

**COMMENTS by the Ekuanitshit Innu
ON THE REPORT OF THE JOINT REVIEW PANEL
Lower Churchill River Hydroelectric Project
CEAR 07-05-26178
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1. The inadequacy of the environmental assessment held to date

We would like to remind you of the highlights of our submissions to the Joint Review Panel (JRP).

- The Environmental Impact Assessment (EIA) should not have been deemed admissible by the Joint Review Panel as the consultation with the Ekuanitshit Innu required by the proponent under the Guidelines was not completed.
- In addition, in the absence of a study of direct and indirect effects on the Lac Joseph caribou herd, the EIA could not meet the requirements of the Guidelines with regard to large mammals in general, the caribou in particular, and the assessment of cumulative effects.
- The Council of the Innu of Ekuanitshit had neither the technical resources or financial resources to provide the Joint Review Panel with a study of the use by the Ekuanitshit Innu of the land and resources affected by the project and the potential negative effects of the project on these activities
- Moreover, it was the Proponent's obligation under Section 4.8 of Guidelines to show his understanding of the interests, values, concerns, contemporary and historic activities, traditional knowledge and important issues for Ekuanitshit Innu "and how these factors will be considered in planning and implementing the project".
- The absence of a study of the Innu of Ekuanitshit was due to inadequate resources applied by the proponent to achieve it, an offer that followed his statement to the effect that, anyway there was no evidence of their use of historical or contemporary territory covered by the project.
- In another vein, the true scope of the project is not that stated by the proponent because, in fact, the project now consists of Muskrat Falls and the transmission line to the island of Newfoundland, which is the focus of this EIS.
- The ongoing evaluation and violates Article 15 of the Canadian Environmental Assessment (CEAA), which aims to ensure that a project be assessed entirely, and there is only one environmental assessment when two or several projects "are so closely related to be considered as one project".

The comments in this letter to you are subject to the Ekuanitshit Innu position that the EIA submitted by Nalcor does not meet the requirements of the Guidelines on the need for community consultation and that the Joint Review Panel therefore erred when it decided that the EIA could be subject to public hearings.

These comments to you are also subject to our objections to the illegal splitting as the real project the combination of two projects: Muskrat Falls and the transmission line between Labrador and the island of Newfoundland.

2. The Interests of the Ekuanitshit Innu in the territory affected by the project.

a. The facts as presented to the Joint Review Panel.

The proponent refused to enter into an agreement with the community that would have allowed the collection of all required information on the use of historical and contemporary territory covered by the project with the Innu of Ekuanitshit.

The community has nevertheless provided the following evidence of such use:

- Research by the proponent's historical and archaeological resources reported intense use of the area by the Mingan Innu in the 9th century.
- Hydro-Québec recognized, at the time of another environmental evaluation, that the "territory used by the Innu of Ekuanitshit to the XXe century [...] in depth, [...] joined the Churchill River in the Labrador".
- This usage to the 20th century is documented in the autobiography of Mathieu Mestokosho, an Innu born in Ekuanitshit at about 1885 and deceased in 1980, who relates how, during the biggest part of his life, he and a large number of other members of the community left in the month of August towards the interior of Labrador to go to Northwest-River and to come back to Mingan at the end of the springs.
- In 1979, the Government of Canada accepted the occupation and the usage of the territory to the Labrador, claimed by the Innu of Ekuanitshit as the basis for the negotiations to conclude treaty when it accepted to negotiate with the Counsel of the Atikamekw and of the Montagnais.
- The study written by Robert Comtois in 1983 in the support of this claim clearly establishes that the traditional territory of the Innu of Ekuanitshit overlaps the territory covered by the project and that moreover, one of the principal camps of the Innu of Ekuanitshit was located on one of the islands downstream of Muskrat Falls.
- Since 2009, the pursuit of the activities of the caribou hunt in the Labrador by the Innu of Ekuanitshit is financed by the Funds Innu Aitun, constituted by the

Impacts and Benefits Agreement with Hydro-Québec, in the framework of the complex of the Romaine River project.

Moreover, we invite you to consult the testimonies of the Chief and of the five elders of Ekuanitshit who appeared in front of the Joint Review Panel on April 7 2011 at the time of the hearing for the Sept Iles project.

The Elders related to the commissioners how, during their childhood or adolescence they went Ekuanitshit and Natashquan to North West River (adjacent to the current Reserve of Sheshashit) and returned, in boat or on foot. The Chief John Charles Piétacho explained how the settlement process imposed by the creation of the reserve in Mingan and the forced sending of the children to the boarding school created a rupture with the traditions prior to the fifties. Nevertheless, the Innu of Ekuanitshit return now to this territory for the caribou hunt.

b. The interest of the Innu of the Quebec was recognized by Innu Nation

i. The new incoherent position

In a memory recorded at the end of the public hearings of the Joint Review Panel, the organization Innu Nation (of Labrador) claimed that, by virtue of the Canadian right and Innu custom, it is the Innu of Sheshatshiu and Natuashish that would have the exclusive right to decide if this project is to commence, to the exclusion of the Innu on Reserves situated in Québec. Unfortunately, the Joint Review Panel was not able to take account of the position of the Counsel of the Innu of Ekuanitshit on this memory.

The authors of the deposited memory in the name of Innu Nation allege that of the projects of Hydro-Québec within the borders of the Province of the Quebec (of which St. Marguerite III and Romaine) would be situated in the territory claimed by Sheshatshiu and Natuashish, but that these two last communities would recognize that they principally fall in the territory of the communities that benefited from understandings with the proponent (such Uashat mak Mani-Utenam and Ekuanitshit).

According to the authors of the memory, Sheshatshiu and Natuashish would have recognized, by virtue of an Innu custom and mandates of the contemporary political agencies, that these communities had the right to decide if these projects were to forge ahead and had the right to negotiate with the proponent and governments to this subject.

However, the Counsel of the Innu of Ekuanitshit had participated actively to the environmental evaluation of the hydroelectric complex of the Roman River project without ever having been informed of any interest from the communities of Sheshatshiu or Natuashish in the project, or of a renunciation of such an interest.

Although in practice, the Innu Nation did not participate in the evaluation of the project of the Romane project, they could very well have participated for the Government of

Canada had ordered to Hydro-Québec to include in this study of environmental impact, the effects of the project on "the Innu of the Labrador using the territory".

It is by virtue of a similar directive that the Innu of Ekuanitshit intervened in front of the Joint Review Panel. They insisted for that the proponent must respect the obligation imposed by the federal and provincial governments to take into account their interests as the directed in Part 4.8 of the Guidelines..

The authors of the recorded submission in the name of Innu Nation recognize that in theory, the Lower Churchill project affects the rights of the other Innu communities, such as Ekuanitshit. But in practice, the authors allege that only Sheshatshiu and Natuashish would have the right benefit from the advantages of the project. The invoked motive to exclude the Innu communities on Reserves situated to the Quebec on the basis that the people of Sheshatshiu would more be affected by the project.

This position suffers from a striking incoherence: if one followed this logic, any intervention by Natuashish under the present evaluation would be opposite to the Innu traditions that are being defended by the principals of the Innu political agency (Innu Nation).

In fact, Innu Nation alleges that the project is located completely on the traditional territory of Sheshatshiu but does not explain why they represent the interests of the Innu of Natuashish for a project in which they would not have therefore have any interest. Also note: the proponent is opinion that the community of Natuashish will not be affected by the project.

ii. The recognition in the past

The adopted position in the name of Innu Nation in the April 13 2011 submission also faces the position taken in the preceding decade by the Labrador Innu. These positions contradict the pretension that this last submission would reflect any tradition or custom.

The previous commentaries of Innu Nation on the project include many affirmations of the rights and interests that the Innu, with Reserves in Quebec, share with the Innu of the Labrador in the territory of the project.

As the recognized by the Innu Nation, as early as 1997, an Innu alliance was formed by the communities of Labrador and of the Québec, reflecting a much older tradition of meeting and collaboration between the Innu of these same communities. It is this alliance that, in March 1998, prevented the Prime Minister of the Quebec and the Premier of Newfoundland to announce a joint project, which then had not been the subject of any consultation with the Innu.

Eventually, Innu Nation decided to act alone in the file, but only after trying working in collaboration with the communities of the Québec. Even after this decision by the Innu

Nation to act alone in the present file, a consultation with its members raised their preoccupation to take account of the interests of the Innu of the Quebec.

The one of the 18 priority" recommendations " from the community consultation held in 2001 by Innu Nation on the hydroelectric development in the Labrador was precisely to again seek an alliance with the communities of the Reserves are situated to the Quebec:

"The Innu Nation should renew its efforts to work with the Innu of Quebec to develop an understanding of what common and united positions can be taken on any hydro project proposed in Nitassinan".

It is therefore clear that the "tradition" invoked in the submission in the name of the Innu Nation is the invention of its authors. The intervention of the Innu of Ekuanitshit in this file is in continuity with the recognition of their rights and interests by Innu Nation in the past.

3. The effects of the project on the Innu of Ekuanitshit.

a. The question of the caribou

i. Introduction

It is common knowledge that the caribou plays a basic role in the culture of the Innu: the Innu of Ekuanitshit continue to hunt the caribou in Labrador, as did it their ancestors since time immemorial. The survival of this species on the traditional territory is therefore an essential interest for the community.

Since 2000, the same Government of Newfoundland and Labrador that refuses to negotiate the global claim of the "Innu of the Quebec" (under pretext that it is necessary first to regulate the position with Innu Nation) declared that the Innu of the Quebec were or should be involved in their conservation efforts for the caribou, and particularly for the program of restoration of the woodland caribou.

For the Innu of Ekuanitshit, the report of the Joint Review Panel remains deficient in the matter of the effects of the project on the caribou. More precisely, it is unacceptable that the Joint Review Panel did not treat effects of the project on Lake Joseph herd. Moreover, the recommendations as for the required measures to protect the Red Wine herd are insufficient.

ii. The Lac Joseph caribou herd

Unfortunately, the Joint Review Panel did not evaluate the effects of the project on the Lac Joseph herd despite the preoccupations to this subject formulated by the Innu of Ekuanitshit.

While depositing submissions prepared by the biologist consultant, the community raised the need to complete an inventory of the watershed in the winter or in the spring to identify if the Lake Joseph caribou stay in the vicinity of the project. This need was justified by the fact that past studies demonstrated that the area of distribution of this herd is widely spread throughout the site of the project

Even if Nalcor admits itself that the Lac Joseph caribou herd is known to be present on the territory covered by the project, the Joint Review Panel did not evaluate or the direct, or indirect, or cumulative effects of this project on the herd. We consider that this is an important deficiency in the report of the Joint Review Panel.

iii. The Red Wine caribou herd

The conclusions of the Joint Review Panel on the Red Wine caribou herd were insufficient for they underestimate the threat of this project on the survival of this herd.

The Innu of Ekuanitshit could not contradict the recommendation 7.6 of the Joint Review Panel, to the effect that the provincial government and Nalcor will have to allocate the necessary funds to support the efforts for the restoration of the Red Wine herd.

Nevertheless, this measure will not be truly effective if it is not accompanied with more precise measures. Submissions prepared by the consulting biologist of the community included the following recommendations that were endorsed by the community:

- that an inventory, with capture, the watershed Churchill River is completed according to the method developed by Courtois, before the beginning of the construction; and
- that an 'exhaustive' follow-up program including the regular inventories and the addition of telemetric collars is established.

iv. Conclusions regarding the caribou

The government should not take any action to authorize this project:

- without a complete study on the potential effects on Lac Joseph caribou herd is not completed;
- before a program of exhaustive follow of the Red Wine caribou herd is set up; and
- without the results of such studies being put back to concerned Aboriginal communities – including the Innu of Ekuanitshit – for only they can be consulted to the subject.

B. Points of Agreement and Disagreement with the conclusions concerning Ekuanitshit

i. The sufficiency of the environmental impact assessment

The Innu of Ekuanitshit endorse completely the recognition by the Joint Review Panel that the potential negative effects of the project on the contemporary usage and on their rights and their ancestral title did not again receive the study or the necessary attention to identify these potential negative effects.

We are opinion that the Joint Review Panel summarized well the position of the Innu of Ekuanitshit as regarding their contemporary usage of the territory. In fact, the Joint Review Panel recognized that the community does not consider to have been consulted by Nalcor at the time of the preparation of the environmental assessment.

ii. The qualification of the effects

However we cannot endorse the conclusion of the Joint Review Panel that even if the effects of the project on the contemporary usage of the territory by the Innu of the Quebec were negative, these effects would not be significant. We consider that the Joint Review Panel could not arrive to a conclusion on the importance of the negative effects while it was not sufficiently informed on the contemporary usage of the territory by the community.

In the fact, the Joint Review Panel recognized itself not to have a factual basis for it's' conclusion:

The Panel also notes that it has limited information on current use of land and resources for traditional purposes. In particular, the Panel is not in has position to assess how complete the information available on use of the Project area by members of NunatuKavut and by Aboriginal communities in Quebec is, making it difficult to conclude on the social the and cultural impact of the Project on these communities.

[...]

The information provided directly by Quebec Aboriginal communities was provided with the understanding that it was incomplete, and that sufficient time and resources were not made available to these communities à provide has complete picture of current use.

Most of the information about current wears was provided by Chiefs and Elders from the community. Without common reference points and local knowledge, the Panel was not in has position to assess how much of the use discussed was in the Project area. Have has result, the Panel was not in has position to assess the impact of the Project one current use by Quebec Aboriginal communities, although, based one the limited information presented, it would appear that the hand current use of the Project area would be to hunt caribou. [our underlining]

Now, it is precisely the problems noted by the Joint Review Panel in this assessment of the testimonials that explains why the Innu of Ekuanitshit always insisted on the fact that a serious study of their community was necessary.

The information on the usage of the territory do not come out any a hat as soon as a proponent sends us a letter, especially not for a project of the complexity of this one. In order to furnish the information required to the Joint Review Panel or the Agency, it is necessary to conduct a study by qualified personnel, able to do the collection with the population and devoted to attempt to translate the traditional knowledge in a language that can be understood by others.

To this matter, we refer the Agency to our previous representations and notably to unlikely disparity between the \$12 million paid by the proponent to Innu Nation since 1998 for studies of impacts of the project on Sheshatshiu and Natuashish and the \$87 500 that Nalcor had offered to the Innu of Ekuanitshit to complete a study within a period of four months.

Note that Pakua-shipi is the only community of Innu to the Quebec that had accepted the offer by Nalcor to finance a study to be completed in some months to the summer 2010. Recently, a consultant of Innu Nation concluded that this report consisting of the serious shortcomings ("serious deficiencies") and precisely, that nether its methods nor its results met the rules of the art for data collection on the occupation and the usage of the territory by the Aborigines ("the methods and reporting do not in any way conform à the best practices [...] for indigenous use and occupancy map surveys").

The Innu of Ekuanitshit were therefore fully justified to refuse the offer that the proponent had made, for the later experience shows that the study that Nalcor proposed would have been completely inadequate.

c. The required measures to protect the rights and the ancestral title.

According to the letter of the President dated September 9 2011, the objective of the Agency is to learn by this consultation "if all the preoccupations about eventual repercussions of the project on the potential ancestral rights of the Innu of Ekuanitshit were defined precisely".

Now, the Joint Review Panel itself or the Innu of Ekuanitshit estimate only this report was able to describe these preoccupations with precision because the repercussions remain unknown.

The summary by the Joint Review Panel of the proof of the rights and ancestral title submitted by the Innu of Ekuanitshit was well done. Let's note that this proof clearly shows that the territory covered by the project is situated in the ancestral territory of the Innu of Ekuanitshit. The Innu of Ekuanitshit never ceded their rights or their title on this territory.

But just as for the contemporary usage, the Joint Review Panel underlined that the information on the rights and the ancestral title were not complete. These gaps took the Joint Review Panel to the following conclusion:

In conclusion, the extent of the adverse impact on rights and title and current use on Aboriginal communities in Quebec could not be assessed by the Panel due to limits in its mandate and due to information gaps with respect to current use. Furthermore, there is no clear evidence of substantial benefits to these communities. This means that if there is has negative impact one the rights, titles, or current use by a given community, the net the effect of the Project on that community would likely be negative unless additional steps are taken. Otherwise, net the effect of the Project on that community would likely be neutral. [our underlining]

If, by its own admission, the report of the Joint Review Panel remains incomplete concerning the potential negative effects on the rights and the title of the Innu of Ekuanitshit, the problem remains with respect to the Agency.

How to proceed facing such a position? The Joint Review Panel already furnished the response:

It seems clear that these communities, to varying degrees, have suffered from impacts from previous developments without their consent and without meaningful consultation. Governments would be well advised to consider this history and make every effort to meaningfully engages with these communities before has Project decision is made.

[...]

The effect of the Project on Aboriginal rights and title as well have the effect on current use by Aboriginal communities has to be fully understood and agreement should be reached with affected communities on how any impacts will be addressed. These issues could be addressed together in the context of the federal consultation framework. In case of any impact on current use, Nalcor would then be asked to address the impacts identified. This would ensure that the process of repairing the relationships with Aboriginal communities could continue, and would ensure that the full costs of proceeding with the Project are understood. [our underlining]

We endorse these remarks from the Joint Review Panel. The Government of Canada must not take any action to authorize this project before a serious study is completed on the historic and contemporary usage by the Innu of Ekuanitshit of the territory covered by the project. This study must equally address the potential negative effects of the project.

Moreover, the Government of Canada should take note of the conclusion of the Joint Review Panel that, in the absence of mitigation measures, the effects of the project on the

Innu of Ekuanitshit remain negative and should itself or through the proponent to ensure that these negative effects are mitigated

4. Project Splitting

As mentioned above, we have made representations to the Joint Review Panel regarding the illegal project splitting for the purpose of this evaluation. Indeed, the project now consists of Muskrat Falls only; and the transmission line to the island of Newfoundland which depend entirely on the development of Muskrat Falls is a separate EA registration.

The result is that the project will not be evaluated in its entirety and there will be two assessments even though the two undertakings "are so closely related to be considered one project", contrary to the requirements of Article 15 CEAA.

Unfortunately, the Joint Review Panel has only summarized this concern without addressing the legal problem posed by the true nature of the project. Instead, the Joint Review Panel decided that because "Muskrat Falls and Gull Island will be subject to separate sanction decisions," they could be "evaluated separately with respect to the alternatives, the justification in energy alternatives and economic validity, and, wherever possible, compared to other factors."

We have serious reservations about this approach with regard to compliance with the CEAA and mandate of the Joint Review Panel.

It must also be recognized that Nalcor encouraged the Joint Review Panel and the responsible authorities to evaluate a project at Gull Island before the PUB, while the proponent agrees that they do not currently have the intention to commence construction:

[...] The output scale of Gull Island output creates a requirement to either negotiate with neighboring utilities for export contracts, attract investments in energy intensive industries, or to participate in regional wholesale markets directly to attain the full utilization unit cost. If such opportunities do not exist, and island supply is the only available market, then the total cost for Gull Island has to be spread over a smaller block of utilized of energy. This makes the actual unit cost of Gull Island greater than Muskrat Falls. [...] [...]

[...]In the absence of the required certainty on being able to access export markets and sell surplus production, it would not be prudent at this time to propose project sanction for the Gull Island project. Similarly, in the absence of substantive commitments from new or existing industrial interests requiring major new power and energy requirements, it is again not prudent for Nalcor to advance Gull Island further at this time. [Emphasis added.]

Specifically, Nalcor precludes the construction of the station at Gull Island as alternative in the supply of the island of Newfoundland on the grounds that it is currently unable to access additional export markets by Quebec which would need for adequate funding for

the project.

The proponent therefore accepts that the Gull Island will be built in the indeterminate future for other markets other than those referred to for the development of Muskrat Falls and using other transmission lines.

The Innu of Ekuanitshit obviously have an interest that the current assessment is not unlawfully or artificially split the project in a manner that would result in their participation in the assessment being wasted: the Agency must take into account the transmission lines which will transmit the power from Muskrat Falls.

The Ekuanitshit also have an interest that the proposed plant at Gull Island is assessed in a context to consider the real issues of this project, which requires that the assessment is commenced as close as possible to construction. This project can not be evaluated in a meaningful way if the proposal under assessment is theoretical. The proponent must not receive a blank cheque for the approval of the main hydroelectric project that they may decide to build in the future.

5. Energy and Economic issues

a. The importance of the issue

i. The interest of the Innu of Ekuanitshit

When the Joint Review Panel recommended the "confirmation by the government of long-term financial returns"(4.1), it explained that "the financial returns should be in addition to the income needed to cover operating costs, spending on surveillance, mitigation and adaptive management and financial obligations in respect of the Innu Nation".

In its report, the Joint Review Panel was more explicit and explained that the construction of the Muskrat Falls project only creates the risk that project revenues are insufficient to cover the various mitigation and compensation costs associated with project.

Already the Ekuanitshit Innu are dissatisfied with the proposed mitigation measures. But according to the Joint Review Panel, if revenues are poorly evaluated, the proponent may be unable to fund the mitigation and monitoring funds that the project requires.

Moreover, case law teaches us that even when infringement ancestral of an Aboriginal people has been demonstrated, "there are circumstances where, in the pursuit of important goals with a compelling and real to the whole community (given the fact that aboriginal societies are part of it), some restrictions of these rights are justifiable "by the federal government.

There is a strong possibility that the government could invoke the socio-economic

benefits that the project gives Ekuanitshit Innu are of greater value than the energy and economic plans even if the Joint Review Panel (JRP) was not convinced that the project can really be justified on energy and economic merits.

However, the Government of Canada has already taken the position that this project is "a great news for Canada", which according to the Minister of Natural Resources, will stimulate "the economy substantially while reducing greenhouse gases emissions".

ii. The example of the justification for reducing emissions of greenhouse gases

The contention that the project would help reduce emissions of greenhouse gases (GHGs) is an excellent example of an deficient results of an incomplete analysis of the economic and energy aspects of the project.

It is true that if, as suggested by the Joint Review Panel, we deferred the transmission connection between Labrador and the island of Newfoundland to access the power station at Churchill Falls later in 2041, the island could remain dependent on fossil fuels for its electricity for 30 years and that GHGs may increase (if other energy sources were not available).

But it is also why GHGs are likely to increase. Nalcor admitted recently that, as of 2011, almost all of the load growth on the Island of Newfoundland will be due to the addition of the nickel processing plant in Long Harbour by Vale Inco. This one plant alone will require the combustion of 1.1 million barrels of heavy oil per year in addition to the annual output from the Holyrood generation plant. The nickel processing plant is located on the Island of Newfoundland because the Government of Newfoundland and Labrador had demanded this in the agreement it signed with the company, Voisey's Bay Nickel in 2009. If the province had decided to install the nickel treatment plant in Voisey's Bay Labrador, the 94 MW needed by the plant could have been provided from the 150 MW produced from Churchill Falls and which are reserved for the province but could be exported to markets abroad. It should be noted that the federal government appears to have accepted the assertion by Vale Inco that the needs of the Long Harbour plant are to be supplied by the provincial power grid without noting that, without new sources of energy, the plant would add air pollution created by burning 1.1 million barrels of heavy oil each year.

Let's recap: according to the logic of the proponent and the Minister of Natural Resources Canada, the Churchill River must be harnessed to generate hydro-electricity to be exported from Labrador to the Island of Newfoundland to provide energy that will operate the nickel processing plant

The Long Harbour nickel processing plant that must process nickel extracted Voisey's Bay and also exported from Labrador to the Island of Newfoundland. This need is quite artificial and comes from a decision of the province to benefit the Island of Newfoundland and not allow Labrador to have the jobs created by the factory.

This is a consistent approach to that Labrador –and the territory of the Innu and Inuit in that Labrador is constantly being plundered for the benefit of the Island of Newfoundland:

- First, by extracting its minerals;
- Second, in the treatment of these minerals on the island, rather than Labrador, where hydropower is already in surplus;
- Third, by the diversion of rivers in Labrador in order to provide additional hydropower for the Island and also to reduce air pollution on the Island (closure of Holyrood plant).

This example demonstrates that without rigorous analysis of the project, the destruction of environment in Labrador may be disguised as "economic and energy benefits".

iii. The role of economic and energy justifications in law enforcement

In the absence of justification on the basis of energy and economic plans, the report of the Joint Review Panel does not allow the Minister of Environment Canada to refer the project to the authorities responsible for them to take a decision.

In addition, authorities will be unable to apply Article 37 of the Canadian Environmental Assessment Act. The authorities can not decide whether adverse environmental effects are nonetheless "justified in the circumstances" given that the Joint Review Panel has already found "significant adverse effects on the aquatic environment and land, culture and heritage [...] in respect to land use and resources".

b. Recommendations of the Joint Review Panel plans on energy and economic issues

i. Need, rationale and justification

Recall that the Joint Review Panel "concluded that Nalcor had not shown justification sufficient, both energy and cost for the entire project and that some questions remain unanswered regarding Muskrat Falls and Gull Island and their ability to generate financial benefits long term planned for the province, even if other requirements for approval of the project were satisfied."

The Joint Review Panel has "recommended that prior to the sanction for Muskrat Falls or Gull Island, the Government of Newfoundland and Labrador must provide separate financial analysis in proper form to determine if the component being analyzed effectively provides long-term economic benefits expected."

ii. Alternatives to the project

The energy and economic justification provided by the proponent was deficient according Joint Review Panel, in part because "the analysis by Nalcor, which presented Muskrat Falls the most appropriate and most economical to meet domestic demand, was inadequate".

The Joint Review Panel has "recommended an independent analysis based on the factors economic, energy and environment "including:

- "forecasts for domestic demand";
- "conservation and demand management";
- "alternative energy sources on the Island";
- "the role of the production of Churchill Falls";
- "the estimated cost of Nalcor and assumptions about the alternative of power plant ";
- "the ability to use offshore gas as fuel for the Holyrood plant "
- "cash flow projections for Muskrat Falls," and
- "the impact on customers and the regulatory systems of the province".

The Joint Review Panel also recommended "integrated resource planning, as this approach could be more effective than traditional planning is to conduct forecasts of load and then find the least costly to meet this demand ".

As part of an "independent analysis of alternatives to meet domestic demand, "the Joint Review Panel recommended that governments get an answer the following question:

What is the best way to meet domestic demand if the project is not carried out, including the possibility of connection between Labrador and the Island of Newfoundland, no later than 2041 to gain access to the power station at Churchill Falls at that date, or sooner, depending on the excess energy?

Recommendation 4.2 (p. 31)

c. Inadequate response to the recommendations on energy and economic plans

i. The limited mandate of the Public Utilities Board

The Government of Newfoundland ordered a reference to the governance of public services Newfoundland ("Public Utilities Board" or "PUB") July 17, 2011, a survey is not yet complete because Nalcor was delayed in filing the information and its submissions.

The only issue is before the PUB is whether the projects are the central Muskrat Falls and transmission lines to the island of Newfoundland is the option of least cost compared to an electric development on the island taken in isolation.

PUB should not consider the possibility of return ("monetize") or to use the energy generated by Muskrat Falls exceeding the needs of the province, which is Id careful. In addition, the PUB must analyze the option of the island taken in isolation under certain specific conditions for the Holyrood plant and wind development (Appendix B) .

According to a former president of the PUB, David A. Vardy, the reference excludes some of best options for effective and efficient operation of the lower Churchill River, including the construction of the Gull Island, the purchase of Hydro-Québec (Particularly from Churchill Falls), better demand management or conversion of the central gas natural Holyrood.

By his dismissal and in particular its definition of the option of the island taken in isolation, the province did not require consideration by the PUB on several factors deemed relevant by the Joint Review Panel and did not require consideration by the PUB of all alternatives proposed by the Joint Review Panel in the event that the Muskrat Falls facility is not built.

Upon receiving the report of the PUB, the Agency could not therefore have all the information required by the recommendations 4.1, 4.2 and 4.3 of the Joint Review Panel.

ii. The inadequate response of the proponent

On November 10, 2011, the proponent filed its submissions before the main PUB: some options that are not explicitly mentioned in the reference are nevertheless mentioned, including the use of natural gas at Holyrood. However, the paper demonstrates a very limited capacity on the part of Nalcor to conduct an evaluation economic objective of his own project, especially when discussing alternatives.

Recall that the Joint Review Panel wanted an assessment of "the possibility of an interconnection between Labrador and the island of Newfoundland in 2041 at the latest to gain access to the central energy from Churchill Falls to that date, or sooner, depending on the excess energy".

In its answer to this question, Nalcor states, inter alia, that any delay in construction of the plant at Muskrat Falls and transmission lines would have the disadvantage Economic delay the "monetization" of the "energy storage" of the province. It means that the failure to build dams as soon as possible would be a loss in itself because the rivers in their natural state would then have produced no return quantifiable in money.

At the same time, the proponent claims that the absence of revenues from new transmission facilities would be a waste because rather than being assigned to the construction of these same facilities, the funds have been used to buy oil imported.

The absurdity of this position is demonstrated if we will implement an investment property: according to the proponent, the failure to purchase a building that would occupy only 60% and not knowing if we can find a tenant for the remaining 40% (knowing that tenant would require major renovations) would still avoid the "loss" caused if we continued to pay rent for the space you need.

The affirmation of Nalcor means that if the project was profitable and that do not built, the potential profits would be lost: it is obvious that does not the question.

It is the same for his statements - when Nalcor why we can not until the excess energy from Churchill Falls in 2041 - that the future is uncertain, the Holyrood plant will grow old and that oil prices are volatiles. These are all of evidence that inform people about the ins and outs of the option to wait hydropower will become available in 2041 at the latest.

iii. The role of reference in the work of the federal government.

The report of the Joint Review Panel acknowledged that its investigation was incomplete because "Nalcor had not shown sufficient justification, both energy and economic, for the whole project."

The Joint Review Panel, however, did not feel free to wait for this justification because it was required by the Guidelines to submit its report within 90 days of the late public hearings. The agency and its minister are not subject to any similar period and must take the time it takes to draw the right conclusions.

Since the mandate of referral to the PUB does not meet all issues raised by the Joint Review Panel, including the financial benefits and solutions alternative, the Agency, the Minister of Environment Canada and the responsible authorities must get the answers needed prior to making any decision on the project.

6. Summary of Findings

a. The need for serious study and appropriate mitigation measures

The stated purpose of the Agency is to learn from its consultation "if all concerns about the potential impact of the project on Aboriginal rights potential Ekuanitshit Innu have been precisely defined."

Neither the Joint Review Panel itself, or the Innu of Ekuanitshit are satisfied that the report could accurately describe these concerns because the effects are unknown. The reason is that the study of both the contemporary use of the rights and Aboriginal title is incomplete. In addition, the Joint Review Panel believes that in the absence of evidence of tangible benefits, the effects of the project on the community must be presumed negative.

These are precisely the problems identified by the Joint Review Panel in its assessment of stories that explain why the Innu of Ekuanitshit have always insisted a serious study of their community was needed.

The solution, according to the Joint Review Panel, is to use the Aboriginal consultation process by the Government of Canada to perform the missing study and require the proponent to find solutions to problems posed by the impact of project.

We endorse the recommendation from the Joint Review Panel. The Government of

Canada should not take any action to authorize the project before a serious study is completed the use of historical and contemporary by the Innu of Ekuanitshit the territory covered by the project. This study must also address the potential negative effects of the project and the appropriate mitigation measures.

b. The particular issue of the caribou

For the Innu of Ekuanitshit, the report of the Joint Review Panel remains deficient with respect project effects on caribou. Specifically, it is unacceptable that the Joint Review Panel did not address the project's effects on the herd of Lake Joseph. In addition, recommendations for action required to protect the herd of Red Wine Mountain caribou are insufficient.

The government should not take any action to authorize the project:

- Without a comprehensive study on the potential effects on the Lac Joesph caribou herd is completed;
- before a comprehensive monitoring program of the Red Wine caribou herd is established, and
- without consulting with the Innu of Ekuanitshit onthe results of such studies

c. Energy and economic issues

In its report, the Joint Review Panel said that the construction of the Muskrat Falls only create the risk that project revenues are insufficient to cover the different mitigation and compensation measures associated with project. The Innu of Ekuanitshit interest that these measures can be paid.

But again, the strong possibility that the government relies on the socio-economic benefits Project gives Ekuanitshit Innu even greater interest in the whether the project can really be justified in terms of energy and the economy.

The Joint Review Panel has found "significant adverse effects on the aquatic environment and land, culture and heritage [...] in respect to land use and Resources": Summary and Recommendations, p. 2.

In the absence of a justification in terms of energy and economic authorities managers are therefore unable to apply art. 37 of the CEAA as they could whether the adverse environmental effects are nonetheless "justified in the circumstances ".

Currently, the reference by the Government of Newfoundland PUB does not guarantee consideration of several factors deemed relevant by the Joint Review Panel. Specifically, by definition of the option of the island taken in isolation, the province did not require consideration of all the alternatives proposed by the Joint Review Panel.

Upon receipt of the PUB, the Agency could not therefore have all the information required by the recommendations 4.1, 4.2 and 4.3 of the Joint Review Panel.

The Joint Review Panel noted that the investigation was incomplete because " Nalcor did not demonstrate sufficient justification, both energy and cost for the entire project ". Before they received answers to all questions raised by the Joint Review Panel, including the financial benefits and alternatives, neither the Agency and the Minister Environment Canada nor the authorities should make the decision on the project.