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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

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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.

