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TAB 1

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SOCIAL SUSTAINABILITY & SAFEGUARDS

Paper No. 128/June 2012

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A Guide for Local Benefit Sharing in Hydropower Projects

Chaogang Wang

SOCIAL DEVELOPMENT WORKING PAPERS

Paper No. 128/June 2012

A Guide for Local Benefit Sharing in Hydropower Projects

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List of Acronyms

AFR	Africa Region
CDD	Community driven development
CSR	Corporate social responsibility
EAP	East Asia and Pacific Region
EMP	Environmental management plan
ESIA	Environmental and social impact assessment
ESMP	Environmental and social management plan
HPP	Hydropower project
ICR	Implementation completion and results report
IPP	Independent power project
LADF	Local area development fund
LHRF	Lesotho Highlands Revenue Fund
LHWP	Lesotho Highlands Water Project
NGOs	Nongovernmental organizations
NT2	Nam Theun 2 Hydroelectric Project
PAD	Project appraisal document
PPPs	Public-private partnership projects
RAP	Resettlement action plan
SAR	South Asia Region
SWECO	Sweco Norge AS
WCD	World Commission on Dams

Note: All dollars are U.S. dollars unless otherwise indicated.

Acknowledgments

This guide for Local Benefit Sharing in Hydropower Projects was prepared by Chaogang Wang, Senior Social Development Specialist in the Social Development Department, based on the outputs of the World Bank's initiative on Enhancing Development Benefits of Hydropower Investments, including the proceedings of the technical workshop, the literature review report completed by Mott MacDonald, and the case study report on benefit sharing and hydropower completed by SWECO. Susan Wong provided overall guidance for this task. Substantial comments and suggestions were received from Alberto Ninio, Anna Bjerde, Charles E. Di Leva, Daryl Fields, Elena Correa, Elisabeth Huybens, Glenn Morgan, Maria C. J. Cruz, Maninder Gill, Nina Masako Eejima, Paivi Koskinen-Lewis, Rikard Liden, and William Rex. Zeynep Durnev Darendeliler helped with review of benefit sharing arrangements in hydropower projects financed by the Bank.

Contributions from all of the above are gratefully acknowledged.

Executive Summary

Local benefit sharing in hydropower projects can be defined as the systematic efforts by project proponents to sustainably benefit local communities affected by hydropower investments. Benefit sharing is a promising approach for implementing hydropower projects sustainably, and is emerging as a supplement to the requirements of compensation and mitigation. Benefit sharing can provide equitable development, sustainability, and smooth project implementation for hydropower development.

For benefit sharing mechanisms to work, the key enabling conditions are government policies, the legal and regulatory framework, corporate social responsibility strategies of development companies, and the capacity of local communities. Stakeholder engagement is essential in initiating and designing benefit sharing programs.

Monetary benefit sharing and non-monetary mechanisms are commonly used in benefit sharing in hydropower projects. Monetary benefit sharing means sharing part of the monetary flows generated by the operation of the hydropower projects with local communities. Commonly used monetary benefit sharing mechanisms include:

- Direct payments/revenue sharing
- Preferential electricity rates
- Payments for environmental or ecosystem services
- A community development fund
- Equity sharing

Non-monetary benefit sharing refers to the approaches adopted by the project entity for ensuring that local communities benefit from construction and operation of a hydropower project in non-monetary terms. A hydropower project can share benefits with local communities in non-monetary terms, such as improved infrastructure, support for health and education programs, improved access to fisheries and forests, and legal title to land. Examples of non-monetary benefit sharing mechanisms include:

- Modifying project design and operation
- Watershed management
- Associated infrastructure and public service investment
- Employment creation

To ensure that local communities share the social and economic benefits of hydropower projects, benefit sharing arrangements need to be carefully planned and designed as part of the project. A well-designed benefit sharing program should (a) have clear objectives; (b) carefully define the target population; (d) include benefit sharing mechanisms; and (d) identify responsible agencies, as well as implementation arrangements. Generally, the design of a benefit sharing program needs to be consistent with other studies and assessments, such as social and environmental impact assessments, socioeconomic studies in the project areas, and a resettlement action plan. It normally includes the following steps:

- Understanding the impacts of a hydropower project on local communities
- Analyzing the legal and regulatory framework and local development context

- Carrying out consultations with stakeholders
- Designing the objectives of benefit sharing programs
- Determining the beneficiaries of benefit sharing programs
- Designing the types and mechanisms of benefit sharing
- Exploring benefit sharing arrangements through multiple entry points
- Setting up the implementation arrangements of benefit sharing programs

Some of the Bank's safeguard policies require sharing benefits with project-affected people. For instance, the policy on Indigenous People (OP 4.10) requires that "the borrower includes in the IPP arrangements to enable the Indigenous Peoples to share equitably in the benefits" when a project involves "the commercial development of natural resources on land or territories that Indigenous Peoples traditionally owned." The policy on Involuntary Resettlement (OP 4.12) requires that "resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits" when involuntary resettlement is unavoidable. The policy on Environmental Assessment (OP 4.01) requires that EA takes into account the natural environment and social aspects, and "explores opportunities for environmental enhancement."

This guide provides some advice to task teams on how to design effective local benefit sharing mechanisms in hydropower projects. Benefit sharing arrangements would ensure that local communities have the opportunity to benefit directly from hydropower development, which will make hydropower projects more environmentally and socially sustainable. As a long-term arrangement, benefit sharing can facilitate local development. It can respond to unexpected environmental circumstances in the operation of dams to ensure local communities receive adequate benefits. Arrangements for the equitable sharing of benefits can offer scope for local communities and all other stakeholders to avoid conflicts and focus on creating synergies to maximize local development opportunities.

I. Introduction

The World Bank has committed to reengage in hydropower project investments. The World Bank had significant investments in hydropower projects at an early stage, but it dramatically scaled down its investments in new hydropower projects in the late 1990s and early 2000s, partly due to concerns about the environmental and social impacts of dams. After a hiatus of roughly a decade, the World Bank is scaling up its investments in hydropower. In 1999, no new lending was approved for hydropower. Between 2002 and 2004, the amount of investment approved was less than $250 million a year; from 2005 to 2007, it went up to $550 million a year. In 2008, approved lending reached $950 million in hydropower projects and another $150 million in hydropower-related technical assistance and carbon finance. The Bank approved 67 hydropower projects between fiscal 2003 and fiscal 2008, amounting to $3.7 billion in WBG contributions (World Bank 2009a).

The World Bank's renewed vision for hydropower recognizes that hydropower projects can offer important opportunities for poverty alleviation and sustainable development beyond its traditional role in providing electricity access (World Bank 2009a). The Bank's Water Sector Strategy emphasizes the role that hydropower can play in poverty reduction in developing countries (World Bank 2004). The changed global recognition of the role of hydropower and the strong demand from clients require a major reengagement by the Bank in the hydropower sector. However, in terms of social development, one of the main criticisms of hydropower projects is that in many cases local communities are often the most adversely impacted by projects, while benefiting the least. Expected macro benefits were not necessarily trickling down to the local community level; in many cases, those most affected were poor rural or vulnerable groups.

New paradigms to share the benefits of hydropower projects emerged in the 1990s and several monetary and non-monetary mechanisms were applied in different projects across the world. The focus of these projects increasingly widened from electricity generation to multiple purposes such as integrated water, land, and resource management. One of the key challenges is the need to equitably distribute both monetary and non-monetary benefits across multiple groups and stakeholders.

This guide seeks to provide practical guidance to Bank task teams on the working steps and procedures in designing benefit sharing programs for hydropower projects that enhance development benefits to local communities. It could also be used as a reference by hydropower proponents to improve the institutions and systems needed to better incorporate benefit sharing with local communities in their policies, laws, plans, and project management activities.

II. Why is Benefit Sharing Important for Hydropower Projects?

Hydropower projects can generate substantial benefits, including electricity generation, flood control, irrigation, fisheries, industrial and domestic water supply, navigation, recreation, tourism, taxes, royalties, and profits to companies. However, these benefits are viewed differently among stakeholders, particularly governments, communities, and companies. While the primary beneficiaries of hydropower projects can live far away from the dam sites, other groups in the project-affected areas may sustain most of the negative impacts (Egre 2007) and generally do not have access to electricity produced by the project. Local communities often bear the brunt of project-related economic and social losses (WCD 2000).

Hydropower projects may result in a wide range of adverse impacts on local communities depending on their size and location, such as involuntary displacement of significant numbers of people, loss of livelihoods, damage to species and habitats, and altered aquatic and riparian ecosystems. The adverse impacts of hydropower projects are often different from other large-scale infrastructure projects. In addition to involuntary displacement, hydropower projects can have significant adverse social, economic, environmental, and ecological impacts on downstream and upstream communities. In many cases, the productive skills of affected people may no longer be applicable because of changes in production condition and economic activities as a result of physical and/or economic displacement. Hydropower projects often appear to generate severe impacts that seem to be the most difficult to mitigate.

The traditional compensation alone is usually not sufficient to mitigate all the adverse impacts (Van Wicklin 1999)**.** The commonly used compensation-based approach includes payments to those people directly affected due to involuntary displacement. In many cases, the people compensated often encountered difficulties adapting to different and unfamiliar circumstances. Furthermore, the compensation-based approach generally did not cover the indirectly affected downstream and upstream communities.

The equitable distribution of benefits is often a contentious issue, as local and vulnerable people tend to receive the least benefits unless governments and companies make some provisions in this area. According to the World Commission on Dams report in 2000: "In too many cases an unacceptable and often unnecessary price has been paid to secure those benefits, especially in social and environmental terms, by people displaced, by communities downstream, by taxpayers, and by the natural environment."

Benefit sharing arrangements could ensure that local communities have the opportunity to benefit directly from hydropower development and enhance sustainability. Benefit sharing as a long-term arrangement can facilitate local development. It can respond to unexpected environmental circumstances in the operation of dams to ensure local communities receive adequate benefits. Arrangements for the equitable sharing of benefits can offer scope for local communities and all other stakeholders to avoid conflicts and focus on creating synergies to maximize local development opportunities and eventually to enhance sustainability.

Sharing benefits with local communities could help relevant stakeholders. Since the publication of a report favoring benefit sharing by the World Commission on Dams (WCD 2000), some hydropower

projects have been experimenting with this approach. Going beyond normative justification, benefit sharing approaches are helpful in gaining local support for hydropower development. From the perspective of investors, the presence of an explicit policy framework with a realistic provision for local benefit sharing is an indicator that local communities and the public are likely to support the project. As a consequence, the investors' risk exposure is reduced. From the perspective of operators, benefit sharing increases the capacity to work effectively with local communities. Good community relations are important for various reasons, such as improved local cooperation and reduced risk of project delays. From a government perspective, benefit sharing is a practical policy tool to achieve greater social inclusion and balance social, economic, and environmental factors in the planning, design, implementation, and operation of hydropower projects.

D. Designing the objectives of benefit sharing programs

Benefit sharing programs can be designed for different purposes, such as (a) providing additional long-term compensation; (b) establishing partnerships with local communities; (c) promoting local development in a socially and environmentally sustainable way; (d) meeting the needs and expectations of poor communities in the project area; (e) avoiding potential conflicts between communities that benefit from the project and those that do not; (f) ensuring communities receive financial incentives for taking local actions that contribute to sustainable management of the watershed and thereby help maintain performance levels and revenue flows from hydropower assets in the long term; and (g) ensuring local communities become long-term partners in sustainable management of hydropower assets.

The objectives of benefit sharing can be varied according to specific project context, but should be as specific as possible.

E. Defining the beneficiaries of benefit sharing programs

Beneficiaries of a benefit sharing program can vary depending on the specific objectives of the benefit sharing program. The intended targeted population can be, for instance, people affected by land acquisition, people affected by adverse environment impacts, and local communities in the project areas. Local communities generally can be understood as the residents of an area surrounding a development project who experience any direct and indirect impacts to their environment. "Impacts" connote any social, environmental, and economic impacts, both positive and negative. Within the context of a hydropower project, local communities can be the communities affected by land acquisition, or encompass the whole watershed area or river basin. The geographical and administrative boundaries of benefit sharing programs will vary depending on the specific project context. The coverage of local communities sometimes depends on the mechanisms of benefit sharing programs. Overall, benefit sharing programs can be designed to target the following local communities:

Local communities affected by land acquisition and resettlement. When a benefit sharing program is designed to target local communities affected by land acquisition and resettlement, its function may differ from compensation and mitigation included in the resettlement action plan (RAP), which contains the compensation to immediate losses of affected persons and measures assisting them to rehabilitate their livelihoods and living standards. The benefit sharing programs normally will cover the whole community rather than only persons affected by land acquisition, and provide both resettlement and host communities with opportunities to benefit from the project's operation in the long term.

Local communities living downstream and upstream: Aside from the communities affected by land acquisition, communities in upstream and downstream areas can be affected in various ways, as discussed in previous sections. These communities should be covered by benefit sharing programs.

Local communities in the whole watershed or river basin: In some cases, the benefit sharing programs should cover all local communities in the whole watershed area or river basin, particularly when a hydropower project uses the run-of-the-river approach or the benefit sharing arrangement is integrated into local development plans; see for example, the benefit sharing programs in the Glomma and Laagen River basin in Norway (box 5).

At an early stage in designing the benefit sharing program, the task team should work with clients, including the local government and development companies, to define the targeted local communities of the benefit sharing programs. Once the targeted communities are determined, the team needs to identify the formal and informal organizations at the community level and assess the capacity for them to implement the benefit sharing programs.

F. Designing the types and mechanisms of benefit sharing

Various benefit sharing mechanisms have been used in hydropower projects based on some case studies and a review of Bank-financed hydropower projects. Benefit sharing mechanisms used in some Bank-financed hydropower projects are summarized in annex 1.

In terms of temporal scale, benefit sharing can be categorized as either short-term or long-term. Short-term benefit sharing may start during the project design and construction period and can span several years. Such forms of benefit sharing include investments to maximize local employment in the construction work force and local supply of goods and services to the project, as well as investments in infrastructure and public services such as roads and clinics. Such services are primarily intended for the project, but they are open to local communities.

Long-term benefit sharing refers to the benefit sharing arrangements that commence after the project becomes operational, and can normally last over the economic life of the project. These arrangements mainly include (a) monetary benefit sharing, and (b) non-monetary benefit sharing.

Monetary benefit sharing means sharing part of the monetary flows generated by the operation of the hydropower projects with local communities. It includes, but is not limited to, the following mechanisms:

- Direct payments/revenue sharing
- Preferential electricity rates
- Payments for environmental or ecosystem services
- Community development fund
- Equity sharing

Direct payments/revenue sharing. This mechanism refers to transferring some revenues generated by the operation of a hydropower project to local communities, local governments, regional authorities, or the national government. Through this mechanism, the target beneficiaries share part of the monetary benefits the project generates, typically expressed as a portion of revenue from bulk electricity sales on an annual basis. This mechanism normally includes two different approaches. In the first approach, the hydropower companies pay a certain proportion of their sales to the government in the form of royalties, taxes, or license fees as defined in legislation, or based on an agreement reached among local and national authorities and project development companies (annex 2). Under this approach, the government will decide how the fund is to be used. Without further action, it may be difficult to determine the extent of the benefits going to local communities. In the second approach, the hydropower companies pay directly to communities in certain community development programs or into a community development fund. When this approach is used, operational arrangements need to be well-established in advance, and capacity building is always critical at the community level.

TAB 2

Canadian Environmental Assessment Agency

Agence canadienne d'évaluation environnementale

Keeyask Generation Project

Comprehensive Study Report

April 2014

Canada

Executive Summary

The Keeyask Generation Project considered in this *Comprehensive Study Report* consists of a 695-megawatt hydroelectric generating station at Gull Rapids (Keeyask) on the lower Nelson River in Manitoba and associated transmission lines.

The proponent is a joint venture between four local Cree Nations, Tataskweyak Cree Nation, War Lake First Nation, Fox Lake Cree Nation, and York Factory First Nation, and Manitoba Hydro. The Project would be located approximately 30 kilometres southwest of Gillam, 60 kilometres northeast of Split Lake and 180 kilometres northeast of the City of Thompson and would consist of a power house complex, spillway, dams and dykes, cofferdams, access roads, borrow sources, a work camp, and supporting infrastructure. A 93 square kilometre reservoir would be created upstream of the principal structures, consisting of approximately 45 square kilometres of newly inundated lands. A transmission line would be developed, owned, and operated by Manitoba Hydro to provide construction power to the Project site. Manitoba Hydro would also build three new transmission lines to transmit electricity from the Keeyask Generation Project to an existing converter station for use in Manitoba and export markets (Figure 1-2).

The Project is designed to produce and deliver about 4400 gigawatt hours per year of energy. It will be used to meet Manitoba's demand, including expected future growth. Energy in excess of Manitoba's demand will be exported from the province.

To enable the Project to proceed, Fisheries and Oceans Canada and Transport Canada may issue authorizations under the *Fisheries Act* and the *Navigation Protection Act* (should approvals under be sought) respectively. These authorizations trigger the requirement for a federal environmental assessment under the former *Canadian Environmental Assessment Act* S.C. 1992, c. 37 (the former Act). The type of environmental assessment required is a comprehensive study, as mandated by the *Comprehensive Study List Regulations* of the former Act. These regulations require comprehensive study of projects that include "*...the proposed construction, decommissioning, or abandonment of a hydroelectric generating station with a production of 200 MW or more*" (Part II, Section 4).

This *Comprehensive Study Report* presents the Canadian Environmental Assessment Agency's (the Agency's) evaluation of the Project's environmental effects. This evaluation is based on the Agency's review of technical information provided by the proponent, environmental reports prepared by Aboriginal groups, advice from a Federal Review Team and provincial experts, and comments from Aboriginal groups and the public through various consultations.

The proponent identified and assessed potential impacts of the Project on valued environmental components representing aspects of the environment including aquatic ecosystems and habitat, terrestrial ecosystems and habitat, wildlife and wildlife habitat, and socio-economic factors.

This report presents the assessment of the following key valued environmental components: key aspects of the physical environment; fish and fish habitat, including water quality; terrestrial vegetation communities, wetlands, and priority plants; terrestrial wildlife and wildlife habitat; and human health (including country foods). The Agency's assessment also considered the effects of the Project and its impacts on the current use of land and resources by Aboriginal groups for traditional purposes, and on archaeological and heritage resources.

The Project could result in adverse environmental effects on fish and fish habitat, country foods and human health, birds, wildlife, wetlands,

and terrestrial habitats proposed to be flooded. Measures to reduce or eliminate these potential effects were incorporated into the overall planning and design of the Project.

A follow-up program is required to verify the accuracy of the environmental assessment and to determine the effectiveness of the proposed mitigation measures. The follow-up program will focus on country foods and human health, freshwater fish and fish habitat, water resources, birds and wildlife, wetlands, rare plants, and archaeological and heritage resources.

The Agency concludes that the Project is not likely to cause significant adverse environmental effects when implementation of the proposed mitigation measures, the follow-up program and adherence to conditions and requirements related to the necessary federal permits, authorizations and approvals are taken into account.

TAB 3

The Keeyask Project Public Involvement Program
Draft Summary

The Partnership initiated the Keeyask Project Public Involvement Program in 2008. The program was integral to development of a technically feasible, economically viable and environmentally sustainable generation project. The purpose of the Public Involvement Program was to provide Aboriginal and other interested communities, groups and the general public with meaningful opportunities to receive information about the Project and to provide information and their views about the Project and its potential effects. Feedback received through the Public Involvement Program helped guide the environmental assessment process. Federal and provincial government agencies with a regulatory interest in the Project were also engaged throughout the Project development process.

The Public Involvement Program has been extensive and thorough, providing opportunities throughout Manitoba to participate and provide input. The Partnership sought to apply the following principles consistently in all public involvement activities:

- accessible process;
- opportunities at key stages;
- transparent and open;
- use of variety of communication mechanisms;
- engagement with Aboriginal peoples; and
- responsive and adaptive.

The targeted audiences for the Public Involvement Program included potentially affected Aboriginal and other northern Manitoba communities and groups, other interested organizations and the general public. In northern Manitoba,

meetings were sought with Aboriginal and other communities within the Churchill-Burntwood-Nelson area that were affected by past hydroelectric developments. Meetings were also held with Shamattawa First Nation, Manitoba Keewatinowi Okimakanak, Keewatin Tribal Council and Northern Association of Community Councils. Over the five years that the Public Involvement Program ran, in excess of 130 groups, communities, businesses and organizations were provided an opportunity to participate.

The Public Involvement Program took place in three distinct stages or rounds that coincided with the timing of the following key Environmental Impact Statement milestones: initial scoping and the identification of issues and concerns, then initial findings of the assessment, and the final Environmental Impact Statement document.

- Round One, held between June and December 2008, introduced the proposed Project in an effort to learn about any related issues or concerns, informed the public about the process and requirements for the environmental assessment, and determined how different groups wished to be consulted in future rounds.
- Round Two, held between February and May 2012, described Project features and changes after Round One and obtained feedback on the initial effects assessment and proposed methods to mitigate Project effects.
- Round Three, held between April and July 2013, described the content of the Environmental Impact Statement; how input received to date influenced the Project assessment and communicated supplemental information since the filing of the Environmental Impact Statement with Regulators in 2012.

Through the three rounds of formal public involvement activities, a total of more than 70 public involvement events were held throughout Manitoba.

A variety of methods were used to communicate with potentially affected and interested publics including face-to-face interaction, community leadership meetings, community information sessions, open houses, workshop forums for environmental non-government organizations, specific organization meetings, and written communication materials. The Partnership also continues to maintain a project website with project information, as well as contact information that can be accessed if individuals wish to provide additional comments or ask further questions.

All Public Involvement Program activities were documented. Notes from leadership and organization meetings were sent to participants for review and comment, to ensure that the information shared had been captured accurately. Open house participants were invited to fill in a comment and evaluation form to record their issues and perspectives about the Project and about the open house. The website provided another feedback mechanism. Comments and concerns always receive due consideration, and efforts are made to follow up on any outstanding questions raised by participants. At the end of each round of the Public Involvement Program, a summary report was produced and posted on the Project website for public review.

The complete record of concerns, comments and questions raised through the Public Involvement Program process was documented in the Environmental Impact Statement filing and subsequent supplemental filings. Concordance tables were also provided to show where these comments have been addressed in the Environmental Impact Statement. Many key issues have been raised through the Public Involvement Program process and these have helped to shape the content of the Environmental Impact Statement, and to inform and confirm what has been studied as part of the environmental assessment process. Some of the key issues raised include planning and partnership issues; employment, training and business opportunities; concerns

about the physical environment including erosion and sedimentation and changing water levels and flows; the need to protect lake sturgeon population; mercury in fish and the relationship to human health; concerns about caribou and other terrestrial topics; and concerns about water quality along the entire Nelson River, and especially and drinking water quality.

Manitoba Hydro, acting on behalf of the Partnership, has also engaged certain Aboriginal groups through bilateral discussions. These groups include Nisichawayasihk Cree Nation, Cross Lake First Nation/Pimicikamak Cree Nation and the Manitoba Metis Federation.

Given Nisichawayasihk Cree Nation and Manitoba Hydro's partnership relationship on the Wuskwatim Generation Project, a separate process was agreed to with respect to Nisichawayasihk Cree Nation's involvement in the Keeyask Project.

The Manitoba Metis Federation participated in Round One of the Public Involvement Program, declined participation in Round Two, and never formally responded to invitations and special arrangements made for participation in Round Three. In 2009, Manitoba Hydro and the Manitoba Metis Federation signed a protocol agreement to create a forum for reviewing and discussing hydro-related issues, including future developments like Keeyask. In June of 2013, Manitoba Hydro and the Manitoba Metis Federation agreed to a work plan to undertake a Metis specific traditional land use and knowledge study, a socio-economic impact assessment and historical narrative for the Keeyask region. These studies will build upon relevant information already collected and documented by the Partnership in the Environmental Impact Statement, and in responses to information requests.

Manitoba Hydro has also worked with Cross Lake First Nation/Pimicikamak Cree Nation since 2001, when it notified

the First Nation of its intention to prepare plans for future development at Gull Rapids. Under Article 9 of the Northern Flood Agreement engagement has included discussions on the general project description, a review of project effects, and a review of potential opportunities for training, employment and business. Manitoba Hydro and Cross Lake First Nation/Pimicikamak Cree Nation also continue to discuss a potential work plan for a resource use study related to the Keeyask region.

Discussions with federal and provincial government agencies with a regulatory interest in the Keeyask Project were also undertaken throughout the Project development process. Meetings were held between 2008 and 2013 to introduce the Project, discuss possible mitigation measures and to learn about the environmental review process. Input received was incorporated into the Environmental Impact Statement and supplemental materials.

Separate from the Public Involvement Program, each of the Keeyask Cree Nations also undertook extensive engagement activities within their communities to review and discuss a number of Project-related matters, including the terms of the Joint Keeyask Development Agreement and relevant Adverse Effects Agreements, community-related environmental evaluation processes and the Partnership's environmental impact statement.

TAB 4

THE MANITOBA CLEAN ENVIRONMENT COMMISSION

IN THE MATTER OF: Keeyask Generating Station

Environmental Impact Statement

INDEX OF FINAL ARGUMENT

MS. GUNN: I don't think that we could comment on that because it wasn't part of the review framework that we were employing. That wasn't, you know, a piece of the work that we sort of undertook."

CEC Hearing, November 12, 2013, Pages 2899-2900

Keeyask & Regional Cumulative Effects Assessment

Many hearing participants have argued that the assessment of Keeyask is somehow deficient because the regional cumulative effects assessment recommended as part of the CEC's Bipole III report is not yet complete. The Partnership takes exception to this argument. It has demonstrated that the cumulative effects assessment submitted for Keeyask meets the best practice goals of a project-specific cumulative effects assessment – exactly what is asked of each and every project proponent in this country. The cumulative effects assessment accounts for the past and it accounts for the future. It considers all the impacts to each VEC, not just the ones related to Keeyask. And, it assesses the significance of effects against the health of each VEC and the sustainability of each VEC, exactly as experts and academics in the field of cumulative effects assessment have advised should be done.

The CEC has already recommended that Manitoba Hydro in cooperation with Manitoba look at the cumulative impacts of past hydro development in the Nelson River sub-watershed. The Minister has taken up this advice and the work is underway. Any aspects of this broader work that are relevant to the potential cumulative effects of the Keeyask Generation Project have already been contemplated in the Partnership's approach to cumulative effects assessment and are addressed by the Partnership in its EIS filing. As such, a further recommendation in that regard is not required.

From the Partnership's perspective, the record created in this hearing process and the overall regulatory review contains everything the CEC needs to recommend that the Project proceed, and everything the Minister needs to approve and set conditions for the Keeyask Generation Project.

As has previously been observed, the proponent of the Keeyask Project is not Manitoba Hydro, but rather the Keeyask Hydropower Limited Partnership which includes Hydro. Over the past 38 days of hearings, a significant part of the evidence has been directed not at this Project or this proponent but at past projects built and operated by Manitoba Hydro. Even where there were attempts to draw a link between the Manitoba Hydro issues alleged to continue for existing development on the Nelson River and the Keeyask Project, the evidence was still more focused on the past projects and allegations of unresolved effects rather than on the Keeyask Project.

Again, as has been noted, the CEC was charged with reviewing the Keeyask Project. It was not asked to review the history of the hydroelectric system on the Nelson River from its inception to

the present day or come to any conclusions or recommendations with respect to the existing system. As part of its assessment, the Partnership has done a thorough job of reviewing and understanding the effects of past projects that have the potential to overlap with effects anticipated as a result of developing Keeyask. It has not reviewed, nor was it incumbent upon the Partnership to review, the effects of all past hydro-electric developments in other areas that are in no way affected by Keeyask.

Notwithstanding the foregoing, it should be noted that Manitoba Hydro has considered and taken steps to assess and address the effects of past developments. The CEC will be aware from the extensive filings by the Partnership that agreements of one form or another to deal with past effects have been concluded with every First Nation along the Rat, Burntwood and Nelson Rivers. In addition agreements are in place with the Kisschickimee Treaty Council in Churchill and the South Indian Lake community (succeeded now by Op-Pipon-Opwiwin Cree Nation). Further agreements have been reached with either the Northern Affairs communities or community groups in those communities (on behalf of all of the residents) which are either adjacent to or within the region generally viewed as being affected by various forms of hydro development. It should be noted that the beneficiaries of such agreements in the Northern Affairs communities includes persons who would identify themselves as Métis.

V. IMPACTS ON THE RIGHTS AND INTERESTS OF OTHERS

The extensive engagement process with the Keeyask Partner First Nations located in the vicinity of the Project and the Partnership's thorough and inclusive Public Involvement Program, identified and confirmed all topics of importance (valued environmental components and supporting topics). It also provided another mechanism through which to identify and confirm possible Project effects and the appropriateness of related mitigation for all stakeholders.

Without a doubt, the majority of time and effort in communication and consultation took place in and with the Partner communities. They are the ones living in the vicinity of the Project and most deeply affected by it. As a result of their participation, this Project is rich in Aboriginal Traditional Knowledge and guided by their strong commitment to environmental stewardship.

This engagement process, however, was not to the exclusion of others interested in and potentially affected by Keeyask. Manitobans beyond the in-vicinity Partner communities also had a full opportunity to be engaged in the Project through the Partnership's comprehensive Public Involvement Program (PIP), implemented between 2008 and 2013.

The PIP provided the opportunity for Aboriginal and other communities and organizations, as well as the general public, to be engaged through three substantive rounds of public involvement implemented at key stages during the Environmental Assessment process.

The PIP design was based on recent Wuskwatim PIP experience, the core values of the International Association of Public Participation, and a review of public engagement processes and practices throughout Canada.

Through the PIP, over 130 stakeholder groups throughout Manitoba were informed of the potential Project, and opportunities were provided for their involvement, if they so choose. In excess of 70 PIP events were undertaken in the five-year period.

During the PIP, participants provided input into the best methods to communicate in future rounds, the most appropriate timing for PIP events to be scheduled, and the best locations for maximizing participation.

A variety of methods were used to provide information to the public and to receive their feedback, including small community meetings, leadership meetings, workshops, open houses, newsletters, presentations, use of translation services, newspaper, poster and radio advertising, and a Project website.

For those whose interest in the Project was not directly identified in the early stages of the PIP, the numerous public advertisements and Project website with contact information provided venues to solicit additional input from the public and to allow such interested parties to come forward.

Results of the PIP were considered in the environmental assessment process and provided in a transparent manner in the Keeyask Generation Project Public Involvement Supporting Volume. They also informed the VEC selection, effects assessment, and the many mitigation measures and monitoring programs developed.

The Partnership would like to make special mention of its efforts with respect to some of the Participants and particular issues raised by each of those during the hearing and final argument:

The Manitoba Métis Federation

a) Engagement

Manitoba Hydro, on behalf of the Partnership, engaged in special Keeyask-related processes with the Manitoba Métis Federation (MMF).

This organization and its members had the opportunity to participate directly in the PIP if they so chose. The MMF were invited, and encouraged, to participate in the PIP and special arrangements were offered to support their participation - these offers to the MMF were refused in all but Round 1 of the Program.

In addition, the MMF has been involved in processes related to Keeyask since it became a participant in the Hydro Northern Training and Employment Initiative in 2004. Since that time,

over 150 meetings that have addressed Keeyask in some way have taken place. Success in reaching agreement is not, in this case, an indication of a lack of effort on the part of Manitoba Hydro.

At the insistence of the MMF, these meetings have been organized by, and taken place with the MMF Head Office.

Métis witnesses at this hearing expressed a strong desire at the local level for more one-on-one discussions directly with the Proponent. Anita Campbell, in particular, indicated that not once has she had the opportunity to sit down and speak with Manitoba Hydro about the issues in her community:

> MR. BEDFORD: So, I have certainly heard you this morning. Something that I heard at past hearings regarding your concern, I think the words you used was there is no relationship in the north between the Métis and Manitoba Hydro. So, based on my personal experience, which I summarized ever so briefly about how in my life I have tried to build relationships with other human beings, I have firmly concluded that the time has come for me to urge my other client, Manitoba Hydro, to go forward into the world and seek out Métis people where they live, in their communities, in Thompson, in the north, and to engage them in conversation about what they do, where they hunt, where they fish, where they do their resource gathering. And in the same conversations, perhaps over coffee or over a meal, to describe what it is my colleagues at Manitoba Hydro do when they plan these projects, these dams, and when they operate these dams.
>
> Would you agree with me that the time has come for someone like me to urge my colleagues at Manitoba Hydro to get out and to meet Métis people where Métis people live?
>
> MS. CAMPBELL: When I'm down in the city, I always tell people to be careful of their "perimeteritus" because there are things, people that exist outside of the perimeter. People are so amazed when they come up north, not only of how beautiful it is up there, but how we lack in so many resources.
>
> With Vale, we have such a good relationship with Vale that we can call on individuals in there and have that coffee, have that conversation, have that working relationship with them and say, here is why you're not getting what you're getting. Here is why you're not attracting the people that you should be attracting.
>
> I have never once sat down with anybody from Hydro in that capacity to say to them, here are some of the things you might be wanting to change, in terms of whether it's hiring, whether it's retaining, whether it's keeping people, whether it's doing business differently. Not once have I had that opportunity to sit down.

> Is it time? It's way past time. The time was there a long time ago. And if that's the direction that Hydro is seeking to go, and I'm hoping that's the direction your current president is going in, but they need to start sitting down not only with First Nations, but other Aboriginal people that exist."
>
> CEC Hearing, December 3, 2013, Pages 4747-4749

Manitoba Hydro, on behalf of the Partnership, would have welcomed the opportunity to meet directly with local Métis persons interested in the Keeyask Project – an opportunity that was offered on many occasions and consistently rejected by the MMF Head Office.

Between 2008 and 2013, Manitoba Hydro and the MMF met over 30 times specifically to come to the agreement reached in June 2013 for the MMF to undertake three projects - a Métis-specific traditional land use and knowledge study, a socio-economic impact assessment and a historical narrative for the Keeyask Resource Use Regional Study Area identified in the EIS. The delay in reaching agreement is not for lack of effort on the part of Manitoba Hydro, nor was it a strategy to delay the MMF's ability to undertake this research. On behalf of the Partnership, the company has dealt and will continue to deal with the MMF on relationship matters in a good faith manner and based on the best of intentions.

We have repeatedly heard throughout these hearings that the MMF are "being rushed" to finish this work in a six-month time frame. Nothing could be further from the truth. Since discussions began in 2008, the negotiated arrangements have been based on MMF-developed workplans and timelines that have consistently referenced a 6 month time period. In fact, through the course of cross-exam, we heard from Ms. Larcombe that study interviewees were actually identified in 2010, saving a considerable amount of time and effort at the front end of the Project, once the agreement was finalized.

> "MR. REGEHR: Now if we can turn to slide number 6? My understanding is that your work on the traditional land use and knowledge began back in 2010; is that correct?
>
> MS. LARCOMBE: That's correct."
>
> CEC Hearing, December 4, 2013, Page 4938

Though due in October 2013, the results of these reports and studies are still outstanding and will not be available until at least late February. As such, Manitoba Hydro and the MMF have mutually agreed to extend the deadline for these studies. It has always been our expectation that the agreement reached with the MMF to complete this work was signed in good faith and is one that can and will be accomplished by the organization. This is confirmed by a simple reading of the agreement.

It is notable, however, that the evidence presented at the hearing did not come close to providing the information expected, and was not based on the study area agreed to for the work.

> "MR. REGEHR: So, Ms. Larcombe, were you aware of the requirement for the TLUKS study to be done in accordance with the study areas as set out in the EIS?
>
> MS. LARCOMBE: The work that I did, I was not provided with a contractual arrangement between Manitoba Hydro and the MMF. I was asked to do a TLUKS study for the Keeyask -- I wasn't told, you have to use this area or you use that area. I defined the Keeyask study area based on what I thought would encompass potential use by communities that I was aware that there was Métis presence in. I think that the work that I have done has not excluded any study area that the proponent has identified. So we have not disregarded any of the local or regional study area identified in the EIS. But I was -- I'll make this really clear -- I was not given the agreement between the MMF and Hydro and said, this is your contract. That did not happen."

CEC Hearing, December 4, 2013, Pages 4955-4956

As committed, the Partnership will review the material provided, once available, assess the relevance, and take such actions as may reasonably be required, if any.

b) Impacts on Métis resource users

If the information presented by the MMF at these hearings is any indication, it is anticipated that the results will simply confirm information already presented in the EIS on possible Project effects and mitigation - that there is no Métis community or significant presence in the Keeyask region, nor are there unique traditional uses of the land by Métis individuals in the vicinity of the Project. Project mitigation and monitoring designed for all resource users, and all types of resource use, including that for moose management, is (and will be) appropriate for Métis harvesters. As such, no further mitigation or monitoring will likely be required.

More particularly, both the local and regional study areas included the entire Aboriginal population in those regions, including any Métis residents In addition, any related mitigation would also be available, unless it is specifically included in the Adverse Effects Agreements, and would help to offset any effects that may be experienced by Métis citizens who use the local study area. An example of that is the Waterways Management Program that helps to create safe waterways for any user of the area. Similarly, in accordance with the Access Management Plan, individuals who traditionally use the Keeyask area will be provided access to the Keeyask area along the access road, regardless of whether or not they are members of the Partner communities. Communication products with respect to mercury and fish will be widely distributed so that resource users in the area are made aware of potential risks, with respect to consuming fish that may be taken out of Gull Lake or Stephens Lake.

Ms. Larcombe also confirmed that Métis harvesters who hunt outside the Métis Natural Resource Harvesting Zone found in western Manitoba have to obtain a provincial hunting licence:

MR. REGEHR: It's your understanding that should a Métis person with a harvester's card issued by the MMF hunt outside of the pink areas, they still have to obtain a provincial hunting licence?

MS. LARCOMBE: Yes, that's my understanding for hunting."

CEC Hearing, December 4, 2013, Page 4990

It is understood that the MMF negotiated the agreement it has with the Province in good faith and that Métis citizens are also abiding by this agreement in good faith. Since all licensed hunters have already been accounted for in the Keeyask Environmental Impact Statement, those using the Keeyask region have already been incorporated into the Project's assessment and the Moose Harvest Sustainability Plan developed by the Cree Nation Partners and referenced frequently by the MMF. A more detailed discussion on this issue is found below (see Section "d) Government Negotiations and a General Caution").

Further, on cross-examination, Ms. Larcombe confirmed that her own findings regarding resource use in the local study area (as defined in the EIS) are fairly consistent with the conclusions included the Keeyask Environmental Impact Statement – i.e., that there is very little harvest activity taking place by the Métis in the Resource Use Local or Regional Study Areas:

MR. REGEHR: Now, according to this data here, it would appear to me that using the local study area, as defined by the Environmental Impact Statement, none of the 35 harvesters are harvesting moose within the local study area; is that correct?

MS. LARCOMBE: Your local study area being the footprint of the generating station and the reservoir?

MR. REGEHR: Including the reservoir.

MS. LARCOMBE: That's correct.

MR. REGEHR: And if we go on the basis of the regional study area as defined by the EIS, I was going to suggest that it looks like there could be four to five harvesters, but you can't tell me that because you don't know?

MS. LARCOMBE: Mr. Regehr, I'm not going to analyse on the fly here.

MR. REGEHR: You have presented this map as evidence.

MS. LARCOMBE: And you are asking me to sit here and visually picture what your study area looks like on top of this map. And I'm just not prepared to do it. There's too much potential for error.

MR. REGEHR: So you can't tell me how many people are harvesting within the regional study area, as defined by the EIS, correct?

MS. LARCOMBE: I have not analyzed that data in that manner.

CEC Hearing, December 4, 2013, Pages 4997-4998

Based on the evidence presented, it appears that the majority of Métis harvest is in areas surrounding Thompson and the communities of Thicket Portage and Pikwitonei – locations that are not in any way affected by the development of the Keeyask Generation Project.

The Métis have not been ignored. Their interests, as identified by the Partnership and by their own expert, Ms. Larcombe, have been considered in the EIS and any effects will be mitigated. If new information comes to light, it will be addressed. Not only is that a commitment made by Manitoba Hydro and the Partnership, but it is also a requirement of the JKDA (Article 11.2.4 dealing with Potential Adverse Effects on Others).

c) Section 35 Rights

The terms of reference for the Clean Environment Commission in these hearings do not extend to s. 35 rights. The Manitoba Métis Federation itself has stated that "rights recognition" are not the subject of these hearings (statement of Jason Madden, CEC Hearing, Keeyask, Volume 21, p. 4657, lines 20 and 21; see also final submission by MMF, p. 13, "…the MMF is not asking the Commission to make a determination with respect to the existence of a rights-bearing Métis community in the region…"). It would not be appropriate for the CEC to comment upon the extent to which the Métis have a site-specific Aboriginal right in the Project area. The existence of such rights must be established by convincing evidence that a particular Métis community used a particular geographic area for traditional activities prior to the time of the assertion of European sovereignty.

The litigation of such cases can involve extensive and detailed testimony by academic experts as well as community members. Sometimes particular Métis communities have been successful in proving site-specific rights in respect of a particular area and activity (*Powley*), and sometimes not *R v. Hirsekorn*, 2013 ABCA 242 (CanLII). The Court in *R. v. Goodon*, 2008 MBPC 59, held in favour of the existence of a site-specific right in the area of Southwestern Manitoba, not in the Project area. The CEC should not speculate on whether a court of law would recognize a site-specific s. 35 right in the Project area. A court would decide on the basis of whatever historical evidence on both sides was adduced in a particular proceeding in relation to the specific nature of whatever right was asserted. The MMF submission has provided some sense of what a Métis community might argue in such a case, but a particular litigant might have other or more detailed submissions. For its own part, the Crown might, for example, introduce evidence or argument to the effect that at least some of the first Métis in the area were raised by First Nations' mothers in First Nations' communities, rather than living in distinct Métis communities; (Manitoba Métis

Report submitted by the partnership, dated July 13, 2013, pp. 2-5 to 2-6, referring to the work of Métis historian Jean Legasse); that some scrip takers at the time of the historic treaties were not ordinarily resident in the area or were induced to disavow their First Nations identities by scrip buyers who accompanied the Treaty Commissioners (p. 2-9), or that some Métis communities emerged after the date of the assertion of European control. Proposals concerning that date might vary, depending on the area, from around 1880 to at the latest around 1910. It should also be noted that the communities of Wabowden, Thicket Portage, Pikwitonei, Ilford and Gillam did not exist before 1910, when construction of the Hudson Bay Railway first began. Thompson did not exist until 1956. The compatibility of asserted Métis rights with the historic uses and rights of First Nations might also have to be considered. Any particulars here are mentioned by way of illustration of some of the complexities, uncertainties, and potential controversies concerning s. 35 rights for Métis in the Project area, rather than to invite the CEC to comment upon them. There are other more appropriate forums for discussion, negotiation and resolution of these matters.

Agreements between provincial government and the Métis may recognize a Métis community as having rights in a particular area, but such agreements do not necessarily establish that the right is a historically-established and constitutionally-protected one under s. 35. In any event, the CEC should not speculate on whether the current agreement between the Province of Manitoba and the MMF will be extended to the area of the Project footprint.

Likewise, agreements between the federal government and the Métis National Council, the so-called "Powley Agreements", only establish a process of discussion between the federal government and the Métis National Council – not the MMF. These agreements explicitly do not recognize any rights. In addition, the federal government's Métis Harvesting Guidelines are merely that – guidelines designed to assist federal officers in dealing with Métis harvesters in areas which are monitored by federal officers – national parks, military bases, coastal fisheries and migratory bird sanctuaries – none of which are affected by the Project or exist in Manitoba.

These proceedings would also not be an appropriate forum in which to explore whether there is any basis in law or fairness to extend to the MMF or any local Métis community the same kind of partnerships that have been reached with the First Nations' proponents. The Supreme Court of Canada has by now several times ruled that constitutional equality does not necessarily require the same treatment for all aboriginal persons and groups. The history, rights and practical circumstances of a particular aboriginal community may make it appropriate for a federal or provincial order of government to carry out a program that is focused on that particular community. In *Lovelace v. Ontario*, 2000 SCC 37 (CanLII), the Supreme Court of Canada held that a partnership program concerning casinos could be extended to a group of First Nations, even though it did not also extend to Métis or non-status individuals. In *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, 2011 SCC 37 (CanLII), the Court held that

the distinctive identity and circumstances of Métis in Alberta could justify the exclusion of status First Nations' citizens from participation designed specifically for Métis.

The approach that the CEC should take is interest-based, rather than rights-based. The issue is identifying and addressing expected impacts of the Project on the expected use of the area by Métis, regardless of who operates the permitting system for Métis hunting or whether the use has a constitutional foundation. The proponents have acted in a reasonable and diligent manner to identify Métis resource use in the Project area and the potential effects of the Project on them. The design of the Project and mitigation measures have taken into account the current resource users, including Métis, that have been identified. Measures have been put in place to address in a satisfactory manner the potential emergence of resource users, including Métis, who have not been identified so far or who are new to the area.

d) Government Negotiations – and a General Caution

It is incumbent on the CEC, having in mind the Terms of Reference given to it by the Minister, to look behind the positions presented by the MMF.

The CEC has been invited to become an agent and ally of the MMF in its ongoing negotiations and discussion with the Government over extending and expanding the nature and scope of rights recognition and its status as the sole and exclusive representative of all Métis people in Manitoba. This is not within the scope of the reference to the CEC with respect to the Keeyask Generation Project specifically and goes beyond what has been, to date, in the scope of non-licensing recommendations considered by the CEC. The MMF is asking the CEC to take sides in a legal and political dispute and make non – licensing recommendations which would require the CEC to make judgements and interpretations on what are, at their most basic, questions of law.

The MMF asserts generally that the issues and impacts alleged by specific Métis communities have not been dealt with appropriately. Nothing is further from the truth. The CEC will be aware that many communities in northern Manitoba have entered into processes and agreements to resolve their particular issues. The MMF assertion can only be true if one accepts the principle that, notwithstanding the provision of independent legal and technical resources to these communities and groups, any agreement that does not include the MMF as a party or had the MMF as a negotiating agent or otherwise has the imprimatur of the MMF, is not a valid, proper or appropriate agreement.

The MMF has stated before you that the Partnership has failed to capture information on Métis harvest in the Keeyask study area and, as a foundation for that position, takes the position that there is a protected aboriginal right to hunt or take resources within the area. Under current laws and agreements, Métis people harvesting resources are required, and the MMF agreed, to have provincial harvest licences to take resources in the Keeyask study area. This area is outside of the area agreed by the Government and the MMF as being covered by the Harvester Card system.

While the MMF and the Government continue to discuss and explore that issue the CEC should not speculate or attempt to influence that process.

Further, the evidence presented by the MMF shows that the overwhelming majority of the Métis harvest occurs within the vicinity of Thompson and there are no pathways of effect from the Keeyask Project which would impact the identified harvest. The MMF also overlooks the fact that Métis harvest can be easily estimated and extrapolated based on the issuance of game licences. On the specific question of Moose harvest, each harvester would be required by law and agreement to have a Moose tag. If it is alleged that these data are unreliable, then the only alternative that can explain the discrepancy would be illegal harvest and it is doubtful that information of that nature would be made available to any proponent.

The MMF continues its complaints about the Northern Flood Agreement. As some of the CEC may be aware, the development of the Churchill and Nelson Rivers directly impacted treaty rights and also required that Hydro obtain access to reserve land which would be impacted by the works and operations. One of the considerations to be received by Hydro and Manitoba under the NFA was a flooding easement over reserve land. While the MMF asserts aboriginal rights in the Nelson River watershed, these assertions have not been accepted by Manitoba nor have they been determined by the courts.

The MMF also suggests that the CEC advise the Government to specifically name which parties should be consulted for each project. While this recommendation is attractive on its face, consultation is generally driven by what a proponent expects to be the pathways of effects as those impact people in a project region. It would seem somewhat curious that a government which has few project details beyond perhaps a basic project description (to support an application for the start of a licensing process) and some form of draft scoping document would somehow be better positioned than a proponent to determine who ought to be consulted with respect to the preparation of an EIS. This would be similar to suggesting that a proponent should mandate who government consults as part of their process. Each of government and a proponent has consultation mandates, needs and obligations and, therefore, consults various interests as the circumstances dictate. The needs and processes are not necessarily identical nor should they be. To suggest that such a recommendation is required due to, as counsel phrased it, “internal biases and self interest” cannot be sustained in the face of the efforts put forth by Manitoba Hydro on behalf of the partnership to engage with the MMF. The environmental assessment and s. 35 tracks both converge (along with the NFAT Review Process) on licensing decisions that are made by a Minister or Cabinet as the case requires. In the context of the s. 35 track, the duty of consultation is dependent on the existence or plausible assertion of historically based rights in an area. That is also beyond the scope of these proceedings. The CEC, it is respectfully suggested, should not take up any express or implied invitation to use its role in the environmental assessment process to comment upon the appropriate choice of business partners or the manner in which the Crown fulfills its s. 35 duties.

In the context of an environmental assessment, which is of course squarely within the jurisdiction of the CEC, the determination as to who is to be consulted should depend on the impacts that the particular project might have on individuals and communities within its footprint, and is not by its nature a political decision for government. The proponent submits that it has acted in a diligent and thorough manner to consult residents of the Project area and to engage with the MMF. The proponent has also committed to being open and responsive to legitimate concerns as they are brought forward in the future by any of those potentially affected by the Project, including Métis. There has been no demonstration that on the basis of environmental concerns the progress of this Project should be contingent upon the negotiation or conclusion of partnership agreements with the MMF or any other Métis organization, or that such organizations should be brought into the process as monitors of Project effects, rather than being genuinely and entirely welcomed to bring facts, concerns and proposals to the attention of the Project monitors. It has not been shown by evidence in these proceedings that such conditions would be necessary or even productive. They might, to the contrary, entail significant contention, delay and cost that would divert time and resources away from a substantive focus on identifying environmental issues and engaging in appropriate measures for their prevention or remediation.

Pimicikamak Cree Nation

Pimicikamak Cree Nation had the opportunity to participate directly in the PIP. Manitoba Hydro, on behalf of the Partnership, also engaged in a special Keeyask-related process with Cross Lake First Nation/Pimicikamak Cree Nation, consistent with the requirements of Article 9 of the Northern Flood Agreement and this was specifically addressed in Question 53 of the CEC's final questions to the Partnership.

a) Land Use and Occupancy Study

In its final argument before the CEC, Pimicikamak has recommended that, if the Keeyask Project is to be licensed, such licence be subject to the following condition:

> "**A Land Use and Occupancy Study must be conducted to determine Pimicikamak's connections to, values in, uses and occupancy of the land. An impacts assessment (impacts from Keeyask on the values, connections and uses and occupancy of the land, identified through the LUOS), must be completed before Keeyask may be constructed or operated. Once these Studies are complete, Manitoba Hydro and the Partnership must meet with Pimicikamak to discuss the resulting necessary accommodation and mitigation measures, and must apply such accommodation measures to the extent possible."**

The Proponents have already "provided the information on current and proposed use of land and resources by each Aboriginal group (not just the KCN partners) based on information provided

by the Aboriginal groups or, where Aboriginal groups did not provide this information, on available information from other sources" (Response to EIS Guidelines Keeyask Federal Guidelines Concordance Table page xxvii) The Partnership prepared a draft response to CEAA-0014, as it related to the Pimicikamak, and provided that draft response to Pimicikamak. Pimicikamak provided comments and a revised final draft was filed with the CEAA and forms part of the record before the CEC. The conclusions found within that response have not been contradicted by any submissions made by Pimicikamak during this hearing. To the contrary, even in its final submission it does not identify any adverse environmental impacts of the Keeyask Project on Pimicikamak, but speculates about how such adverse environmental impacts, if there are any, would be dealt with.

In its final argument, Pimicikamak suggests that the Keeyask Project falls within Pimicikamak's traditional territory. However, the only treaty signed by TA-PAS-TA-NUM, the Chief referenced by Pimicikamak as signing the treaty, is Treaty 5. The Keeyask Project does not fall within the area ceded under Treaty 5, but within the area ceded under adhesions to Treaty 5, signed by other First Nations. The map that Pimicikamak references as depicting its traditional territory includes the current resource areas of a number of other First Nations. There is no evidence before the Commission that this is an area that is currently extensively used or harvested by Pimicikamak or its members.

The Partnership respectfully submits that there is not a shortage of evidence about current and proposed use of land and resources by Aboriginal groups or about the potential adverse environmental effects of the Keeyask Project on such uses. As a consequence, there is no need for such a study for the CEC to make its report, nor for such a recommendation to be included by the CEC in its report on the proposed Keeyask Generation Project.

Manitoba Hydro's relationship with Pimicikamak is much broader than the Keeyask Generation Project and the study proposed continues to be considered by Manitoba Hydro based on such broader considerations. The Partnership at no time considered that there was any gap that needed to be filled through information to be gathered under the proposed study, nor that in the absence of such study, was the Keeyask EIS deficient.

In addition to the information submitted specifically with respect to Pimicikamak, Aboriginal people beyond the Partner First Nations were considered among other residents of the Socio-economic Local and Regional Study Areas. In the Local Study Area, this included analysis of effects to residents of Thompson and Gillam inclusive of their Aboriginal populations. Analysis of effects stemming from physical and biophysical changes arising from the Project include potential changes to community health (including mercury and human health), and travel access and safety. Mitigation measures identified were inclusive of all residents in Gillam and Thompson, Aboriginal or otherwise. Physical effects on heritage resources focused on the presence of those resources relative to physical changes anticipated by the Project and are not

specific to any one community. Other effects stemming from Project expenditures, such as on the economy, employment, training, and income, or effects to population, infrastructure and services, provided consideration of effects on Gillam and Thompson as well. In the case of labour expenditures on construction and the effects on employment, the analysis considered the Aboriginal population of northern Manitoba as a whole because such opportunities are governed by the Burntwood-Nelson Agreement, which provide preference to qualified Aboriginal people. This is not related to the physical/biophysical pathways of effect.

In summary, the Partnership has made all necessary efforts to identify effects of the Keeyask Generation Project, including on land and resource uses by Aboriginal people, in order that mitigation can be identified to reduce those effects. The Partnership has identified a broad array of mitigation measures that are included in the filing. The Partnership remains open to considering further mitigation if at any time new information is provided (through monitoring, new studies, or other relevant sources) that additional mitigation measures are required or appropriate.

b) Northern Flood Agreement Implementation

Pimicikamak also requested the following condition be recommended by the CEC relating to the Northern Flood agreement:

> "**The NFA must be implemented in its full spirit and intent. The NFA must be implemented in accordance with annual action plans developed jointly by Pimicikamak and Manitoba Hydro, and funded by Manitoba Hydro, through good faith best efforts negotiations and in accordance with the spirit and intent of the NFA. The action plans should provide that to the extent feasible, Pimicikamak should manage and employ its citizens to work on, the implementation programs. The resources required for such management shall be provided by Manitoba Hydro."**

As discussed under the section relating to the MMF, the Northern Flood Agreement ("NFA") is a multi-party agreement with multi-party obligations. It does not involve only Manitoba Hydro and Pimicikamak. Canada is also a party, as is Manitoba and the five NFA First Nations, who at the time were represented by the Northern Flood Committee. The Partnership itself and some of the partners in the Partnership, are not parties to the NFA

The NFA contains its own provisions for implementation and enforcement, including arbitration and appeal by way of stated case to the Court of Appeal of Manitoba. There have been many arbitrations before the NFA Arbitrator and there have been a number of appeals to the Court of Appeal of Manitoba. The Cross Lake First Nation and, in some cases, Pimicikamak as the representative of the Cross Lake First Nation, have matters in arbitration under the NFA.

The NFA, and the implementation and enforcement of its provisions, are not matters within the scope of the CEC in relation to the hearings on the Keeyask Generation Project.

Shamattawa First Nation

In terms of engagement with respect to the Keeyask Generation Project, Shamattawa First Nation was:

- Invited to participate in the Round One PIP, but declined the invitation;
- Participated in a PIP Round Two community meeting; and
- Participated in a PIP Round Three Chief and Council meeting and community meeting.

Land and resource use for traditional purposes by Shamattawa First Nation members has not been documented in the Keeyask Resource Use Local Study Area. Therefore, traditional land and resource use undertaken by Shamattawa First Nation Members is not expected to be directly affected by the Project.

Based on available information, land and resource use for traditional purposes has occurred and is occurring in the Keeyask Resource Use Regional Study Area. It is not expected that this use and associated travel and navigation will be affected in any noticeable way. No significant adverse effects are expected. However, Manitoba Hydro, on behalf of the Partnership, remains committed to consider any additional information provided on the use of lands and resources for traditional purposes by Shamattawa First Nation. Upon review of further information provided, Manitoba Hydro (on behalf of the Partnership) will consider the need to develop appropriate or alternate mitigation strategies, if necessary.

There has also been discussion about the impact of York Factory First Nation Offsetting Programs under the YFFN Keeyask Adverse Effects Agreement. Those programs can be carried out in a wide variety of areas, including anywhere in the YFFN Resource Management Area (RMA), an area set out in the 1995 Comprehensive Implementation Agreement (1995 CIA) between YFFN, Canada, Manitoba and Manitoba Hydro.

The YFFN RMA consists of two regions: the larger coastal RMA and the much smaller Trapline 13 area around York Landing. The coastal portion of its RMA is in the “heart” of YFFN traditional territory and YFFN members have continued to use this coastal area since being relocated to York Landing in 1957. YFFN has cabins at Ten Shilling Creek and at York Factory.

The 1995 CIA also provides for a Resource Management Board with representatives from YFFN and the Province of Manitoba. The Resource Management Board may develop land use plans and/or resource management plans for the YFFN RMA. However, the Resource Management Board must hold at least one public meeting on any such plan and must also give notice to Manitoba Hydro, Shamattawa First Nation and Fox Lake First Nation of such a meeting and

provide a copy of any proposed plan. While YFFN is in the very early stages of such planning, YFFN has already initiated contact with Shamattawa First Nation.

There are Shamattawa First Nation members who currently hold trapping licences for commercial purposes in the YFFN RMA and so there is the potential for Offsetting Programs to be carried out in those trapline areas. However, The commercial interests of Shamattawa First Nations members who hold trapline licences are not expected to be affected. Therefore, there is no rationale for Shamattawa First Nation involvement in setting conditions for the York Factory First Nation Offsetting Programs and management of resources in the YFFN Resource Management Area. In addition, trapline allocations by the Province of Manitoba make the trapline holder the furbearer manager.

Potential effects of Keeyask to Shamattawa First Nation's collectively held Aboriginal and Treaty Rights are being assessed through the Crowns' Section 35 consultation processes. The Partnership is not involved in this consultation process.

Peguis First Nation

It has been alleged by the Peguis First Nation that it was not properly engaged in the Keeyask Project's PIP, and that the Partnership should have known its interest in the Project because of the community's claim that it has been affected by past hydro-electric developments.

Peguis First Nation's main community settlement is located roughly 700 kilometres from the Keeyask Generation Station site. Manitoba Hydro provides power for all Manitobans and has infrastructure throughout the province. Many communities and individuals claim they have been affected by these developments; this does not necessarily mean they are potentially affected by Keeyask development.

The PIP was designed specifically for the Keeyask Project and to understand the effects of the Keeyask Project. It was not a program to engage with communities on their perspectives and concerns with respect to previous hydro-electric developments.

In order to identify potential for the PIP, the Partnership undertook an extensive stakeholder mapping program that began as early as 2000. It looked at pathways of effects related to the Project and who might be potentially interested or potentially affected by the Project. In order to capture all who might be interested, it was advertised extensively throughout Northern Manitoba when there were open houses in both Thompson and Gillam. It was also advertised in Winnipeg when there were open houses and the website clearly was accessible to everyone.

Round One of the public involvement program included meetings directly with communities, based on the Partnership's understanding of communities who were likely interested in participating in the Project, based on their past discussions with Manitoba Hydro, their proximity

to the Project, or other related interests. It also included a series of public open houses and workshops.

It was and remains the Partnership's view that there are no pathways of effect from the Keeyask Project that have the potential to affect Peguis First Nation. Despite the opportunity to do so, Peguis First Nation did not express any interest in the Project until it applied for the CEC's Participant Assistance Program. This means the Partnership was not aware of their interest in either Rounds One or Two of the PIP. However, as soon as the Partnership became aware that Peguis First Nation was interested, it did reach out to the community. The Partnership provided the community with all relevant Project materials, including the Executive Summary, the EIS, the video, all of the previous PIP information, and copies of all newsletters. The community was also then invited to participate in Round Three of the PIP.

To date, no additional interests or impacts have been ascertained that have not already been considered for other resource users or interested parties. Like others, Peguis First Nation would like to see a Regional Cumulative Effects Assessment, but their request is not unique to their community.

Peguis has also asserted Treaty Land Entitlement rights in the vicinity of the Keeyask Project. In 2008, Peguis' Treaty Land Entitlement Agreement (TLE Agreement) was executed. Peguis' TLE Agreement entitles Peguis to select up to 55,038 acres of Crown Land and acquire or purchase up to 111,756 of private lands.

Peguis' TLE rights are minimal at best. Numerous restrictions on selecting and acquiring land along the Nelson River and within the Keeyask Project area, as well as the clear contemplation of hydro development and how to accommodate treaty land entitlement processes with hydro development illustrate that Peguis cannot now claim that any impacts have not been addressed.

As presented on December 11, 2013, Peguis has not made any Crown Land selections or private land acquisitions outside the Treaty Area, nor within the Treaty 5 area. It should also be noted that at the presentation on December 11, 2013, Peguis relied upon the incorrect agreement with respect to its ability to select and acquire land. Peguis representatives testified that Peguis could select Crown Land and acquire private land in its Treaty Area and within its traditional territory. Upon questioning, and as later confirmed by Peguis legal counsel in Undertaking #19, such a provision was present in the Manitoba Treaty Land Entitlement Framework Agreement dated May 29, 1997. Peguis is not a party nor entitled to rely upon the provisions of the Framework Agreement and the Peguis TLE Agreement has no provision allowing it to select within its "traditional territory."

There are principles with respect to the selection and acquisition of land under the TLE Agreement. A key defined term within the TLE Agreement is the term "Treaty Area. The term is defined at subsection 1.01(91) of the TLE Agreement as follows:

> "Treaty Area" means the area of land particularly described in, and surrendered and ceded by those First Nations which entered into Treaties No. 1 and 2 with Her Majesty the Queen;

With specific regard to Crown Land, under subsection 3.02(1) of the TLE Agreement, Peguis may select Crown Land within the area comprising the Treaty Area. Peguis may select Crown Land from outside the Treaty Area and within Manitoba, on a case by case basis, provided that Peguis can establish a reasonable social or economic development objective and the Province of Manitoba concurs in the selection.

With specific regard to private lands (referred to as Other Lands in the TLE Agreement), under subsection 3.02(2) of the TLE Agreement, Peguis may acquire private lands within the area comprising the Treaty Area. Peguis may acquire private lands outside the Treaty Area and within Manitoba, on a case by case basis, provided that Peguis can establish a reasonable social or economic development objective.

The Keeyask Project is wholly located within the boundaries of Treaty 5.

There are also provisions contained within the Peguis TLE Agreement related to competing treaty land entitlement claims of other First Nations which were not presented by Peguis to the Commission. Subsections 3.02(10) and (11) of the Peguis TLE Agreement specifically address that any Crown Land selection made by Peguis which has a competing interest from a First Nation entitled to the benefits of the Framework Agreement or simply a competing interest from any other First Nation, will not proceed with further in the reserve creation process until Peguis and the other First Nation resolve their competing interests. It is noteworthy that of the four KCN, three are entitled to the benefits of the Framework Agreement – namely Fox Lake Cree Nation, War Lake First Nation and York Factory First Nation.

There are provisions dealing specifically with hydro developments. Subsection 12.04(2) of the Peguis TLE Agreement requires the Province of Manitoba and Manitoba Hydro, to consult with Peguis, during a period of time known as the "Period of Selection" concerning any proposed water project not physically constructed as of 2008 **and** which may have a reasonable likelihood of having a material and continuing physical, chemical or biological impact upon a water body **in the Treaty Area**. The Partnership does not anticipate any impact on any water body within the Treaty Area. The "Period of Selection" is a finite period of time for five years commencing in 2008 and subject to some short extensions.

Subsection 12.04(3) of the Peguis TLE Agreement states that where Peguis selects Crown Land or acquires private land along a "Developed Waterway" (as defined in subsection 1.01(22) of the Peguis TLE Agreement to include the Nelson River and its lakes and affected tributaries), and that land is confirmed as eligible to be set apart as reserve, the Province of Manitoba and Manitoba Hydro will consult with Peguis concerning the construction of any proposed water

project not physically constructed as of 2008 and which may have a reasonable likelihood of having a material and continuing physical, chemical or biological impact upon that "Developed Waterway" which may affect that land.

As indicated by Peguis representatives, Peguis has not made any Crown Land selections or private land acquisitions along the Nelson River (which is wholly within the Treaty 5 area).

Should Peguis select Crown Land or acquire private land along the Nelson River, section 12.05 of the Peguis TLE Agreement sets out that such land will be subject to a "Hydro Easement." Such an easement will allow the holder of the easement (whether Manitoba Hydro or the Partnership) to use that portion of the selection or acquisition for hydro purposes, including the inundation of water. As compensation for this easement, Peguis is then entitled to select additional land equivalent to the land affected by the easement, so long as the additional land is above the easement line.

Subsection 12.08(3) of the Peguis TLE Agreement states that any selections or acquisitions by Peguis on land which adjoins Lake Winnipeg shall not be subject to a hydro easement, and Peguis and its members shall have no right to make any claim for any losses associated with the raising or lowering of the water levels on the land as long as the water levels continue to be regulated in accordance with the licence issued to Manitoba Hydro under *The Water Power Act* (Manitoba).

Lastly, Section 12.09 of the Peguis TLE Agreement addresses the issue of lands required by Manitoba Hydro for future water projects. The sixteen sites are listed in Schedule "F" of the Peguis TLE Agreement – Keeyask is listed as "Gull", site number 9 in the Schedule.

Commercial Rights Holders

Issues surrounding commercial activities must be distinguished from those activities that are carried on by virtue of the individual exercise of the collective Treaty and Aboriginal Rights. Activities for which programs, measures or compensation may need to be provided which flow from the individual exercise of a right held by the collective are provided for under the various Adverse Effects Agreements. Licensed or commercial activities are specifically excluded from the Adverse Effects Agreements. Commercial activities are carried out based on the grant of a permission, privilege or concession by the Crown. Issues arising in the context of licensed commercial trapping fall into this latter category and are dealt with through discussions and negotiations with individual licensed trappers

Manitoba Hydro provides compensation to registered trappers for disturbances (noise, aircraft and ground activities) during exploration, environmental investigations and other ongoing Keeyask activities in the area. The factors that are considered in arriving at these payments include past fur production on the trapline and the estimated amount of disturbance over the time

period in question typically on an annual basis. This measure is more qualitative in nature than the formula used for transmission lines and considers the extent and frequency of the anticipated disturbances during the period. As the past fur production on the trapline would include the production records of any trapper helpers, it is expected that the trapline licence holder would address the concerns of his or her helpers, as required.

Manitoba Hydro has a disturbance agreement in place on Trapline 9. The Trapline 15 disturbance agreement expired on December 31, 2013 and it is anticipated a new disturbance agreement for the coming year will be signed shortly. These agreements address disturbances of the Project to the Resource Use trappers' commercial fur harvest production and lost incidental domestic production (including, but not limited to, country foods, crafts, baiting, etc.). These agreements are negotiated with trappers; provisions of the agreements may include trapline improvements (trail cutting), employment opportunities with Manitoba Hydro, equipment replacement and/or monetary settlement.

Once there is greater certainty that the Keeyask Generation Project will proceed, Manitoba Hydro, on behalf of the Partnership, will provide an offer of compensation to any member, who is a licensed trapper, to enter into an agreement over a longer term to address any existing or anticipated loss of net revenue from commercial trapping, and for any anticipated direct loss or damage to any buildings, structures or other infrastructure located on a Registered Trapline used by the member, resulting from the construction and operation of the Keeyask Generation Project, as per the processes in the Adverse Effects Agreements. As set out in those Agreements, Manitoba Hydro remains liable to compensate licensed trappers for any loss of net revenue from commercial trapping and for any direct loss or damage to any buildings, structures or other infrastructure which results from the construction and operation of the Keeyask Generation Project.

Manitoba Hydro in accordance with the Adverse Effects Agreements will also operate an ongoing claims process to facilitate the resolution of claims by members of the four First Nations for loss or damage to personal property resulting from Keeyask adverse effects to personal property.

VI. ADDRESSING UNCERTAINTY FOR KEY ISSUES

The theme of "uncertainty" has been raised by a number of the Hearing Participants. Their common mantra has been – "delay this Project until uncertainty has been resolved". This is especially so for several key topics discussed at these hearings and in the environmental assessment like lake sturgeon, caribou, mercury and human health, public safety and worker interaction, climate change and the safety of waterways.

The reality is that no level of study or analysis can completely eliminate uncertainty in environmental assessment.

During the hearing, one of the Participants put a "motherhood statement" to the Environmental Assessment Approach Panel. He said words to the effect that:

> Environmental assessment done well "appropriately outlines its level of confidence, as well as its limitations and uncertainties".
>
> Byron Williams, Transcript October 24, Page 846

That statement recognizes the inherent uncertainty that exists in the field of environmental assessment, even when it is done well or is "best practice".

Uncertainty is a reality when it comes to managing systems and projects, and is inherent in environmental assessment – after all, we are making predictions about the response of many environmental parameters to the implementation of a major development. These predictions and, ultimately, project decisions must be made with the best information available. Then adaptive management during project implementation must be used where necessary. This is the crux of sound environmental assessment, licensing and management.

It is the Partnership's view that it has gone to extensive efforts to minimize uncertainty, to clearly acknowledge where uncertainty exists and to put plans in place to address this uncertainty through its approach to Project planning, assessment and implementation. These efforts include:

- ***A decade of in-depth study and analysis based on both western science and Aboriginal Traditional Knowledge:***

  The Partnership filed its environmental impact statement for the Keeyask Generation Project in early July 2012. The final product submitted by the Partnership represents over a decade of collaborative work, from both a technical science and Cree worldview perspective, by a predominantly Manitoba-based team. It includes a Response to EIS Guidelines that incorporates technical science and Aboriginal Technical Knowledge, and three separate Cree environmental evaluation reports. The final product is a major accomplishment – it is a very rigorous assessment of the Project, in a manner that respects two worldviews and reflects the knowledge and wisdom of the Partner First Nations, along with that of scientific researchers.

The partners agreed early on to a two-track approach for the assessment. There was criticism of this approach during this hearing, arguing that a three track approach should have been used. In answer to that, we remind the Commission of the words of Mr. Keeper at this hearing on October 23, 2013:

> "From the beginning of the consultation on the Keeyask project in 1998, Tataskweyak Cree Nation took the position that they must do their own environmental assessment of the Keeyask project, based on their knowledge, experience, customs and values, to which Manitoba Hydro agreed... The term Two-track approach was adopted to describe the unique, this unique approach for assessing the effects of Keeyask...
>
> To avoid confusion, it is essential to emphasize that the two processes are different in scope, methods, values and concepts. Equally important, both approaches, but particularly the Cree assessment process, needs to be recognized and respected as being different, equal and separate in the EIS itself. Aboriginal traditional knowledge and an Aboriginal assessment based on the Cree world view and values are completely different matters. On the one hand, specifics specialized environmental knowledge derived from and a part of Aboriginal traditional knowledge can contribute to the understanding the specific impacts of the project together with sources of information and knowledge derived from western technical science leading to regulatory approval or rejection. On the other hand, an assessment of the impacts of the project based on the Cree world view and values is a different and separate process, altogether, since it does not conform to the regulatory concepts and values like significant adverse effects or valued ecosystem components."

Mr, Joe Keeper, October 23, 2013, Page 457

Using those two different knowledge and value systems, assessments were carried out and, astonishingly, both processes arrived at the same conclusion - that the Project should proceed based on its final design including the extensive suite of enhancement and mitigation measures. Although it has not been an easy or smooth journey, both the Project and the assessment are infinitely better as a result of this collaboration.

- ***A VEC-centric approach that focuses on long-term VEC sustainability based on all factors affecting a VEC, regardless of source.***

  The Partnership has undertaken its cumulative effects assessment using a VEC-centric approach, rather than a project-centric approach. This approach is consistent with best practices, addresses a key criticism raised about project-specific cumulative effects assessments and minimizes uncertainty in the assessment by focusing on long-term VEC sustainability. It also means that full consideration has been given the effects of past, present

and reasonably foreseeable future projects, in addition to the Keeyask Generation Project, on the long-term health of each of the VECs assessed.

For Keeyask, VECs were selected based on input from a variety of sources, including the Partner First Nations, experts, and those involved in the public engagement process. In total, 38 VECs were selected for study as part of the Keeyask environmental assessment – 5 aquatic VECs, 13 terrestrial VECs, and 20 socio-economic VECs. Since the Partnership also felt it was important to have a full understanding of the environment that supports each VEC, other components of the environment – for example, the aquatic habitat that supports fish populations – were also studied. Other important components of the environment that had the potential to be affected by the Project, like amphibians, were also studied. These additional components, called "supporting topics" were studied to provide greater insight into the nature of potential effects on VECs and to improve the reliability and completeness of the assessment.

Wherever possible, the Partnership has based its findings of the significance of Project effects on a VEC based on established thresholds set by governments (of which there are very few) and benchmarks set by the Partnership. These "benchmarks" are values set below the range of what a specialist, or government regulator, believes are the thresholds for significant change in a VEC. In such cases, there may be insufficient information to define a specific "threshold" – but the information that is available is considered to be sufficient to set out a 'benchmark" level which is considered to be well below any likely threshold. The Partnership has also committed to incorporating benchmarks and thresholds into the draft monitoring plans wherever it is reasonable to do so.

Finally, using a VEC-centric approach, the Partnership has scoped the specific study areas for each VEC based on what Dr. Noble has referred to as "the maximum zone of detectable influence" of the Project (November 12, 2013, page 2765). This was noted as a best practice for a project-specific cumulative effects assessment during the course of testimony from Dr. Noble.

- ***A comprehensive engagement process with our partners, other Aboriginal communities and organizations, and provincial and federal regulators:***

  The extensive and meaningful engagement process with the Keeyask Partner First Nations located in the vicinity of the Project and the Partnership's Public Involvement Program (PIP) have reduced uncertainty in the assessment by identifying and confirming topics of importance (valued environmental components and supporting topics) and by providing another mechanism through which to identify and confirm possible Project effects and the appropriateness of related mitigation.

This engagement process has also extended to regulatory authorities. Extensive discussions and a comprehensive information request process have taken place over many years with both federal and provincial government agencies. The expert staff at these agencies bring additional knowledge and experience to the review of the Keeyask environmental assessment – its approach, its findings and its planned mitigation and monitoring measures. Discussions with regulatory agencies will be ongoing throughout the life of the Project and will be especially important in determining the need for adaptive management.

- ***Ongoing application of the precautionary approach and the development of detailed mitigation measures to address effects:***

  The ATK principles developed to guide the environmental impact statement identified how Aboriginal Traditional Knowledge (ATK) would be included in the Environmental Assessment (EA). Notably, one of those principles was 'Acknowledging Caution and Addressing Uncertainty' (page 2A-2, Appendix 2A: Aboriginal Traditional Knowledge Principles within the Keeyask Environmental Impact Statement, Response to EIS Guidelines). This principle acknowledged and respected the caution that many of our Partner First Nations members have about predictions of environmental effects of hydro-electric development (e.g., uncertainty associated with predictive models). For that reason, it was important to employ a precautionary approach that identifies knowledge gaps and recognizes the uncertainty of predictions. The need to apply a precautionary approach is also a condition of the EIS Guidelines issued for the Keeyask Generation Project (Keeyask Generation Project EIS Guidelines, CEAA, Section 9.1.1, page 20).

  When asked to define what its precautionary approach was, Stuart Davies, on behalf of the Partnership, indicated simply that, "where there is uncertainty, we assume that the effect is larger rather than smaller" (October 24, 2013, page 750). Having made that assumption, Project design was reconsidered and mitigation measures were carefully planned to either avoid, prevent or reduce, to the extent practical, adverse effects from the Project. The measures are based on extensive study of the Project, the relevant ATK, best practices, research, literature reviews and numerous discussions between the Partners. These measures are documented in the environmental impact statement and community-specific Adverse Effects Agreements. The Partnership also took the unusual step of developing and submitting its preliminary Environmental Protection Program, at an early stage and prior to licensing, for review and input by regulators, the CEC, interested parties and the public.

  To assist the CEC, the mitigation measures committed to in the EIS, in Information Requests and in the preliminary Environmental Protection Program have been summarized in a single document that is provided with this final argument as Appendix A. These measures, developed jointly with the First Nation Partners, go a very long way towards reducing

TAB 5

APPENDI X C

Summary of AEA Offsetting Programs

KEEYASK
Hydropower Limited Partnership

Keeyask Adverse Effects Agreements – Offsetting Programs

Offsetting Program	Objective/Description of Program
Tataskweyak Cree Nation *(TCN)*	
3.2 *(TCN)* **Keeyask Centre**	To provide space and facilities, primarily related to accommodating staffing requirements and other functions, for the management and administration of the Offsetting Programs, but also including, without limitation, space for display cases, for fish processing and for other needs incidental to the management, administration and implementation of the Offsetting Programs.
3.3 *(TCN)* **Access**	To provide Members with substitute opportunities to hunt, fish and trap for food and to carry out associated customs, practices and traditions integral to their distinctive cultural identity within the Split Lake Resource Management Area (SLRMA). The Access Program addresses the loss of meaningful opportunities to sustain TCN's distinctive cultural identity on the waters of the Nelson River and on land within the SLRMA adjacent to the Nelson River.
3.4 *(TCN)* **Land Stewardship**	To provide opportunities for TCN to show respect for the land in a manner consistent with traditional TCN values and to assist TCN in caring for the land within the SLRMA.
3.5 *(TCN)* **Healthy Food Fish**	To provide opportunities for Members to continue to fish and to provide a supply of wholesome food fish to Members in order to replace fish which may no longer be available to Members as a result of increased methyl-mercury levels in fish caused by the Keeyask Project in the reach of the Nelson River between the Kelsey Generating Station dam and the Keeyask Generating Station dam.
3.6 *(TCN)* **Traditional Lifestyle Experience**	To provide opportunities for young adult Members to experience a traditional lifestyle during one (1) cycle of seasonal activities on the land.
3.7 *(TCN)* **Traditional Knowledge Learning**	To replace opportunities for members for traditional learning that will be lost due to development of the Keeyask Project. Has two parts, namely: (a) the opportunity for traditional learning created through the Access Program; and (b) opportunities for traditional learning provided for students primarily at, or through, the Keeyask Centre.
3.8 *(TCN)* **Cree Language**	To strengthen the cultural identity of TCN and Members by creating an opportunity for adult Members to learn to speak Cree, or to improve their Cree language skills.
3.9 *(TCN)* **Traditional Foods**	To provide opportunities for Members to gather and share traditional foods. This program is to be implemented and operated in conjunction with the Access Program, and will create opportunities for gathering and sharing traditional foods by resource harvesters, in keeping with the customs and traditions of TCN and members.
3.10 *(TCN)* **Museum & Oral Histories**	To provide a substitute opportunity for TCN and Members to maintain the historical connection to the land that will be destroyed when the Keeyask Project is built
War Lake First Nation *(WLFN)*	
3.2 *(WLFN)* **Distribution Centre**	To provide a building for War Lake on Reserve for space and facilities related to fish processing, storage and distribution.

Offsetting Program	Objective/Description of Program
3.3 *(WLFN)* **Community Fish**	To provide a supply of wholesome food fish to Members from War Lake and Atkinson Lake, in order to replace fish which may no longer be available to Members to consume as a result of risks of increased methyl-mercury levels caused by the Keeyask Project in fish in the reach of the Nelson River between the dam of the Kelsey Generating Station and the dam of the Keeyask Generating Station.
3.4 *(WLFN)* **Improved Access**	To provide Members with substitute opportunities to fish and to carry out other customs, practices and traditions integral to their distinctive cultural identity in a vital part of their homeland.
3.5 *(WLFN)* **Traditional Learning / Lifestyle**	To provide opportunities for young adult Members to experience a traditional program at Atkinson Lake.
3.6 *(WLFN)* **Cree Language**	To strengthen the cultural identity to War Lake by creating an opportunity for adult Members to learn to speak Cree, or to improve Cree language skills.
3.7 *(WLFN)* **Museum and Oral Histories**	To provide a substitute opportunity for War Lake and Members to maintain the historical connection to the land that will be destroyed when the Keeyask Project is built.
Fox Lake Cree Nation *(FLCN)*	
3.2 *(FLCN)* **Gathering Centre**	To provide a permanent substantial presence for Fox Lake in the Gillam community from which Fox Lake will be able to administer and implement the Offsetting Programs to manage Keeyask Adverse Effects. It will provide space and facilities, staff areas, offices, storage areas and meeting room, all of which will are needed in order for FL to manage and administer the Offsetting Programs and accommodate citizens participating in such offsetting programs.
3.3 *(FLCN)* **Youth Wilderness Traditions**	To provide opportunities for young adult Citizens to experience a traditional lifestyle over a year cycle of seasonal activities
3.4 *(FLCN)* **Cree Language**	To strengthen the cultural identity of Fox lake and Citizens by creating an opportunity for adult Citizens to learn to speak Cree or to Improve their Cree language skills.
3.5 *(FLCN)* **Gravesite Restoration**	To restore, re-consecrate and protect community gravesites in and around the Gillam area.
3.6 *(FLCN)* **Alternative Justice**	To make a contribution towards the development of a program model that will provide an alternative method of resolving situations involving the justice system and Citizens.
3.7 *(FLCN)* **Crisis Centre & Wellness Counselling**	To make a contribution towards the development and implementation of a wellness counseling program and the establishment of a crises shelter for Citizens.
3.8 *(FLCN)* **Lateral Violence & "Where do we go from here"**	To host a series of discussions and workshops to assist Citizens to prepare to participate in the proposed Keeyask Project. The Lateral Violence component of the program is meant to address individual behaviours and attitudes in order to assist individual Citizens to identify and participate in the opportunities that are being made available in connection with the Keeyask Project. The "Where Do We Go From Here" component addresses similar manners but with respect to groups, such as families, in order that those groups may collectively maximize their participation associated with the Keeyask Project.

Offsetting Program	Objective/Description of Program
3.9 *(FLCN)* **Alternative Resource Use**	To provide opportunities for Citizen resource users, whose resource use area may experience Keeyask Adverse Effects, to access alternate resource areas, within the Fox Lake Resource Management Area, to pursue their traditional activities.
York Factory First Nation *(YFFN)*	
3.2 *(YFFN)* **Resource Access and Use:** Objectives and General Description	(a) to offset some of the potential effects on resource harvesting and access caused by Keeyask Adverse Effects and to enhance York Factory's connection with the York Factory Resource Management Area (YFRMA), including at the Hudson Bay coast; (b) to enhance the traditions of harvesting and sharing country foods among Members, in order to strengthen community cohesion and help the community better cope with changes brought on by Keeyask Adverse Effects; and (c) to address the potential for mercury methylation in fish by replacing the domestic supply of fish currently taken from on-system lakes and rivers that have the potential to be affected by Keeyask Adverse Effects.
3.3 *(YFFN)* **Environmental Stewardship:** Objectives and General Description	To provide York Factory with the capacity to monitor and assess potential environmental changes resulting from Keeyask Adverse Effects, including potential environmental changes resulting from implementation of Offsetting Programs.
3.4 *(YFFN)* **Cultural Sustainability:** Objectives and General Description	To strengthen the cultural identity of Members in order to enhance York Factory's ability to deal with the potential changes brought about as a result of Keeyask Adverse Effects, including both environmental and social and cultural changes.

TAB 6

3 Analysis of the Keeyask Model

In this section, the potential economic benefits for the KCNs from the Keeyask project are first estimated. The community development achievements of the Keeyask model are then discussed. Insight on the topic of dams and community development from the academic literature, the policy literature, and results from the interrogatory process associated with the Clean Environment Commission are used to evaluate the Keeyask model relative to the five principles of community development identified in Section 2. This academic and policy literatures largely focuses on hydroelectric development in Manitoba, but also considers hydroelectric development in other parts of Canada and the world. Results from the interrogatory process relate specifically to the Keeyask project.

3.1 Economic Benefits for the KCNs from the Keeyask Project

The Keeyask project is expected to bring a wide range of economic benefits for the KCNs. In this section we present scenarios for the construction and operational periods of the Keeyask project, to illustrate the potential magnitude of benefits arising from the Keeyask project for KCN Members (Tables 1-5). We begin by first discussing increased employment and business opportunities during the construction period.[7]

3.1.1 Labour income from Keeyask construction employment

This section summarizes labour income to Keeyask communities flowing from the project and the points are summarized in Box 2. The job target for KCN Members for the construction phase of the Keeyask project is 630 person years of employment. Given an estimated total person years of employment of 4,225, KCN members would hold 15% of total projected construction jobs on the Keeyask project if the target is met.

There is risk that the KHLP will not meet that target. The BNA notes that "regardless of the hiring preferences in place, all employment will be conditional on each applicant having the required qualifications for the job." (http://keeyask.com/wp/the-project/employment) As noted above, 1,876 individuals were trained through the HNTEI, however this statistic includes those that have only taken one course (WKTC (2010)). After taking one course through the HNTEI, a person could still be deemed 'unqualified'.

KHLP (2012) provides an estimate of the total economic benefit to job creation resulting from the construction phase of the Keeyask project (page 3-105 to 3-106). We include these estimates as our figures for Keeyask construction employment income in Table 1 below. The low estimate corresponds to the total wage bill if the lowest wage within a job category (construction support, non-designated and designated trades) applied, while the high estimate corresponds to the total wage bill if the highest wage within a job category applied. The

[7] While recognizing the economic flows resulting from the Keeyask project will be reflective of the ebbs and flows of the construction schedule, for the purposes of the illustrative scenarios below we take averages of economic benefits flowing from each phase of the project.

Partnership notes that most of the labour income stemming from the construction phase of the project will come from employment on the DNCs (KHLP (2012), page 3-105).

Box 2. Summary of Construction Labour Income to Keeyask Communities from the Project

- The job target is for 630 person years of employment for KCN members.
- There is a risk that this target is not met if there are not sufficient numbers of qualified applicants or if substantial amount of the work is for short durations. On this latter point, by means of comparison, on average, aboriginal workers involved in the Wuskwatim project worked one-half a year.
- If sufficient jobs are not created then a $3 million fund will be provided to assist people to find work but it is unclear how this fund can assist in job creation or identification.
- Construction support and service jobs are predicted to account for over one-half construction phase employment and these jobs would be, relative to other trades, lower waged.

The KHLP notes that "construction of the project will require a large, skilled workforce comprised mainly of designated trades (e.g. apprentice and journeymen carpenters and electricians) and non-designated trades (e.g. truck drivers and heavy equipment operators) along with construction support occupations (e.g. caterers and security personnel)" (KHLP (2012), page 3-3). Construction support and service jobs are predicted to account for over half of KCN DNC employment from the construction phase (KHLP (2012), Figure 3-23). These jobs would be lower-paying relative to trades positions, perhaps suggesting that more weight should be placed on the lower estimate of labour income noted in Table 1. The 6 most common jobs created during Wuskwatim construction were Carpenter, Labourer, Caterer, Equipment Operator, Ironworker and Electrician (in that order) (Wuskwatim Power Limited Partnership (2013), page 37). Supervisory positions are explicitly excluded from the BNA preferences (KHLP (2012), page 3-8).

Table 1: An Illustration of the Economic Benefits for the KCNs from the Construction period of the Keeyask Project

	Estimated Range of Benefit	
Item	Low estimate	High estimate
Total and annual labour income from Keeyask construction employment	$21.6 million (KHLP (2012), page 3-105, Table 3-25) or $2.7 million/year	$62.2 million (KHLP (2012), page 3-105, Table 3-25) or $7.8 million/year
Total and annual business profits during construction period of the project	$10.16 million (KHLP (2012), pages 3-105 to 3-106) or $1.27 million/year	$15.23 million (KHLP (2012), pages 3-105 to 3-106) or $1.90 million/year
Potential annual income for construction period of the project	**$3.97 million**	**$9.7 million**

The benefits of KCN construction employment would also be diluted if a large portion of that employment were short-term. In Article 12.6.3 of the JKDA it is noted that very short spells

of employment on the Keeyask project will be counted towards the 630 person-years target. For example, if a person works on the project for 20 days, that employment duration will be counted toward the target as one month. Hence a consistent overestimation is built into the measurement of progress towards the employment target. Further, short spells such as this would barely indicate a gain of any sort for the employee – in terms of income or work experience. Temporary, short-term employment of this sort should be excluded from measurement of progress on job creation.

Comparison with Wuskwatim is helpful, as it too used the BNA hiring preferences and a similar job referral process during its construction phase. Despite that Wuskwatim is a smaller project than Keeyask, 944 person years of employment were generated for Northern Aboriginal people during the construction phase of Wuskwatim (Wuskwatim Power Limited Partnership (2013), page 36). This is encouraging, in that it indicates a large, qualified labour supply for construction of the Keeyask project. However given that in total 2,247Aboriginal individuals were hired for Wuskwatim construction, and a total of 1,137 person-years of employment was created for Aboriginal individuals on Wuskwatim, each Aboriginal person worked on average only half a year. Further, the turnover rate for Aboriginal workers is high, at 38% (Wuskwatim Power Limited Partnership (2013), page 38).

If the construction jobs target is not met, the JKDA notes that up to $3 million will be provided for the Working Group on Operational Jobs (WGOJ) (KHLP (2009a), page 109). The fewer construction jobs created by the Keeyask construction phase, the more money the WGOJ is given. In other words, if in the worst case scenario less than 400 person-years of employment are generated during the construction period, the WGOJ will receive the maximum amount of $3 million. This could lead to a concentration of benefits among fewer KCN Members, and it is not clear how employment would subsequently be increased by the work of the WGOJ. In the JKDA it is simply noted that the WGOJ will "review targets in respect of Operational Jobs set forth in subsection 12.7.1." (KHLP (2009a), page 110).

3.1.2 Business Opportunities

Construction of the Keeyask project will bring opportunities for businesses owned by KCN individuals through Direct Negotiated Contracts (DNCs) (Box 3). A value of $203.1 million in DNCs has been reserved for KCN contractors. While this sounds like a significant amount, it accounts for only 9.2% of the overall value of construction (estimated at $2.2 billion (KHLP (2012), page 3-123)). Assuming that profits account for 10% of business income[8], business profits would be $15.23 million if KCN Members owned 75% of businesses undertaking DNCs. We take this as our high estimate of business profits from DNCs in Table 1 above. However if KCN Members owned only 50% of DNCs, then half of the $20.31 million profit from DNCs would accrue to KCN members ($10.16 million). We take this as our low estimate of business profits from DNCs in Table 1.

[8] This rate of profit is used by InterGroup Consultants Inc. on page 3-106 of KHLP (2012).

Box 3. Summary of Business Income to the Keeyask Communities from the Project

- Just over $200 million, or 9.2% of the construction expenditure, is reserved for KCN contractors.
- For illustration purposes, assuming profits amount to 10% of business income and KCNs own 75% of businesses undertaking DCNs, revenue would amount to just over $15 million.
- If KCNs owned 50% of businesses undertaking DCNs, then just over $10 million would accrue to KCN members.

Taking the average of the low and high estimates of income flowing from the construction phase of the Keeyask project in Table 1, the KCNs as a whole could earn approximately $6.8 million per year during the construction period. Next we consider two types of income the KCNs will receive during the operational period of the Keeyask project – investment income and labour income from Operational jobs with the Keeyask project.

3.1.3 Investment Income

As noted in Section 3c) above, the KCNs have two options for investment in the Keeyask project. The first option is for KCNs to hold their investment in the form of Common Units. As the KCNs would receive investment income proportionate to the Partnership's financial performance with this option, investment income stemming from this option would be highly uncertain. In times of low financial performance, the KCNs could receive no distributions from the project but will still be repaying loans from Manitoba Hydro, which means there is the potential for significant losses with this option. A hypothetical return for this option is very difficult to calculate given that it would depend on many factors whose expected value we are not aware of. As a result we do not include its returns in Table 2 below[9].

The second option for investment in the Keeyask project is the Preferred Unit option. A KCN Investment Entity that decides to hold its investment in the form of Preferred Units will have its Construction Credit Facility loans forgiven by Manitoba Hydro (Article 5.3.7 (KHLP (2009a), page 64). The return on KCN investment for this option will be the higher of the Preferred Minimum Distribution and the Preferred Participating Distribution.

The Preferred Minimum Distribution is an annual payment equal to a KCN's own cash invested multiplied by the Thirty Year Rate minus 1.5%. Hence as long as the Thirty Year Rate is greater than 1.5%, the KCNs will see a stable stream of investment income with this option[10]. To illustrate the magnitude of investment income for the Preferred Unit option, we assume the Thirty Year Rate is equal to 5.73%, the average of the Thirty Year rate using average long-term

[9] The assumption that the KCNs opt for Preferred Shares is also made in Information Request response CAC/MH 1-022 a) (Manitoba Hydro (2013b)).

[10] The Thirty Year Rate minus 1.5% would also have to remain above the rate of inflation, which is expected to be 2% given the Bank of Canada's 2% inflation target. Hence to maintain a positive real rate of return on the KCN investment, the Thirty Year Rate would have to remain higher than roughly 3.5%.

Government of Canada bond rates as a proxy for the 30 year Government of Canada bond rate, and average long-term Provincial bond rates as a proxy for the Manitoba 30 year bond rate, both for the period 1983-2012[11]. Then assuming that aggregate KCN own cash invested is $29,450,000 (in the case of 1.9% equity ownership), the Preferred Minimum Distribution would be $1.25 million per year. If KCN cash invested were instead $38,750,000 (in the case of 2.5% equity ownership), the Preferred Minimum Distribution would be $1.64 million per year[12].

If however revenue of the Keeyask project were high, the Preferred Participating Distribution would be the higher distribution for the Preferred Unit Option. This distribution provides an annual payment equal to the following proportions of Adjusted Gross Revenue (AGR) for each 1% share of KCN equity:
- 0.8% of AGR for AGR < $250 million
- 1.2% of AGR for $250 million < AGR < $1 billion
- 1.6% of AGR for AGR > $1 billion

In Tables 2 and 3 below, we illustrate investment income for the KCNs if their combined investment in the project were 1.9% (Table 2) and 2.5% (Table 3)[13]. For the low estimate of investment income in each table, we assume the Partnership experiences zero AGR, and the KCNs receive the Preferred Minimum Distribution. For the high estimate in each table, we assume AGR of $200 million and the KCNs receive the Preferred Participating Distribution[14]. This information provided is for illustrative purposes and any distribution will naturally be a function of the magnitude of KCN investment and of the AGR in any particular year.

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[11] The Thirty Year Rate is "for any particular day, the rate of interest per annum equal to the sum of: (a) the Thirty Year Canada Bond Rate, as at 10:00 a.m. (Winnipeg time), for such day; and (b) the difference between the Thirty Year Canada Bond Rate in effect on that date and the rate of interest, expressed as a percentage rate per annum, for Thirty Year Manitoba Bonds had Thirty Year Manitoba Bonds been issued by Manitoba on that day, at 10:00 a.m. (Winnipeg time), including commission costs, with the rate of interest being determined by Hydro obtaining three (3) rate quotations for Thirty Year Manitoba Bonds and using the median of the three (3) rate quotations obtained." (KHLP (2009b)). To calculate expected income in the low estimate case in Table 1, we took the Government of Canada thirty year bond rate as the 1983-2012 average long term Government of Canada bond yield (Bank of Canada (2013)), which was 7.09%. We then used the average long-term yield for Provincial bonds from 1983-2012 (which was 8.46%) as a proxy for the Manitoba 30 year bond rate. This gave a difference between the yields of Federal and Provincial bonds as –1.36%. Adding the average long term Government of Canada bond yield to this difference gave an estimate of the Thirty Year Rate of 5.73%.

[12] These illustrations of the potential returns arising from the Preferred Unit equity option assume that the KCNs indeed raise the $29.45 million (in the case of 1.9% equity ownership) and $38.75 million (in the case of 2.5% equity ownership) to achieve these returns. We are not aware of how likely these scenarios are.

[13] This is the range of KCN equity investment assumed by Manitoba Hydro in the response to Information Request MIPUG/MH 1-017a) (Manitoba Hydro (2013b), page 59).

[14] We note that in the response to PUB-1-078 c), Manitoba Hydro estimated preferred distributions declared based upon its 'most likely' economic assumptions, capital costs and export/energy prices. Distributions from 2022 through 2039 ranged from $5 million to $8 million annually. While the question asked Manitoba Hydro to assume a full equity interest subscribed by the partners, Manitoba Hydro's response does not identify the assumptions in terms of subscription.

Table 2: An Illustration of the Economic Benefits for the KCNs from the Operational period of the Keeyask Project – 1.9% Preferred Equity Holding

	Estimated Range of Benefit	
Item	Low estimate	High estimate
Estimate of annual investment income (during operational period of the project)	Preferred Units – Assuming AGR of $0: $1.25 million/year	Preferred Units – Assuming AGR of $200 million: $3.04 million/year
Labour income per year from operational jobs	$19.7 million (KHLP (2012), page 3-129, Table 3-33, column 3)	$19.7 million (KHLP (2012), page 3-129, Table 3-33, column 3)
Estimate of annual income during operational period of the project	**$20.95 million**	**$22.74 million**

Table 3: An Illustration of the Economic Benefits for the KCNs from the Operational period of the Keeyask Project – 2.5% Preferred Equity Holding

	Estimated Range of Benefit	
Item	Low estimate	High estimate
Estimate of annual investment income (during operational period of the project)	Preferred Units: Assuming AGR of $0: $1.64 million/year	Preferred Units: Assuming AGR of $200 million: $4 million/year
Labour income per year from operational jobs	$19.7 million/year (KHLP (2012), page 3-129, Table 3-33, column 3)	$19.7 million/year (KHLP (2012), page 3-129, Table 3-33, column 3)
Estimate of annual income during operational period of the project	**$21.34 million**	**$23.7 million**

Box 4. Summary of Investment Income Possibilities to KCNs from the Project

- Investment income to communities holding Common Units is uncertain as these returns depend on many variables. Further the Common Units option would entail significant losses for the KCNs if the Partnership were to earn no profits since they would still have to service their debt.
- Preferred Units are less risky but investment income from them is also variable.

3.1.4 Income from Operational Jobs

Regarding long-term job prospects for KCN Members, in the JKDA Benefits Summary (Manitoba Hydro (2013a)), it is noted that "Manitoba Hydro and the KCNs have agreed to a 20 year target for the employment of 182 Members of the KCNs in Manitoba Hydro's ongoing operations. The funding quantam agreed to in the JKDA for this initiative is $20 million and the

20-year period is 2009-2029" (page 3)[15]. According to Table 3-33 (KHLP (2012, page 3-129), these operational jobs will generate gross annual income of $19.7 million/year for the KCNs, if we assume that the 20 year target of 182 Members employed is reached.

3.1.5 Multiplier effects

As more KCN Members who have been hired to work on the Keeyask project have incomes to spend, demand for goods and services in other (non-Hydro) sectors will increase in the KCNs. That is, if workers spend their incomes in the KCN communities, they will create increased demand for all goods and services in the KCNs which will lead to further employment in the KCNs, further spending, and so on. We refer to this as the multiplier effect for the Keeyask project. In Table 4 below, we calculate the multiplier effect for income stemming from the construction and operational phases of the Keeyask project.

The within-province total multiplier for Manitoba for 2009 was 1.4 (Statistics Canada (2009)). We decrease this multiplier to 1.2 to account for the fact that a large portion of income stemming from the Keeyask project will be spent in Gillam, Thompson and even Winnipeg. Using this multiplier, if aggregate wages and business income stemming from the Keeyask project were $55 million, an additional $11 million of economic activity would be generated through the multiplier effect. The extent to which this happens will depend on how broadly the benefits are spread. If many KCN Members obtain employment, this multiplier effect would be greater. In Table 4 we also account for a multiplier effect for operational income.

Table 4: An Illustration of the Indirect Economic Benefits (Multiplier effects) for the KCNs from the Keeyask Project for the Preferred Unit Equity Option

	Estimated Range of Benefit	
Annual multiplier effect for:	Low estimate	High estimate
Construction period of the project	$793,875/year	$1.94 million/year
Operational period of the project – 1.9% equity holding (Preferred Shares)	$4.19 million/year	$4.55 million/year
Operational period of the project – 2.5% equity holding (Preferred Shares)	$4.3 million/year	$4.7 million/year

Investment income may be used to build housing, local roads or water infrastructure in the KCNs. It is appropriate then to calculate a multiplier effect for infrastructure spending as well. Infrastructure multipliers are used to calculate the increase in output that results from a given increase in infrastructure spending in a given geographic region. Estache (2010) notes that infrastructure multipliers may range from 1.2 – 2.0. Assuming that the infrastructure multiplier equals the lower bound of this range (1.2), the multiplier effect arising from investment income

[15] It is not clear why the quotation above from the JKDA Benefits summary refers to a funding quantum of only $20 million over 20 years. This would fund only 182 person years of employment at the wage rate of $108,157 quoted at the bottom of Table 3-33 (KHLP (2012, page 3-129).

from the Preferred Unit option would range from roughly $4.19 million to $4.7 million per year for KCN communities.

Funds provided to KCN leadership to spend on the programs listed in the AEAs above could also be re-invested in the community and therefore contribute to economic development. Funds for AEA programs will allow Members to revitalize their Cree language ability, to carry out traditional activities in other areas, to preserve cultural artifacts and oral history or to support wellness and transition programs. We do not provide an estimate of these effects in Table 4 below, but note that all of these programs may have spillover effects on local economies, as individuals' well-being and community infrastructure improve.

Box 5. Summary of Multiplier Benefits to KCNs from the Project

- The Keeyask project will introduce new labour, business, and investment income to the KCNs. As people earn additional money they spend a share of it on locally produced goods and services which is referred to as a multiplier effect.
- For illustrative purposes we estimate a multiplier effect on the KCNs of approximately $1.4 million per year during the construction period of the project, and a multiplier effect of approximately $4 million per year during the operational period.

3.1.6 An illustration of total economic benefits

In Table 5 below we tally the illustrative direct and indirect benefits (annually) for the Keeyask project from all tables above. It is evident that there is a great deal of variance in the expected economic benefits resulting from the Keeyask project. However even if the high estimate of Keeyask benefits were realized, total economic benefits per KCN member would depend on how such benefits were distributed between all KCN Members. As we note in Section 4c)vii. below, a uniform distribution of the economic benefits from Keeyask is not assured by the JKDA in its present form. We acknowledge that if the Common Unit option were chosen, results would be significantly different.

Table 5: Illustrative Total Annual Economic Benefits (Direct and Indirect Benefits) for KCNs from the Keeyask Project, Assuming Preferred Unit Equity Option

	Estimated Range of Benefit	
Period	Low estimate	High estimate
During construction phase	$4.76 million/year	$11.64 million/year
After construction phase – 1.9% equity ownership	$25.14 million/year	$27.29 million/year
After construction phase – 2.5% equity ownership	$25.64 million/year	$28.4 million/year

3.2 Achievements of the Keeyask Model

The Keeyask project imbeds certain community development features within it and for this reason is an improvement, from a community economic development (CED) perspective, over

TAB 7

NEEDS FOR AND ALTERNATIVES TO (NFAT)

Manitoba Hydro Undertaking #62

Manitoba Hydro to update the table provided in response to PUB/MH II-499b). Provide a breakdown as to the value of each of the contracts which add up to the $390M.

Response:

The table below shows all of the Identified Work Packages that will be available for direct negotiation to the Keeyask Cree Nations (KCN). Under Article 13 of the JKDA, the identified work packages and the minimum aggregate dollar value is comprised of:

(i) two hundred and three million, one hundred thousand ($203,100,000) dollars (scope of work and allocation detailed in JKDA Schedule 13-1) – this was previously outlined in PUB/MH II-499b; and

(ii) the value of the Provincial Road 280 upgrades from the Provincial Road 391 intersection to the Keeyask Project intersection at kilometre 174, provided that such work has not otherwise been completed and that it continues to be a contract under the direction and control of Hydro;

The amount (based on 2007 estimates) is to be escalated from July 2007 until the commencement of negotiation of the last Identified Work Package at Hydro's "Hydro-Electric Project Composite Escalation Rate" set out in its corporate policy G-911 – Project Escalation, Interest, Exchange and Hurdle Rates, or its equivalent, in effect from time to time.

To date, $393.6 million in Purchase Orders have been directly negotiated with the KCN. The balance of the work as outlined in the table below will be negotiated at a future date.

Infrastructure or GS	DNC	KCN Allocation	Contract Negotiated	Negotiated PO Value
Both	Catering	FLCN[1] and YFFN[2]	Yes	
Both	Camp Maintenance Services	CNP[3]	Yes	
Both	Security Services	FLCN and YFFN	Yes	
Both	Employee Retention and Support	FLCN and YFFN	Yes	
Both	Emergency Medical Services	CNP	Yes	
Infrastructure	Start-Up Camp Site Development and Install	CNP	Yes	
Infrastructure	Worksite Area Development	CNP	Yes	
Infrastructure	North Access Road Construction	CNP	Yes	
Infrastructure	Installation of Bridge Over Looking Back Creek	CNP	Yes	
G.S.	Main Camp - Decommissioning	CNP	No	TBD
G.S.	South Access Road Construction	CNP	No	TBD
G.S.	Forebay Clearing	CNP	No	TBD
G.S.	Painting and Architectural Finish	CNP	No	TBD
G.S.	[4] Rock and Unclassified Excavation	CNP	No	TBD
-	PR280 Crushing and Stockpiling	CNP	Yes	
-	PR 280 Upgrades	CNP	No	TBD
Total Negotiated Purchase Orders (PO) to Date				**$393,643,318**

TBD = contract not yet negotiated (value to be determined)

[1] FLCN = Fox Lake Cree Nation

[2] YFFN = York Factory First Nation

[3] CNP = Cree Nation Partners

[4] Rock and unclassified excavation for channel improvements upstream of the Powerhouse

TAB 8

Project. This is the cost budgeted in the CEF/IFF; this cost has a higher probability of being higher— rather than lower—than the actual cost.

2.2 The Conawapa Project

The Conawapa Project consists of two components, the 1,485 MW Conawapa Generation Project and the Conawapa Transmission Outlet Project.

The generating station will be located on the lower Nelson River 30 km downstream of the Limestone G.S. (refer to Map 2.1), 270 km northeast of Thompson, 90 km northeast of Gillam, 31 km northeast of Fox Lake (Bird), and 775 km north of Winnipeg. Most of the project will be located in the Fox Lake Resource Management Area; the upper portion of the reservoir will stretch into the Split Lake Resource Management Area, and the lower portion of the hydraulic zone of influence reaches into the York Factory Resource Management Area.

The generation project will take over 10 years to construct, scheduled to begin in late 2017 and concluding with decommissioning of temporary infrastructure and site rehabilitation in 2028. The first of 10 generating units will begin producing power in May 2026; the remaining nine units will be in production by October 2027. The final two years of construction will overlap with the first two years of operation. The budgeted in-service cost for the Conawapa Project, including interest and escalation, is $10.2 billion.

Conawapa will add an annual average of 7,000 GWh of energy, which will be integrated into the Manitoba Hydro system—representing enough energy to power approximately 640,000 Manitoba homes. Table 2.3summarizes several key project design parameters.

Table 2.3 CONAWAPA GENERATING STATION DESIGN PARAMETER

Parameter	Value
Full Supply Level (FSL) Winter/Open Water	57.2 m asl/56.7 m asl
Initial Reservoir Area	37.4 km^2
Initial Flooded Area	5.1 km^2
Rated Total Output Power - open water/end of winter	1,485 / 1,410 MW
Net System Capacity Addition – open water / end of winter	1,395 / 1,300 MW
Generator Rated Output	146 MW / 176 MVA
Average Annual Energy- gross	8,170 GWh
Average Annual Energy – net of losses at Limestone G.S.	7,000 GWh
Annual Dependable Energy	4,650 GWh

2.2.1 Conawapa Ownership Structure

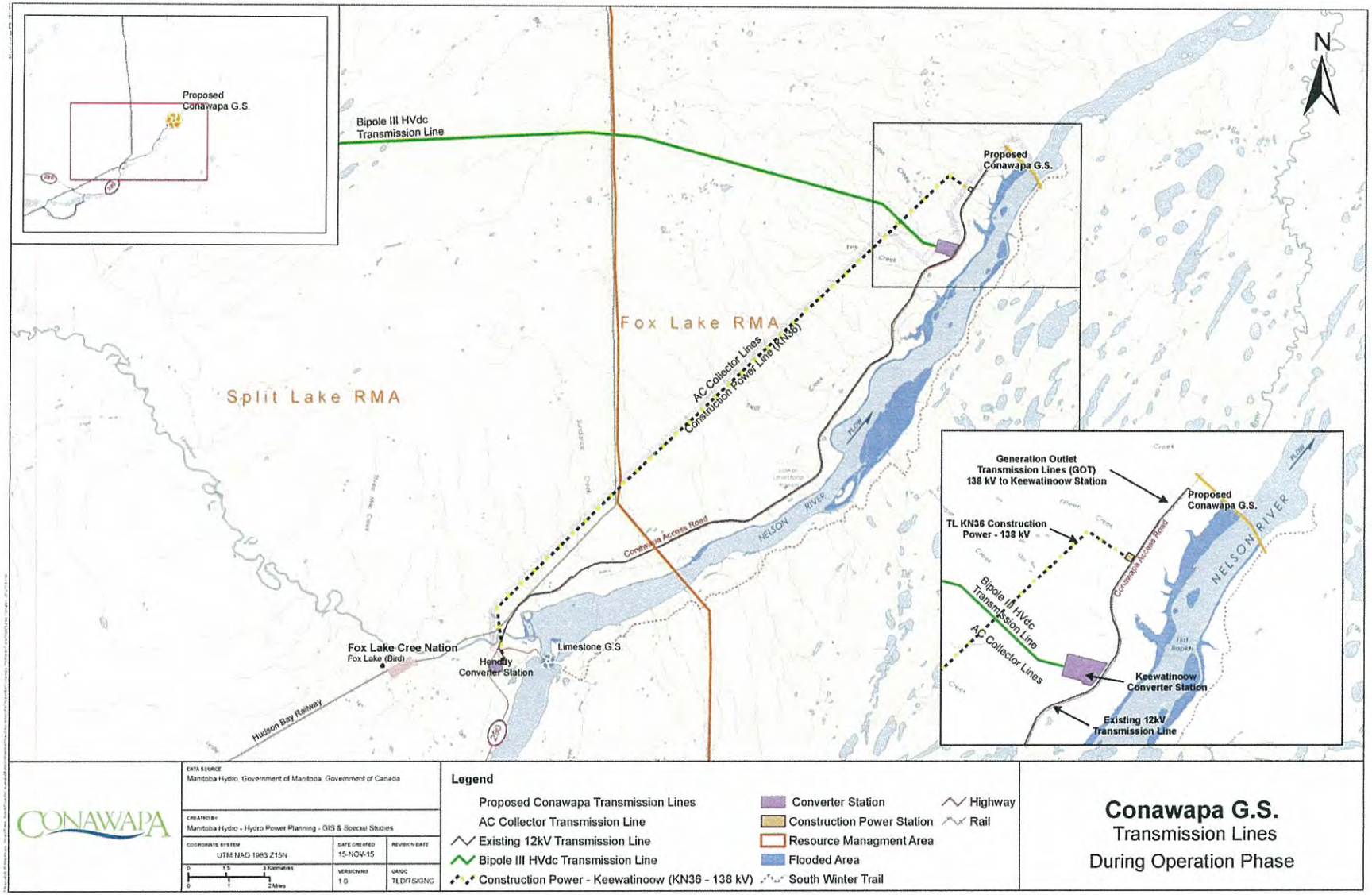
2.2.1.1 Ownership of the Generation Project

Although the generation ownership structure has not been finalized, Manitoba Hydro is committed to the following:

- providing early involvement and extensive consultations with First Nations in planning the project
- providing a forum for addressing community issues and concerns, incorporating Aboriginal traditional knowledge, and creating understanding of project impacts and benefits
- providing long-term, sustainable benefits for First Nations in the vicinity of the project. As with Wuskwatim and the proposed Keeyask Project, the focus of these benefits will be on income, training, employment and business opportunities
- providing opportunities for First Nations in the vicinity of the project to participate in the environmental assessment, monitoring and governance of the project.

1

Map 2.4. CONAWAPA OUTLET TRANSMISSION



2

TAB 9

SUBJECT: First Nations

REFERENCE: CAC/MH I-231a Page 23

PREAMBLE: "Although the Conawapa ownership structure is not yet finalized, Manitoba Hydro is committed to achieving long-term, sustainable benefits for First Nations in the vicinity of the project with a focus on income, training, employment and business opportunities. The broader regional communities will have access to project benefits, which may include some form of income sharing; these plans are still being developed."

QUESTION:

Please indicate the state of negotiations with First Nations Communities in the Conawapa vicinity, including monies currently spent or committed to be spent in the region benefiting First Nations Communities.

RESPONSE:

Manitoba Hydro entered into Process Agreements with the in-vicinity First Nations between 2006 and 2007, and has been engaged in discussions with the communities since that time, mainly on project description and environmental impact assessment. In early 2013, Manitoba Hydro began discussing project opportunities with Fox Lake First Nation, as per its Process Agreement obligation to consult with Fox Lake first on significant issues of process and substance. Over the past 9 months, Manitoba Hydro and Fox Lake have exchanged information and perspectives on a range of issues. Agreement was reached in June 2013 on Key Terms related to Fox Lake's share of income and business opportunities, and on Fox Lake's role in First Nations decision making, and the regulatory process. Discussions are progressing more slowly than anticipated, as key resources are constrained by Manitoba Hydro's engagement in multiple regulatory processes. Manitoba Hydro will be discussing Conawapa opportunities with other in-vicinity communities.

The monies spent on this process to date are summarized in the response to PUB/MH II-445b. Monies currently committed for project opportunities and benefits are the subject of negotiation with the in-vicinity First Nations. Due to the sensitive nature of these discussions, the specifics cannot be shared at this time.

TAB 10

WUSKWATIM
Power Limited Partnership

HISTORY AND ARCHIVE

- Access Road
- Camp
- Earth Structures Excavation
- River Management
- Training
- Employment
- Employment Statistics
- Contracts
- Contracts List
- Photos Archive
- Videos Archive

Employment Statistics

Project Employees* at End of December 2012

Category	Employed	Percent of Total Emp
Total Aboriginal Employees (NCN employees)	20 (11)	41% (22%)
Total Non-Aboriginal	29	59%
TOTAL EMPLOYEES	**49**	**100%**

** Current project employees represent those actively working at site, on rotational leave fror currently on hiring recall as per Article 12.4.2 of the BNA*

Total Hires August 2006 - December 2012

Category	Hires	Percent of Total Hires
Total Aboriginal Hires	2247	37%
Total Non-Aboriginal	3796	63%
TOTAL HIRES	**6043**	**100%**

Aboriginal Hires Since Project Began August 2006

Aboriginal Group*	Hires	Percent of Total Hires**
Barren Lands First Nation	12	1%
Bunibonibee Cree Nation	17	1%
Cross Lake First Nation (Pimicikak)	279	5%
Dakota Tipi	6	< 1%
Fisher River	13	1%
Fort Alexander	13	< 1%
Fox Lake Cree Nation	33	1%
Garden Hill First Nation	10	<1%
God's Lake First Nation	31	1%
Grand Rapids First Nation	25	1%
Keeseekoowenin	13	1%
Mathias Colomb Cree Nation	28	1%
Mosakahiken Cree Nation	14	1%
Nisichawayasihk Cree Nation	650	11%
Norway House Cree Nation	45	2%
Opaskwayak Cree Nation	101	5%
O-Pipon-Na-Piwin Cree Nation	23	1%
Peguis	37	2%
Pinaymootang First Nation	33	1%
Pine Creek	11	< 1%
Sapotaweyak Cree Nation	16	1%
Sayisi Dene First Nation	12	1%

Skownan Cree Nation	7	< 1%
Tataskweyak Cree Nation	83	4%
York Factory First Nation	25	1%
Metis	512	23%
Other	196	3%
TOTAL HIRES	**2247**	**37%**

* *Includes groups with over 5 active employees. Those with 5 or less have been grouped into "Other"*

** *% may not be additive due to rounding*

"Aboriginal" means persons who are Indian, Inuit, or Metis peoples of Canada including status, treaty, or registered persons as well as non-status and nonregistered peoples.

"Hires" refers to instances of hiring and can include individuals who have been hired more than once. All project hires are consistent within the provisions of the Burntwood Nelson Agreement (BNA)

For more employment detail please **click here**