

What is a *Water Power Act* Licence ?

Water Power Act licences are issued by Manitoba for individual Hydro facilities. They are licences to divert, use and store water for power production purposes and to construct, operate and maintain the facilities. Other provisions in the licences include details on the payment of land and water rentals. Licences are valid for up to 50 years, at which point they expire or must be renewed if the particular facility is to continue in operation.

There are several categories of issued *Water Power Act* licences currently in effect:

■ Interim Licence

- Is issued prior to construction of the project so that the lands and waters can be entered and altered and the construction can proceed
- May contain operating constraints for the project which are projected from estimates made prior to construction and prior to start of operation
- Describe the design of the project that may change as construction proceeds

It is anticipated that an interim licence will be replaced by a final licence within a few years after construction of the project; after a few years of operation of the project have shown how it performs and what the formal operational constraints should be,

or to replace the earlier estimated operational constraints that were specified in the interim licence.

Several newer projects are operating under Interim Licences including the Wuskwatim Project. An application was made recently to finalize the terms and conditions of that Licence which were issued in 2006.

■ Final Licence

- Is usually requested and issued after construction is complete and project is in operation
- Confirms the project description – what was actually built
- Includes formal operating constraints (such as water level ranges, flow rate ranges, rates of change of flow rates)

- Is for a fixed term, up to 50 years, but is usually 50 years
- A few projects are currently operating under Final Licences such as the Kelsey and Kettle Generating Stations.

■ Renewal Licence

- Are usually requested prior to the end of the fixed term of the Final Licence
- Always or almost always includes identical terms as the Final Licence (i.e. no change to operational constraints)
- Are for a fixed term up to 50 years, usually 50 years but some older projects are operating under Renewal Licences with terms as short as 20 years.

■ Short-term Extension Licence

- May be issued if licence renewal process has not been completed prior to the expiry date of the Final Licence or Renewal Licence
- Is usually for a fixed term of 5 years
- The terms of agreement and operational constraints are identical to the existing Final Licence
- Quite a few projects are beyond the end of their renewal licences and are currently operating under Short-term Extension Licences.

The CRD's Augmented Flow Program

Following the completion of construction of the CRD in 1976 and the start of full operation in 1977, several test programs were requested, approved and then conducted between 1979 and 1985. These determined the ranges of CRD flow rates that were possible without violating the original high water level targets that had been established for Thompson and Nelson House (800 feet above sea level [ASL] in Footprint Lake).

The test programs found that the maximum flow rates released at Notigi could be increased in both summer and winter beyond the maximum flow rate constraint specified in the Interim CRD Licence while maintaining the water surface of Footprint Lake below 800 feet ASL as well as acceptable

conditions at Thompson. Together with an increase in the annual range of water storage on Southern Indian Lake, increased flow release limits at Notigi would allow a greater proportion of the incoming Churchill River water to be diverted to the Nelson River for power production there.

Starting in 1986, Hydro began to request, each year, the approval from Manitoba for a standardized set of deviations from the terms of the Interim *Water Power Act* Licence. Each year since 1986, Manitoba has approved these requests, with some conditions. The set of authorized deviations from the Interim Licence has become known as the Augmented Flow Program.



Water Regimes and Other Relevant Agreements

In addition, other NCN legal arrangements with Canada, Manitoba and Hydro provide additional operating constraints for the CRD. All such constraints are compliant with the terms of the Interim *Water Power Act* Licence for the CRD and Hydro's request for a Final Licence. These include:

Arrangement	Year	Operating constraint
Northern Flood Agreement (NFA)	1977	1. Maximum water level at Nelson House with CRD operating, before further downstream dam construction 1(a). Higher maximum water level at Nelson House with CRD operating, after further downstream dam construction
Nelson House Comprehensive NFA Implementation Agreement - Article 2, Water Levels and Flows	1996	Operating limits with pre-determined compensation for exceedances: 1. Footprint Lake maximum level (all year, same as first NFA constraint above) 2. Footprint Lake minimum level (all year) 3. Footprint Lake 7-day maximum rate of rise (seasonal schedule) 4. Footprint Lake 7-day maximum rate of drop (seasonal schedule) 5. Footprint Lake 31-day maximum rate of rise (seasonal schedule) 6. Footprint Lake 31-day maximum rate of drop (seasonal schedule)
Wuskwatim GS - Power Development Agreement (PDA) - Article 2.10 Fundamental Features	2006	1. GS max headwater level (Wuskwatim Lake) 2. GS normal operating water level range and exceptions (Wuskwatim Lake) 3. Birch Tree Lake Stability Guideline (maximum daily water level variations, seasonal schedule)
Wuskwatim GS - Manitoba Environment Act Licence #2699	2006	1. GS mean daily max and min headwater levels 2. Birch Tree Lake maximum daily water level variations (seasonal schedule)
City of Thompson Agreement	1976	-
Churchill Weir Licence	1997	-
Split Lake Comprehensive NFA Implementation Agreement	1992	(Operation of CRD may affect water levels of Split Lake, but agreement defines a Split Lake compensated water regime with pre-determined compensation for exceedances)
York Factory Comprehensive NFA Implementation Agreement	1995	(Operation of CRD may affect water levels of Split Lake, but agreement defines a Split Lake compensated water regime with pre-determined compensation for exceedances)

Key CRD *Water Power Act* Licence Operating Parameters - the Hydro Request

All other related Licences and agreements, as listed above, are compliant with the CRD Interim *Water Power Act* Licence and the Hydro request for a Final *Water Power Act* Licence. No operating changes are being requested for the Final Licence. In other words, if the following requested CRD operating limits are adhered to, then operation of the CRD would remain in compliance with all other related existing agreements and licences.

Location	Operating Parameter	Licence Request
Southern Indian Lake	Maximum water level	847.5 feet ASL
	Minimum water level	843.0 feet ASL
Missi Falls Control Structure	Minimum flow	500 cfs (open water) 1500 cfs (winter)
	Maximum daily flow change	10,000 cfs
Notigi Control Structure	Minimum water level	834.0 feet ASL
	Maximum average weekly flow	34,000 cfs (winter) 35,000 cfs (summer)
	Maximum daily flow change	10,000 cfs
Thompson	Maximum water level	619.0 feet ASL (summer, measured at Seaplane Base)
	Maximum water level	623.0 feet ASL (winter, measured at Pumphouse)

Manitoba's Summary of Comments/Concerns Raised by

Process/Project	Community Specific Concerns	Community Proposed Measures to Address Concerns
Process - licensing	The 'final' license is in perpetuity and closes the door on any future negotiations. Fear that MB and MB Hydro will be able to walk away and not deal with the many issues left unresolved or unforeseen future issues.	Manitoba needs to develop messaging and communication strategies to address these issues
Process	Concern that 50 years is too long for a licence	Maximums under regulation should not be granted
Process licensing	Terminology used for the licenses – 'final' and 'interim' leads to misunderstandings in the community of what the licences actually provide for	Revise the licence terminology within the Water Power Regulation
Process - licensing	Interim licence not properly monitored and enforced by the province	
Process	A mechanism is needed to act as a hammer in dealing with outstanding issues with MB Hydro.	NCN wants involvement in drafting licencing conditions. Licencing conditions should provide a mechanism to ensure outstanding issues are addressed. If the licence is not the appropriate mechanism other options must be provided to ensure licence compliance.
Process - licensing	Concern if MB was NOT going to accept the AFP conditions in the final licence or if MB was going to deviate from the AFP	
Project	Many concerns regarding Article 14 of the licence - debris clearing and management on the shoreline, Hydro claims the debris is naturally occurring and did not want to provide funding to clean it up.	NCN has entered into a debris clearing agreement with Manitoba Hydro – but Manitoba should enforce its licences– more debris clearing is required.
Project	Debris in the water makes transportation difficult and dangerous. Have to watch out for dead heads and log debris. Logs just under the water's surface are very dangerous.	More debris clearing required

Project	Debris along the shoreline impacts wildlife which cannot access the water and feeding areas. This in turn impacts hunters and trappers as the wildlife are not where they used to be.
Project	Debris in the water damages fishing nets and boats
Project	Erosion of beaches and shoreline repair are not covered under CIA
Project	Erosion still occurring - one such lake where erosion is occurring is on the Karsack Lake
Project	Heritage resources issues – issues with burial grounds and repatriation issues
Project	Impacts of mercury on health
Project	Timing and rate of change in flows from Notigi impacts walley/pike/pickereel in the spring and whitefish in the fall.
Process	Resource Management Boards (RMB) under the CIA are not adequately funded
Process	NCN spends its own money addressing community concerns for example the NCN Resource Board wanted to monitor a small herd of Caribou but no money was available from the province so NCN funded it themselves
Process	NCN wants co-management under the RMB but Manitoba has a highly structured process and tells NCN where and how it can participate. This is not NCN's process.
Process	How does the province intend to reconcile the hurts in the community as a result of CRD
Process	Setback lines need to be adjusted as this affects TLE selections.
Process	The government processes around many issues are interconnected, ie RMBs, TLE, CIA, Hydro Licenses, but the Province deals with them independently which is almost impossible to work with. NCN sees and works holistically
Process	ATK needs to be recognized. The people





Enhancement of Fish Spawning Conditions Along the CRD Through Notigi Flow Release Management

Consultation with Province of Manitoba Fisheries: Provincial opinion is that an expected positive result of a specific control of CRD discharges during fish spawning periods is too uncertain at present to support a commitment or a licence requirement under the *Water Power Act*. The Province instead would recommend that NCN and Hydro undertake a study program to explore the possible fisheries benefits of CRD flow management.

Next Steps to Conclude the Process

1 After the meeting with Manitoba on August 9, 2016 and the small group meetings with NCN Citizens on August 10th a summary of the issues identified and potential options to address the concerns will be developed and submitted to Manitoba for consideration.

2 There will be a booth at the NCN Summer Festival (August 15-20, 2016) to provide additional information and to give NCN Citizens a further opportunity to provide any comments about the CRD licence issue.

3 NCN's Engineer and Legal Counsel will prepare a draft report of the comments at the August meetings and from the NCN Summer Festival. This Summary will be reviewed by Chief and Council and submitted to Manitoba.

4 A meeting will be held with Manitoba on August 31, 2016 to discuss the Summary.

5 In September 2016 there will be a response from Manitoba along with a further opportunity for NCN to respond to Manitoba's draft report.

6 Manitoba will then make a decision about finalizing the CRD terms and conditions up to 2026.



Nisichawayasihk Cree Nation
General Delivery
Nelson House, Manitoba R0B 1A0
Phone: (204) 484-2332
Fax: (204) 484-2392
www.ncncree.com

To provide input please contact Joyce Yetman or Monica Linklater at the NCN Trust Office 204.484.2604.