

August 7, 2018

*Innu Nation submission on
Consultation and Mitigation Measures
in relation to the Muskrat Falls Project*

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for Muskrat Falls Inquiry

Innu Nation has had a very long history of protest followed by, eventually, consultation with the Province and Nalcor Energy (previously Newfoundland and Labrador Hydro or NLH) relating to the proposal to develop hydroelectric potential along the Lower Churchill River.

The enormous flooding of Innu territory to create the Smallwood Reservoir in order to build and operate the existing hydroelectric generating facility along the Upper Churchill River caused devastating damage to our traditional territory. The Churchill Falls project was built without any consultation with the Innu of Labrador. The Innu people represented by Innu Nation have land claim territory that covers much of Labrador (and parts of Quebec). Our land claim includes the Smallwood Reservoir and extends into the Lower Churchill River area as well.¹ The Innu of Labrador, who reside now primarily in Natuashish and Sheshatshiu, determined after this devastating development that any further hydroelectric development of the Churchill River was going to have to be done with our consent, or not done at all.

In 1998, the Province's and NLH's desire (together with Quebec and Hydro Quebec at that time) to develop further hydroelectric dams on the Lower Churchill River at Gull Island became known to the Innu Nation. The Innu Nation then began to try to start negotiations with these 4 parties about how the aboriginal rights of the Innu people could be respected if this project were to proceed. Innu Nation was by that time already engaged in intensive land claims negotiations with the Province of Newfoundland and Canada about the large portion of the Innu land claim that was in Labrador. The Innu Nation took the position with the Province and NLH from the outset that Innu consent was required for any Lower Churchill hydro development.

The Innu Nation made their position of consent clear in numerous forums, both through correspondence and in public forums, including through protest. For example, in the late 1990s, the Innu Nation had been involved in several years of unsuccessful negotiations between Innu Nation on the one hand, and the governments of Quebec and Newfoundland and NLH and Hydro Quebec on the other, to reach an agreement that might allow for the Innu Nation to consent to Lower Churchill Hydro development. While those negotiations were ongoing, the Innu Nation learned that the Province of Newfoundland and the Province of Quebec under then Premiers Tobin and Bouchard were attempting to conclude a bilateral agreement for a Lower Churchill Hydro

¹ Our land claim was filed in 1977 and formally accepted for negotiation by Canada in and around 1987, after protests by Innu Nation members regarding low-level military flying in Labrador led to arrests and criminal trials for defending our rights. Land claim negotiations formally began with Canada and the Province in 1996 under a Framework Agreement. Our land claim area covers large portions of Labrador, including but not limited to both the Upper and Lower Churchill River and the Smallwood Reservoir.

development without Innu Nation consent. The Innu Nation protested at the meeting of the Premiers to prevent the bilateral agreement from being signed. We were successful in that protest.

By October 2000, the project proponent had changed and the Province of Quebec and HQ were no longer involved. Innu Nation then entered into a process agreement with NLH alone to allow for continued communications, consultations and negotiations between Innu Nation and NLH about a potential Gull Island project and associated transmission in Labrador. Under the process agreement and subsequent extensions of it, Innu Nation was funded for and carried out:

(a) Community consultations about potential environmental impacts of the project, and to facilitate the Innu Nation leadership in getting direction from the Innu people about how to address the proposed project

(b) Participation in technical review of the environmental, engineering and financial information in order to support and facilitate community consultations and planning for future EA work and to facilitate negotiations for an Agreement in principle about the project

(c) Negotiations for an Agreement in principle to outline Innu Nation's potential participation in the project

Following this work, in 2001, Innu Nation and NLH negotiators initialled an agreement in principle for an IBA that was not complete in many respects, because the project at that time was being temporarily shelved. This was done in anticipation of the possibility that in future a Lower Churchill project would become a reality. The 2001 working version of the IBA was used in part in the subsequent negotiations for the IBA that was signed in 2011.

Several years later, in 2006, when under then Premier Danny Williams the province again wished to pursue the proposed development of a Lower Churchill Project, the Innu Nation again made clear our position to the Premier and to NLH that Innu consent to a lower Churchill development proceeding before concluding a final land claims agreement was required. The Innu leadership laid out 3 conditions for consent:

1. An IBA for the Lower Churchill project, ratified by the Innu membership,
2. Resolution of outstanding major land claims issues with the Province
3. Compensation to the Innu people for the damages caused to our land rights because of the Upper Churchill project. The Innu Nation informed the Premier that the Innu people would never approve the Lower Churchill project if compensation was not provided for the damages done to our rights without any consultation whatsoever as a result of the existing Upper Churchill hydroelectric project.

The negotiations on these 3 matters proceeded between the Province, Nalcor Energy and Innu Nation representatives. The negotiations led in 2008 to a short agreement in principle, called the Tshash Petapen or New Dawn Agreement. As Chief of Mushuau Innu First Nation at the time, I and other Innu leaders and advisors participated extensively in those negotiations. I signed the 2008 Tshash Petapen Agreement together with Grand Chief Mark Nui, Deputy Grand Chief Peter Penashue and Chief Anastasia Qupee of Sheshatshiu Innu First Nation. The 2008 agreement set out key principles that formed the basis for (a) intensive negotiations with the Province, Nalcor

Energy and, regarding the land claim, with Canada, and (b) community consultations with the Innu people about these agreements, over the next 3 years. As a result of the 2008 Tshash Petapen Agreement, we were able to conclude 2 legally binding agreements (the Lower Churchill IBA and the Upper Churchill Redress Agreement) and 1 Agreement-in-Principle (the Land Claims and Self Government AIP). Those 2 binding agreements and the Land Claims and Self Government AIP were, after having been ratified by the Innu people in a ratification vote in June 2011, signed in November 2011.

The Innu Nation and others also call the package of these 3 agreements the Tshash Petapen or New Dawn Agreements. The Lower Churchill IBA is between Innu Nation, the 2 Innu First Nations in Labrador (Sheshatshiu and Mushuau Innu First Nations) and Nalcor Energy. The Upper Churchill Redress Agreement is with these same parties and also includes the Province. These 2 agreements are contracts.

The Land Claims and Self Government AIP, which is not legally binding, was signed by Innu Nation, Canada and the Province following the Innu ratification vote. It is available publicly online and includes a draft chapter about the Lower Churchill Project that deals with harvesting rights of the Innu of Labrador in the Lower Churchill project area and provides for the requirement of a subsequent IBA with a future developer if the current project were to be abandoned. The AIP continues to be the subject of negotiations between Innu Nation, the Province and Canada. A Final Agreement has not yet been concluded. If a Final Agreement is concluded, it will be the subject of ratification vote by the Innu Nation membership too. A Final Agreement which, if it were concluded, would be a modern land claims agreement protected by s. 35 of Canada's *Constitution Act* (1982).

Before the 3 New Dawn Agreements were signed by Innu Nation, there were extensive community consultations that took place between 2008-2010, and then intensively in 2011 over several months when the detailed legal texts of those 3 agreements were nearly complete. The Innu people were provided with detailed written confidential summaries of the 3 New Dawn Agreements, including the Lower Churchill IBA. The summaries were distributed to Innu homes in the 2 communities and available at other meetings in St. John's for Innu people not in the communities at the time. Our community members were also provided with opportunities to go into offices in the community to review the full texts of the agreements. The Innu Nation leadership and Innu Nation's technical and legal advisors gave oral presentations about the agreements and about the Lower Churchill project's predicted impacts. The Innu people had numerous opportunities to and did ask questions about them before the vote was held.

The Innu ratification vote was conducted by secret ballot. The ballot question was in English and Innu aimun. It asked if the Innu wanted the Innu leaders to sign the package of 3 New Dawn Agreements. The results of the vote were made public at the time and have been provided to the Commission. 84% of the voters from Sheshatshiu and 95% of the voters from Natuashish voted in favour of the 3 New Dawn Agreements.

While the negotiations for the New Dawn Agreements were underway, Innu Nation also participated extensively in the joint federal/provincial environmental assessment of the Lower Churchill project. That project included both the Muskrat Falls and Gull Island projects. We also participated in the environmental assessment of Labrador Island Transmission Link (LITL). Government and Nalcor Energy provided funding for that participation. We also had direct

discussions with Nalcor Energy consultants and Nalcor Energy about mitigation and monitoring measures that we were seeking because of the importance of our land and waters to the Innu and because of our concerns about the socioeconomic impacts of the project on our communities. For example, the Innu Nation was very concerned about the potential impact of construction of the project on Manitu-utshu, a rock knoll at Muskrat Falls which is of considerable cultural importance to the Innu. Through our role in the EA and in discussions with Nalcor Energy, various mitigation measures to seek to minimize the impact of the project on Manitu-utshu were put in place, although initial proposals by Nalcor Energy had been to damage the rock by putting diversion tunnels through it. Land use and harvesting studies and Innu traditional knowledge studies were conducted by the Innu Nation and provided to Nalcor Energy. These contributed to the EA process and identification of mitigation measures.

It would not be correct to say that all of our proposals for mitigation and monitoring measures were accepted. However, the project as proposed by Nalcor Energy following our input through the direct discussions with them and through our participation in the EA, was acceptable to the Innu people in the context of the IBA we negotiated with Nalcor Energy, and given that, finally, compensation for impacts of the Upper Churchill project had been agreed to and key aspects of a land claims agreement with the Province had been agreed to in principle. That the project was acceptable is shown by the fact that the Innu people chose to ratify these agreements when we voted on them in 2011.

We continued to raise, during these environmental assessments and in direct discussions with Nalcor Energy, our perspectives and technical comments on the environmental impacts of the project and on proposed mitigation measures. After the joint federal provincial panel review report on the Lower Churchill project was issued in August 2011, the Innu Nation also had direct consultations with the Province about the Innu Nation's perspectives on the terms and conditions for approval of the Lower Churchill project.

In light of the consultations that took place that led to the 2008 initial New Dawn Agreement, and the 2011 package of 3 New Dawn Agreements, and the consent given by the Innu people following the negotiations and community consultations and the work we completed during the EA process in order to assess the potential environmental effects of the Lower Churchill project (including the Muskrat Falls), the Innu felt that the consultations by governments and the proponent about the mitigation measures for the project were acceptable to that point in time.

Innu Nation has continued, under the IBA with Nalcor Energy, and with consultations with Canada and the Province on proposed permits for the project, to be consulted by Nalcor Energy and these governments about the mitigation measures associated with this project. Those mitigation measures are continued in the details of those permits that were applied for and issued after the EA. We also have continued to push Nalcor Energy for full implementation of the entirety of the IBA, including the provisions dealing with Innu employment and Innu business opportunities and workplace conditions. All of these measures were intended to provide benefits to the Innu and mitigate potential adverse effects of the project.

We had also tried to conclude an Environmental Management Agreement (EMA) with Canada and the Province regarding consultation of Innu Nation on the terms and conditions for the proposed post-EA permits but were unable to conclude that EMA. In the absence of an EMA, we still have been consulted by Canada and the Province on the permits they have issued to date, after the EA

was completed. Innu Nation continues to strive to complete the EMA, since ongoing permits for the Muskrat Falls may continue to be required from time to time and a more formalized process for consultation and funding for that is appropriate. Also, if the Gull Island project were ever to be built, consultations with the Province and Canada on permits for that project would take place through the EMA.