



**Nisichawayasihk Cree Nation Future Development Working Group**

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March 9, 2004

Vern Anderson  
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Association for the Displaced Residents  
of South Indian Lake  
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Dear Sir:

Re: Wuskwatim Generation And Transmission Project

As you know, on or about December 17, 2003 you sent correspondence to the Clean Environment Commission (CEC), posing 128 questions about the proposed Wuskwatim projects. The questions were presented in a narrative format and were not numbered. On or about January 8, 2004, the CEC wrote to you, advising that your letter was sent past the deadline for information requests. Nevertheless, at the January 23, 2004 CEC hearing dealing with disclosure issues, when your letter was mentioned, legal counsel for the Nisichawayasihk Cree Nation (NCN) advised the CEC that NCN would endeavour to provide to you as many answers as possible, through the community consultation (rather than the CEC) process.

Therefore, enclosed please find your 128 questions, separated and numbered, and answers to each of them. Some of the answers can be found in documents already filed with the CEC, including the Agreement in Principle (AIP), various CEC filings, and the Summary of Understandings (SOU). NCN's Chief and Council wish to provide as much information as possible about the proposed projects. In addition, we also want our members understand as much as possible about the proposed projects. These answers are provided to you in that spirit.

Page 2

The 128 answers contain concise summaries of various topics. The AIP, the SOU and the materials filed with the CEC contain much more detail. If there is a conflict between the concise answers and these more detailed documents, the documents prevail.

Yours truly,

***NISICAWAYASIIHK CREE NATION***

A handwritten signature in black ink, appearing to read 'W. E. Thomas', with a stylized flourish at the end.

W. E. Thomas  
Councillor  
Future Development Portfolio

Enclosure

March 9, 2004

## DRSIL QUESTIONS

*Note: When NCN and Hydro are referred to in the context of their partnership, the reference is to NCN and Hydro as limited partners in the limited partnership.*

*This document responds to specific questions. If there is a conflict between this document and the SOU or the PDA, the SOU, then the PDA will prevail.*

1. A majority of NCN members did not ratify the Wuskwatim Agreement in Principle (AIP) as stated on page 2. DRSIL has been informed that only 150 out of 2300 eligible voters voted on the AIP. What was the exact number voted for the AIP?

This is incorrect. 1427 of 2095 eligible voters actually voted. This is a turnout of about two-thirds - better than the turnout in most federal provincial and municipal elections.

2. Were on reserve and off reserve members of NCN eligible to vote on the AIP?

Yes.

3. How many votes were included from South Indian Lake and what number of people voted for and against the AIP?

About 390 votes were cast in SIL. Of these, about 19% voted "yes" and about 81% voted "no".

4. Were these votes included in the final vote count for the AIP?

Yes.

5. I believe that approximately of the 82% of NCN members from South Indian Lake that voted against the AIP[sic]?

Yes, about 81% from SIL voted "no".

6. How many votes were exactly used to claim approval of the Wuskwatim AIP and what was the total vote tally?

1,427 NCN votes were cast altogether. About 65.5% voted “yes” and about 33.5% voted “no”.

7. Carol Kobliski in her September 2003 letter to the Clean Environment Commission stated that the AIP was misleading and many NCN members did not understand what they were voting for and a new correct process should be implemented. What were the exact terms of the Wuskwatim AIP and will it be on the record for the CEC Hearings?

Ms. Kobliski is entitled to her own personal opinion. The AIP was explained in detail before the vote. An AIP Overview and an AIP Guidebook (simple language, question and answer format and Newsletters) were circulated to NCN households before the vote. Meetings were held in Nelson House, South Indian Lake, Thompson, Brandon and Winnipeg for over a 4 month period, immediately prior to the AIP votes in May 2001. The AIP is already part of the EIS, so it can be referred to at the CEC hearings. It's also on the NCN website, and the Hydro website.

8. Was the Wuskwatim AIP and its exact terms binding, and can additional terms be included in it post the vote?

The AIP is explicitly non-binding (see page 7 of the AIP). There are no plans to amend it.

9. Who are the responsible parties for the drafting and negotiation of the AIP?

NCN and Hydro.

10. What role did Manitoba Hydro and the Government of Manitoba play in developing the Wuskwatim AIP and the conducting of the AIP vote?

Manitoba had no role. Hydro negotiated it with NCN, but had no role in conducting the vote.

11. What individuals and parties were involved in the drafting and negotiating of the Wuskwatim AIP and what conflict of interest guidelines were used to ensure that those involved on behalf of NCN Chief and Council were not in an actual or perceived conflict of interest?

The AIP is signed by NCN's Chief & Council, and by Hydro's President and Chairman. Various NCN and Hydro employees and advisors were involved in the negotiations. All conflict of interest laws have been and will be complied with.

12. Did any individuals representing, negotiating or working on behalf of NCN Chief or Council have any personal connection with any employee or representative of Manitoba Hydro or the Government of Manitoba or member of the Cabinet of the Government of Manitoba at the time the AIP was drafted, negotiated and signed?

Hydro and Manitoba have tens of thousands of employees (most of whom have no connection of any kind to the proposed Wuskwatim project). All conflict of interest legislation has been complied with.

13. Will all members of NCN, both on and off reserve be allowed to vote on the Wuskwatim Project Development Agreement?

All NCN members 18 or over, whether they live on or off reserve, will be allowed to vote.

14. Summary of Understandings is non-binding (p.2) What exactly does this mean and what written and verbal commitments have been made?

It is not legally enforceable. No binding commitments have been made. The PDA will contain binding commitments if it is approved by NCN members and the Manitoba Hydro Board and the Lieutenant Governor in Council.

15. How much flexibility is there to change the Summary of Understandings and who will make the decisions besides Manitoba Hydro?

There are no plans to change the SOU. If there were, both NCN and Hydro would have to agree.

16. Will it be presented and discussed thoroughly with NCN members prior to the start of the Wuskwatim CEC Hearings?

Yes. It has already been distributed to NCN members. Explanatory material has been distributed. Other materials will also be distributed and placed on the NCN website. Meetings with various NCN groups were held in January-February 2004 and are ongoing.

17. When will the document be finalized and what is the timetable and process to be followed in consultation with NCN Band members?

The SOU is finalized. The next step is to complete a formal and legally binding Project Development Agreement. It is hoped that the PDA will be finalized by the fall of 2004. Meetings will be held and written information distributed to NCN members as part of the ongoing process of consultation.

18. Who will be involved in drafting and negotiating the final summary of Understanding Agreement [sic] for the Project?

The SOU is complete. The PDA will be drafted by various NCN and Hydro representatives in the months ahead.

19. Current estimated costs in 2002 dollars for the Wuskwatim Project are stated as \$568 million (p2). What are the current estimated costs in 2003 dollars factoring in the recent rise of the Canadian dollar which many economists are predicting will reach 80 cents U.S. by the end of 2004?

Potential currency fluctuations have been taken into account in writing the SOU. There will be more detail in the PDA. Together, the Generation and Transmission Projects may cost roughly \$990 million.

20. What safeguards are in place to protect the fiscal position of NCN for cost overruns and other unforeseen circumstances?

Most of the risk of cost overruns will be taken by contractors, not the partnership. The estimated costs of the project include an allowance for some unforeseen circumstances. When construction is complete and most of the capital costs have been finalized, NCN will be able to withdraw as an investor and have its investment repaid if it so chooses.

21. Who is the General Partner for the Project that is stated as being a wholly owned subsidiary of Manitoba Hydro? (p.3)

The General Partner will be a corporation controlled by Hydro. There will be more detail in the PDA.

22. Property, assets and ability to enter into contracts for Wuskwatim sole responsibility of General partner which in effect is Manitoba Hydro [sic]? Why creation of a General Partnership if owned solely by Manitoba Hydro?

Ownership will be shared by NCN and Hydro. The Parties have decided that this a partnership structure is advantageous to both partners from a tax and liability standpoint. NCN obtained independent legal, tax and business advice on this and other issues. NCN is also seeking an advance tax ruling.

23. The Project Development Agreement (PDA) will be submitted to NCN members for ratification. (p.4) What will meaningful consultation entail and why does it assume that it will be ratified by NCN members?

Consultation will include meetings, home visits by community consultants, written information. There is no assumption that it will be ratified - that will be up to NCN voters.

24. What is the timeframe for the vote on the Wuskwatim PDA and, given the controversial 2002 NCN Chief and Council election that is still before the federal courts, what safeguards are in place to ensure that the election will be fair and above board? Will an independent body like Elections Manitoba or Elections Canada oversee the vote to ensure its fairness and honesty?

Firstly, in Primrose et al. v. Spence et al., [2003] 3 C.N.L.R. 141, the Federal Court Trial Division determined that the current Chief and Council of NCN are validly in office. The appeal of this decision was dismissed by the Federal Court of Appeal on January 28, 2004. There are some NCN members who are unhappy about the results of the 2002 NCN election, but the same could be said about every federal, provincial and municipal election. The PDA vote will be fair and democratic. It may be held in the fall of 2004, perhaps a bit earlier or later.

25. Agreements to be negotiated by General Partner (solely owned by Manitoba Hydro). The Project Financing Agreement (with Hydro); Power Purchase Agreement (with Hydro); Systems Operations and Dispatch Agreement (with Hydro); Maintenance and Operations Agreement (with Hydro); Interconnection Agreement (with Hydro); Adverse Effects Agreement (with NCN); and Management Agreement (with Hydro) as outlined in the Wuskwatim Power Partnership Flow Chart (p.5) will be negotiated after the Project Development Agreement is signed. Why are these agreements not being presented to NCN members along with, or part of, the Project Development Agreement (PDA) and voted on at the same time as the PDA?

They will be. When they are complete, these agreements will all be schedules to the PDA. The PDA and its schedules will be available to NCN members. Voters will have every opportunity to read them before the PDA vote. Explanations will be provided in newsletters and meetings held for this purpose.

26. Why is the Adverse Effects Agreement only to be negotiated with NCN (p.5)? Why is Manitoba Hydro not involved and what effects does this have on Manitoba Hydro's responsibility and liability for adverse effects of the project? Does this make NCN solely responsible for adverse effects and potential liability and claims resulting from Wuskwatim? Will Manitoba Hydro take full responsibility as they have total control of construction and operation of the Wuskwatim Project?

In fact, the Adverse Effects Agreement will be negotiated by representatives of NCN and Hydro. The details of this agreement are still being negotiated. Hydro will not have total control over the construction and operation of the project - it will be legally bound to comply with the terms of the PDA and all licences and permits. The cost of adverse effects will be a partnership cost.

27. Why is NCN not involved in the Management Agreement with Manitoba Hydro?

As a limited partner, NCN will not be involved in day-to-day management (SOU pp. 16-18). NCN will lose the limited liability protections it could have if it gets involved in day to day management.



28. NCN and Hydro have sought the necessary licenses for Wuskwatim as co-proponents. (p.6) Is this true and where are the written and signed applications and why was this not cleared with NCN band members? Will these be publicly presented to NCN band members and tabled with the Clean Environment Commission?

Being co-proponents at the CEC just means that both NCN and Hydro are proposing the potential project and asking the CEC to assess it as a potential project. That is what being a co-proponent means. Neither NCN nor Hydro has actually decided that they will build the potential project. The fact that NCN and Hydro are co-proponents in the regulatory process does not mean that Wuskwatim is a “done deal”. On the contrary, NCN has said over and over again that NCN voters will have the final say in the PDA vote. NCN’s Chief and Council, as the democratically elected representatives on NCN, have made and will continue to make day-to-day procedural decisions in respect of many NCN issues.

29. What are the mitigation and compensation provisions of the Birch Tree guideline (p.8) are not adhered to, including low outflow conditions and failure of any components of Manitoba Hydro’s transmission or generation capability?

There will be more detail about this in the PDA. In addition, if the regulators grant licences, there may be licence terms and conditions in respect of these matters.

30. What monitoring of other components of the Churchill-Nelson River Hydro Project System will be undertaken to ensure adverse affects are not transferred to other aspects or components of the system to compensate for effects caused by the Wuskwatim Project?

Monitoring is discussed at length in the EIS - a public document.

31. What monitoring of potential impacts on Southern Indian Lake and South Indian Lake will be undertaken on an ongoing basis?

NCN’s own engineers have confirmed that Wuskwatim will have no effect on how the CRD will be operated or on Southern Indian Lake.

32. Hydro has committed up to \$5 million for training with up to 75% for NCN members and the Nelson House Northern Affairs Community with the other 25% earmarked for other aboriginal people. (p.8). Over how many years is the \$5 million to be provided?

Over the pre-construction and construction period (roughly 5 - 6 years).

33. How much training funds from Canada and Manitoba can be expected?

INAC has already committed and disbursed \$3.26 million. Western Economic Diversification Canada has committed \$1.25 million. NCN has applied to Human Resources Development Canada for additional funds, but has not received a final response. Manitoba has committed \$2.5 million for aboriginals, of which \$1.875 million will be for NCN members and Nelson House (Northern Affairs) residents. Hydro has committed up to \$2 million in additional funding if certain NCN targets are met. There have also been \$2.85 million in advance funding commitments.

34. How much is being allocated for the training of NCN members at South Indian Lake and members of the Displaced Residents of South Indian Lake (DRSIL)?

There is no specific quota for NCN members at SIL. There is certainly no quota for DRSIL members, some of whom are not NCN members, and some of whom live outside of Manitoba. All those who request training, from SIL and elsewhere, will be considered.

35. Who will make the decisions on who receives the training and what input will band members have? Will it be solely controlled by NCN Chief and Council and Hydro?

Annual and multi-year training plans are being developed by NCN and submitted to the three funding parties, (Canada, Manitoba and Hydro). Individuals who want training will have to take some initiative in coming forward. The Atoskiwin Training and Education Centre (ATEC) and Manitoba Advanced Education and Training (MAET) will both play important roles in organizing training and job placements. ATEC, rather than Chief and Council, will make most day-to-day decisions about training issues. Other than

providing funding and receiving information, Hydro will not be involved in making day-to-day decisions about training.

36. Will the training for long-term sustainable jobs and skills training or short-term low skilled training as with previous hydro development? What employment guarantees are in place to ensure long-term sustainable employment for NCN band members at the end of the training?

There will be no guarantees of a job (either short or long-term) for any specific individual. There will be many job opportunities, for both skilled and unskilled workers, during construction. Those who acquire training and experience will be better positioned to obtain jobs after construction, on future hydro projects, and in general.

37. Hydro has control and responsibility for all tendering and hiring on the project including negotiations with the unions and the text states that NCN will be kept informed of material issues with respect to the progress of negotiations". (p.10) Why is NCN, as a partner and co-proponent, being excluded from being at the table and active participant in these negotiations?

By law, a collective agreement is a contract between a union and an employer. NCN will not be the employer of employees covered by the BNA. Therefore, by law, it cannot be a party to the BNA. However, NCN has not been excluded from such discussions.

38. Are there any firm job guarantees for NCN members or will preference be given to union members?

With perhaps a few exceptions, NCN members who work at Wuskwatim will be union members either prior to or automatically upon being hired. The Burntwood-Nelson Agreement (BNA) now contains preferences for northern aboriginals (including NCN members in Nelson House and SIL). It is now being renegotiated. The new BNA may contain preferences for aboriginals in the CRD-LWR region (including Nelson House and SIL).

39. Employment will be seasonal with a peak of 150-300 workers and 50-180 workers typically in the slower months (p.10) Are these guaranteed numbers or just estimates?

Estimates.

40. What is the Wuskwatim Letter of Agreement and the Burntwood Nelson Agreement?

This is the collective agreement between the HPMA and the Allied Hydro Council. Explained in SOU pages 10 and A-1.

41. Why is NCN not involved in the negotiations over the Wuskwatim Letter of Agreement?

See answer 37.

42. With the Burntwood Nelson Agreement being part of the Northern Flood Agreement (NFA), do all signatories of the NFA have to agree to any changes to it?

This is a false premise. The BNA is not part of the NFA.

43. Will NCN band members receive access to both the Wuskwatim Letter of Agreement and the Burntwood Nelson Agreement?

Both will be public documents.

44. Who sits on the Hydro Projects Management Association and the Allied Hydro Council of Manitoba, and what are their affiliations?

The Management Association consists of three Hydro representatives. The Council consists of representatives of twelve construction trade unions.

45. Hydro, as contractor will enter into contracts with Qualifying NCN Businesses...(p. 12) What conflict of interest safeguards will be in place to ensure that Chief and Council and their family members will not be in a conflict or perceived conflict of interest? This includes current Chief and Council and future Chiefs and Councils.

See AIP section 12.1 (page 42). The PDA will also contain conflict of interest provisions.

46. Will the directors and owners of all companies bidding on Wuskwatim work and tenders be made public to ensure transparency?

By law, the list of directors and shareholders of all corporations is public information. Call the Manitoba Companies office (945-2500 or 1-888-246-8353) for more information.

47. Why is it that only Hydro can unilaterally reject contractors or subcontractors to work on the site? What input or say will NCN have?

Hydro is the Project Manager. NCN will have a role through the Construction Advisory Committee. See also answer 27.

48. What criteria will be used to make decisions on who is selected and allocated work on Wuskwatim?

Manitoba Advanced Education and Training will have a major role as the primary referral agent for the project in respect of northern aboriginal workers. Other workers will be hired pursuant to the BNA. The PDA will contain more detail.

49. What are the special tender conditions and incentives to contractors and sub-contractors to include Northern Aboriginal Businesses, and in particular, Qualifying NCN Businesses (point d. p.13)?

Negotiations on this subject are ongoing. There will be more detail in the PDA.

50. What safeguards are in place to ensure that Chief, Council and members of Future Development Office of NCN and their families do not benefit from arrangements made? Who will decide on the incentives and who receives them? What public accountability procedures and guidelines will be put in place?

See answer 45.

51. General Partner will have a Construction Advisory Committee made up representatives of NCN and Hydro to keep them informed but “the role of the Committee will be consultative and advisory only; it will have no decision-making authority” (p. 15) Are there any mechanisms or guidelines to ensure that legitimate concerns of NCN band members are taken into account and appropriate action taken?

See provisions about “fundamental matters” - SOU pp. 17-18. See also answer 27.

52. What are the anticipated direct and indirect costs of Manitoba Hydro (p.15)?

There will be more detail in the PDA.

53. The Adverse Effects Agreement will provide for the establishment of mitigation measures before, during and after construction of the project and a compensation trust fund that NCN and Hydro agree is reasonable in the circumstances. (p. 16) What baseline and conditions will be used for determination of the “post construction water regime” on which the environmental assessment and mitigation measures will be based?

For environmental assessment purposes, the baseline is discussed in the EIS, the Supplemental Filings, and the answers to the information requests. In short, the baseline is the way things are today. For compensation purposes, the 1996 Agreement already applies and will continue to apply after Wuskwatim. CASIL’s 1992 Agreement with Hydro and Manitoba will also continue to apply after Wuskwatim.

54. On what criteria will be used [sic] to determine “reasonable mitigation measures” and “appropriate” provisions for further mitigation or compensation?

The EIS comments on this in detail.

55. What are the criteria and guidelines to determine the “size” and “reasonableness of the trust fund”?

This is subject to the give and take of negotiation between NCN and Hydro.

56. What is eligible for compensation including specific terms and guidelines for eligible compensation?

See answer 55.

57. Manitoba Hydro still has not adequately addressed past hydro environmental and social economic damage and the settling of compensation claims under the NFA and what safeguards are there that compensation claims will not be “tied” up in arbitration or mediation?

Outstanding NFA claims are subject to the dispute-resolution provisions of the NFA. The 1996 Agreement applies to compensation to NCN for Wuskwatim, and it too contains its own dispute-resolution provisions. The PDA will not amend the NFA or the 1996 Agreement. Since the 1996 Agreement has been in effect, only one claim has proceeded to arbitration and court. There have been no disputes between NCN, Manitoba, Manitoba Hydro and Canada that have gone to arbitration under the Agreement.

58. What effective safeguards are in place to ensure that NCN band members are provided with a “level playing field” in dealing with Manitoba Hydro and the General Partner (totally owned by Manitoba Hydro) on compensation issues?

As of today, the “playing field” is set out in the 1996 Agreement, which was ratified by a double majority of NCN members in a secret ballot vote (a majority of eligible voters voted; and a majority of those who voted, voted “yes”). The details of the PDA are still being negotiated.

59. Will outstanding claims under the NFA be settled prior to Wuskwatim and other hydro projects being started?

Outstanding NFA claims will be dealt with under the NFA, which contains its own dispute-resolution provisions.

60. With no Northern Flood Arbitrator in place since December 2001, how will the outstanding claims be settled, including the claims filed by the Displaced Residents of South Indian Lake and other NCN band members?

This question is not related to Wuskwatim. Not all DRSIL members are NCN members. The NFA itself deals with the process for selecting an arbitrator. Madame Justice Krindle was appointed on November 26, 2003 as the new NFA Arbitrator.

61. Monitoring of the environmental and socio-economic impacts of the project must be for a lifetime (as long as the river flows and the sun shines) as, once built, that is for how long the environment and ecological systems will be affected by Wuskwatim. Why is this not included in the Summary of Understanding and will this be included in the final Project Development Agreement (PDA) for Wuskwatim?

The EIS contains details about monitoring. If the governments licence the project, the licences will almost certainly contain terms and conditions about monitoring. Not every form of monitoring must be permanent. For example, if water quality at a specific location does not change at all for many years, it may not be necessary to continue monitoring at that specific site.

62. Compensation must be provided for direct and indirect loss and loss of opportunity as well as environmental, economic and social impacts on the community and individuals resulting from the project. Will this be implicitly included in the Wuskwatim PDA?

See 55. Note also that the project will have numerous positive impacts, including NCN's share of partnership profits. Article 8 of the 1996 Implementation Agreement sets out the broad parameters for the compensation agreement.

63. The General Partner for the Wuskwatim Project will be a wholly owned subsidiary of Hydro, the board of directors of the General Partner will be made up of representatives of Hydro and NCN on a basis proportionate to their respective equity interests (p.17). Since Hydro will own at least two-thirds equity in Wuskwatim, they will be guaranteed voting and total control of the partnership and will make all the decisions. What safeguards are in place to ensure the interests of NCN are protected when decisions or issues arise that may not be in the best interest of NCN?

See 51.



64. What stipulations are in place guiding the appointment of board members?

There will be more detail in the PDA.

65. NCN's representatives on the board of the General Partner will be limited to participate to certain fundamental matters (p. 17). Why is NCN's participation limited to the six "fundamental matters listed" in the Summary of Understandings which are limited to interest in the Partnership arrangement and use of Auditor (unless it is Hydro's Auditor), which Hydro has control over anyway?

The participation of NCN's representatives on the board is not limited in any way. NCN also has rights in the partnership through its ownership of partnership units and the fundamental matters set out on p.17 of the SOU are proposed examples of things which could not be done without NCN's consent as a limited partner.

66. It seems highly unlikely that it would want to cede ownership or control of Wuskwatim to a third party which would involve involving NCN having some input into designation of the new third party [sic]. Why is there no stipulation for independent third party auditors, free of the control of Manitoba Hydro to provide audits to ensure another Enron-Arthur Anderson situation does not occur? Will NCN have its own independent auditors and audit advice separate and distinct from Manitoba Hydro and the General Partner?

Canadian auditors are legally and professionally required to follow stringent accounting rules. This would be the case whether they were selected by NCN, Hydro, or both. NCN will receive copies of the partnership's annual audited statements, and will share them with NCN members.

67. What will be Manitoba Hydro's management fee to manage the business and affairs of the partnership on behalf of the General Partner? (p.17)

This is being negotiated. Generally, Hydro will charge its costs. There will be more detail in the PDA.

68. Will NCN have to pay towards this fee? Will this be an operating or financial cost of the Project?

It will be an operating cost of the Project and therefore it will come out of the limited partners' shares.

69. NCN will have the right, in certain cases and circumstances, to compel the General Partner to exercise the General Partner's rights on behalf of NCN (p.18). These circumstances and cases and degree of actual authority NCN has must be clearly articulated. Will they be included in the Wuskwatim PDA and thoroughly explained to NCN band members prior to voting on the PDA?

Yes.

70. Review to be ordered by wholly owned subsidiary of Hydro: is this a conflict?

There is no question that the General Partner will be a corporation controlled by Hydro and that the General Partner will make many decisions regarding many aspects of the project. NCN, as a limited partner, will have various rights under the PDA. This is the arrangement worked out by the parties through negotiations and NCN has certain rights within the negotiated terms to protect its interest.

71. Will any operational audits be done by an independent third party not associated with Manitoba Hydro?

See sections 12 and 13 of the SOU. There will be more detail in the PDA.

72. Will the results of any audits be tabled in the Manitoba Legislature to ensure public accountability?

Manitoba will not be a party to the PDA. It is not anticipated that the PDA will require anything to be tabled in the Manitoba Legislature. NCN will share the partnership's annual financial statements with its members.

73. The Project Development Agreement (PDA) will contain an overall dispute resolution mechanism for matters that are expressly agreed to be resolved in that manner (p. 18). What will be NCN's input into the dispute resolution process, and what is preventing Manitoba Hydro from having the process triggered for matters they do not want to be discussed or resolved in this manner?

There will be more detail in the PDA.

74. Will this dispute resolution be in writing and subject to review and endorsement of NCN Band members? Has the dispute resolution process been developed and, if not, what process will be followed to develop it, and will it involve NCN band members beyond Chief and Council and their legal council [sic]?

It will be set out in writing in the PDA, which will be explained to all NCN members. All NCN voters will be able to vote on the PDA.

75. Will NCN have to pay for Water Rentals for the Wuskwatim Project that are normally paid entirely by Manitoba Hydro to the Province?

Hydro pays annual water rentals to Manitoba, and this will continue whether or not Wuskwatim is built. NCN and Hydro, as partners, will have to pay for all project costs including costs for any water rentals charged by the Province for Wuskwatim. There will be more detail in the PDA.

76. Will there be any independent third party verification of the amount of capital required by the General Partnership (the Initial Capital) as determined by Hydro (p. 20)?

NCN's own financial advisors have been involved in the negotiations and will be involved in reviewing the capital costs. See also answer 20.

77. At closing of the deal "the limited partners will finance 25% of the Initial Capital and the remaining 75% will be financed by debt" (p. 20). During the first 10 years, Hydro as lender, will permit the debt ratio (amount of loan) to increase to a maximum of 85% of the capital of the Partnership. The General Partner will be required to make a cash call on limited partners during the first 10 years following the Final Closing if the debt ratio exceeds 85% and at any time after the first 10 years following the Final Closing if the debt ratio exceeds 75%. Where will NCN get the money for the cash call if no guaranteed profits to meet the debt financing charges?

See provisions on NCN Cash Call Loans - SOU page 26.

78. What safeguards are in place to protect NCN's interests? Will the Province of Manitoba underwrite and guarantee (co-sign) the financial obligations of NCN as it automatically does for Manitoba Hydro as a Crown Corporation?

Manitoba will not be a party to the PDA. Also, if NCN refused to invest in any business venture unless the government guaranteed NCN's investment, NCN would virtually never be able to invest in any business venture. The PDA provides various safeguards to protect NCN's interests.

79. What has Chief and Council of NCN done with the money from the \$40 million Hydro Bond from the 1996 NCN MIA [sic], and will it be used to finance NCN equity requirements for Wuskwatim?

NCN will fund its investment in the project through various sources. NCN has invested the capital of its Hydro Bond in a laddered bond portfolio, based on the advice of professional financial advisors, as it is permitted to do under the 1996 Agreement. The bonds in this portfolio mature on different dates, thus minimizing investment risks.

80. There will be no income distributions prior to Final Closing and for so long as the debt ratio exceeds 75% (p.20). NCN has no say in the price the power will be sold for and no independent verification or audit of profits by NCN. How will NCN be protected from Hydro arbitrarily ensuring that the debt ratio is not reduced from the initial 75% thereby ensuring no income distributions to NCN?

Hydro cannot arbitrarily reduce (or increase) the debt ratio. That is part of the agreement. The partnership's auditors will be bound by general legal and professional rules.

81. What is preventing Manitoba Hydro from selling the power generated at an artificial low price thereby reducing profits that should be going to NCN?

See answer 80. The price of the power will be fixed in the Power Purchase Agreement being negotiated by NCN and Hydro, and will be attached to the PDA. Hydro cannot "artificially" lower that price, nor would it have any incentive to do so. A lower export price would negatively impact Hydro's returns. Also, as Hydro will receive about 67% of the project's profits, Hydro

will have a greater incentive than NCN to do everything to make the project to be as profitable as possible.

82. Legally even a nominal amount over the 75% level will ensure no income payments to NCN, thereby giving Hydro total control. Will this be thoroughly checked out by an independent expert on behalf of NCN?

See 80.

83. Will a long term power sale to buy all the power from Wuskwatim at a fixed minimum price be in place before construction starts?

There is no guarantee that a contract will be in place. There will be a power purchase agreement that will establish the rules for selling and pricing all power produced by the Wuskwatim Generating Station.

84. Will NCN be guaranteed that price agreements made will cover all construction, operating and maintenance costs and provide a suitable rate of return?

No. See SOU section 11 and the PDA.

85. The General Partner will make cash calls on the limited partners if required to reduce the debt ratio to the agreed upon limits (p.21). The Government of Manitoba and ultimately the taxpayers and ratepayers of Manitoba will cover Manitoba Hydro's cash requirements but who will cover NCN's portion, and will it be in proportion to the ownership equity position? Will Manitoba Hydro or the Government guarantee NCN's requirements?

See Cash Call Loan provisions on page 26 of the SOU. Manitoba will not be a party to the PDA.

86. Hydro will be reimbursed for its administrative costs and expenses in acting as lender (p.21). What are the costs to NCN and are they fixed?

As a partner, NCN will ultimately be responsible for its share (e.g. 33%) of partnership costs and expenses. The cost figures used in the SOU are estimates.

87. Has an independent financial expert not associated with Manitoba Hydro or the Government of Manitoba reviewed the interest rate terms outlined on page 21 and 22?

NCN's own financial experts have been involved in SOU negotiations, and are involved in PDA negotiations.

88. The Summary of Understandings states that other provisions that are customary to financing transactions will be included, such as repayment, mandatory prepayment, voluntary repayment, events of default and conditions precedent provisions as well as representations, warranties and covenants. Will all of these conditions be clearly explained to NCN band members prior to any votes being held on the Wuskwatim Project?

Yes.

89. What will these provisions be and on what are they to be based upon [sic]?

They will be detailed in the PDA.

90. Equity Financing (p.22), General Partner will ask for payment of the promissory notes in increments from time to time as it requires money to finance the construction of the Project to be paid in full at time of closing. Where will NCN get the money to cover these costs?

If it decides to participate, NCN will raise its own money from various sources. Through the Community Approval Process, NCN may choose to set aside some money between now and 2010. NCN is exploring other funds that might be available. The balance will come from the Hydro Equity Loan (see page 21 of the SOU).

91. Has a schedule been developed and will it be shared with NCN Band members? If not, when will it be developed, presented and explained to all NCN Band members?

If the project proceeds, it is hoped that construction will start in about December 2004 and finish in about 2010. The construction schedule will depend on variables such as the speed of the regulatory process, the

progress of PDA negotiations and, of course, the outcome of the PDA vote. As in the past, progress reports about the schedule will be shared with NCN members through newsletters and other formats.

92. What protection and support will the Government of Manitoba provide to NCN in meeting these promissory requirements?

Manitoba will not be a party to the PDA.

93. NCN Financing and Final Closing Equity Adjustments (p.23-27). Has an independent financial expert analysis been done and, if so, will the full analysis be shared with NCN Band members and the public? If not done, will one be completed and what is the timetable to complete one? If one is not planned, why not?

NCN's own financial advisors have been involved in the SOU negotiations and are involved in the PDA negotiations. The PDA will be available to NCN members.

94. Is there any protection of NCN for potential cost overruns as NCN [sic] as Manitoba Hydro will control all aspects of tendering and construction for Wuskwatim? If there are such provisions, what are they?

See 20.

95. Hydro must approve any cash invested by NCN (p.23) and, since Manitoba Hydro is providing the financing for NCN, any missed payments Manitoba Hydro may end up owning NCN's equity share. What are the exact terms of the investment arrangement between NCN and Manitoba Hydro, and when will NCN Band members see the signed deals and arrangements made between NCN Chief and Council and Manitoba Hydro, the General Partner and the Province of Manitoba?

The Province of Manitoba will not be a party to the PDA. There is a fair bit of detail on the terms of these arrangements in the SOU, and there will be more detail in the PDA, which is still being negotiated. NCN members will be able to review the PDA prior to the ratification vote.

96. Are NCN's financing loan costs to be factored in as debt for the Wuskwatim Project?

NCN's equity, dividend and cash call loans are explained at SOU pp. 22-27.

97. If NCN wants to withdraw as an investor, Hydro will pay \$1 million and own all of NCN's equity units (p.25). Does this mean that Manitoba Hydro will only be repaying the original \$1 million NCN put up initially to be an investor without any accrued interest?

Yes.

98. Future profits post-2035 to repay loans to Hydro (p. 27). What are the exact terms of this arrangement, and when will NCN Band members, and not just Chief or Council or others designated, have access to all relevant information pertaining to these arrangements?

The PDA is still being negotiated. NCN members will be able to review the PDA prior to the ratification vote.

99. Except for water spilled at the Wuskwatim spillway (and power not generated) "the risk of the Project not being able to generate power from all other matters of circumstances will be borne by the Partnership (p. 27). This means that other major concerns such as current major losses being incurred by Manitoba Hydro by lost generation capacity due to low water levels are not covered. Does this mean that NCN will not be covered for potential huge losses from low water levels and other circumstances while still having to pay debt and operational costs?

NCN and Hydro do not expect huge losses. On the contrary, even accounting for the certainty that there will be low water levels in some years, they expect the project to be profitable. NCN's own engineers and consultants have confirmed this expectation. As a limited partner, NCN is potentially liable only for the amount of its investment.

100. Power Purchase Agreement automatically renewed for another 25 years on the same terms and conditions (p. 29). Does this mean that NCN has no



rights or opportunity to reopen the agreement if it is not favorable or fair to NCN?

There will be more detail in the PDA.

101. Does Hydro have total control of the financial terms of the Project and guaranteed supply of power regardless of fairness to NCN?

NCN and Hydro do not accept this premise. They both expect that the PDA will be fair to both parties. NCN voters will have the final say.

102. Why are there no evaluation components or opportunities for either side to renegotiate terms of the agreement after a set period of time(s) to ensure fairness and relevancy?

There will be more detail in the PDA.

103. If no firm power sale for Wuskwatim Power, will Hydro have to buy the power anyway, guaranteeing profits to NCN?

See SOU pp. 27-31. Hydro will purchase all of the power generated by the Project.

104. At what minimum price will the power be sold? Not stated in terms of the document. Will this be confirmed in writing to protect NCN (p. 29)?

There will be no defined minimum price. See section 11 of the SOU. The PDA will contain more details.

105. Will Manitoba Hydro be required to open its books fully to NCN on the Wuskwatim Project?

Both partners will have full access to the annual audited financial statements. The Annual Audited Financial Statement of the Limited Partnership will be available to each of the Limited Partners.

106. Non-binding mediation to settle any disagreements on price of the power which is effectively “toothless” and will not protect NCN (p. 31). What is the mediation and arbitration process to settle any disputes or disagreements

between NCN, Hydro and the General Partner? Why no independent arbitration process included to settle disputes?

Mediation is often a fast, inexpensive way to resolve legal disputes. That is why courts and tribunals are encouraging mediation more today than ever before. There is a provision for arbitration (by a sole expert) if mediation does not work (page 31). There may be an independent arbitration process to settle some other types of disputes. This is still being negotiated. There will be more detail in the PDA.

107. What safeguards does NCN have to ensure that Hydro does not shift other system operating costs onto Wuskwatim to negatively impact profits and potential payments to NCN? (p. 31)?

The PDA, including provisions about operating costs, will be legally binding on both NCN and Hydro. It will contain various dispute resolution provisions. Some disputes could ultimately be resolved by the courts.

108. Will detailed regular reports be provided to NCN to share with NCN band members?

NCN will continue to share information about Wuskwatim with NCN members. The PDA will be available to NCN members. NCN will share the partnership's annual audited financial statements with NCN members.

109. (p.31-32) Hydro's dispatch of the Integrated Power System (centrally within environmentally regulated limits to optimize the use of available water flow and to maximize the profits available in the markets for electricity) will have an impact on the project, sometimes negatively, and possibly materially so. Hydro will operate Wuskwatim as part of the Integrated Power System just like any other generating station within the Integrated Power System, without regard to ownership of the Wuskwatim generating station or, in particular, the existence of the Power Purchase Agreement. General Partner (solely owned by Manitoba Hydro) can have a third party expert and if the expert determines that Manitoba Hydro has been operating the Integrated Power System "in a manner that is materially prejudicial to the Project and did also not intend to benefit the Integrated Power System, then the expert also will make a determination as to the direct losses suffered by the Project as a result thereof, and Hydro agrees to be bound by that determination and to reimburse

that amount to the Project.” Remedy is only limited to compensation for direct losses and does not limit or control Hydro’s ability to operate the Integrated Power System as it sees fit. Many potential problems and questions with the above. Will Hydro in effect hire the expert with no input from NCN?

NCN will have representatives on the board of directors of the General Partner.

110. Does this confirm that Wuskwatim is part of the Integrated Operating System of Hydro and not a stand-alone project and its operation will be determined by Hydro’s operating requirements for the overall system?

There has never been any question that power from Wuskwatim will enter the Integrated Power System. Wuskwatim is a “stand-alone project” in the sense that its environmental effects will be limited. It will cause less than one half square kilometre of flooding. NCN’s own engineers have indicated that Wuskwatim will have no effect on the operation of the CRD. Depending on how the power is sold, Wuskwatim will either have no effect at all on Lake Winnipeg Regulation, or an effect so small as to be imperceptible.

111. Therefore, Wuskwatim should be assessed by the CEC as one component of an existing system and not a stand-alone project. Will this be taken into consideration by the CEC during the hearings on Wuskwatim and will a broad scope be used in applying the hearings?

The CEC considered this argument and rejected it in September 2003.

112. As the above reads, the expert can only recommend compensation if both the operation of the Integrated Power System is prejudicial to the Project and also not intended to benefit the Integrated Power System. Why would Hydro do anything that if not to benefit the overall Integrated Power System [sic]?

It is not likely that it ever would. However, the SOU deals with this issue out of an abundance of caution to protect NCN.

113. Potentially Hydro will not have to pay any compensation for any impacts or direct losses to NCN, if they can make a logical argument that it was to

benefit the overall system, which should be no trouble. What safeguards are in place to NCN to ensure this does not happen?

See section 12 of the SOU. There will be more detail in the PDA.

114. What is a direct loss according to the Summary of Understandings?

There will be more detail in the PDA.

115. What about indirect losses?

There will be more detail in the PDA.

116. With Manitoba Hydro's record of deliberately tying up claims in the courts or arbitration process under the NFA, or settling for a few cents on the dollar, achieving any just compensation will be very difficult.

This premise is not accepted. NCN and Hydro take the position that the SOU is fair to both NCN and Hydro. Since 1996, NCN and Hydro have established a constructive working relationship, which has continued during Wuskwatim negotiations. The parties don't always agree, but they have been able to make good progress. NCN voters will have the final say on the PDA.

117. What obligations does Manitoba Hydro have to change its operating regime to lessen repeated environmental, social or economic impacts to Nelson House or NCN members, if the expert finds that they are operating the Integrated Power System contrary to the interests of NCN?

Hydro has certain obligations to NCN under the 1996 Agreement and under existing licences. These will continue whether or not Wuskwatim is built. Also, there will be more details in the PDA.

118. The Summary of Understanding seems to allow Manitoba Hydro to offload additional costs and limit potential profits to NCN as part of the Wuskwatim Project with little or no protection for NCN. What will be done in the Project Development Agreement to rectify this?

NCN and Hydro do not accept this premise. As a 66.99% owner, Hydro will have twice as much incentive as NCN to do everything possible to make Wuskwatim profitable. Also, see 55.

119. Will the Wuskwatim Protection Plan [sic], decommissioning plan and waste disposal plan (including hazardous waste) all be submitted immediately for review by the CEC?

If the reference is to the Environmental Protection Plans, they will be filed with environmental regulators when they are ready, and prior to being required for construction or operation of the Project.

120. For on-going operations, it currently is anticipated that approximately six maintenance staff will be required for the Wuskwatim generating station. This will include three or four technicians and two utility workers. How many long-term sustainable jobs for NCN members beyond the short-term construction jobs will there be with Wuskwatim? (p.32)

See 36.

121. NCN and Hydro have agreed to preferred routes and have applied for environmental licenses. (p. 35): is this part of the co-proponent status and have the band members agreed to this, and is it in writing?

Preferred routes are discussed at length in the Transmission EIS. A special NCN/Hydro committee considered community, environmental and technical factors before selecting the route for the access road. NCN elders and resource users had crucial input into determining the routes in the Nelson House Resource Management Area. Also, see 28.

122. NCN has agreed in principle to the payment of the annual distribution of Hydro using Project Transmission Facilities within NCN's resource management area. (p.35). What are the payments and to whom are they being paid to [sic]?

NCN will receive some of the benefits. There will be more detail in the PDA.

123. NCN and Hydro currently are investigating means to provide employment preferences, business opportunities and on-the-job training to NCN members

in connection with the construction of transmission facilities (p.35). What is progress and specifics agreed to date?

The Atoskiwin Training and Education Centre (ATEC) is being built in Nelson House. Negotiations are ongoing, although opportunities with respect to transmission are relatively limited.

124. Which Consultants were hired to undertake the studies and reviews under the Due Diligence Investigations section and what was the decision-making process for making the selection of the Consultants, and how much were they paid? (p.36)

NCN and Hydro issued requests for proposals and chose the firms in accordance with determined criteria. NCN also has a number of engineering, business, financial and legal advisors.

125. If NCN undertakes independent due diligence investigations as stated as allowed (p. 36), what assurances does NCN have that Manitoba Hydro will acknowledge and implement the recommendations that result?

If NCN is not satisfied, it will not conclude a PDA. If NCN voters are not satisfied, they will not ratify the PDA.

126. Will Manitoba Hydro or the Government of Manitoba provide financial assistance for NCN to undertake independent due diligence investigations that are identified as being required?

Manitoba will not be a party to the PDA. Through the process set out in Article 8 (Future Development) in the 1996 Agreement, Hydro has provided funding for various investigations concerning Wuskwatim.

127. Will the final Wuskwatim Project Development Agreement ensure that the General Partner for the Project has no connection or involvement with any aspect of the providing of consulting services and associated billings for the Wuskwatim Project to protect against any potential conflict of interest or “double-dipping”?

The General Partner will be responsible for managing the business of the partnership. It will not be a consultant.

128. With the number of concerns and questions needing to be answered it is very important that the Wuskwatim Memorandum of Understanding (MOU) between Manitoba Hydro and Nelson House First Nation and any financial, economic and risk analyses be thoroughly reviewed by the CEC and outside independent experts as part of the review process for Wuskwatim. Will the MOU and related analyses be released to NCN Band Members in an open general meeting, and thoroughly reviewed as part of the hearings over Wuskwatim?

There is no MOU. If the reference is to the SOU, it has already been distributed to NCN members. Documents explaining the SOU, such as an Overview and a Guidebook will also be distributed. Meetings with NCN groups were held in January-February 2004 and are ongoing. The SOU has been filed with the CEC, and can be discussed by any party at the CEC hearings. If the reference is to the PDA, as previously stated it is not yet finalized, but when finalized it will be available to NCN members and will be reviewed and explained in the community prior to ratification.