

AGREEMENT

Concerning

The Establishment of a Joint Review Panel for the Environmental Assessment of the Lower Churchill Hydroelectric Generation Project

between

**The Government of Canada, as represented by the
Minister of the Environment**

and

**The Government of Newfoundland and Labrador, as represented by the
Minister of Environment and Conservation
and the
Minister for Intergovernmental Affairs**

WHEREAS:

Newfoundland and Labrador Hydro is proposing to develop hydroelectric generating facilities with interconnecting transmission lines on the lower section of the Churchill River;

The Project/Undertaking, as proposed by the Proponent, is subject to an environmental assessment under the *Canadian Environmental Assessment Act* and the *Environmental Protection Act*;

The Governments of Canada and Newfoundland and Labrador wish to ensure that the type and quality of information and conclusions on environmental effects required to satisfy their respective legislative requirements are produced through a single, effective and efficient environmental assessment process;

The Minister of the Environment for Canada has responsibilities pursuant to the *Canadian Environmental Assessment Act* and has referred the environmental assessment relating to the project to a review panel in accordance with subsection 29(1) of the Act;

The Minister of Environment and Conservation of Newfoundland and Labrador has responsibilities pursuant to the *Environmental Protection Act* and has recommended to the Lieutenant-Governor in Council that public hearings be held on the undertaking;

The Minister for Intergovernmental Affairs of Newfoundland and Labrador has responsibilities pursuant to the *Intergovernmental Affairs Act*,

Section 72 of the *Environmental Protection Act* provides that the Minister of Environment and Conservation, with the approval of the Lieutenant-Governor in Council, may enter into an agreement with another government regarding the environmental assessment of an undertaking;

Section 73 of the *Environmental Protection Act* provides that the Lieutenant Governor in Council may establish a joint review panel in conjunction and coordination with another government where an agreement has been reached with such other government pursuant to section 72 of the EPA with respect to an undertaking;

Section 40(2) of the *Canadian Environmental Assessment Act* enables the Minister of the Environment to enter into an agreement with other jurisdictions respecting the joint establishment of a review panel and the manner in which the environmental assessment of the project is to be conducted by the review panel;

The Minister of the Environment has determined that a joint review panel with the Province of Newfoundland and Labrador will be the means by which Canada will proceed with the environmental assessment of the Project/Undertaking;

The Lieutenant-Governor in Council has ordered public hearings and authorized the Minister of Environment and Conservation to enter into an agreement with Canada on the conduct of those hearings; and

The Ministers have requested the Proponent to submit an Environmental Impact Statement to the Panel for the purposes of informing the Environmental Assessment. Process.

THEREFORE, the Minister of the Environment and the Minister of Environment and Conservation hereby establish a review panel for the Environmental Assessment of the Project/Undertaking in accordance with the conditions of this agreement and the Terms of Reference attached as Schedule 1.

1.0 Definitions

For the purpose of this Agreement, including the recitals and Schedule 1.

"Agency" means the Canadian Environmental Assessment Agency;

"Agreement" means this Agreement including Schedule 1;

"CEAA" means the *Canadian Environmental Assessment Act*;

"Day" means a calendar day;

"Department" means the Newfoundland and Labrador Department of Environment and Conservation;

"EIS Guidelines" mean the direction provided to the Proponent by Newfoundland and Labrador and Canada, which must be addressed in the Proponent's Environmental Impact Statement;

"Environment" means the components of the Earth, and includes:

- (i) land, water and air and all layers of the atmosphere,
- (ii) all organic and inorganic matter and living organisms as well as plant, animal and human life,
- (iii) the social, economic, recreational, cultural and aesthetic conditions and factors that influence the life of humans or a community,
- (iv) a building, structure, machine or other device or thing made by humans,
- (v) a solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of humans, or

(vi) the interacting natural systems, a part or a combination of those things referred to in subparagraphs (i) to (v) and the interrelationships between 2 or more of them;

"Environmental Assessment" ("EA") means an assessment of the Environmental Effects of the Project/Undertaking that is conducted in accordance with the Legislation;

"Environmental Effect" means:

- (a) any change that the Project/Undertaking may cause in the Environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the Species at Risk Act;
- (b) any effect of any change referred to in paragraph (a) on:
 - (i) health and socio-economic conditions;
 - (ii) physical and cultural heritage;
 - (iii) the current use of lands and resources for traditional purposes by aboriginal persons; or,
 - (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance; or,
- (c) any change to the Project/Undertaking that may be caused by the Environment;

whether any such change or effect occurs within or outside Canada.

For the purposes of this Agreement, "cultural heritage" includes but is not limited to a human work or a place that

- (a) either
 - (i) gives evidence of human activity;
 - (ii) has spiritual and/or cultural meaning; or
 - (iii) gives evidence of human activity and has spiritual and/or cultural meaning;
- and
- (b) that has heritage value.

"Environmental Impact Statement" (hereinafter "EIS") means the environmental assessment report that is prepared by the Proponent;

"EPA" means the Newfoundland and Labrador *Environmental Protection Act*;

"Follow-up Program" means a program for

- (a) verifying the accuracy of the EA of the Project/Undertaking; and,
- (b) determining the effectiveness of any measures taken to mitigate the adverse environmental effects of the Project/Undertaking;

“Legislation” means, collectively, the CEAA and the EPA;

“Ministers” means the federal Minister of the Environment and the provincial Minister of Environment and Conservation;

"Panel" means the review panel, which is appointed pursuant to Section 2 of this Agreement;

"Participant Funding Program" means the program referred to in Section 8.0 of this Agreement;

"Parties" means the signatories to this Agreement;

"Project/Undertaking" means the Lower Churchill Hydroelectric Generation Project as described in Scope of the Project/Undertaking in Part 1 of the attached Schedule.

"Proponent" means Newfoundland and Labrador Hydro;

"Public Registry" means a repository to facilitate public access to the records relating to the EA of the Project/Undertaking in accordance with section 55 of the CEAA, that has been established by Fisheries and Oceans Canada and Transport Canada and that will be maintained by the Agency or the Secretariat until submission of the Panel report;

"Secretariat" means the Secretariat referred to in Section 5.0 of this Agreement;

"Terms of Reference" means the Terms of Reference for the Panel, as set out in Schedule 1 of this Agreement;

2.0 Establishment of the Panel

2.1 A process is hereby established for the creation of a Panel, pursuant to section 73 of the EPA and sections 40, 41 and 42 of the CEAA, for the purposes of the review of the Project/Undertaking.

2.2 The Agency and the Department will make arrangements for the coordination of public announcements respecting the establishment of the panel.

3.0 Constitution of the Panel

3.1 The Panel shall consist of no more than five members, one of whom shall be the chair.

3.2 The Ministers shall appoint Panel members, consistent with the requirements of the CEAA and the EPA, based on recommendations from the Agency and the Department.

3.3 The Agency and the Department will provide a list of nominees to the Ministers and at least one of each of their respective nominees will be appointed as members.

3.4 The Minister of the Environment shall appoint or approve the appointment of the chairperson or appoint a co-chairperson, and shall appoint at least one other member of the panel.

3.5 The Panel members shall be unbiased and free from any conflict of interest relative to the Project/Undertaking and have knowledge or experience relevant to the anticipated environmental effects of the Project/Undertaking.

3.6 Panel members will not be employed by the Public Service of Newfoundland and Labrador or of Canada.

3.7 At least one (1) of the members of the Panel shall be a resident of the geographical area of the Project/Undertaking.

4.0 Conduct of the Environmental Assessment by the Panel

4.1 The Panel shall have all the powers and duties of a panel set out in section 35 of the *Canadian Environmental Assessment Act* and sections 64 and 65 of the EPA and applicable regulations.

4.2 The Panel shall conduct the EA in a manner that discharges the requirements set out in the EPA, the CEAA and in the Terms of Reference for the Panel set out in Schedule 1.

4.3 All Panel hearings shall be public and shall provide for the participation of aboriginal groups, the public, governments and other interested parties.

5.0 Secretariat and Administrative Matters

5.1 Administrative, technical and procedural support for the Panel shall be provided by a Secretariat jointly established by the Agency and the Department.

5.2 The Secretariat shall report to the Panel and shall be structured and operated so as to allow the Panel to conduct the EA in an efficient and cost effective manner.

5.3 Prior to the appointment of the Panel, the Agency and the Department shall prepare a budget estimate for the activities of the Panel. The budget as agreed to by the Agency and the Department shall be finalized following the appointment of the Panel.

5.4 Costs associated with the review by the Panel will be apportioned between the Agency and the Department in accordance with a cost-sharing agreement to be finalized prior to the appointment of the Panel.

6.0 Record of Environmental Assessment and Panel Report

6.1 A public registry containing all records produced, collected or submitted with respect to the EA of the Project/Undertaking shall be maintained by the Agency from the appointment of the Panel until the report of the Panel is submitted to the Ministers. The public registry shall be operated in a manner to ensure convenient public access to the records for the purposes of compliance with section 55 of the CEAA and the practices of the Department.

6.2 On completion of the EA of the Project/Undertaking, the Panel shall prepare a report and submit it to the Ministers who will make it public.

6.3 The report will address the factors required to be considered under section 16 of the CEAA, will set out the rationale, conclusions and recommendations of the Panel relating to the EA of the Project/Undertaking, including any mitigation measures and follow-up program, and include a summary of issues raised by aboriginal groups, the public, governments and other interested parties.

6.4 The Parties agree to coordinate, to the extent possible, the timing and announcements of decisions on the Project/Undertaking.

6.5 Once the report is submitted to the Minister of the Environment, responsibility for the maintenance of the public registry in accordance with section 55 of the CEAA will be transferred to Fisheries and Oceans Canada as responsible authority.

7.0 Other Government Departments or Agencies

7.1 At the request of the Panel, federal and provincial departments or agencies having specialist knowledge with respect to the Project/Undertaking shall provide available information and knowledge in a manner acceptable to the Panel.

7.2 Subject to clause 7.1 of this Agreement and subsection 12(3) of the CEAA, nothing in this agreement shall restrict the participation by way of submission to the Panel by federal or provincial departments or agencies.

8.0 Participant Funding

8.1 The Agency will administer a participant funding program to facilitate the participation of aboriginal organizations and the public in the EA of the Project/Undertaking.

9.0 Review, Interpretation and Amendment of this Agreement

9.1 The Parties will review this Agreement at the request of either Party.

9.2 The Parties will make every reasonable effort to agree on the interpretation and application of this Agreement.

9.3 Differences of opinion in the interpretation and application of this Agreement will be resolved, to the extent practicable, at a working level, through reasonable efforts taken in good faith.

9.4 The Agreement may only be amended with the written consent of both Parties. Unless another day is agreed, an amendment will become effective upon its execution by the Parties.

In witness whereof our signatures are hereunto inscribed on this _____ day of _____ 2008.

Original signed by:

Minister of the Environment - Government of Canada

Minister of Environment and Conservation - Government of Newfoundland and Labrador

Minister for Intergovernmental Affairs – Government of Newfoundland and Labrador

Schedule 1 - Terms of Reference for the Panel

Introduction

Pursuant to the Agreement Concerning the Establishment of a Joint Review Panel for EA of the Lower Churchill Hydroelectric Generation Project, a Panel is appointed to conduct an EA of the Project/Undertaking proposed by Newfoundland and Labrador Hydro.

The Panel shall conduct the environmental assessment of the Project/Undertaking in accordance with these Terms of Reference and consistent with the Agreement between Canada and Newfoundland and Labrador on the Establishment of a Joint Review Panel for the Environmental Assessment of the Lower Churchill Hydroelectric Generation Project.

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 groups/governments and the concerns and community knowledge of the public.

Part I – Scope of the Project/Undertaking

The Proponent proposes a project/undertaking consisting of hydroelectric generating facilities at Gull Island and Muskrat Falls, and interconnecting transmission lines to the existing Labrador grid. The Project/Undertaking includes the following components as described by the Proponent. The specific dimensions/characteristics of the proposal are subject to change as a result of the findings of the environmental assessment:

The Gull Island facility consisting of a generating station with a capacity of approximately 2,000 MW that includes:

- a dam approximately 100 m high and 1,300 m long; and
- a reservoir approximately 200 km² in area at an assumed full supply level of 125 m asl.

The dam is to be a central till-cored, rock-fill, zone embankment. The reservoir is to be approximately 225 km long, and the area of inundated land is to be in the order of 85 km² at full supply level. The powerhouse is to contain four to six Francis turbines.

The Muskrat Falls facility consisting of a generating station with a capacity of approximately 800 MW that includes:

- a concrete dam with two sections on the north and south abutments of the river, and
- a reservoir approximately 100 km² in area at an assumed full supply level of 40 m asl.

The south section dam is to be in the order of 30 m high and 180 m long, while the north section is to be in the order of 30 m high and 370 m long. The reservoir is to be approximately 60 km long and the area of inundated land is to be in the order of 36 km² at full supply level. The powerhouse is to contain four to five propeller or Kaplan turbines, or a combination of both.

Interconnecting transmission lines consisting of:

- a 735 kV transmission line between Gull Island and Churchill Falls; and,
- two 230 kV transmission lines between Muskrat Falls and Gull Island.

The 735 kV transmission line is to be approximately 200 km long and the 230 kV transmission lines are to be in the order of 60 km long. Both lines will likely be lattice-type steel structures. The location of the transmission lines is to be north of the Churchill River; the final route is the subject of a route selection study that will be discussed in the EA. The lines between Muskrat Falls and Gull Island may be on separate towers, or combined on double-circuit structures.

Part II – Scope of the Environmental Assessment

The Panel shall consider the following factors in the EA of the Project/Undertaking:

1. Purpose of the Project/Undertaking
2. Need for the Project/Undertaking;
3. Alternative means of carrying out the Project/Undertaking that are technically and economically feasible and the environmental effects of any such alternative means;
4. Alternatives to the Project/Undertaking
5. Extent to which biological diversity is affected by the Project/Undertaking;
6. Description of the present environment which may reasonably be expected to be affected, directly or indirectly, by the Project/Undertaking, including adequate baseline characterisation;
7. Description of the likely future condition of the environment within the expected life span of the Project/Undertaking if the Project/Undertaking was not approved;
8. Environmental Effects of the Project/Undertaking, including the Environmental Effects of malfunctions, accidents or unplanned events that may occur in connection with the Project/Undertaking;
9. Any cumulative Environmental Effects that are likely to result from the Project/Undertaking in combination with other projects or activities that have been or will be carried out;
10. The significance of the Environmental Effects as described in items 8 and 9;
11. Mitigation measures that are technically and economically feasible and that would mitigate any significant adverse Environmental Effects of the Project/Undertaking, including the interaction of these measures with existing management plans;
12. Proposals for environmental compliance monitoring;
13. Measures to enhance any beneficial Environmental Effects;
14. Need for and requirements of any follow-up program in respect of the Project/Undertaking;
15. Capacity of renewable resources that are likely to be significantly affected by the Project/Undertaking to meet the needs of the present and those of the future;
16. Extent of application of the precautionary principle to the Project/Undertaking; and
17. Comments received from aboriginal organizations, the public and interested parties by the Panel during the EA;
18. Factors related to climate change including greenhouse gas emissions;
19. Proposed public information program.

To assist in the analysis and consideration of these issues, in addition to the Secretariat established by Canada and Newfoundland and Labrador to support the Panel, within its approved budget, the Panel may retain independent expertise to provide information on and help interpret technical and scientific issues and issues related to traditional knowledge and community knowledge.

Aboriginal Rights Considerations

The Panel will have the mandate to invite information from Aboriginal groups and people related to the nature and scope of potential or established Aboriginal rights or title in the area of the Project, as well as information on the potential adverse impacts or potential infringement that the Project will have on asserted or established Aboriginal rights or title.

The Panel shall include in its Report:

1. information provided by aboriginal related to 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.
2. any concerns raised by Aboriginal groups related to potential impacts on asserted or established Aboriginal rights or title.

The Panel will not have a mandate to make any determinations as to:

- the validity or the strength of claim asserted by individual aboriginal groups
- the scope of the Crown's duty to consult aboriginal groups
- whether the Province or Canada has met its respective duty to consult and accommodate in respect of rights recognized and affirmed by s. 35 of the *Constitution Act, 1982*.

Part III - Steps in the Environmental Assessment Process

The main steps in the EA by the Panel will be as follows:

1. Site Visit:

The Panel will visit the proposed Project area to gain a first-hand understanding of the Project/Undertaking and its surroundings.

2. Public Information Centres

Public information centres will be established by the Panel at Happy Valley – Goose Bay, Sheshatshiu, Natuashish, and other locations in the Province as deemed appropriate by the Panel. These public information centres will be administered by the Secretariat.

3. Submission of the EIS

The Proponent shall submit to the Panel the EIS prepared in accordance with the EIS Guidelines issued by the Ministers. The Panel shall direct the Proponent to distribute the EIS to aboriginal groups, the public, governments and other interested parties.

4. Review of the EIS:

Within 7 days of receiving the EIS from the Proponent, the Panel shall initiate a 75-day comment period on the EIS. Aboriginal groups, the public, governments and other interested parties will be able to review the EIS and provide comments to the Panel on whether it adequately addresses the EIS Guidelines and whether additional information should be provided before public hearings are convened. The comments are to be provided either in writing or verbally by submitting quality recordings. Comments given verbally are to be considered as fully as written comments.

5. Comments provided to the Proponent

Comments received by the Panel during the comment period, shall be provided to the Proponent. The Proponent shall provide its response to the comments not later than 60 days following completion of the comment period.

6. EIS Sufficiency

The Panel shall review all comments received from aboriginal groups, the public, governments and other interested parties. Should deficiencies be identified as a result of the review of the EIS, and in consideration of any comments received from aboriginal groups, the public, governments and other interested parties, and in consideration of the Proponent's response to those comments, additional information may be required from the Proponent. Any request for additional information shall be issued within 30 days following the close of the comment period [or 60 days following receipt of written comments from the Proponent, whichever occurs later.] The Panel will determine the need, timing and location of any meetings required for the clarification of technical information.

7. Scheduling of Public Hearings

The Panel shall schedule and announce the start of the public hearings once the Panel is satisfied that sufficient information has been provided to allow it to do so. A minimum of 45 days notice will be provided to aboriginal groups, the public, governments and other interested parties prior to the start of the public hearings. The Panel will schedule the public hearings to encourage the attendance and participation of aboriginal groups and the public.

As required, the Panel will hold technical hearings on specific aspects of the Project/Undertaking in addition to community-based hearings focused on seeking the views of aboriginal governments/organizations and the public on the potential Environmental Effects of the Project/Undertaking.

8. Location of Public Hearings

The Panel will hold public hearings in locations determined by the Panel within the area likely to be affected by the Project/Undertaking, or in any area reasonably close to where the Project/Undertaking is proposed to be carried out, to provide convenient access for potentially affected aboriginal organizations and the public.

9. Conduct of Public Hearings

The Panel will conduct the public hearings in a manner which will:

- promote and facilitate the participation of aboriginal organizations, the public and interested parties in the project area,
- afford those aboriginal organizations, the public and interested parties an opportunity to present their views on the potential Environmental Effects of the Project/Undertaking; and
- ensure a thorough examination of matters relevant to its mandate.

The Panel will determine interpretation requirements for the public hearings and any other activities associated with the EA.

10. Length of Public Hearings

The public hearings will be completed within 45 days from the start of the hearings. See provisions of Article 4.2(5-7 of Consultation Agreement eg. Independent consultants.

11. Delivery of Panel Report

The Panel will deliver its report to Ministers within 90 days following the close of the public hearings. The report will take into account and reflect the views of all Panel members. The report will include:

- a description of the EA process, including public hearings
- the rationale, conclusions and recommendations of the Panel with respect to the nature and significance of the potential Environmental Effects of the Project/Undertaking,
- the Panel's recommendations concerning, as appropriate, any mitigation measures including, as pertinent, recommendations concerning the environmental management of the Project/Undertaking and follow-up programs
- a summary of any issues identified and comments and recommendations received from aboriginal organizations, and
- a summary of the issues raised and any comments and recommendations received from the public, governments and interested parties.

Translation and Interpretation

Panel's Documents

The Panel's operational procedures, public notices pertaining to the Panel's meetings and hearings, detailed procedures for the conduct of the public hearings, and any information request or deficiency statement issued by the Panel will be translated into French and those aboriginal languages that the Panel deems necessary to enable open and effective participation in the process by aboriginal people and organizations. Reasonable measures will be taken to ensure that the translations will be made available, in written and/or audiovisual forms, on the Public Registry and at Public Information Centres in a timely manner following the public release of the English version by the Panel, and will be provided on request to individuals and groups.

The Executive Summary and Recommendations of the Panel report will be translated into French and those aboriginal languages that the Panel deems necessary to convey its key findings and recommendations to aboriginal people and organizations that have participated in the review process prior to public release of the Panel report. Such translations in written and/or audiovisual forms will be available on the Public Registry and at Public Information Centres at the same time as the English version of the Panel report to the public.

The Panel report will be translated in French and made available in a timely manner following Panel submission of the English version of the report. Translation of the remainder of the Panel report into aboriginal language(s) will be undertaken by the Governments and made available in a timely manner upon request from aboriginal organizations or the public.

Proponent's Documents:

The Panel shall consult with the participating aboriginal organizations and the Proponent regarding which parts of the EIS and any other documentation or additional information prepared by the Proponent for the Panel for use during the Environmental Assessment of the Project/Undertaking will be translated into aboriginal language(s). As determined by the Panel, the Proponent shall translate those documents and shall ensure that all reasonable measures are taken to effect translations in a timely manner.

Translations of the EIS and other Proponent documents into aboriginal languages shall be made available in written and/or audiovisual forms, on the Public Registry and at Public Information Centres

Interpretation:

The Panel shall consult with participating aboriginal organizations prior to making a determination of interpretation requirements from English to aboriginal language(s) and from aboriginal languages into English for any public meetings hosted by the Panel and the public hearings, including the technical and community hearings, and any other interpretation requirements, and appropriate interpretation services will be provided by the Panel.