



A Guidebook To The
AGREEMENT IN
PRINCIPLE

WINTER 2001

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March, 2001

CAUTION

This Guide is not a complete statement of the proposed Agreement in Principle and related issues.

If there is a conflict between the AIP and this Guide, the AIP prevails, and it is the AIP, to which NCN and Hydro will have regard to in the PDA negotiations if the AIP is approved.

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Agreement in Principle (AIP)

What is an Agreement in Principle (AIP)?

An AIP is a framework for future discussions. It has no binding legal effect. It lists the issues and questions that the parties to the AIP will be discussing. NCN and Hydro have now drafted an AIP to guide their future discussions about the proposed new hydro projects at Wuskwatim and/or Notigi. All NCN members (18 years of age and over, on and off reserve) will be allowed to vote on this AIP in March 2001. Chief and Council want to have a mandate from NCN Members, before going further with discussions about the things in the AIP, including a Project Development Agreement (PDA).

Why do NCN Members have to be 18 in order to vote?

This age is taken directly from NCN's own Election Code, which has been in effect for some time.

If NCN members approve the proposed AIP, will NCN and Hydro have to sign any more agreements?

If Notigi and Wuskwatim go ahead, NCN and Hydro will have to come to agreement on several issues. Under the 1996 Implementation Agreement, at the very least NCN and Hydro would have to come to an agreement about compensation, before construction could start. If the projects go ahead and NCN still wishes to be a partner, there will have to be signed agreements between NCN and Hydro about the details of this partnership. The AIP anticipates that NCN could own at least 25%, and maybe up to 33%, of the proposed projects, though many details will still have to be discussed. Subject to negotiations, Hydro has agreed that NCN's interest could be up to 33% of the proposed projects.

If there are more agreements about future development issues in the future, will NCN members get a chance to vote on them?

NCN Chief and Council have gone on record as saying that all NCN members (18 and over, on and off reserve) will have the final say on any future agreements through a vote.

Can NCN members living at South Indian Lake (SIL) vote on the AIP?

Yes. All Members (18 and up) on and off reserve can vote.

Future Development

What is Future Development?

Future Development is a term defined in the NCN 1996 NFA Implementation Agreement. It would include proposed generating facilities at Notigi and Wuskwatim, both of which would be in the NCN Resource Management Area (RMA).

What does the NFA say about Future Development?

The NFA says very little about future development by Manitoba Hydro. Article 20 of the NFA creates a Community Liaison Committee, consisting of representatives of NFA First Nations, Hydro and Manitoba. One of the purposes of the committee is to provide information to the First Nations about "future plans of Hydro".

What is the 1996 NFA Implementation Agreement?

This is the agreement signed by NCN, Hydro, Canada and Manitoba, to implement the 1977 NFA and resolve most, although not all, outstanding claims. The 1996 Agreement improved on the NFA in several specific areas, including Future Development. Hydro has ongoing responsibility for a number of key matters under the 1996 Implementation Agreement.

What does the 1996 Agreement say about Future Development?

Article 8 of the 1996 Agreement contains very progressive provisions protecting NCN's interests. If Hydro proposes any Future Development projects, it has to consult with NCN and share information with NCN about the proposals. Among other things, Hydro and NCN will discuss compensation for NCN for any adverse effect that the proposed projects may have on NCN. If NCN and Hydro cannot agree on compensation, the issue can be referred to the arbitration process set up in the 1996 Agreement. Until a compensation package has been finalized, Hydro cannot proceed with the proposed project. In other words, Hydro cannot build today, and discuss compensation tomorrow. Compensation must be finalized first. This is a major improvement over the provisions of the NFA, which don't provide the same protection to First Nations in respect of Future Development.

By discussing Future Development with Hydro, does that mean that NCN is approving that development?

No. NCN won't sign any agreements which actually approve of any Hydro

Wuskwatim (Taskinigup Falls)

What is Hydro proposing to do at Wuskwatim?

Hydro is considering the option of building a "low head" dam and generating facility at Wuskwatim, to produce about 205 megawatts of electricity. A low head dam is a smaller dam that holds back less water and causes less flooding. It is estimated that the dam at Wuskwatim, if it is built, will result in less than one-half a square kilometre of localized flooding between Wuskwatim Falls and Taskinigup Falls.

How will Wuskwatim affect the level of Wuskwatim Lake and other bodies of water?

There will be less fluctuation of water levels on the lake than there is now. It is anticipated that typical daily water levels will fluctuate less than 2 inches. In the tailrace area (the water just below the dam), there will be larger fluctuations, but not as large as there are at bigger dams. It is anticipated that the typical daily water level fluctuations in the tailrace will be about 3.6 feet. Opegano Lake will experience typical daily fluctuations of about 4 inches. Birch Tree Lake will have daily fluctuations of about 4 inches at most.

What will Wuskwatim do to winter ice?

Today, winter ice conditions upstream of Early Morning Rapids and downstream of Wuskwatim are variable. They change from month to month and year to year based on such things as the weather. It is anticipated that Wuskwatim will not change the current situation. Areas that now remain open water are anticipated to remain open water, and areas that now have ice cover are anticipated to remain ice-covered.

Other Hydro Projects and Questions

What is Hydro going to do at Gull Rapids?

Hydro is also considering the option of building a new generating facility at Gull Rapids, in the Split Lake Resource Management Area (RMA). Hydro has not yet decided whether it will build Wuskwatim and/or Notigi and/or Gull Rapids, or none of these proposed projects. It may also decide to build some first and some later.

What is a generating station?

This is a structure that produces electricity. It can be run by burning coal or natural gas, or by water (hydro) power. If it's water, the station will be a dam with turbines inside.

What is a dam?

A dam is a structure holding back water, usually in a river. It may be designed to control the flow and release of water. It may also be designed to generate electricity.

What is a coffer dam?

This is a temporary dam built to hold back water from the area where a main structure (such as a big dam) is going to be built. When the main structure is finished, the coffer dam is removed.

What is a forebay?

This is the water just above a dam. The size of the forebay will depend on the flatness of the land around it, the size of the dam and the operation of the dam.

What is a tailrace?

This is the water just below a dam. It is generally turbulent (moving fast and full of white water).

What are sluice gates?

These are the gates on a dam that control water flow.

requirements for ongoing studies.

What other studies will be done?

There will also be studies about the socio-economic issues (dealing with things like employment at Nelson House), and cultural issues (dealing with things like the changing nature of NCN Cree culture). All the results will be shared with NCN. NCN and Hydro are working together to identify the issues that need to be studied.

How can we be sure that Notigi and Wuskwatim won't cause a lot of new flooding?

Hydro has been very cooperative in sharing engineering information with NCN. Furthermore, NCN has retained its own engineering firm (Unies) to provide independent advice to NCN about engineering issues. Also, detailed information about flooding will have to be made public, as part of the environmental licencing process. Any member of the public can challenge this information at the public hearings that will be held.

When will the Wuskwatim and Notigi projects be built?

It is anticipated that final decisions about whether the projects will be built, will be made in approximately the spring of 2001. Construction of the projects might take approximately 4-5 years, after licences are obtained. If Notigi is built, it is anticipated that it may begin to generate power in about 2007 or 2008. If Wuskwatim is built, it is anticipated that it will begin to generate power in about 2008 or 2009. These are not firm dates, and the final dates may be a little bit later.

What are the pros and cons of the different options?

If NCN is going to be a partner in the proposed projects, it will have a financial interest in keeping construction costs down. Using the shortest, most direct routes for roads and lines might be the least expensive option. Also, a construction camp very close to the actual site would likely be the least expensive option. However, some of the more expensive options might also have advantages for NCN. For example, a direct road from Nelson House to Wuskwatim might create additional business and job opportunities for NCN Members. Also, housing some of the construction workers in new housing at Nelson House might have long-term benefits for NCN. It might also have some negative short-term effects, like increasing the crime rate. NCN and Hydro will have to weigh these and other pros and cons before making any final decisions.

after the parties have decided to build, and after the federal and provincial licences have been issued, but before construction starts. There might also be one or more additional installments if new unforeseen Adverse Effects come to light later.

What happens to the buildings in the construction camps, after construction is finished?

The AIP says that, if Hydro decides to sell or dispose of things like buildings and equipment, after construction is over, NCN will have the first right to acquire some of these things. Details would have to be agreed on. The PDA may also say something about cleanup of areas like work camps, after construction is over.

Will places and sites like the Footprints and the Dancing Circles be protected?

Protecting ceremonial, sacred, historical and spiritual sites is one of NCN's priorities. The AIP says that NCN will help Hydro identify all these sites. The parties will discuss these issues and try to find ways to address them.

Who would ask for licences for Wuskwatim and Notigi?

The Agreement in Principle (AIP) between NCN and Hydro discusses this issue. NCN is looking at being a partner in the projects. If it is, NCN and Hydro will create a "Project Entity" (maybe a new business partnership or something similar). Many details would have to be worked out. The Project Entity would be the proponent for Wuskwatim and Notigi. If NCN decides not to participate, or if arrangements have not been finalized, Hydro could be the proponent.

Can Hydro apply for a licence even if NCN doesn't reach any agreement with Hydro?

Hydro has said that NCN support is important for the projects to proceed. Legally, Hydro can apply even without NCN's approval, as long as it complies with the 1996 Agreement. This means it must finalize compensation before starting construction. NCN might still be able to argue that these developments would violate its aboriginal and treaty rights. The onus would be on NCN to convince a court of this argument.

Can NCN do its own environmental studies?

Whether or not Notigi and Wuskwatim go ahead, NCN is always free to conduct any environmental studies it wishes in the NCN Resource Management Area. In fact, Article 7 of the 1996 Implementation Agreement specifically says that NCN will do environmental monitoring in the RMA. The four parties to the 1996 Agreement will meet at least annually and, among other things, share environmental information. If NCN does its own monitoring, it would have to pay for it with its own funds. It might be able to access some federal and provincial government funding for some studies.

Can NCN do its own EIS?

If NCN and Hydro are partners, there will be one EIS filed by the Project Entity (NCN and Hydro in cooperation).

During the course of Future Development discussions, NCN has raised some environmental issues that are not directly related to Future Development. NCN is thinking about its different options for dealing with these other environmental issues. If NCN Members want to approve other studies, and spend NCN funds, studies could be planned in the future. NCN might also explore the possibility of finding other sources of funding, such as federal government funds, if any are available. If NCN decides not to be a partner it will still be an interested party and will participate in the environmental process.

Jobs

What does the AIP say about jobs?

The AIP talks about general employment working for Manitoba Hydro across the province, and also about jobs related to Wuskwatim and Notigi. NCN and Hydro will look at ways to help NCN Members get both types of jobs.

Will NCN members be hired to build Notigi and Wuskwatim?

Yes, though the details are still being discussed. One of the issues will be union collective agreements (see below). If one or both of the proposed projects are built, there will be numerous job and business opportunities for NCN members and businesses. Along with protecting the environment, this is one of the priority issues for NCN in its discussions with Hydro. If the projects go ahead, there will be more detailed information about jobs and business opportunities in the months and years to come.

The Agreement in Principle (AIP) between Hydro and NCN makes it clear that jobs and business opportunities are a major concern. This was a priority area identified by NCN members in the recent opinion survey.

Will Hydro pay to train NCN members for jobs?

This is one of the many details still to be worked out. The AIP makes it clear that jobs and business opportunities are a major concern. Hydro hasn't promised to provide NCN Members with a specific number of jobs. If the AIP is approved, NCN's negotiators will work hard to secure as many jobs as reasonably possible for NCN Members.

Will the new jobs be short-term or long-term?

Again, this is one of the many details still to be worked out. NCN's preference would be to secure as many long-term job opportunities as possible. However, short-term job and business opportunities will certainly be part of the mix.

Will there be jobs after the completion of Wuskwatim and Notigi?

There will be very few jobs directly related to the operations of the generating facilities. However, NCN is now looking at different ways to create more long-term job and business opportunities for its members. This may include some permanent

What is a contractor? A subcontractor?

A contractor is the company that is chosen to do a specific part of the job. For example, there have to be cooks to prepare food for the workers building a hydro dam. Hydro won't do the cooking itself. It might sign a contract with some catering firm to do the cooking. The catering firm would be a contractor.

The catering firm might have cooks on staff, but no employees to wash dishes. It might sign a contract with a smaller company to look after all dishwashing. The dishwashing company would be a subcontractor.

What is a performance bond?

Often, the successful bidder has to put up a performance bond. This is sort of like a security deposit. If the contractor doesn't do the job right, or on time, it may lose part or all of its performance bond. Hydro may decide it doesn't require this bond in some cases, in order to help give NCN businesses more business opportunities.

What is a union?

It is an organization of workers. When a group of workers (a bargaining unit) decides that they want a union to represent them, they go to a labour board. If a majority of workers in the bargaining unit want the union, the board certifies the union as the representative for that bargaining unit. That means that the union represents 100% of the workers in that bargaining unit. It negotiates a collective agreement for all of those workers.

What is a collective agreement?

This is a contract between a union and an employer. It covers all the working conditions (salary, vacation, etc.) for all the union members employed by the employer. These employees no longer sign individual employment contracts with the employer, because they are all covered by one big contract - the collective agreement. Hydro has collective agreements with several unions.

What is the Atoskiwin Training and Employment Centre (ATEC)?

The AIP says that NCN may create ATEC as the agency which will coordinate training for NCN Members in Nelson House and may act as a referral agent for some jobs. Hydro would provide some funding to ATEC. NCN and Hydro would have to negotiate an agreement on this.

Ownership

Will NCN own the new facilities at Notigi and Wuskwatim?

NCN and Hydro are now discussing different options for partnership, if the projects go ahead. There are many different ways in which NCN could be a partner with Hydro or could own shares along with Hydro in the new facilities. NCN's priority is to ensure long-term benefits for NCN members in the years and decades to come. NCN will have to consider the pros and cons of all the different partnership options. New agreements between Hydro and NCN would have to be signed. Subject to negotiations, NCN could acquire up to 33% ownership of the new generating stations.

Would NCN become a part-owner of the existing Notigi control structure?

No. By law, Hydro is not allowed to sell part of the control structure. NCN could only become a part-owner of the new Notigi generating station, if it is built.

If NCN and Hydro go into partnership, will NCN be liable for flooding, accidents or other problems?

Legal liability is one of the many details that would have to be worked out in drafting any partnership agreement. There are many different ways in which two or more parties can own a facility or share profits and liabilities. NCN would have to balance the risks it might take against the profits it might make. Furthermore, liability insurance can be purchased and structured in many different ways. Whatever arrangements are made, NCN will obtain detailed legal advice before agreeing to any sort of arrangements with Hydro. Furthermore, the people of NCN will have the final say through a vote.

What is legal advice?

This is advice about legal issues, given by a lawyer or law firm. Lawyers have a professional duty to give their clients reasonable advice. There is a difference between good advice and an absolute guarantee. For example, a lawyer may tell a client that a court is more likely than not to make a certain ruling. That is not a guarantee that the court is 100% certain to make this ruling. A lawyer obtains the facts and researches the law, and then gives an opinion.

Other Questions

What is a Confidentiality Agreement?

In general, a Confidentiality Agreement is a contract between two or more parties that they will share certain types of information with each other, but that the information won't go any further.

Why does Hydro want NCN to keep information confidential?

A great deal of information about the proposed Wuskwatim and Notigi projects is public information. Hydro will share it with NCN and anyone else who wants to know about it. However, a small amount of information about the projects is confidential, at least today. Hydro is willing to share it with NCN, but only on condition that it go no further for now. It is normal for businesses to keep some commercial and financial information confidential. For example, some business information about the Mystery Lake hotel purchase had to be confidential.

At a later date, Hydro will likely be willing to release to the general public some of the information that is still confidential today. Anyone with a computer and internet access can obtain some information about Wuskwatim on Manitoba Hydro's website (www.hydro.mb.ca).

Will Notigi and Wuskwatim change the Water Regime arrangements that now exist?

Article 2 of the 1996 Implementation Agreement deals with water levels and flows. If levels and flows go outside of the ranges set out in the agreement, additional compensation is paid to NCN, according to a formula in the agreement. Amendments to Article 2 (and the agreement as whole) require the consent of NCN. There has been some general discussion about the possibility that Hydro might want to amend the Water Regime in the future. The AIP anticipates no changes in the Water Regime. Again, no changes could be made without NCN's consent.

Will NCN be getting a swimming pool?

If NCN wishes to use trust funds to build a swimming pool, it will have to make this decision through the Community Approval Process created by the 1996 Agreement. It will be a question of how high a priority a swimming pool is, as compared to other potential projects and programs. Eventually, NCN may be able to use some of the profits from Wuskwatim and Notigi for various community programs and services,

Are the fish in Threepoint Lake safe to eat?

Past hydro development caused a mercury problem in some affected lakes. Dry soil contains mercury in a harmless state. When the soil is flooded, some of the mercury is released into the food chain, including the fish in the lake. Also, when vegetation is permanently covered by water, it is broken down by bacteria, and additional mercury enters the food chain. NCN is currently looking at different studies that might be done in relation to mercury in fish and humans. Some of these studies will be done even if Notigi and Wuskwatim do not go ahead. Notigi and Wuskwatim are not expected to have any effect on mercury in fish in Threepoint Lake. Health Canada is currently looking at the mercury issue at Nelson House. The first results may be available as early as the summer of 2001.

How long before all the mercury is gone from the Rat-Burntwood River system?

The exact answer is not known yet. In general, levels of mercury in fish peak a few years after the flooding, and gradually go down after that. Eventually, fish are safe to eat again.

Will Notigi and Wuskwatim reduce our Hydro bills?

These two projects will have no direct immediate effect on Hydro rates. However, over the long term, if Hydro has more electricity to export outside of Manitoba, it may have more flexibility to keep Hydro rates low for all Manitoba customers. Notigi and Wuskwatim will be a small part of this big picture.

What is going on with Hydro's coal-burning plant in Selkirk?

For years, Hydro has generated a small amount of power by burning coal at its generating station near Selkirk. Recently, some neighbours near the station have complained about the air pollution which this plant generates. Hydro is now considering converting the plant in the future to burn natural gas instead of coal. Hydro's licence to operate the Selkirk plant expires in 2005. Hydro plans to apply for a new licence at that time.

Is Hydro now giving loans to people who want to make their houses use less electricity?

Hydro has recently announced a new program to give loans of up to \$5,000.00 to homeowners, to make their homes more energy-efficient (for example, by adding insulation). These loans would carry an 8.5% interest rate. The loan and the interest could be repaid over five years, on the homeowners' hydro bill. More information about this will be released soon.

Treaty and Aboriginal Rights

Will the AIP take away any of NCN's treaty or aboriginal rights?

No. The AIP says that it is not intended to alter any existing treaty or aboriginal rights.

Will future agreements between NCN and Hydro alter aboriginal or treaty rights?

NCN will always make it a priority to protect these rights. Though the wording of future agreements like a PDA or a PPA will have to be negotiated, NCN will likely propose specific language to protect its rights.

Is the NFA a treaty?

The courts have not yet ruled on this question. The Manitoba government has recently said that it considers the NFA a modern-day treaty. Canada and Hydro, which are also parties to the NFA, haven't said whether they agree with Manitoba's new position. A constitutional law expert has said that, in his opinion it is possible to argue that the NFA is a treaty. (The courts have said that the northern Quebec Cree agreement is a modern-day treaty.)

Why does it matter whether the NFA is a treaty?

The constitution protects existing aboriginal and treaty rights, including those in modern treaties. This restricts the power of federal and provincial governments to limit aboriginal and treaty rights. The courts have created strict tests which governments must pass before they can limit aboriginal and treaty rights. However, the NFA has several shortcomings, including a slow arbitration process. Declaring that the NFA is a treaty would not make these shortcomings go away. The issue would still be what does the NFA mean and what is the scope of the obligations created. Deciding the NFA is a treaty does not decide these issues.

Is the 1996 Implementation Agreement a treaty?

The courts have not yet ruled on this question. There is good reason to believe that, if the NFA is a modern treaty, then so is the 1996 Agreement. If so, the 1996 Agreement would have the same kind of constitutional protection that the NFA would have. NCN is trying to get Manitoba and Canada to state their position on this question.

