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November 9, 2010

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

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Dear Mary,

## **Introduction**

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

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

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



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## **Points of agreement and disagreement**

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

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

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

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

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

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

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

- To enable Nalcor to respond to any questions, issues and concerns raised by the Innu of ● about the Project;
- To enable Nalcor to determine what Innu of ● think about the Project and its impacts upon their values, interests and concerns;
- To communicate the findings of the community consultation process to both Parties;
- To identify ● traditional knowledge and current use of land and resources in the Project area;



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- To enable Nalcor to comply with the *Environmental Impact Statement Guidelines* for the environmental assessment of the Lower Churchill Hydroelectric Generation Project with respect to the Innu of • ;
- To identify what actions Nalcor proposes to take to address any issues and concerns identified by the Innu of • with respect to the Project;
- To identify issues in relation to accommodation and mitigation, if any, for future discussion by the Parties.

In your subsequent email to me on May 30<sup>th</sup>, you explained:

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

### **The challenge of preparing the relevant reports**

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

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

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

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



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

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

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

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

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

### **The way forward**

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

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

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



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

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

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

### **Procedural remarks**

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

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

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

We look forward to your response.

Yours,

**DIONNE SCHULZE**

David Schulze

cc: Mr. Todd Burlingame  
Manager, Environment and Aboriginal Affairs  
Nalcor Energy – Lower Churchill Project  
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