

# **AGREEMENT**

## **Concerning**

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

#### **between**

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

#### **and**

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

## **PREAMBLE**

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

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

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

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

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

**WHEREAS** the Minister for Intergovernmental Affairs of Newfoundland and Labrador has responsibilities pursuant to the *Intergovernmental Affairs Act*;

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

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

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

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

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

**WHEREAS** the Ministers have requested the Proponent to submit an Environmental Impact Statement to the joint review panel for the purposes of informing the environmental assessment process.

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

## **1.0 Definitions**

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

"Agency" means the Canadian Environmental Assessment Agency;

"Agreement" means this Agreement including Schedule 1;

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

"Day" means a calendar day;

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

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

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

- (i) land, water and air and all layers of the atmosphere,
- (ii) all organic and inorganic matter and living organisms as well as plant, animal and human life,
- (iii) the social, economic, recreational, cultural and aesthetic conditions and factors that influence the life of humans or a community,
- (iv) a building, structure, machine or other device or thing made by humans,
- (v) a solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of humans, or
- (vi) the interacting natural systems, a part or a combination of those things referred to in subparagraphs (i) to (v) and the interrelationships between 2 or more of them;

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

"Environmental Effect" means:

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

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

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

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

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

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

“Follow-up Program” means a program for

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

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

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

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

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

"Parties" means the signatories to this Agreement;

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

"Proponent" means Newfoundland and Labrador Hydro;

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

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

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

## **2.0 Establishment of the Panel**

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

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

## **3.0 Constitution of the Panel**

**3.1** The Minister of the Environment and the Lieutenant-Governor in Council of the Province of Newfoundland and Labrador shall jointly establish the Panel

**3.2.** The Panel shall consist of five members.

**3.3** The Agency and the Department will jointly compile a list of recommended Panel members and will provide that list to the Minister of the Environment and the Lieutenant-Governor in Council of the Province of Newfoundland and Labrador for their consideration in establishing the Panel.

**3.4** The Minister of the Environment and the Lieutenant-Governor in Council of the Province of Newfoundland and Labrador shall appoint Panel members from the joint list, consistent with the requirements of the CEAA and the EPA.

**3.5** The Minister of the Environment and the Lieutenant-Governor in Council of the Province of Newfoundland and Labrador shall each appoint one member of the Panel and shall jointly appoint the remaining members.

**3.6** The Minister of the Environment and the Lieutenant-Governor in Council of the Province of Newfoundland and Labrador shall jointly appoint the chair of the Panel, or appoint respectively one panel co-chair, who shall not be a resident of the geographical area of the Project/Undertaking.

**3.7** Panel members shall be unbiased and free from any conflict of interest relative to the Project/Undertaking and have knowledge or experience relevant to the anticipated effects of the Project/Undertaking on the environment.

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

**3.9** At least two (2) of the Panel members shall be residents of the geographical area of the Project/Undertaking.

**3.10** In the event that a Panel member resigns or is unable to continue to work, the remaining members shall constitute the Panel unless the Minister of the Environment and the Lieutenant-Governor in Council of the Province of Newfoundland and Labrador determine otherwise. In such circumstances, the Minister of the Environment and the Lieutenant-Governor in Council of the Province of Newfoundland and Labrador may choose to replace the Panel member.

#### **4.0 Conduct of the Environmental Assessment by the Panel**

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

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

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

**4.4** A majority of the Panel members constitutes a quorum for the purposes of the EA to be conducted by the Panel. When a hearing, public meeting, or other activity is conducted by the Panel and a member of the Panel for any reason does not attend on any day or part of a day, the other member or members who are sitting at the hearing, public meeting or other activity, if they constitute a quorum, may continue as fully and effectively as though the absent member or members were present.

#### **5.0 Secretariat and Administrative Matters**

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

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

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

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

## **6.0 Record of Environmental Assessment and Panel Report**

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

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

**6.3** The report will address the factors required to be considered under section 16 of the CEAA and section 65 of the EPA, will set out the rationale, conclusions and recommendations of the Panel relating to the EA of the Project/Undertaking, including any mitigation measures and follow-up program, and include a summary of issues raised by Aboriginal groups, the public, governments and other interested parties.

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

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

## **7.0 Other Government Departments or Agencies**

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

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

## **8.0 Participant Funding**

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