



Ministry of
Environment
and Energy

Ministère de
l'Environnement
et de l'Énergie

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(416) 440-3486

December 21, 1994

REGISTERED MAIL

Mr. Rob Evans
Mattagami EA Coordinator
Ontario Hydro - H8B6
700 University Avenue
Toronto, Ontario
M5G 1X6

Dear Mr. Evans:

Enclosed for your information is a copy of the Notice of Approval of the Environmental Assessment for the Hydroelectric Generating Station Extensions - Mattagami River.

The submission period provided for the Notice of Acceptance of the Environmental Assessment for the above undertaking expired on October 4, 1994. By that date, six requirements for a hearing were received by the Minister of Environment and Energy from groups and individuals that had secured the right to require a hearing by having previously made a submission to the Minister during one or both of the Notice of Completion of Review periods for this undertaking.

The Minister has carefully considered the purpose of the Environmental Assessment Act and the submissions of Ontario Hydro and all others who made submissions, and has decided to approve the undertaking without a hearing, subject to terms and conditions. The Minister's reasons for this decision are set out in the attached Notice of Approval. The terms and conditions that apply to the approval are also enclosed.

Thank you for participating in the review of this Environmental Assessment.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Derek Doyle", written over a horizontal line.

Derek Doyle
Director
Environmental Assessment Branch

Enclosures

RN/hf
WP107\1237F





Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit :

WHEREAS section 14 of the Environmental Assessment Act provides that where the Minister of the Environment has accepted an environmental assessment of an undertaking, the Minister may with the approval of the Lieutenant Governor in Council, give approval to proceed with the undertaking subject to such terms and conditions as the Minister considers necessary, or refuse to give approval to proceed with the undertaking; and whereas six notices requiring a hearing have been received by the Minister of Environment and Energy, and

WHEREAS, having considered the purpose of the Act, the environmental assessment, as accepted, of the undertaking, which is the subject of the attached notice, and the submissions and requirements for a hearing received, the undersigned Minister of Environment and Energy, having also considered the reasons for requiring a hearing given by the requesters; considers that a hearing is unnecessary and is of the opinion that the undertaking should be given approval to proceed, subject to the terms and conditions specified in the attached notice;

THEREFORE, pursuant to the provisions of the Environmental Assessment Act, the undertaking which is the subject of the attached notice, be given approval to proceed subject to the said terms and conditions.

Recommended [Signature]
Minister of Environment and Energy

Concurred [Signature]
Chair of Cabinet

Approved and Ordered _____
DEC 15 1994
Date

[Signature]
Lieutenant Governor



Minister
Ministre

Ministry of
Environment
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ENVIRONMENTAL ASSESSMENT ACT

SECTION 14

NOTICE OF APPROVAL TO PROCEED WITH THE UNDERTAKING

RE: An undertaking consisting of the planning, acquiring of water and property rights, constructing, operating and maintaining additional hydroelectric generation and incorporation facilities at the existing four-station complex on the Mattagami River, described as the proposed undertaking in the environmental assessment entitled Hydroelectric Generating Station Extensions - Mattagami River.

Proponent: Ontario Hydro

EA File No.: OH-GE-02

TAKE NOTICE that the period for making submissions and requiring a hearing with respect to approval of the above-noted undertaking, as provided for in the Notice of Acceptance of the Environmental Assessment for the undertaking, expired on October 4, 1994. I received submissions from 22 groups and individuals during that period. Of these groups and individuals, six had secured the right to require a hearing by having previously made a submission to me under subsection 7(2) of Environmental Assessment Act (the Act), during one or both of the Notice of Completion of Review periods for this undertaking. (Each of these six submitters had required a hearing at the Notice of Completion stage.)

The six submitters have now required a hearing with respect to the approval of the undertaking, under section 13 of the Act. They include: McCreebec Council of the Cree Nation; Moose Cree First Nation; New Post First Nation; Energy Probe Research Foundation; Independent Power Producers Society of Ontario; and Northwatch.

Having considered the purpose of the Act, the Environmental Assessment as accepted and the submissions received, I have determined that a hearing is unnecessary. I hereby give approval to proceed with the undertaking, subject to the appended terms and conditions.

REASONS:

My reasons for determining that a hearing is unnecessary are presented as responses to the main arguments advanced by those requiring a hearing, as follows:

1. *Failure of the proponent to consult adequately with Aboriginal people and to observe the spirit and intent of the Statement of Political Relationship - In Belleville on June 9, 1994, I initiated a negotiating process involving First Nations, Ontario and Federal Governments and the proponent, Ontario Hydro. Although the negotiating process was not without its difficult moments, the facilitator reported a consensus among the parties on most of the terms and conditions that should be included in any subsequent approval of this project. Those proposed terms and conditions were modified somewhat by further discussion with the parties, as a result of my consideration of the input of other stakeholders, and by editing and legal review. But the negotiated package remains the core of the attached terms and conditions. Especially noteworthy, in my opinion, are the provisions for the establishment of the Mattagami Extensions Coordinating Council, the Lower Moose River Basin Aboriginal Employment Strategy, and the requirement to negotiate community impact agreements prior to the commencement of construction.*
2. *Changing circumstances limit the "shelf life" of approvals which should require that construction commence within five years of approval - A specific condition of approval has been developed to address this point.*
3. *Project's effects on the natural environment, including the effect of related transmission lines, impacts on land uses and values, river transportation and fish habitat - The negotiated terms and conditions address a wide spectrum of environmental impacts. Some specifically address water level fluctuations and the project's operating regimen. Others address the maintenance of fish habitats, erosion and sedimentology and mercury. Still others will be addressed as part of the community*

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impact agreements that the proponent is mandated to negotiate prior to commencement of construction.

4. *Lack of a cumulative impact assessment* - A specific condition has been included to address this concern. The recent creation of the Environmental Information Partnership, also addresses this concern.
5. *Ontario Hydro does not need the additional electric power capacity, and when it does, there will be cheaper ways to obtain it* - Ontario Hydro asserts in the EA Amendment that the project represents an important and unique opportunity to secure an economic, renewable, reliable, flexible and environmentally sustainable energy resource beyond the year 2000. No evidence was presented by the reviewers or submitters to challenge this assertion.
6. *Purpose statement is unduly restrictive, alternatives considered are inadequate* - It is not inconsistent with the principles of EA to define the purpose of an undertaking in terms of taking advantage of a unique opportunity to maximize the efficient use of available water resources. In defining the purpose in a site specific fashion, it necessarily follows that the scope for consideration of "alternatives to" the undertaking will be restricted.
7. *The EA failed to include an integrated resource plan review of transmission impacts and alternative configurations* - Desirable as this might have been, the transmission component of this undertaking is very minor, consisting mostly of a new 230 kV transmission line from Smoky Falls GS seven km. to the Little Long GS switchyard. Of greater relevance to Ontario Hydro's transmission capacities in the region is my conditional approval in October 1994 of the undertaking described in the environmental assessment entitled "Transmission Reinforcement in Northeastern Ontario". In that approval, I required Ontario Hydro to submit a report on the need for and alternatives to "subsequent phases" of the undertaking. In preparing that report, I required Ontario Hydro to consult with stakeholders. Such stakeholders, in my opinion, could include those making the above argument for a public hearing with respect to the approval of the Mattagami undertaking.

My reasons for granting this approval are that having taken account of the environmental assessment, the review, and all of the submissions from First Nations and the public, I am of

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the opinion that approval to proceed with the undertaking, subject to the extensive list of terms and conditions attached, is consistent with the purpose of the Environmental Assessment Act (section 2).

[Attachment - Environmental Assessment for the Hydroelectric Generating Station Extensions - Mattagami River: Terms and Conditions of Approval]

Dated the 15th day of December, 1994 at TORONTO.

Bud Weidman

Minister of Environment and Energy
135 St. Clair Avenue West
12th Floor
Toronto, Ontario
M4V 1P5

Approved by C.C. No. 3618/94

ENVIRONMENTAL ASSESSMENT FOR THE
HYDROELECTRIC GENERATING STATION EXTENSIONS
MATTAGAMI RIVER

TERMS AND CONDITIONS OF APPROVAL

1. GENERAL

(a) "Mattagami Extensions Coordinating Council" ("MECC")

- The Government of Ontario and the First Nation Governments shall, upon receiving written notification from Ontario Hydro as to its intent to proceed with the undertaking, constitute the MECC, whose mandate is more particularly described below. For the purposes of this document, First Nations means representative(s) of First Nations communities in the lower Moose River Basin as determined by them from time to time. Negotiations to determine the details of the mandate, structure, financing, and operations of MECC shall start within 30 days of receiving written notification from Ontario Hydro as to its intent to proceed with the undertaking and are subject to the approval of the First Nation and Ontario Governments. MECC shall be constituted and shall begin its work no later than four months after receiving written notification from Ontario Hydro as to its intent to proceed with the undertaking.
- The Minister, in consultation with the First Nations, may form a committee to assume the mandate of MECC only if:
 - (i) MECC is not constituted, other than in circumstances where the failure to be constituted is due to actions or omissions by either or both of Ontario or Ontario Hydro; or
 - (ii) following one or more meetings with the MECC decision makers at which full discussion of issues surrounding MECC's activities has occurred, the Minister determines that MECC has dissolved prematurely.

(b) Re-Evaluation

- (i) MECC shall undertake periodic and comprehensive self evaluation, upon completion of construction and at least once every 10 years thereafter, regarding MECC's implementation experience, and make recommendations regarding its continuing role, procedures and responsibilities.
- (ii) MECC may, from time to time, with the concurrence of the Minister of Environment and Energy, establish new rules for the appointment of representatives and the making of decisions.

(c) Aboriginal Self Government

- The jurisdiction and management authority of Nishnawbe-Aski Nation (NAN) First Nations over lands and natural resources, including the sharing of resource

revenues, shall not, for the time being, be addressed herein, as those matters are currently the subject of negotiations between Canada, Ontario, and NAN pursuant to the 1986 Memorandum of Understanding and the 1989 Addendum thereto, concerning NAN governance and lands, resources, and the environment.

- When these issues of the jurisdiction and management authority of NAN First Nations have been resolved through the negotiations described above,
 - i) Term and Condition 1, "General", providing for the composition, mandate and procedures of MECC shall be reviewed and, if appropriate, amended; and
 - ii) The sharing of revenues generated by water power rentals connected to the undertaking shall be addressed by the parties in accordance with the arrangements negotiated between Canada, Ontario and NAN. Term and condition 1, "General", shall be amended accordingly.

(d) MECC shall have, at a minimum, the following characteristics:

(i) Status

MECC shall be incorporated to protect its members against personal liability and to facilitate the administration of its funds.

(ii) Composition

The composition of MECC shall be as follows:

- (1) There shall be equal numbers of First Nations and Government of Ontario members appointed as decision makers.
- (2) Canada may be a member of MECC. Its representative may contribute to all discussions but shall not be a decision maker.
- (3) Municipalities shall be entitled to be members of MECC and collectively to appoint a maximum of two representatives on MECC who shall be observers but not decision makers.
- (4) Ontario Hydro shall be a member of MECC and be entitled to appoint two representatives on MECC who may contribute to all discussions but who shall not be decision makers.
- (5) An independent Chair shall be appointed jointly by the First Nations and Ontario.
- (6) The participating Governments shall appoint representatives as they deem appropriate, recognizing the technical mandate of MECC.

- (7) The representatives shall be delegated authority to make decisions on behalf of their respective Governments.
- (8) Decision makers shall be appointed for a term of two years and may be reappointed.
- (iii) Powers and Decision-Making Authority
 - (1) MECC shall exercise its mandate as described herein.
 - (2) The objective of MECC shall be to reach consensus and resolution among the decision makers on matters that arise out of the exercise of its mandate.
 - (3) The independent Chair's responsibilities shall include using all reasonable mechanisms to facilitate the reaching of consensus by the members of MECC.
 - (4) In the event of consensus among the decision makers of MECC, the resulting decision shall be implemented by the Governments.
 - (5) In the event of failure of MECC to reach consensus, the Chair shall have the responsibility of exercising his/her discretion to declare an impasse.
 - (6) In the event the Chair declares an impasse, the Chair shall prepare a report outlining the areas of agreement and disagreement, within 15 days of that declaration.
 - (7) The Chair's report shall be tabled with MECC, the responsible Minister and the First Nations' Chiefs.
 - (8) A meeting of the responsible Minister and the Chiefs shall be convened within 15 days of receipt of the Chair's report to resolve the issue as outlined in the report, unless consensus is reached by MECC prior to that time.
 - (9) If the responsible Minister and Chiefs agree, they shall use an alternative dispute resolution mechanism or mechanisms to assist their discussions.
 - (10) The responsible Minister and Chiefs may designate that they shall be represented by a person in a position with at least the authority of an Assistant Deputy Minister or Councillor.
 - (11) If consensus is reached as a result of the meeting of the responsible Minister and Chiefs, the resulting decision shall be implemented by the participating Governments.
 - (12) If there is no consensus resulting from the meetings, the decision shall be made by the responsible Minister having regard for the information and process described above.

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(13) Responsible Minister means the Minister responsible for making a decision under a statute or if there is no such Minister, the Minister of Environment and Energy.

(iv) Substitutions

If a representative is unable to attend a meeting of MECC, the member appointing the representative may appoint a substitute. A substitute appointed by a First Nations member must be a member of one of the First Nations. A substitute appointed by any other member must be an employee of that member.

(v) Quorum

The quorum at a meeting shall be a majority of the decision-making members, provided that each of Ontario and the First Nation Governments is represented equally.

(vi) Mandate

In addition to the specific responsibilities identified in these terms and conditions, the mandate of MECC shall be:

- (1) to ensure that terms and conditions are complied with in a timely and satisfactory manner and to take or cause to be taken whatever steps are necessary to ensure compliance. This shall include, at a minimum, the following:
 - i to oversee the monitoring of the undertaking's effects, including its cumulative effects, and to require monitoring activities;
 - ii to oversee Ontario Hydro's compliance reporting;
 - iii to oversee the pre- and post-construction collection of baseline data;
 - iv to evaluate the success of the mitigative measures and, if appropriate, to require changes or additions to them;
 - v to plan and oversee the periodic re-evaluations of the undertaking's effects contemplated at term and condition 10, "Periodic Re-evaluations";
 - vi to review and, if appropriate, approve the decommissioning plan contemplated at term and condition 11, "Decommissioning Plan";
- (2) where terms and conditions require studies or research, including monitoring, or mitigation, to evaluate the proposed strategies, methodologies, protocols, study/intervention areas, and evaluate the results.
- (3) to address any unanticipated problems that may arise at any stage of planning, construction or operation of the undertaking.

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- (4) to act as a forum for the exchange and making public of information, with particular reference to the information needs of the concerned First Nations.
- (5) at their request, to advise and assist the First Nations when they negotiate Community Impact Agreements.

(vii) Restructuring

In the event of any future restructuring of Ontario Hydro in a manner that would affect the construction or operation of the undertaking or the implementation of the present terms and conditions, the First Nation Governments and Government of Ontario shall negotiate a new set of terms and conditions to replace, in whole or in part, this set of terms and conditions.

(viii) Office

MECC shall maintain a head office in the lower Moose River Basin.

(ix) Financing

The costs and expenses of MECC shall be shared by Ontario and Ontario Hydro. The details of financing shall be agreed to in the negotiations referred to in term and condition 1(a), "Mattagami Extensions Coordinating Council". The financial negotiations between Ontario, Ontario Hydro, and the First Nations shall respect the following principles:

- (1) Ontario Hydro shall be responsible for the costs and expenses for participation of its representatives, and, the costs and expenses for participation of First Nations' representatives.
- (2) All other parties shall be responsible for the costs and expenses for participation of their representatives.
- (3) Ontario Hydro shall provide core funding for the operation of MECC, as provided in the negotiations referred to above from the time MECC is constituted until five years after the completion of construction of the undertaking.
- (4) The budget for MECC shall be prepared by MECC based on the work plans provided by Ontario Hydro in its annual report as provided under term and condition 1(d)(xi), "Reports", below, and that budget shall be approved by Ontario and Ontario Hydro. The budget for the Chair shall be administered by MECC.
- (5) Any additional and reasonable funding requirements shall be shared between Ontario and Ontario Hydro as agreed between themselves.
- (6) All financial arrangements shall be reviewed five years following completion of construction of the undertaking.

(7) Failing agreement on any of the financial issues, the issue resolution process outlined in term and condition 1(d)(iii) "Powers and Decision-Making Authority" shall apply.

(x) Staff

As identified within the annual workplan and budget, or at the discretion of the Chair, MECC shall be provided with the necessary staff, which may vary from time to time, to fulfil its mandate. It is the objective that the members of MECC shall have a single set of advisors. Where, by exception, the First Nation Governments, in the opinion of the Chair, reasonably require independent advisors, the advisors shall be made available to them at the expense of MECC.

(xi) Reports

Ontario Hydro shall table annual reports on meeting terms and conditions and projected workplans for coming years with sufficient lead time to permit MECC to prepare its workplans and budgets.

MECC shall prepare its workplans and budgets based on Ontario Hydro's projected workplans and annual reports.

MECC shall publish an annual report and popular summaries of pertinent reports in Cree and English. MECC shall also emphasize the use of videos and other media that respond to the needs of the Crees.

(xii) Meetings

MECC shall meet at least four times annually. All meetings shall be held in the lower Moose River Basin, and at least one meeting per year must be held in each of the communities of Moose Factory and New Post. Meetings shall not be open to the public, but MECC shall hold a separate public meeting each time that it meets in Moose Factory or New Post. MECC may choose to conduct additional public meetings in other lower Moose River Basin communities.

(xiii) Language at Meetings

English and Cree shall have equal status at meetings of MECC.

(xiv) Information

The parties, including Ontario Hydro, shall, subject to any applicable laws, with or without being requested, provide MECC with all relevant information in their possession to assist MECC in carrying out its mandate. Where a party is uncertain about the relevance of information, it shall submit it to the Chair of MECC, whose decision in this regard shall be final.

(xv) Good Faith

All members of MECC shall participate in good faith in the constituting of and activities of MECC, and shall act in good faith in carrying out their obligations herein.

2. HERITAGE RESOURCES

- (a) Taking into consideration the surveys referred to in the Environmental Assessment document, Ontario Hydro shall consult with Elders of the First Nations and shall undertake ground surveys to identify sites of cultural, historical, spiritual, or other importance to the First Nations, regardless of their antiquity. The studies shall include the systematic recording of Cree place-names in the study area.
- (b) In consultation with the Elders, Ontario Hydro shall formulate and implement a plan for protecting the resources located under term and condition 2(a), "Heritage Resources". Ontario Hydro shall give priority to preserving such resources. Where preservation is not possible, Ontario Hydro shall undertake full excavation, with complete analysis of the resulting materials. In the case of cemeteries or burial sites, Ontario Hydro shall carry out relocation within the lower Moose River Basin, if so requested by close family or, in the absence of known family, by the Elders of the concerned First Nation. The analyses referred to herein shall include materials from earlier Ontario Hydro-sponsored studies.
- (c) In the manner and to the extent provided in the Community Impact Agreements, Ontario Hydro shall provide financial and other assistance to the First Nations to plan, establish, and operate a new or existing cultural/historical centre in a location of their choosing. The work shall include the creation of a historical text and map for the study area within a regional context. The text shall convey both aboriginal and non-Native perceptions and perspectives. Elders and Cree educators shall participate in the preparation of the text, to make sure that it meets the needs of all Crees and is suitable for use as a pedagogical tool in Cree schools and elsewhere. A sufficient number of copies shall be distributed to local schools, Band Councils, and regional aboriginal organizations.
- (d) Ontario Hydro shall sponsor and pay for the publication of a regional map showing only Cree place names and their translations.
- (e) Artifacts from prior excavations associated with hydroelectric development in the region shall be deposited in the cultural/historical centre, if requested by the First Nations. The First Nations shall have a right of first refusal to the artifacts recovered pursuant to the activities specified herein.
- (f) Ontario Hydro shall undertake an archaeological investigation of Smoky Falls Generating Station (GS), including creation of an adequate photographic record of any structures to be demolished, to be carried out by a qualified heritage consultant.
- (g) Ontario Hydro shall take the necessary steps to secure historical drawings, photographs and archival information at the Smoky Falls GS, as well as any artifacts or material items of historical value. Specific items of interest should be offered to the Kapuskasing

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Museum based upon the Museum's policy and space availability. This condition only applies to the records located at the generating station that accompanied the purchase of the Smoky Falls GS and not to any other records belonging to the Spruce Falls Power and Paper Company.

3. VISUAL AND AESTHETIC IMPACTS

- (a) Ontario Hydro shall carry out revegetation work and monitor its success for a period of at least 15 years from its completion.
- (b) Ontario Hydro shall consult with the First Nations to form a full and proper appreciation of their visual and aesthetic concerns in relation to the undertaking and to validate the mitigative measures relating to visual impacts that have already been proposed. In collaboration with representatives of the First Nations, Ontario Hydro shall, if warranted, devise and implement a reasonable program of supplementary activities to meet the concerns of the First Nations.
- (c) Ontario Hydro shall design the lines, volumes, materials, colours, and architectural characteristics of the new Smoky Falls Power House, so as to take into consideration, those of the existing generating station.
- (d) Ontario Hydro shall consult and collaborate with the First Nations to identify within reason, a corridor for the new 7-kilometre transmission line that is acceptable to the First Nations from an aesthetic and visual perspective. It shall restrict clearing in the transmission corridor to a minimum, and shall conduct such clearing in such a way as to minimize its effects.

4. HYDROLOGY, FISH AND AQUATIC HABITATS

Hydrology and the quality of aquatic habitat are inseparable. The following term and condition is intended to ensure that the operating regimen of the undertaking takes account of the need to maintain quality of aquatic habitat and the Department of Fisheries and Oceans' "No Net Loss Policy".

- (a) Ontario Hydro shall table a report, to MECC, describing the methods that it uses to optimize the present operating regimen of the Mattagami Complex, the power, energy, environmental, and other factors used in that optimization and the resulting operating regimen. That report shall serve as a reference point to monitor the effects of the undertaking.
- (b) Ontario Hydro shall obtain baseline data as well as monitor the aquatic environmental effects and shall periodically report as specified by MECC, how it can further mitigate the environmental effects of the undertaking as a result of actual or proposed changes in Ontario Hydro's system which could allow the undertaking to operate in a different fashion.

- (c) Ontario Hydro shall evaluate the costs and benefits (including environmental benefits) of increasing the capacity of the existing sluiceways, including possible utilization of the "slot" for the fourth unit at the Kipling, Harmon and Little Long plants, but excluding the Adam Creek Control Structure, so as to minimize the release of water down Adam Creek while maintaining the safety and operability of its existing structures on the Mattagami River.
- (d) In order to ensure that there is no net loss in fish and aquatic habitat from the conditions as they exist prior to redevelopment, Ontario Hydro shall maintain a daily average flow of 100 cms below Kipling by operating a single unit in "bursts" two or more times daily.

When inflows into the Mattagami Complex are less than 100 cms on any given day, Ontario Hydro shall pass an amount equal to the average flow for that day through the Kipling plant.

- (e) Ontario Hydro shall implement a program to pursue ways of mitigating the current problems of releasing water down Adam Creek. This program shall assess both the benefits and the costs. It is recognized that flows down the main river cannot be of such a magnitude that they would create an unsafe condition, or damage through flooding to the existing plants.

At the outset, the quantity of water to be passed through the sluiceways at the main dams shall be equal to that which will be expected to pass through the extensions, approximately 250 cms. The benefits to passing this water shall be assessed and reported to MECC. This program shall take place over 3 years, or some other time, to be determined by MECC following approval of the undertaking. The spillway operation at the main dams shall take precedence over Adam Creek spills.

Further, the spill diversion shall be increased to the equivalent of one sluiceway gate (approximately 600 cms) and the effects documented over the following three years, or other time to be determined by MECC. Following completion of these tests, a cost benefit analysis shall be presented to MECC for determination of the acceptable initial operating regimen.

5. TERRESTRIAL ECOLOGY

- (a) For the duration of the construction period, in consultation with MECC, Ontario Hydro shall ensure that restrictions on hunting and fishing and on disturbing animals or habitats are respected.
- (b) In light of the operating regimen determined pursuant to term and condition 4, "Hydrology, Fish and Aquatic Habitats", Ontario Hydro shall evaluate the need for, feasibility of, and costs and benefits of terrestrial habitat restoration immediately downstream of Kipling GS (or in an alternative location acceptable to the concerned First Nations) designed to restore biological productivity, with special reference to water birds, furbearers, and other animals identified by MECC.

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- (c) Within the lower Moose River Basin Aboriginal Employment Strategy, Ontario Hydro shall hire First Nations individuals in order to accomplish (a) above.
- (d) Ontario Hydro shall, in consultation with MECC, ensure that any access infrastructure required for construction of the undertaking, but not its operation, is decommissioned. It also shall ensure that access to infrastructure not so decommissioned is controlled in a manner and to a degree acceptable to the concerned First Nations, and with First-Nation involvement.

6. EROSION AND SEDIMENTOLOGY

Ontario Hydro shall collect baseline information and implement a monitoring program to test two specific hypotheses:

- 1. That reducing flows in Adam Creek will reduce erosion:

Aerial photography at appropriate intervals for a period of 25 years after the undertaking becomes operational, and a sediment station at an appropriate location in Adam Creek near its confluence with the Mattagami River shall be utilized.

- 2. That reducing erosion in Adam Creek will increase erosion in the Mattagami River downstream of its confluence with Adam Creek:

Aerial photography at low flows of frequency and for the duration specified in (1) above shall be utilized as well as the installation of a sediment station at an appropriate location in the relevant portion of the Mattagami River upstream of Grand Rapids. In addition, Ontario Hydro shall establish and monitor the cross-section of the Mattagami River at two critical locations.

7. MERCURY

- (a) Ontario Hydro shall conduct the necessary baseline studies and monitoring to test the hypothesis that proceeding with the undertaking will not increase the levels of methyl mercury in fish. Should the studies and monitoring falsify the hypothesis, Ontario Hydro shall implement appropriate mitigation measures, which shall address both operational and other changes to the undertaking.
- (b) Jointly with the First Nations, Ontario Hydro shall plan and implement a Public Information Program to inform the First Nations and others of the outcome of the preceding baseline studies, monitoring and mitigation.

8. CUMULATIVE IMPACTS

- (a) Ontario Hydro shall provide to MECC through the Environmental Information Partnership (EIP), data to assist the creation of baseline data which can lead to the

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development of a cumulative impacts study. Subsequently, Ontario Hydro shall, if necessary, adjust its monitoring to conform with data bases assembled by the EIP or any cumulative impacts study.

- (b) MECC shall employ best efforts to ensure that an assessment of the cumulative effects, including socio-cultural, of the undertaking is done. It shall do so, where possible, in co-operation with the EIP.

9. EMPLOYMENT AND CONTRACTING

Recognizing that many trained and qualified First Nation individuals already exist, Ontario Hydro, through its Hydroelectric Business Unit, shall promote and provide meaningful and sustainable employment and contracting benefits to First Nation individuals and enterprises, both with regard to the undertaking and with regard to the Hydroelectric Business Units operations in the Moose River Basin, by the following means:

- (a) undertake a joint process with the First Nations to arrive at mutually agreed upon principles for a Lower Moose River Basin Aboriginal Employment Strategy for the Hydroelectric Business Unit specific to its operations in the Moose River Basin, and an implementation plan for meaningful and sustainable employment of First Nation individuals. The strategy and implementation plan shall be completed by the earlier of:
 - (i) six months after receiving written notification from Ontario Hydro as to its intent to proceed with the undertaking;
 - (ii) prior to the commencement of any construction or field work in relation to the undertaking.
- (b) the Strategy shall include, as a minimum, the following: First Nation enterprises from the lower Moose River Basin, including majority-owned joint ventures with non-First Nation partners, shall receive a price preference premium of 10% in the awarding of contracts relating to the construction of the undertaking. The price preference premium shall initially be for the first five years of the construction of the undertaking. It shall be renewed automatically for further increments of five years, unless Ontario Hydro and First Nations, in consultation with MECC, jointly decide otherwise. It shall terminate upon the completion of the construction of the undertaking. The existence of the price preference premium shall not serve to preclude the implementation of additional initiatives to promote and sustain competitive contracts for First Nation enterprises, including majority-owned joint ventures or other undertakings of the Hydroelectric Business Unit.
- (c) subject only to the availability of interested First Nation individuals from the Lower Moose River Basin, Ontario Hydro, through its Hydroelectric Business Unit, shall work jointly with the First Nations, Ontario, Canada, and other relevant parties, e.g., labour unions and community colleges, in providing training and development programs to ensure meaningful and sustainable employment to First Nations individuals during the construction phase of the undertaking. The exact number and types of employment

opportunities shall be identified during the development of the Lower Moose River Basin Aboriginal Employment Strategy referred to under clause (a) and shall include employment opportunities associated with undertaking compliance monitoring and mitigative measures such as revegetation. Ontario Hydro shall use its best efforts to provide at least 200 person-years of employment created by the undertaking to First Nation individuals.

- (d) as part of the Strategy, Ontario Hydro's Hydroelectric Business Unit commits to meaningful and permanent employment of First Nation individuals from the Lower Moose River Basin in the Hydroelectric Business Unit's operations labour force in the Moose River Basin. The exact number, timing and types of employment opportunities shall be jointly developed between the parties and shall take into consideration appropriate training and development programs to ensure maximum effectiveness and mutual benefit.
- (e) Failing the completion of the strategy and implementation plan within the time frame specified, the parties shall submit to MECC the outstanding issues for mediation. The issue resolution process that is outlined in term and condition 1(d)(iii), "Powers and Decision Making Authority", shall apply.

10. PERIODIC RE-EVALUATIONS

When so requested by the Minister of Environment and Energy and the First Nation Governments, on the recommendation of MECC, which recommendation shall take into account the results of Ontario Hydro's monitoring program, Ontario Hydro shall conduct periodic re-evaluations of the environmental effects of the operation of the undertaking.

11. DECOMMISSIONING PLAN

- (a) Prior to initiating construction of the generating facilities Ontario Hydro shall provide information to the satisfaction of MECC demonstrating that should the need arise, existing technologies permit the safe decommissioning of the undertaking.
- (b) Eighteen months prior to any decommissioning, Ontario Hydro shall submit to MECC, or in the event MECC no longer exists, to the responsible authority then responsible, a decommissioning plan, which complies with all applicable legislation, policies, guidelines and standards. Following receipt of all necessary approvals, Ontario Hydro shall implement the plan.

12. AMENDMENTS TO WATER POWER LEASES

Should Ontario and Ontario Hydro negotiate to amend the water power leases and licences of occupation and other agreements referred to in these documents and associated with the undertaking, the First Nations shall be consulted.

13. ABORIGINAL KNOWLEDGE

Ontario Hydro shall, in its studies, monitoring, and other activities in relation to the undertaking, accord to aboriginal knowledge (also known as Traditional Ecological Knowledge) a status equal to that of other forms of knowing, understanding, and predicting.

14. PERMIT REVIEW AND COMPLIANCE MONITORING PROTOCOL

- (a) With the assistance of MECC, Ontario Hydro and the First Nations shall establish and implement a protocol, including appropriate training if and as required, with the following objectives:
 - (i) that First Nation individuals shall participate as soon as possible in monitoring Ontario Hydro's compliance with these terms and conditions, and with the terms and conditions of such other planned developments, dispositions or activities required for the undertaking, which may have significant impact upon any of the First Nations (hereafter "Planned Developments, Dispositions or Activities"). In this section, Planned Developments, Dispositions or Activities has the meaning given to it in the Interim Measures Agreement between Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of Ontario and Nishnawbe-Aski Nation dated November 28, 1990 and such amendments or extensions to that agreement as have been or may be made (hereafter "the Interim Measures Agreement").
 - (ii) that First Nation individuals shall participate in pre-consultation in relation to Planned Developments, Dispositions or Activities that Ontario Hydro intends to submit, and review applications for those Planned Developments, Dispositions or Activities.
- (b) The First Nations shall report from time to time to MECC on the results of their monitoring activities described in clause (a).
- (c) The protocol shall address its relationship with the Interim Measures Agreement. The protocol shall be completed as soon as possible, but in any event no later than 12 months after the approval of this undertaking. Failing completion of the protocol within this time frame, the parties shall submit to MECC the outstanding issues for mediation. The issue resolution that is outlined in term and condition 1(d)(iii) "Powers and Decision-Making Authority" shall apply.

15. DURATION OF APPROVAL

Approval of the undertaking under the Environmental Assessment Act shall terminate if construction has not commenced within five years from the date of this approval. The Minister of the Environment and Energy, with the recommendation of MECC, may extend the date for termination of the approval under this condition for up to a further five years based on the review and approval of an environmental assessment status report. This report, created through

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consultation with First Nations, the Ontario Government and MECC, shall describe any changes from those described in the accepted Environmental Assessment. It shall detail any changes in existing environmental conditions, and in the components and technology of the undertaking. The report shall also provide in detail a description of the progress of the undertaking, reasons why undertaking construction has not commenced, and a forecast of the likelihood of the commencement of undertaking construction in the next five years.

16. APPROVAL OF PHASING

Upon commencement of construction, approval to construct any part of the undertaking shall expire 5 years from the commencement of construction. The Minister of Environment and Energy, with the recommendation of MECC may extend the term of the approval within which construction may be completed in increments of five years based on the review and approval of an environmental assessment status report. This report created through consultation with First Nations, the Ontario Government and MECC, shall describe any changes from those documented in the accepted EA and should provide sufficient information to determine the reliability of the accepted EA. It shall detail any changes in existing environmental conditions, and in the components and technology of the undertaking. The report shall also provide in detail a description of the progress of the undertaking, reasons why construction of the undertaking has not been completed, and a forecast of the likelihood of the completion of construction in the next five years. In any event, approval for construction of any part shall not extend beyond 20 years following the commencement of construction.

17. PROVISIONS OF THE ENVIRONMENTAL ASSESSMENT

Except as otherwise provided by these conditions, Ontario Hydro shall carry out the undertaking in accordance with the provisions of the Environmental Assessment "Hydroelectric Generating Station Extensions - Mattagami River", as amended and accepted, which are incorporated herein by reference.

18. NOISE CONTROL

Ontario Hydro shall comply with the "Protocol for Community Noise Control, 1981" for all phases of the undertaking.

19. DOMESTIC WASTES

Ontario Hydro shall ensure that domestic wastes are collected and disposed of at an approved waste management facility or in another manner approved by the MOEE. Domestic wastes shall not be burned.

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20. CONTRACTORS

Ontario Hydro shall ensure that contractors and subcontractors are aware of, and abide by, all terms and conditions of this and other environmental approvals relating to the undertaking which relate to their activities; all relevant environmental laws, regulations, guidelines and codes of practice; and any terms of their contracts relating to environmental protection and shall meet all environmental standards and commitments.

21. FLOODING

Ontario Hydro shall prevent the release of mercury as a result of flooding on Smoky Island by dry excavation of all soil and vegetation down to bedrock prior to blasting for the new intake. MECC shall be provided with detailed implementation plans, including wetted area, and mitigative measures for its review. Ontario Hydro shall carry out and report to MECC on a study evaluating the success of this mitigative measure.

22. COMMUNITY IMPACTS

Community Impact Agreements (CIA) shall be negotiated between Ontario Hydro and affected parties, including First Nations, Moosonee Development Area Board and affected municipalities, and shall be completed prior to the commencement of any construction, other than preparation activities such as core sampling and site surveys, etc. Failing the completion of any agreement, the parties shall submit to MECC the outstanding issues for mediation. The issue resolution process, as described in term and condition 1(d)(iii), "Powers and Decision-Making Authority", shall apply.

23. AMENDING PROCEDURE

Ontario Hydro shall follow the procedure established in Section 2.2.1 (*Procedure to Amend the Environmental Assessment*, pages 2-2 and 2-3) of the Mattagami River Environmental Assessment. This shall be done in consultation with MECC.

24. WASTE ROCK DISPOSAL

Ontario Hydro shall supply MOEE and MNR with details associated with the disposal of the 250,000 cubic metres of waste rock created from the excavation of the intake channel, intake, penstocks, power-house and tailrace areas of the new Smoky Falls GS, and any adverse environmental effects thereof. In addition, Ontario Hydro shall evaluate the technical feasibility of the use of the rock for construction purposes in the Moose River Basin.