

**RESPONSE TO THE MANITOBA CLEAN ENVIRONMENT COMMISSION'S
REQUEST FOR A COMPARISON OF:**

**AGREEMENT CONCERNING A NEW RELATIONSHIP, 2002
BETWEEN THE GOVERNMENT OF QUEBEC AND THE CREES OF QUEBEC**

AND

**WUSKWATIM PROJECT SUMMARY OF UNDERSTANDINGS, 2003
BETWEEN NISICHAWAYASIIHK CREE NATION AND MANITOBA HYDRO**

SUBMITTED TO THE MANITOBA CLEAN ENVIRONMENT COMMISSION

SUBMITTED BY MANITOBA HYDRO AND NISICHAWAYASIIHK CREE NATION

MAY 14, 2004

1. Preface

This document responds to the request from the Clean Environment Commission for a comparison of the *Agreement Concerning a New Relationship, 2002* (the "Peace of the Braves" Agreement) signed by the Government of Quebec and the Crees of Quebec and the *Summary of Understandings, 2003* (the "SOU") signed by Manitoba Hydro and NCN.

A direct comparison between the two agreements is difficult due to the significantly different nature of the two agreements. One is a comprehensive economic and social/cultural agreement between a provincial government and a governing authority for the Crees of Quebec. The other sets out the understandings between a utility and a Cree Nation in relation to a potential limited partnership arrangement respecting a specific hydro-electric development. Recognizing the parties involved and their relationship to one another, a more accurate and appropriate comparison would be made between the Wuskwatim Project Summary of Understandings and the agreements between Hydro-Quebec, the Societe d'energie de la Baie James (SEBJ)¹ and representatives of the Cree of Quebec regarding the development of the Eastmain-1 Project (Nadoshtin Agreement) and the Eastmain-1-A Rupert Project (Boumhounan Agreement). Highlights of these agreements are available through internet sources, and have been accessed for the purpose of preparing this response; however, we have not been able to review the complete agreements and are advised that the documents are not available for public review.²

The Peace of the Braves Agreement was entered into by the Government of Quebec and the Grand Council of the Crees in February 2002. The Agreement is said to establish a new relationship between the two nations, and builds on commitments which were set out in the James Bay Northern Quebec Agreement of 1975 (the "JBNQA"), particularly those commitments relating to economic and social development. The JBNQA was signed on November 11, 1975 by the Government of Quebec, the James Bay Energy Corporation, the James Bay Development Corporation, the Quebec Hydro-Electric Commission (Hydro-Québec), the Grand Council of the Crees (of Quebec), the Northern Quebec Inuit Association, and the Government of Canada. It sets up a new comprehensive land regime in Northern Quebec, provides financial compensation, defines the rights of the Aboriginal communities to practice traditional pursuits and provides for certain hydro-electric development. It also includes provisions related to health, social services and justice and established regimes for future relations among local, regional, provincial and federal governments. Aboriginal title in Northern Quebec was not surrendered until the signing of the JBNQA (1975), which was thereafter recognized as Canada's first modern day treaty.

The Peace of the Braves Agreement speaks to a bi-lateral "Nation-to Nation" Agreement, the principles of which are founded on relationship building and a devolution of powers and responsibilities by the Government of Quebec to the Quebec Cree with respect to community and economic development in the Territory. The

¹ The SEBJ was created by Hydro-Quebec in 1971 to provide a complete range of services in generation and transmission plant engineering, project management and construction.

² The Peace of the Braves agreement acknowledges that "remedial works for the Crees, employment for Crees, contracts for Crees and Cree Enterprises and various other matters concerning the Eastmain-1 Project [and Eastmain-1-A/Rupert Project] are set out in a separate agreement[s] between the Grand Council of the Crees and Hydro-Quebec".

The Nadoshtin and Boumhounan Agreements, as well as seven other agreements in connection with past obligations of Hydro-Quebec (including an agreement addressing past employment commitments associated with the La Grande Complex), were negotiated contemporaneously with the Peace of the Braves Agreement. Among other things, the Nadoshtin and Boumhounan Agreements call for remedial measures and economic and community benefits such as training, employment and contracts. The Boumhounan Agreement also includes provisions for the creation and financing of a joint study group to conduct environmental and social impact studies in connection with the Eastmain 1-A/Rupert Project.

Agreement is not, nor is it intended to be, a project-specific development agreement. Rather, it includes the principles governing the participation of the Crees in resource development in the region. Among other things, the Agreement provides for the definitive settlement or withdrawal of legal proceedings and related matters associated with past and planned potential new hydroelectric developments. The 2002 Peace of the Braves Agreement is effectively a modification to an existing Treaty.

The Wuskwatim SOU was finalized in October 2003 and was intended to outline the status of the understandings reached by NCN and Manitoba Hydro since the signing of an Agreement in Principle in 2001. The SOU is non-binding, and is intended to provide direction to NCN and Manitoba Hydro in drafting a binding Project Development Agreement. In contrast to the Quebec Agreement, the understandings in the SOU arise out of an anticipated investment transaction and an expectation of a financial return associated with the production and sale of electricity. The Agreement does not relieve Canada, Manitoba or Manitoba Hydro of any continuing obligations associated with past Agreements (the Northern Flood Agreement, the 1996 Implementation Agreement or the TLE Agreement). The SOU provides that nothing in the document or any other arrangements or agreements contemplated in the SOU is intended to alter Aboriginal or Treaty rights recognized and affirmed under Section 35 of the *Constitution Act, 1982*. In addition, the Agreement does not replace compensation agreements which are under negotiation with NCN or any other affected community for adverse effects of the development.

In addition to the above, there exist significant differences in the income streams to the Cree signatories resulting from the agreements. Under the Peace of the Braves Agreement, the transfer of funds is associated with devolution of responsibility for the provision of certain community and economic development services for Cree people. For the period between April 1, 2002 to March 31, 2052, Quebec is to provide an annual amount so that the James Bay Cree may assume, for that period, certain obligations of Quebec, Hydro-Quebec and SEBJ with respect to community and economic development as established under the JBNQA.³ The funds are therefore not comparable to the income stream flowing to NCN as a result of the Wuskwatim Project, as they are associated with a transfer of responsibility for the provision of services including, for example, fire protection, training, local entrepreneurial support and other community affairs services.

The funds provided by the Government of Québec to the Quebec Cree under the Agreement are as follows: \$23 million in 2002 - 2003, \$46 million in 2003-2004 and for each year between April 1, 2005 and March 31, 2052, the Government of Quebec will pay the greater of \$70 million or an amount corresponding to the indexed value of \$70 million (indexed to reflect the evolution of the value of economic activity in the territory in the hydro-electric, forestry and mining sectors).

In contrast, the potential income stream to NCN is associated with the opportunity to own up to 33 per cent of a Limited Partnership in the Wuskwatim Project. As a result of the investment, NCN is expected to receive annual

³ The specific obligations assumed by the Crees under the Agreement with respect to economic development relate to the following provisions of the JBNQA: Cree Trappers' Association (operation, capital and programs); Cree Outfitting and Tourism Association (operation); Cree Native Arts and Crafts Association (operation and programs); an Economic Development Agent per community, and; provision of assistance to Cree Entrepreneurs. The specific obligations assumed by the Cree under the Agreement with respect to community development relate to the following provisions of the JBNQA: supply of electricity to isolated northern communities (by Hydro-Quebec) in respect to Waskaganish and Whapmagoostui; encouragement by the SEBJ and Hydro-Quebec of training programs for the Crees; study by the SEBJ and Hydro Quebec of the implementation of a training program for the Crees; training programs or facilities, offices, job recruitment and placement services; community centre in each Cree community; essential sanitation services in Cree communities; fire protection including training, equipment and facilities; community affairs services; assistance for friendship centres outside communities; construction of access roads for Eastmain, Wmindji and Waskaganish.

dividends from the Project. The magnitude of any annual dividend payments will depend on NCN's level of cash investment in the Partnership, the Project's profitability and the final terms agreed upon in the Project Development Agreement.

Table 1 below responds to part "a" of the Clean Environment Commission's request for a comparison of the two agreements, based on the provided criteria. The criteria are addressed in the Table in two separate sections in order to ensure that they are compared in an accurate manner: 1. Comparison of the Nature and Scope of the Agreements and 2. Comparison of the Hydro-electric Projects Referenced in the Agreements.

Part "b" of the Clean Environment's request is not responded to as the income streams generated by the two agreements are not comparable in the suggested format. The funds allocated to the Quebec Cree under the Peace of the Braves are associated with a devolution of responsibility for providing certain community and economic development services to the Quebec Crees, and are not associated with a specific hydroelectric development. The potential income flowing to NCN under the SOU is associated with investment in a Limited Partnership in the Wuskwatim Project.

Table 1
Comparison of the 2002 Agreement and the 2003 Wuskwatim Project Summary of Understandings

	Agreement Concerning a New Relationship, 2002 (Government of Quebec and the Grand Council of the Crees)	Wuskwatim Summary of Understandings, 2003 (Manitoba Hydro and NCN)
1. Comparison of the Nature and Scope of the Agreements		
Equity Opportunity	None	Up to 33 per cent of a Limited Partnership
Terms of Cash Flows	50 years	Life of the Project
Risk Related to Cash Flows	The Crees of Quebec have no investment risk, because they have no investment in a particular project.	NCN has an investment risk, which is associated with changes to capital costs, export prices, water flows and unanticipated equipment outages. ¹ Protection is provided for NCN's initial cash investment.
Number of Cree Nations Involved in Agreements	9 communities (listed below)	1 Cree Nation - Nisichawayasihk Cree Nation
Populations of Communities Involved in Agreements	The populations of these nine communities as of 2001 were as follows: <ul style="list-style-type: none"> • Chisasibi: 3, 250 (resident), 3, 299 (total) • Mistissini: 2, 687 (resident), 2, 876 (total) • Waskaganish: 1, 704 (resident), 2, 044 (total) • Waswanipi: 1, 210 (resident), 1, 556 (total) • Wemindji: 1098 (resident), 1, 176 (total) • Whapmagoostui: 740 (resident), 747 (total) • Ouje-Bougoumou: 569 (resident), 655 (total) • Nemiscau: 566 (resident), 599 (total) • Eastmain: 564 (resident), 578 (total) Combined resident population: 12, 388 Combined total population: 13, 530*	INAC's 2001-2002 First Nations Community Profile for the Manitoba Region shows that as of May 31, 2001 NCN had 3,388 on-reserve and on-crown land members, and 1,159 off-reserve members. Combined total population: 4,547. NCN members resident at South Indian are currently seeking independent First Nation status from NCN as the O Pipon Na Piwin Cree Nation.
Alteration of the Participating Community Government Structures	The Agreement does not include specific terms altering the governance structure of the Crees of Quebec. However, structural changes may evolve as strategies and plans to deliver community and economic development services are developed. ²	The SOU does not require any alteration to NCN's government structure. NCN has a separate governance project underway.

	<p align="center">Agreement Concerning a New Relationship, 2002 (Government of Quebec and the Grand Council of the Crees)</p>	<p align="center">Wuskwatim Summary of Understandings, 2003 (Manitoba Hydro and NCN)</p>
<p>Impacts to JBNQA Zoning and NCN Treaty Land Entitlement</p>	<p>The Agreement alters the way in which forestry resources are exploited in the Cree Territory, through a new Forest Management regime.</p>	<p>The SOU provides that nothing in the document or any other arrangements or agreements contemplated in the SOU is intended to alter Aboriginal or Treaty rights recognized and affirmed under Section 35 of the <i>Constitution Act, 1982</i>.</p>
<p>Responsibilities of Aboriginal Communities for Third Party Liabilities</p>	<p>Communities represented under the Agreement assume no liability for third parties.</p>	<p>Pursuant to the SOU, NCN does not assume third party liability. The liability of NCN is limited to the amount of capital they invest in the Partnership. In order to protect this benefit for the limited partners, a limited partnership is represented in all of its business and affairs through its general partner. All property and assets of the partnership are owned by the general partner on behalf of the partnership, the general partner is liable for the debts and liabilities of the partnership and only the general partner can enter into contracts on the partnership's behalf.</p>
<p>2. Comparison of the Hydro-electric Projects Referenced in the Agreements*</p>		
<p>Number of Dams</p>	<p>Eastmain 1 Project: 1 dam Eastmain 1-A/Rupert Project: 4 dams</p>	<p align="center">1</p>
<p>Capacity</p>	<p>Eastmain 1 Project: capacity of 480 MW Eastmain 1-A/Rupert Project: capacity of 770 MW</p>	<p align="center">200 MW</p>
<p>Area of Flooding Associated³</p>	<p>Eastmain 1 Project: approximate flooding of 603 km² Eastmain 1-A/Rupert Project: approximately 230 km²</p>	<p align="center">Less than 0.5 km²</p>
<p>In-service</p>	<p>Eastmain 1 Project: targeted initial in-service date is 2007 Eastmain 1-A/Rupert Project: targeted initial in-service date end of 2010</p>	<p>The current in-service date of the Project is November, 2010**</p>
<p>Total Construction Costs</p>	<p>Eastmain 1 Project: an approximate cost of \$2 billion Eastmain 1-A/Rupert Project: an approximate cost of \$2 billion</p>	<p>Total cost is \$710.12 million in 2002 Year Dollars**</p>

	<p align="center">Agreement Concerning a New Relationship, 2002 (Government of Quebec and the Grand Council of the Crees)</p>	<p align="center">Wuskwatim Summary of Understandings, 2003 (Manitoba Hydro and NCN)</p>
<p>Number of Jobs Expected to be Created</p>	<p>The approximate projected number of jobs created by both projects is 10,500⁴ direct jobs (person years) over nine years. [Note: This estimate was obtained from the Government of Quebec's web site at http://www.mce.gouv.qc.ca/w/html/w2057004.html]</p>	<p>A total of 1,109 person-years of direct employment is anticipated over six years, exclusive of Manitoba Hydro staff. **</p>
<p>Number of Jobs Guaranteed to be Filled by Aboriginal Persons</p>	<p>The Agreement does not provide a guarantee of jobs.</p>	<p>There are no jobs guaranteed in the SOU. The number of jobs anticipated to be filled by Aboriginal persons is as follows:</p> <ol style="list-style-type: none"> 1. NCN Members (includes members living at Nelson House, the adjacent Northern Affairs community and at South Indian Lake): 81 to 93 peak positions (58 to 66 person years of employment) during the first two years and 80 to 113 (124 to 170 person years of employment) during the subsequent four years of construction, exclusive of Manitoba Hydro staff. 2. Other Aboriginal Residents of the Northern Region (Manitoba): 53 to 65 peak positions (45 to 53 person-years) of employment during the first two years, and 181 to 256 peak positions (271 to 373 person-years) of employment during the subsequent four years of construction, exclusive of Manitoba Hydro staff.**
<p>Existence of a Training Centre</p>	<p>There are no specific terms in the Agreement guaranteeing a training centre.⁵</p>	<p>NCN has secured access to funds to construct a training centre (Atoskiwin Training and Employment Centre), which is expected to be completed in 2006. This facility will include a 24 bed residence.**</p>
<p>Existence of Training Funding Targeted to Aboriginal Signatories to the Agreement</p>	<p>The Agreement does not allocate specific funds for training.⁵ The availability of training funds for the Eastmain-1 and Eastmain-1-A/Rupert Projects was subject to separate negotiations between the Cree and Hydro Quebec and addressed respectively in the Nadoshtin and Bouhmounan Agreements.</p>	<p>NCN has access to training funds. Manitoba Hydro has allocated up to \$5 million to Pre-Project Training for the Wuskwatim Project. Seventy-five per cent (75%) or \$ 3.75 million will be provided to NCN. The provincial and federal governments are also providing training funds for the Wuskwatim Project.</p>

Notes:

1. Assessment of the need for and alternatives to the Wuskwatim Project included a Project Risk Assessment and Hurdle Rate Conclusions. The Wuskwatim Need For and Alternatives To Submission (April, 2003) indicates that, based on the examination of the various risk factors (quantified where possible and otherwise utilizing informed judgment), the project economics are sufficiently robust for the project to be considered to be lower than medium risk. The economic robustness of the Project demonstrates that risks are contained and unlikely to cause the project to be uneconomic. Overall, the IRR does not drop below 9.2% for any single sensitivity examined, with the exception of the Low export price scenario (8% IRR).
2. Although not formal government structures, the Agreement did result in the creation of forums (implementation mechanisms) to: 1. increase participation of the Crees of Quebec in resource planning and development in the region and 2. to promote cooperation and dispute resolution between Quebec and the Crees without recourse to litigation. These forums include a Standing Liaison Committee, Cree-Quebec Forestry Board, Forestry Joint Working Groups, and a Mineral Exploration Board. In a complementary Agreement, the Government of Quebec and the Quebec Cree established a Cree Development Corporation, which replaced the James Bay Native Development Corporation.
3. Up to one meter of reservoir storage will be designated for utilization as the operating range of the Wuskwatim Project. Water levels on Wuskwatim Lake will normally stay within the top 25 cm of the specified operating range (estimated to be 97.5% of the time), with normal average daily fluctuations of 0.06 m (and maximum daily changes of less than 0.13 m). With respect to the Eastmain-1 Project, the annual reservoir drawdown is limited to 9 m. The Eastmain-1-A/Rupert Project will involve diversion of a portion of the flow from the Rupert River watershed into the Eastmain River. No new diversions are required for the Wuskwatim Project.
4. The number of direct jobs created by the Eastmain-1 and Eastmain-1-A/Rupert Projects is higher than for Wuskwatim due to the scale of the construction efforts required.
5. The Peace of the Braves Agreement provides that for the 50 years that the Agreement is in place, the Cree assume the economic and community development obligations set out in the JBNQA with respect to training facilities or programs, offices, job recruitment and placement services.

* The 2002 Agreement does not specifically deal with any of the criteria listed in this section. Therefore, information presented was obtained from other sources including discussions with a representative from Hydro-Quebec. Remedial works for the Cree, employment for the Cree, contracts for the Cree and Cree Enterprises and various other matters concerning the Eastmain-1 and Eastmain 1-A/Rupert Project are dealt with under separate agreements between the Grand Council of the Crees and Hydro-Quebec and were executed contemporaneously with the *Agreement Concerning a New Relationship, 2002*. We are advised that the contents of these separate agreements is not in the public domain.

** The information provided was obtained through sources other than the 2003 SOU.