indeterminate liability. Strict liability will raise both commercial and policy issues for Nalcor and Government. Innu Nation</p>

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						<p>comments – supports the recommendation with respect to the “no fault” nature of the insurance.</p> <p>May 2014- Justice indicates that there are no changes to note.</p> <p>June 2019- Justice indicates that there are no changes to note.</p>
69	14.3 Seismic testing	Nalcor	NR-Energy		<p>NL Gov accepts intent</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- Nalcor notes that this recommendation incorporates standard practices related to reservoir management. Nalcor will follow this practice.</p> <p>May 2014- NR notes that there have been no changes.</p> <p>June 2019- Nalcor informs NR that the authorized impoundment period is July 15 to September 30, 2019 and that seismic testing is part of Nalcor’s on-going monitoring program. Reference to seismic monitoring are included on slide 26 and 27 here: https://musktratfalls.nalcorenergy.com/wp-content/uploads/2017/01/North-Spur-Information-Session-Presentation_Jan-2017_Website-posting.pdf</p>
70	15.1 Authorizing regulation	Province	ENVC-EA	ENVC-Wildlife ENVC-WR SNL FES MIGA	<p>NL Gov accepts intent</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- Complete – Gazetted on March 16, 2012. See Lower Churchill Hydroelectric Generation Project Undertaking Order (OC 2012-061) under the Environmental Protection Act.</p> <p>WRMD provided input for the Lower Churchill Hydroelectric Generation Project Undertaking Order under the Environmental Protection Act (OC 2012-061).</p>
71	15.2 Federal-provincial joint regulatory plan	Province Federal	ENVC-EA	ENVC-Wildlife ENVC-WR SNL MIGA	<p>NL Gov accepts intent</p> <p>Fed Gov agrees with intent but notes the Province’s EPP will ensure compliance</p>	<p>Nov. 2012- ENVC to continue collaborating with federal regulatory agencies to coordinate compliance and inspection activities. Nalcor has submitted a (Project Wide) P-WEPP to EA Division who coordinated review with both prov-fed agencies and returned to Nalcor for revisions. EPP for access road and camp construction only approved (work this year). WRMD provided input for the review of EPP submitted by Nalcor.</p> <p>February 2013- EPP Approved by Minister on February 7, 2013. Posted on web page. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html</p> <p>May 2014- There have been no changes to date.</p> <p>2014- Regulatory Compliance Plan approved. Posted on web page. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html</p>
72	15.3 Long-term funding for environmental management from Nalcor	Nalcor	NR-Energy Policy	ENVC-WR	<p>NL Gov accepts intent</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- Nalcor has included funding in its construction budget for environmental monitoring activities. Operating budget allocations will be made on an annual basis as part of Nalcor's operating budget setting process.</p> <p>May 2014- No action has been required to date.</p>

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						June 2019- Nalcor informs NR that it continues to budget for ongoing environmental management of the project and it will be included in operating and management expenses as project transitions to operations. Environmental Management activities are publically reported annually in Nalcor's Energy Sustainability Report.
73	15.4 Long-term funding for environmental management from government departments	Province Federal	FIN	ENVC-Wildlife ENVC-WR ENVC-EA IBRD	NL Gov accepts intent Fed Gov will work with the appropriate parties as required.	Nov. 2012- Nothing specific required from IBRD unless engaged by FIN or other department. May 2014- No action has been required to date.
74	15.5 Lower Churchill Project Monitoring and Community Liaison Committee	Province Nalcor	ENVC-EA	ENVC-Wildlife ENVC-WR LAAO MIGA IBRD	NL Gov accepts intent Fed Gov will work with the appropriate parties as required.	Nov. 2012- Lower Churchill Hydroelectric Generation Project Undertaking Order (OC 2012-061) Section 4(k) requires Nalcor Energy to establish an Environmental Monitoring and Community Liaison Committee to provide feedback to government. Nalcor to announce committee appointed soon. WRMD has not been involved in the LCP Monitoring and Community Liaison Committee Nalcor has made a public commitment to the region to establish a CLC. In addition, the provincial government's responses 15.1 and 15.5 to the Joint Review Panel (JRP) recommendations stated it accepts the intent of the JRP's recommendation to establish a CLC. The purpose of the CLC is to promote open communication with area stakeholders and provide them with an avenue to bring forward feedback on community, environmental, economic or other matters relating to the development Project. The CLC will facilitate communication between Nalcor and area residents, Aboriginal groups, municipal representatives, and community stakeholders. The CLC will consist of up to 13 members representing various stakeholder groups from the Upper Lake Melville region. The CLC is an advisory group that provides feedback, knowledge, and suggestions to Nalcor on project-related issues. It will not be a decision making forum, and the CLC will interact with Nalcor in relation to the Project. Nalcor has prepared a draft Terms of Reference which establishes the membership, objectives, roles and responsibilities of the CLC. Community and Aboriginal community members will be invited through a letter to their respective town and organization. Members-at-Large will be invited through a public and advertised Expression of Interest (EOI) process. The EOI has been sent out with a deadline of December 3, 2012 for interested parties to submit their applications. The intention is to hold the first CLC meeting before the end of 2012. Nothing specific required from IBRD unless engaged by ENVC and/or the proponent. May 2014- ENVC notes that a committee has been established by Nalcor. 2016- Copy of committee minutes available at https://muskratfalls.nalcorenergy.com/in-the-community/community-liaison-committee/ June 2019- Nalcor states that the Committee continues to meet quarterly.
75	15.6 Project-specific effects monitoring programs	Nalcor Federal	ENVC-EA	ENVC-Wildlife ENVC-WR AES	NL Gov accepts intent Fed Gov accepts but notes it falls under the Province to monitor	Nov. 2012- Nothing specific required from IBRD unless engaged by ENVC and/or the proponent. The systematic approach outlined is to ensure that the results of the monitoring programs have public credibility and scientific relevance. Nalcor is to submit monitoring programs before commencement of activity affects subject matter. WRMD continues to operate, in partnership with Nalcor and Environment Canada, Real Time Water Quality monitoring stations within the Churchill River watershed at the following locations: a) Churchill River below Metchin

ENVC-WR now MAE-WR; ENVC-EA now MAE-EA; ENVC-PPD now MAE-PPD; LAAO now LAS or IAS; NR-Forestry now FLR; ENVC-Wildlife now FLR; AES now AESL; ENVC-PNA now FLR or TCII; MIGA now MAE- 24
MA; FES now MAE-FES; TCR now TCII; CCEE now MAE-CC

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				IBRD		<p>River, b) Churchill River below Grizzle Rapids, c) Churchill River above Muskrat Falls, d) Churchill River below Muskrat Falls, e) Churchill River at English Point, and f) Lake Melville. This data is available on the ENVC website.</p> <p>May 2014- ENVC notes that EEMP is currently under EA Review</p> <p>April 2014 to June 2016- Various environmental effects monitoring plan approved by Minister and posted online. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html. Only outstanding plan is for wetland and riparian habitats.</p> <p>May 2019- Draft wetland and riparian habitats plan submitted Nalcor Energy.</p> <p>June 2019- All Environmental Effects Monitoring Plan and permits are provided to indigenous groups for review and comment as outlined by the Aboriginal Consultation Guidelines.</p>
76	15.7 Adaptive management	Nalcor Federal	ENVC-EA	ENVC-Wildlife ENVC-WR	<p>NL Gov accepts intent but notes that it may not be able to complete all elements</p> <p>Fed Gov accepts but notes it falls under the Province's mandate</p>	<p>Nov. 2012- Nothing specific required from IBRD unless engaged by ENVC and/or the proponent. The systematic approach outlined is to ensure that the results of the monitoring programs have public credibility and scientific relevance. Nalcor is to submit monitoring programs before commencement of activity affects subject matter. WRMD continues to operate, in partnership with Nalcor and Environment Canada, Real Time Water Quality monitoring stations within the Churchill River watershed at the following locations: a) Churchill River below Metchin River, b) Churchill River below Grizzle Rapids, c) Churchill River above Muskrat Falls, d) Churchill River below Muskrat Falls, e) Churchill River at English Point, and f) Lake Melville. This data is available on the ENVC website.</p> <p>May 2014- ENVC notes EA has no update on this activity</p> <p>April 2014 to June 2016- Various environmental effects monitoring plan approved by Minister and posted online. www.mae.gov.nl.ca/env_assessment/projects/Y2010/1305/index.html. Only outstanding plan is for wetland and riparian habitats.</p> <p>May 2019- Draft wetland and riparian habitats plan submitted Nalcor Energy.</p> <p>June 2019- All Environmental Effects Monitoring Plan and permits are provided to indigenous groups for review and comment as outlined by the Aboriginal Consultation Guidelines.</p>
77	15.8 Complaints resolution	Nalcor	ENVC-EA	ENVC-WR	<p>NL Gov accepts intent</p> <p>Fed Gov will work with the appropriate parties as required.</p>	<p>Nov. 2012- This recommendation is directed to Nalcor Energy. Any complaints resolution process should be left to Nalcor to develop and implement. Community Liaison Committee could also address this matter.</p> <p>May 2014- ENVC notes EA has no update on this activity.</p> <p>2016- Copy of Community Liaison Committee minutes available at https://muskratfalls.nalcorenergy.com/in-the-community/community-liaison-committee/</p> <p>June 2019- Nalcor states that the Committee continues to meet quarterly.</p>

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78	15.9 Environmental review in the event that construction of the second generation facility is delayed	Province Federal	ENVC-EA		Gov NL does not accept Fed Gov does not accept	Nov. 2012- Complete
79	15.10 Local hiring for environmental management work	Nalcor	NR-ER	AES	NL Gov accepts intent subject to IBA and benefits agreement with Innu Nation Fed Gov will work with the appropriate parties as required.	<p>Nov. 2012- Nalcor recognises the benefits of hiring local personnel to the community and to the Project. Where possible, Nalcor will hire qualified local residents to undertake environmental management activities. Any construction activities for mitigation projects would be addressed by the Benefits Strategy for the Project, which will be supported by Nalcor.</p> <p>May 2014- Nalcor recognises the benefits of hiring local personnel to the community and to the Project. Where possible, Nalcor is hiring qualified local residents to undertake environmental management activities. Any construction activities for mitigation projects would be addressed by the Benefits Strategy for the Project, which will be supported by Nalcor.</p> <p>November 2014- Gender Equity and Diversity Program (also referred to as Women's Employment Plan) approved by Minister and posted on web page. www.mae.gov.nl.ca/env_assessment/projects/Y2010_/1305/index.html</p> <p>June 2019- Nalcor's LCP quarterly reports on employment and business metrics to NR indicate Nalcor is meeting its benefits commitments, as per the Benefits Strategy, which are published on Nalcor's website.</p> <p>June 2019 – AESL encourages the hiring of local apprentices through the Apprenticeship Wage Subsidy Program. This program provides a wage subsidy to employers who hire apprentices. This program supports apprentices across all levels – First, Second, Third and Fourth year and provides a wage subsidy of 75 per cent, to a maximum of \$14 an hour, for all apprentices funded under the program, and is paid directly to the employers who hire the apprentice. AESL also provides \$200K yearly in annual funding to support the Office to Advance Women Apprentices. This program provides support to females to commence and maintain a career in the skilled trades. OAWA also administers a wage subsidy to support hiring of females in NL. AESL regional staff continue to support workers in Labrador in completing job applications on the MuskraftFallsJobs.com site as required, which would include posted positions specific to environmental management. Nalcor releases monthly reports which are available on their website, outlining employment and recruitment activities: https://muskraftfalls.nalcorenergy.com/newsroom/reports/</p>
80	15.11 Government response to Panel report	Province Federal	ENVC-EA		NL Gov accepts Fed Gov accepts	Nov. 2012- Complete

Responsibility Matrix and Status of Recommendations of the Joint Review Panel

81	15.12 Decommissioning	Nalcor	ENVC-WR		NL Gov does not accept Fed Gov does not accept	Nov. 2012- Complete
82	16.1 Regionally integrated cumulative effects assessment	Province	ENVC-EA	LAAO ENVC-Wildlife/ LM/PNA/ WR MA	NL Gov accepts intent Fed Gov will work with the appropriate parties as required.	Nov. 2012- EA Division to participate in workshops on cumulative effects assessment. February 2013- Provincial cumulative effects workshop held. March 2013- Environment Canada offered workshop on limits and thresholds. Agenda included: Regional planning (including the concept of targets) in Labrador; Introduction to ALCES; Alberta case study; and Labrador scenario analysis methodology. June 2019- The Province has and continues to participate on the Canada Council of Ministers of the Environment (CCME) Cumulative Effects Working Group. Current and recent projects, including those in Labrador, that require the level of assessment as an Environmental Impact Statement include consideration of cumulative effects in the issued guidelines (e.g. Foxtrot Rare Earth Element Mine - www.mae.gov.nl.ca/env_assessment/projects/Y2017/1936/1936%20EIS%20Guidelines%20July%202018.pdf ; Kami Iron Ore Project - www.mae.gov.nl.ca/env_assessment/projects/Y2011/1611/1611_Kami_Iron_Ore_Project_EIS_GL_Final.pdf).
83	16.2 Establishment of protected areas	Province	ENVC-PNA	ENVC-Wildlife	NL Gov does not accept	Nov. 2012- Complete

LABRADOR AND ABORIGINAL AFFAIRS

Lower Churchill Project

Government of Newfoundland and Labrador Permit Approvals

	2012	2013	2014	2015	2016*	Total (June 30, 2016)
Approved Permits	194	288	336	739	412	1969

Approved permits are for construction of Muskrat Falls, the Labrador Island Link, and the Maritime Link.

*Permits approved for the period between January 1, 2016 and June 30, 2016.