



MAY 2015

Summary

PDA SUPPLEMENT AGREEMENT

2

Prepared For Nisichawayasihk Cree Nation Citizens



[For complete details please refer to the full Project Development Agreement, Supplement Agreement and related documents.]

Wuskwatim Project Development Agreement (PDA)
SUPPLEMENT NO. 2

Between

***Nisichawayasihk Cree Nation, Manitoba Hydro
and Others***

Summary of the Amended Agreements

May 2015.

Please note: This document reflects only the parts of the amended sections to the original 2006 PDA Summary Document. Sections that were not amended have been removed from this Summary.

The amendments in this Summary are indicated in **RED bold**.

A Simple Snapshot is available for those NCN Citizens who do not want to read this full Summary.

[For complete details please refer to the full Project Development Agreement, Supplement Agreement and related documents.]

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INTRODUCTION

The Project Development Agreement (PDA) is the primary document governing the agreements and understandings for the development of the Wuskwatim Generation Project between:

- Manitoba Hydro (Hydro),
- Nisichawayasihk Cree Nation (NCN),
- Taskinigahp Power Corporation (TPC),
A new corporation controlled and wholly owned beneficially by NCN,
- 5022649 Manitoba Ltd. (General Partner),
 - *A new corporation wholly owned and controlled by Manitoba Hydro to manage the business and affairs of the Wuskwatim Power Limited Partnership, and*
- Wuskwatim Power Limited Partnership (Wuskwatim Partnership),
 - *A new limited partnership managed by the General Partner, in which Hydro is a limited partner and TPC will be a limited partner as part of the PDA transactions.*

When NCN is referred to as Hydro's partner in this Summary, the reference actually means TPC as a limited partner in the Wuskwatim Partnership (NCN is not an actual partner in the Wuskwatim Power Limited Partnership).

The full PDA is a long and complicated legal document containing all of the necessary legal detail for a complex arrangement. It is difficult to read even for lawyers.

This Summary is intended to provide a brief description of the PDA's provisions and the related primary agreements which were amended by PDA Supplement No. 2. The changes from the original PDA which were summarized in April 2006 are marked in bold.

Disclaimer: This is a summary document only. The Project Development Agreement and related documents contain approximately 1,300 pages of detail, and therefore, for a full understanding of the terms of NCN's participation (through Taskinigahp Power Corporation) in the Wuskwatim Project, the primary documents should be referred to directly. Although all reasonable efforts have been made to verify the accuracy of the information contained in this document, none of NCN, the Chief or any councilors, advisors or representatives of or to NCN make any representations concerning the accuracy or completeness of this document. This document is based on known risk factors and reasonable assumptions, but as this is a summary of a number of agreements, completeness cannot be guaranteed. There are statements in this document which may constitute "forward-looking statements" that involve both known and unknown risks, uncertainties and other factors that may cause the actual results,

performance or achievements of the Wuskwatim Project, and its costs, benefits and risks for NCN, to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements in this document. Forward-looking statements involve significant risks and uncertainties, **and should not be read as guarantees of future performance or results**, and will not necessarily be accurate indications of whether or not such results will be achieved. The statements made in this document are made as of the date set out on it, and none of NCN, the Chief or any councilors, advisors or representatives of or to NCN assume any obligation to update or revise them to reflect new events or circumstances.

COMPARING THE AGREEMENTS At-a-Glance

CURRENT STATUS – PROGRESSION OF NCN AND MANITOBA HYDRO DISCUSSIONS

Over the course of the last number of years, there have been economic and regulatory challenges that have impacted the financial outlook for the Project. This has resulted in escalating capital expenditures and reduced expected revenues for the Project. This is evidenced below through the progression of the terms of the investment decision:

	Original PDA (2006)	PDA Supplement No. 1 (2010)	PDA Supplement No. 2 (2015)
Cash requirement	\$38 Million	\$29 Million	\$21.178 Million which includes the credit of \$750,000 for the mobitel and trailer
Equity loans	4x Leverage	6x Leverage	Leverage to 33% (No further cash call loans made available)
Capital costs	\$1.027 Billion	\$1.375 Billion	\$1.410 Billion
Rights	25 year and 50 year put rights	25 year and 50 year put rights	25 year and 50 year put rights
Ending loan balances	\$0	\$22,389 Million	\$0
Types of cash flow	Dividend loans, distributions from export prices and water rental rebates	Dividend loans, annuity, distributions from export prices and water rental rebates	Dividend loans, annuity, distributions from export and domestic prices and water rental rebates
WPLP Revenue projections (First 25 years in '000's)	\$3,502,621	\$3,519,028 (IFF11)	\$3,169,185 plus spill energy revenue adjustment
GP Board Representation	Representation proportionate to TPC equity interest	Representation proportionate to TPC equity interest	NCN maintains 33% of votes on GP Board regardless of dilution
Annuity	No annuity	Less than \$2M per annum for 10 years	\$2.5M per annum for 20 years
Debt Ratio	75:25 except in first 10 years of operation when it could go to 85:15 at the discretion of the GP Board	75:25 except in years 1 to 10 when it could go to 85:15 at the discretion of the GP Board	Elimination of the fixed Debt Ratio
Spill Energy Revenue Adjustment	N/A	N/A	WPLP will be paid for lost energy production when operational decisions are made not to use the CRD as anticipated during the Original PDA negotiations
Nisichawayasihk Trust Hydro Bonds	Part of the 1996 NFA Implementation Agreement - Bonds matured June 30, 2013	Reinvested for \$10 M Bonds which can be reinvested for the life of the Wuskwatim Project	

This document uses simple terms rather than technical ones. For example, it may say "NCN and Hydro" or "the partnership" rather than "the Wuskwatim Power Limited Partnership," or "NCN" rather than the "Taskinigahp Power Corporation," or "shares" instead of "partnership units," or "profits" instead of "distributions on partnership units." Please consult the PDA directly for precise legal drafting.

1. PROJECT DEVELOPMENT AGREEMENT

The parties to the PDA are:

- NCN
- Hydro
- TPC
- General Partner, and
- Wuskwatim Partnership

Background

NCN and Hydro entered into discussions about the Wuskwatim and Notigi projects in 1999 that led to the Agreement in Principle (AIP), which was signed by NCN and Hydro in September 2001 after a ratification vote by NCN Members authorizing Chief and Council to negotiate a Project Development Agreement (PDA).

Discussions continued and a Summary of Understandings (SOU) about the Wuskwatim Project was developed. The SOU provided more detailed information about the business and other arrangements that would form part of the PDA. The SOU was also used in the regulatory process, including the Clean Environment Commission (CEC) hearings in which NCN participated as a co-proponent of the Wuskwatim Project.

Both the AIP and SOU were non-binding documents. The PDA however sets out the binding arrangements between NCN, Hydro, TPC, the General Partner and the Wuskwatim Partnership. NCN Citizens authorized Chief and Council to enter into the PDA by a secret ballot ratification vote held in May 2006.

Article 25.14 of the PDA gives Chief and Council the authority by written agreement between the Parties to amend the PDA without any further referendum being held as long as there are no changes to the Fundamental Features or in the opinion of Chief and Council, the amendments do not result in a material or substantial change to the arrangements for developing and operating the Project.

The PDA was amended in 2010 and again in 2015.

Purpose of the PDA

The purpose of the PDA is to set out the terms and conditions under which NCN and Hydro will proceed with the development of the Wuskwatim Generation Project. It is the primary agreement, which is supplemented by all of the other agreements and arrangements for the planning, development, construction and operation of the Wuskwatim Project.

The PDA does not deal with the Wuskwatim Transmission Project, except to describe how that project relates to the Wuskwatim Generation Project and NCN's role in it as described in Article 7. References in this summary to

“Wuskwatim” or the “Wuskwatim Project” are intended as references to the Wuskwatim Generation Project specifically.

The PDA brings together the entire relationship between NCN and Hydro, as well as the other parties, and the various agreements that have been drafted to define that relationship. It also deals with a number of issues, which either cannot be dealt with separately under the various agreements, or would be needlessly repeated under various agreements.

Summary of Key Provisions

Preamble and Interpretation: Article I

The preamble indicates that NCN and Hydro have stated publicly that they will not proceed with the Wuskwatim Project or the Wuskwatim Project Related Transmission Facilities unless NCN Members authorize Chief and Council to sign the PDA.

Article 1 contains provisions to assist in the interpretation of the PDA, including defined terms. Defined terms are denoted in the PDA by being capitalized and in bolded text.

Project Development: Article II

Article 2 provides the basic provisions to govern the development and operation of the Wuskwatim Project. It states that as of the date of the signing of the PDA, all rights and obligations of Hydro in connection with the Wuskwatim Project are to be assumed by the Wuskwatim Partnership, including the licences, which are to be issued by the federal and provincial governments. It also states that the costs of the parties from April 2002 up to the signing date are to be assumed as project costs by the Wuskwatim Partnership, including Article 8 planning costs. NCN and TPC also agree to support the Wuskwatim Project and not to oppose any aspects of it.

The Wuskwatim Partnership is obligated to give notice of the start of construction to NCN and TPC. It also provides Hydro with certain rights to halt construction for up to five years, subject to certain conditions. The PDA terminates if construction is not commenced within five years of the date of the PDA, or if it is halted by Hydro after the start of construction and Hydro does not start up again within five years.

It also sets out the fundamental features of the Wuskwatim Project, such as the low-head design, the location of the road, the camp and the transmission routes. The fundamental features cannot be changed without NCN's consent, whether relating to construction, operation or licence conditions. NCN has certain defined periods of time within which to bring its objections to the licence conditions that, in its view, change a fundamental feature. Hydro agrees not to breach a fundamental feature in its operation of the Wuskwatim Project. Any material breach of a fundamental operating feature will be handled in the manner provided in the Adverse Effects Agreement.

The structure for the development of the Wuskwatim Partnership is set out.

NCN waives any conflicts of interest that exist in the development structure due to Hydro's multiple hats and Hydro's exercise of its first duty to the Integrated Power System, which is Manitoba's electric system.

NCN consents to the Wuskwatim Partnership and Hydro entering into certain agreements between the Wuskwatim Partnership and Hydro which have been called the “Hydro Service Agreements”; namely, the Management Agreement, the Project Financing Agreement, the Construction Agreement, the Power Purchase Agreement, the Operations and Maintenance Agreement, the Interconnection and Operating Agreement and the System Operations and Dispatch Agreement. Hydro agrees that for as long as TPC owns units in the Wuskwatim Partnership, except for the agreements contemplated by the PDA, Hydro will not enter into any other agreements with the Wuskwatim Partnership, the purpose of which is to have Hydro provide services to the Partnership, without the prior consent of NCN.

Any disputes or claims relating to the PDA, the Wuskwatim Partnership Agreement, the NCN Financing Agreement or the TPC Financing Agreement are to be resolved under the dispute resolution provisions of the PDA (which provide for arbitration), except in relation to an alleged breach of a fundamental operating feature, which will be dealt with under the dispute resolution processes in the Adverse Effects Agreement.

The Wuskwatim Partnership confirms that it will monitor the project as it considers necessary to comply with regulatory conditions. Hydro, as the manager of the Wuskwatim Partnership under the Management Agreement, agrees to negotiate contracts with NCN or NCN Qualifying Businesses to provide certain environmental or socio-economic monitoring activities to Hydro.

NCN is given a right of first refusal to purchase used assets upon completion of construction. **NCN exercised its rights to obtain six trailers and one mobitel. Five of the trailers were delivered to Nelson House in 2013. TPC's capital account was credited with the value of the remaining trailer and mobitel in the amount of \$750,000.00.**

The Wuskwatim Partnership agrees to implement the Access Management Plan. The Partnership also agrees that when considering any amendments to the Plan, or when preparing any environmental protection plan or environmental monitoring plan, it will utilize Ethinesewin (traditional knowledge, including the collective wisdom of Nisichawayasihk Nehethowuk) and conventional scientific analysis in a way that is equal and meaningful.

The Wuskwatim Partnership agrees that as part of the information to be provided to individuals employed on, and visitors to, the Wuskwatim Project construction site who may have access to the Nelson House RMA, the Partnership will make available the Nisichawayasihk Nehethowuk Customary Law principles, a copy of which is attached as Schedule 2-1 to the PDA.

Wuskwatim Partnership & Financing the Partnership: Articles III & IV

The General Partner is to be a wholly owned subsidiary of Hydro, the sole undertaking of which will be to act as general partner of the Wuskwatim Partnership.

The Board of the General Partner is to consist of a minimum of three directors and maximum of 12 directors, to be determined by Hydro, with proportionate representation of Hydro and NCN on the Board, based on unit ownership in the Wuskwatim Partnership. For as long as TPC owns units in the Limited Partnership, NCN will be entitled to have **one-third of the directors** on the Board of the General Partner.

There are criteria for eligibility of NCN nominees to serve on the board, including no formal affiliation with TPC or the new Taskinigahp Trust. General Partner Board meetings are to be held at least once every two months during construction, and four times a year after that unless otherwise agreed.

Two advisory committees **were** established – the Construction Advisory Committee and the Monitoring Advisory Committee. Their mandates are generally defined in Schedules 3-1 and 3-2 of the PDA. **The Monitoring Advisory Committee will continue in place during the operations phase of the Project.**

All of the costs of the Wuskwatim Project are to be funded by equity and debt. The old fixed Debt Ratio of 85:15 in the first ten years of operation, followed by a Debt Ratio of 75:25 has been removed. It is now up to the Board of the General Partner to decide if further cash contributions are required but there is no longer an obligation to maintain a fixed Debt Ratio. This change helps to reduce escalating loan balances and also reduces the risk of dilution of TPC's ownership.

Cash or investment reserves established by the General Partner for things like de-commissioning costs are not included as equity for the purposes of determining the debt ratio of the Wuskwatim Partnership. The equity is to be provided by the limited partners (TPC and Hydro), and the debt is to be funded by Hydro, as lender, under negotiated credit facilities provided for in the Project Financing Agreement. **Cash Call Loans will no longer be provided by Hydro to TPC so if there is a Cash Call, NCN will need to find alternate funds or TPC's ownership in the Project will be diluted.**

With respect to ownership of the Wuskwatim Partnership:

- Hydro will own not less than 66.99 percent of the issued and outstanding units;
- The General Partner will own 0.01 percent; and
- TPC will own up to 33 percent, provided that it pays the required price in approved funds and complies with certain conditions that apply at **final investment date, which was January 1, 2015 instead of the final closing date (when the first of the three turbines went into service in 2012) and at the adjustment date (which is to occur on the first anniversary of the final closing date).** TPC has to date retained its **33% of the units in WPLP although it has three remaining put options (one time only right, 25 year and maturity date (50) year**

options). If TPC does not satisfy a specified condition, it can be involuntarily reduced to a lower percentage.

The numbers of units (units are like shares except for a partnership) to be issued to each of Hydro and TPC will be specified. The unit price will be \$1,000 per unit. The exact number of units that TPC will get will ultimately depend on the total amount invested by it for the purchase of the units (which will be driven by the cost of the project and other factors). Additional equity may be injected via cash calls on the limited partners made by the General Partner. Failure to inject equity into the Wuskwatim Partnership when called upon to do so by the General Partner by cash call could result in a dilution of TPC's ownership percentage. When TPC injects equity in response to a cash call, it will be issued additional units in the Wuskwatim Partnership.

Money will be lent to the Wuskwatim Partnership by Hydro as set out in the Project Financing Agreement. Under the Project Financing Agreement and related security documents to be given by the Wuskwatim Partnership to Hydro, the Wuskwatim Partnership will be granting a security interest in favour of Hydro in all of the Wuskwatim Partnership's present and future property, including the Wuskwatim lands. In very simple terms, this means that if the Wuskwatim Partnership does not pay back the money it borrows from Hydro, Hydro will be able to seize the Wuskwatim Partnership's assets (among other remedies in this circumstance available to Hydro as the lender).

Financing of TPC and NCN: Article V

Hydro **made** loans available to TPC under a loan agreement called the TPC Financing Agreement, to fund cash calls made by the General Partner under the Wuskwatim Partnership Agreement as cash is required to build the Wuskwatim Project.

The TPC Financing Agreement now provides for only one credit facility, the Equity Credit Facility which provided the moneys to build the Project. Cash Call loans for operational purposes are no longer available under the TPC Financing Agreement.

TPC **had** a final closing sale right, which **was** the right to sell its units in the Wuskwatim Project back to Hydro. The sale right **was** exercisable for all or part of TPC's units at final closing. This sale right **was** negotiated as a way to give NCN/TPC an exit strategy if the project does not look like it will pan out or NCN decides it no longer wants to be a partner.

If the specified loan conditions applicable to TPC (as set out in Article 5.4) are not met on **final investment date** (essentially, if TPC does not put up its share of the cash), Hydro has the right to purchase all or some of TPC's units in the Wuskwatim Project depending on the magnitude of TPC's breach of the closing conditions (thereby reducing or possibly eliminating TPC's participation as a limited partner).

Loans **were** made by Hydro to TPC under the equity credit facility at any time after the final closing, until the first anniversary of the final closing (also called the adjustment date). If the specified loan conditions applicable to TPC **were** not met on the **final investment date** (essentially, if TPC does not put up its share of the cash), Hydro **had** the right to purchase all or some of TPC's units in the Wuskwatim Project depending on the magnitude of TPC's breach of the closing

conditions (thereby reducing or possibly eliminating TPC's participation as a limited partner).

If the construction of the Wuskwatim Project had not start by the specified deadline, or if it is halted but not re-commenced by the specified deadline, TPC has the right to sell (a "non-completion sale right") all (but not less than all) of its units to Hydro and Hydro must buy them.

TPC has a term sale right, exercisable only once between the final closing and the maturity date (fifty years after final closing), to require Hydro to buy all of its units in the Wuskwatim Partnership on the terms set out in the TPC Financing Agreement. Under this right, TPC does not get all of its money back from Hydro when it sells its units, and so this right would only be used in very dire scenarios. It is not anticipated that this right will be exercised.

TPC also has a twenty-fifth anniversary sale right, exercisable only on the twenty-fifth anniversary of the final closing, to require Hydro to buy all (but not less than all) of its units in the Wuskwatim Partnership on the terms set out in the TPC Financing Agreement.

TPC also has a maturity date sale right, exercisable only on the fiftieth anniversary of the final closing (the maturity date), to require Hydro to buy all (but not less than all) of its units in the Wuskwatim Partnership on the terms set out in the TPC Financing Agreement.

On the maturity date, any equity loans remaining outstanding must be paid back in full if TPC wants to keep its units. Any cash call loans remaining outstanding also will need to be repaid out of distributions from the Wuskwatim Partnership on all of TPC's units. Until the maturity date, the equity and cash call loans will be paid back only out of distributions made by the Wuskwatim Partnership on some or all of TPC's units (depending on the loan), in the order of priority and subject to the terms set out in the TPC Financing Agreement.

However, if TPC exercises its Final Sale Closing Right, Twenty-fifth Anniversary Sale Right or Maturity Date Sale Right and if any equity, cash call or dividend loans remain outstanding as of the date the right is exercised, those loans will not have to be repaid by TPC or NCN.

Hydro will also provide dividend loans to NCN to provide cash flow to NCN under a separate loan agreement called the NCN Financing Agreement. The amount of these loans is based on a formula of availability, based on TPC's invested cash **and the arrangements in the PDA Supplement No. 2**. Any dividend loans remaining outstanding at the maturity date will need to be repaid.

All of Hydro's costs (as a lender) for the loans to NCN or TPC will be paid by the Wuskwatim Partnership unless NCN or TPC default under their loan agreements, in which case NCN and TPC will be responsible for those costs.

As set out above, until the maturity date, neither NCN nor TPC will be required to repay the equity or dividend loans to Hydro except out of distributions from the Wuskwatim Partnership or on the security of TPC's units in the Partnership. All loans made to Hydro will be secured by a security interest in all of TPC's units in the Wuskwatim Partnership and any and all distributions made by the Wuskwatim Project on those units. TPC risks losing its units in the Wuskwatim Partnership in the event of default under the TPC or NCN Financing Agreements.

Description of the Project: Article VI

Article 6 outlines how the Wuskwatim Project will be built and operated. The Wuskwatim Partnership can change how the project will be built or operated as it considers appropriate, but it cannot make any change which would result in a material change to a fundamental feature. The Wuskwatim Project must at all times comply with the fundamental features as defined in Article 2. The Wuskwatim Partnership is the owner of the Wuskwatim Project but will contract with Hydro to manage the construction of the project.

The location of the Wuskwatim Project is specified in the PDA, as are the:

- primary and secondary structures and supporting infrastructure,
- construction camp,
- access road (and related access rights),
- temporary facilities,
- construction power services.

Article 6 describes the lands on which the Wuskwatim Project will be built and describes the access road to those lands. The General Partner on behalf of the Wuskwatim Partnership will be entitled to become the owner of the project lands as trustee for the Partnership, on the initial closing date in accordance with the Wuskwatim Lands Transfer Agreement (Schedule 6-11). The General Partner on behalf of the Wuskwatim Partnership will also enter into a Quarry Mineral Lease and a CRD Easement Agreement with Manitoba, as well as a Transmission Corridor Easement Agreement, an Access Road Transmission Easement, a Communications Tower Easement Agreement, a Transmission Lands Lease and an Access Road User Agreement with Hydro. These agreements are described in section 12 of this Summary entitled "Wuskwatim Land Arrangements".

Article 6 describes the source documents used in the Wuskwatim Project for determining topographic mapping and geotechnical and water level information, and also describes the:

- forebay level,
- inflow design flood,
- rated plant discharge and best gate discharge (the normal highest output),
- number and type of turbines,
- mode of operation,
- water regime (including water levels, fluctuations and upstream and downstream effects),
- operation of the Churchill River Diversion,
- particulars of operating conditions (abnormal, special and emergency), and
- flooding and clearing.

Article 6 provides that access to the Wuskwatim Project and to the Access Road will be restricted in accordance with the Access Management Plan, which is Schedule 6-17 to the PDA.

Transmission Matters: Article VII

Article 7 makes it clear that transmission-related facilities are excluded from the Wuskwatim Project and will not form part of the assets of the Wuskwatim Partnership. It is a separate project for licencing and for regulatory purposes.

Article 7 also describes where electric power will be obtained for construction of the Wuskwatim Project, and sets out what the permanent portion of the transmission facilities (lines and stations) will be comprised of.

As set out in the Power Purchase Agreement, the Wuskwatim Partnership will deliver the electrical power generated by the Wuskwatim Project to Hydro at the point of interconnection (near the generating station) specified in Article 7.

NCN acknowledges having participated in the route evaluation and selection of the local transmission facilities, and Hydro agrees that the location and routing of these facilities will not be changed materially without NCN's concurrence.

Subject to the PDA being complied with, NCN agrees to support the development of the Wuskwatim Transmission Project.

Hydro agrees to establish the Wuskwatim Transmission Development Fund to generate funds to be used for community development purposes by eligible First Nation and small or remote northern communities in the vicinity of the Wuskwatim transmission project.

Also set out are matters related to the establishment of the fund and the annual payments and allocations. NCN's share of payments available annually from the fund will be 44 percent of the total amount paid out by the fund, (currently estimated to be about \$100,000 annually). These moneys will be deposited to the Resource Account of Taskinigahp Trust.

These payments from the fund will be assigned to the Taskinigahp Trust and deposited to the resource account for resource development and harvesting programs.

Pre-Project Training: Article VIII

Article 8 confirms the original commitment of \$5 million of project funds by Hydro for pre-project training for NCN Members and other northern aboriginals in connection with the Wuskwatim Project and the Keeyask Project, and a further \$15 million of Keeyask project funds for training of members of the Keeyask Cree Nations and other northern aboriginal people in connection with the Wuskwatim Project and the Keeyask Project.

It also confirms that a training initiative called the Hydro Northern Training and Employment Initiative was agreed to with \$62 million of funding as set out in contribution agreements involving Human Resources and Skills Development Canada (HRSDC) under the Aboriginal Skills and Employment Program (\$22 million), Hydro (\$20 million, as described above), Manitoba (\$10 million), Western Economic Diversification (\$5 million), Indian and Northern Affairs Canada (\$3.3 million) and the specified aboriginal training partners (\$1.7 million).

NCN will be responsible for training its Members and Nelson House Northern Affairs Community (NAC) Residents. Manitoba Keewatinowi Okimakanak Inc. and the Manitoba Métis Federation Inc. will be responsible for training certain other northern aboriginals as set out in their agreements under the training initiative.

Of the funds under this training initiative, \$15 million will be spent for pre-project training for NCN's Members, NAC residents and other northern aboriginals for jobs associated with the Wuskwatim Project and the Keeyask Project, 75 percent of which (\$11,250,000) will be training funds just for NCN's Members and NAC Residents. NCN's training will be provided through Atoskiwin Training and Employment Centre (ATEC). Neither NCN, nor its Members and NAC residents will be entitled to access any of the training initiative funds allocated for training in respect of the Keeyask Project.

However, supplemental training funds of up to \$2 million will be available to NCN, if it exceeds certain training targets for designated trades.

NCN has already received \$6,289,065 in training funds already advanced from various specified sources (and acknowledges this in the PDA). NCN also confirms in the PDA that these funds it has received form part of the training funds, even though they were received prior to the establishment of the training initiative.

Hydro also confirms in the PDA that it has provided or will provide a number of advances to NCN for ATEC activities in a total amount not to exceed \$5,685,000. As part of the PDA, NCN, TPC and Hydro will enter into a Revenue Advance Consolidation Agreement (Schedule 8-1) to be effective on signing the PDA - just before construction starts - to put the terms of the various ATEC loans into one agreement.

Finally, NCN specifically agrees to continue providing training to NCN's former members residing at South Indian Lake who had commenced pre-project training prior to becoming members of OPCN in December 2005.

Employment Opportunities During Construction: Article IX

Article 9 makes clear that the Wuskwatim Project will be constructed under the Burntwood Nelson Agreement (BNA), a collective agreement between the Allied Hydro Council, that represents the unions that build hydro projects, and the Hydro Projects Management Association, which is essentially Hydro. The BNA is subject to some specific provisions related to the Wuskwatim Project, as set out in the Wuskwatim letter of agreement attached to the BNA. NCN Businesses working on a direct negotiation contract will be able to directly hire NCN Members and other Northern Aboriginals to work on the Wuskwatim Project.

The BNA now provides that first preference for employment on all major hydro-electric development projects covered by it, including all of Hydro's projects on the Burntwood or Nelson Rivers for which construction is commenced prior to 2016, is to go to northern aboriginals who qualify as northern residents and reside within the specified region of the Churchill/Burntwood/Nelson River Area. They must also be registered with Manitoba Advanced Education and Training (MAET).

Hydro agrees that the first preference provisions in the collective agreement will not be amended in relation to any project covered by the collective agreement, which has commenced prior to 2016, provided that Hydro will seek an

amendment to the preference provisions of the BNA specifically for the Keeyask Project that would allow members of the Keeyask Cree Nations, wherever they reside to be considered as residents within the specified region of the Churchill/Burntwood/Nelson River Area. The Allied Hydro Council (AHC) would need to agree to such an amendment.

NCN agrees that MAET will be the primary job placement and referral agency for employment on the Wuskwatim Project, and that ATEC will be the referral agency to MAET, with respect to employment of Members of NCN on the Wuskwatim Project. MAET will have a number of responsibilities including:

- Recruiting and screening candidates,
- Developing a candidate database,
- Receiving and registering job orders from contractors,
- Matching job orders to the candidate database, having regard for the preference provisions of the BNA, and
- Making referrals to contractors.

However, NCN acknowledges the right of contractors, on reasonable grounds, to reject candidates referred to it by MAET.

Hydro also agrees to establish an Advisory Committee on Employment (ACE) to monitor and address issues that arise in the referral and hiring process. Written complaints can be made to this Advisory Committee when disputes arise.

However, this committee is advisory only and Hydro retains the ultimate authority as project manager. Accordingly, if a contractor does not accept the Advisory Committee's decision, it can refer the matter to Hydro, as project manager for resolution.

Hydro, as project manager, retains ultimate control and responsibility for all tender specifications for construction, operation and maintenance of the Wuskwatim Project, but must include the following tender specifications:

- The collective agreement provisions will form part of the tender specifications,
- Contractors will set reasonable requirements for accreditation, skill and experience, and
- Contractors will be required to provide on-the-job training (the details of which will form part of their tender submission).

Hydro agrees to provide reports to NCN concerning the employment of NCN Members on the Wuskwatim Project. Hydro also agrees to work with NCN to increase opportunities for its Members to be employed by Hydro in its on-going operations, as well as for Hydro positions on the Wuskwatim Project.

Business Opportunities During Construction: Article X

Under Article 10, the Wuskwatim Partnership agrees to contract with Hydro for the planning, design, engineering, construction and commissioning (start-up process) of the Wuskwatim Project in accordance with the Construction Agreement, subject to Hydro's right to sub-contract.

Hydro negotiated with NCN and NCN qualifying businesses for certain direct negotiation contracts. The conditions under which the negotiations occurred were that the costs would be reasonable, and there would be no adverse effect on construction scheduling or the quality of delivered goods and services (as determined by Hydro, acting reasonably).

Subject to the Wuskwatim Partnership proceeding with construction, Hydro **agreed** to enter into those direct negotiation contracts listed in Schedule 10-2 to the PDA for which Hydro and the applicable qualifying NCN business have signed, or will sign, cover agreements upon completion of the negotiation of the form of these agreements. These direct negotiation contracts are:

- Construction of the Access Road
- Cross-cultural activities and ceremonies
- Catering
- Site Preparation and Camp Development
- Sewer and Water
- Security
- Transmission Clearing

NCN has set up several companies or business entities to joint venture with others in order to carry out these contracts, which are worth over \$100 Million in revenues. Among the companies or business entities established so far are:

- (1) Nisichawayasihk Construction LP, a limited partnership whose general partner is N.H. 313 Inc. and whose limited partner is NCN, and which is carrying on business in succession to Nelson House Forest Industry. Nisichawayasihk Construction LP has entered into a joint venture with Strilkiwski North Ltd.; and
- (2) Nisichawayasihk Catering LP, a limited partnership whose general partner is NCN Catering GP Corporation and whose limited partner is NCN. Nisichawayasihk Catering LP has entered into a joint venture with Sodexo Ms Canada Ltd.

Additional NCN businesses may be set up prior to the start of construction. **Nisichawayasihk Catering has a contract to continue providing services during the operations phase of the Project.**

Adverse Effects Article: XI

Article 11 provides that, while NCN and Hydro have worked closely together in the planning and design of the Wuskwatim Project and the Wuskwatim Transmission Project to avoid any adverse effects of those projects, nonetheless those projects may cause adverse effects to NCN or to Members for which the Limited Partnership, in respect of the generation project, and Hydro, in respect of the transmission project, will pay compensation, as provided in the Adverse Effects Agreement. The Adverse Effects Agreement is described in Section 13 of this Summary.

Article 11 also provides that the Wuskwatim Partnership will conduct ongoing monitoring to determine whether any unanticipated environmental impacts or adverse effects might arise and confirms that in such event the Wuskwatim Partnership will have the responsibility to address concerns and that the Partnership may enter into agreements with First Nations with which Hydro has contractual commitments relative to such monitoring.

Representations and Warranties: Article XII

Article 12 sets out the representations and warranties given by each of the parties. Each of the parties to the PDA and the General Partner state that:

- they have power to sign the PDA and perform their obligations under the PDA,
- the PDA is enforceable against them,
- they have complied with all laws in relation to the Wuskwatim Project,
- no adverse litigation is outstanding against them (i.e., no one is now suing them),
- they have or will have all necessary licences, approvals etc. for entering into the PDA and doing the things set out in the PDA,
- no person, other than the parties to the PDA, has options or agreements to acquire any unissued units or interests in the Wuskwatim Partnership, and in the case of Hydro, no party has any agreement with Hydro or option for the development of the Wuskwatim Project,
- the performance of their obligations will not breach contracts to which they are a party, and
- the performance of their obligations will not breach judgments, licences or applicable laws, to which they are subject.

The general representations of the parties survive indefinitely. TPC and Hydro also give additional representations to support the exemptions of securities laws being relied on for the issuance of units in the Wuskwatim Partnership to them. These representations survive for two years following the final closing.

The Wuskwatim Partnership gives additional representations in respect of the issued units, existence of and compliance with the provisions of the Initial Wuskwatim Partnership Agreement, accuracy of financial statements, etc. Such additional representations of the Wuskwatim Partnership survive for two years following the final closing.

Initial Closing Conditions: Article XIII

Article 13 sets out the conditions that must be complied with prior to the initial closing date for the benefit of Hydro, TPC and the Wuskwatim Partnership. The parties confirm, on the record, that there are no orders or injunctions against them.

TPC and Hydro confirm that:

- they have delivered the subscription agreement and subscription price to the Wuskwatim Partnership,
- the NCN Loan Agreements (being the TPC Financing Agreement and the NCN Financing Agreement), the Hydro Service Agreements and certain other agreements were properly signed, and

- their lawyers have given the required legal opinions.

If the conditions in favour of a party are not satisfied on or prior to the initial closing date, that party may, at its option, terminate its obligations to the other parties under the PDA, without prejudice to any claims the terminating party may have against the others for breach of agreement. However, where Hydro terminates its obligations as set out in this Article:

- Its obligations to NCN and TPC to carry out the Limited Partnership Transaction essentially, to allow TPC to invest in the Wuskwatim Partnership, to enter into the Hydro Service Agreements and to finance TPC and NCN's involvement in the Wuskwatim Limited Partnership also terminate, and
- the balance of the PDA continues in full force and effect.

Each party agrees to use its best efforts to ensure compliance with all these conditions.

Closing Arrangements: Article XIV

Article 14 sets out the place and time of closing for the initial closing, as well as the obligation of TPC on the final closing and on the first anniversary of the final closing (the adjustment date), to deliver to the Wuskwatim Partnership confirmation as to whether the conditions set out in the TPC Financing Agreement in connection with the final closing and the adjustment date, as the case may be, have been satisfied.

If under the TPC Financing Agreement a sale or purchase right is exercised on either the final closing or the adjustment date in respect of all of TPC's units, TPC and NCN are required to provide a full release in favour of the Wuskwatim Partnership and Hydro, in respect of the Wuskwatim Project and the Wuskwatim Partnership Transactions, and to return to Hydro all confidential information, as defined in the PDA and the General Partner, the Wuskwatim Partnership and Hydro are required to provide similar releases and returns to NCN and TPC.

Construction Conditions: Article XV

Article 15 sets out three conditions before the Wuskwatim Partnership proceeds with construction of the Wuskwatim Project, being:

- the closing of the Wuskwatim Partnership Transaction, unless it fails to close because NCN chooses not to close,
- all of the closing licences having been obtained by or assigned to the Wuskwatim Partnership, without any deficiency notices having been delivered by NCN in respect of non-compliance with the conditions of such licences, and
- that there are no court orders or injunctions prohibiting the construction of the Wuskwatim Project.

TPC and Taskinigahp Trust: Article XVI

Hydro agrees that NCN can use TPC as its nominee to invest in the Wuskwatim Partnership, provided that NCN is and continues to maintain beneficial ownership of all of the shares of TPC. NCN agrees that it will not use TPC for any business activity other than to invest in the Wuskwatim Partnership. NCN also agrees that, so long as TPC owns units in the Wuskwatim Partnership, or NCN or TPC are indebted to Hydro under the NCN Loan Agreements or the Revenue Advance

Consolidation Agreement, NCN will not in any way transfer its TPC shares without Hydro's consent.

TPC cannot accept or record any transfer made by NCN in breach of this condition, and cannot issue any more shares or securities in its capital stock without Hydro's consent. Hydro agrees to NCN assigning, in the manner set out in the NCN Deed of Assignment, NCN's present and future dividends (profit payments) on its shares in TPC, the dividend loans it receives from Hydro under the NCN Financing Agreement, the settlement proceeds under the Adverse Effects Agreement and the benefits from the Wuskwatim Transmission Development Fund to Taskinigahp Trust, provided NCN, TPC and Taskinigahp Trust execute the Commitment Agreement on the initial closing date.

NCN also agrees not to sell its shares in TPC and to maintain TPC's existence and agrees to advise Hydro upon the appointment of a new corporate trustee for Taskinigahp Trust.

Power Purchase Agreement Review Process: Article XVII

Article 17 sets out the process for Energy Rate Reviews, as referred to in Article 6 of the Power Purchase Agreement (the PPA). Under the PPA, Hydro will pay the Wuskwatim Partnership for all the power generated at Wuskwatim and delivered to the point of interconnection, regardless of what Hydro does with the power, based on a pricing mechanism described in the PPA (See Section 6 of this Summary). If Hydro actually exports a fair amount of power, the price to the Wuskwatim Partnership will be based on a weighted average of the prices Hydro actually gets for the exports. If Hydro doesn't actually export much power (called insufficient transactions in the PPA), there will be a different formula for setting the price.

In summary, the review process generally provides the ability for NCN or Hydro to appoint an expert (an independent person or firm with expertise in the hydro-generation and electric industry), to review the pricing mechanism under the Power Purchase Agreement:

- i. every five years during the term of the Power Purchase Agreement,
- ii. upon any extension of the term of the Power Purchase Agreement, and
- iii. where a report provided by Hydro discloses that there were insufficient transactions in the particular fiscal year covered by such report.

Reviews also can be called for in respect of adjustments made under the Power Purchase Agreement and in respect of environmental credits (as described below).

The person or firm to be appointed as an expert is to be agreed upon by NCN and Hydro. If they cannot agree, the Court of Queen's Bench appoints the expert. The expert is appointed to make non-binding recommendations as to what changes may be required to the pricing mechanism, so as to make it effective to establish a representative price based on the agreed-upon pricing principles. If the review is requested by Hydro or NCN as set out in item (iii) above, the party requesting the review has the onus of demonstrating certain matters to the expert.

If NCN or Hydro is not prepared to accept the expert's decision, then the parties can ask the expert to try to mediate an agreement.

If NCN and Hydro cannot reach agreement within 45 days, either of them can call for a second expert to be appointed, who will make a decision based on such expert's review of the:

- pricing principles,
- Power Purchase Agreement,
- first expert's report, and
- written submissions of the parties, if any, which must be made within 45 days of the second expert's appointment.

The second expert's decision shall be binding and not subject to appeal or review. Each party bears its own costs of the review, and the Wuskwatim Partnership pays the costs of experts.

An expert appointed under this Article does not have the authority to amend or vary the Pricing principles and must adhere to the Pricing principles in making any decision; nor does an expert have the authority to amend or vary the other fees or charges set out in the PPA.

Note: Canada and other countries have said they will try to reduce their greenhouse-gas (GHG) emissions (e.g. carbon dioxide) in the future. It is possible that there might eventually be a system of environmental credits. Businesses, like power companies, might be able buy and sell the right to produce GHGs. Making power with hydro dams generally creates fewer GHGs than making power by doing things like burning coal. Therefore, it is possible that, some day in the future, the Wuskwatim project might get some value from some form of environmental credits, because it would be able to generate power while creating few GHGs.

The parties agree in principle that, to the extent not already reflected to the benefit of the Wuskwatim Partnership in the pricing mechanism under the Power Purchase Agreement, any future environmental credits in respect of the Wuskwatim Generating Station will be assets of, or credited to, the Wuskwatim Partnership. In the event Hydro and NCN are unable to agree to the calculation or application of such credits, whether or not they are reflected in the pricing mechanism, the same process of using experts set out above will be used to resolve the dispute.

Operations and Maintenance Agreement Review Process: Article XVIII

A similar type of review process set out in Article 17, is also provided in Article 18 to give NCN the ability to appoint an expert to conduct a review as to:

- whether the operating and maintenance costs charged to the Wuskwatim Partnership as set out in the Operations and Maintenance Agreement have been charged in a manner consistent with the costs calculation criteria (or a cost review), and
- whether the manner in which Hydro provides the operations and maintenance services to the Wuskwatim Partnership is consistent with the services parameters (or a services review).

However, in Article 18, only NCN has the ability to trigger a review, which, in respect of a cost review can generally be triggered no later than 90 days after having received a report on the operating and maintenance costs, and in respect

of a services review, can be triggered at each 10 years of the term of the Operations and Maintenance Agreement occurring after final closing.

The same review process, by a first expert and then a second expert, set out in Article 17 applies to reviews triggered as set out in Article 18. Hydro agrees to pay the amounts to be paid, and to change its procedures in carrying out the operations and maintenance services, as may be directed by the second expert or arbitrator.

However, an expert appointed under this Article does not have the authority to amend or vary the costs calculation criteria or the service parameters. In addition, an expert appointed under this Article does not have the authority to require a payment by Hydro in excess of the amount it has received from the Partnership under the Operations and Maintenance Agreement, and does not have the authority to direct or constrain in any way Hydro's sole ability and authority to dispatch the Integrated Power System or the Project as Hydro considers appropriate.

Article 18 also states that Hydro is to conduct an internal review of the manner in which it provides the operations and maintenance services to the Wuskwatim Partnership at least once every five years during the term and to share the results with NCN.

System Operations and Dispatch Agreement Review Process: Article XIX

A similar type of review process as provided in Article 17 is also provided in Article 19 to give NCN the ability to appoint an expert to conduct a review as to:

- whether the operating costs charged to the Wuskwatim Partnership as set out in the System Operations and Dispatch Agreement have been charged in a manner consistent with the cost calculation criteria (or a costs review), and
- whether Hydro has controlled, operated and dispatched the Integrated Power System, including the Wuskwatim Generating Station as part of that system, in a manner consistent with the operation and dispatch criteria and, if not, what direct losses the Wuskwatim Partnership has suffered as a result of such non compliance (or an operations review).

Only NCN has the ability to trigger a review, which for a costs review can generally be triggered no later than 90 days after having received a report on the operating costs, and for an operations review, can be triggered no later than 90 days after having received a report on the control operation and dispatch of the Integrated Power System, as set out in the System Operations and Dispatch Agreement.

The same review process as set out in Article 17, by a first expert and then a second expert, applies to reviews triggered as set out in Article 19, and Hydro agrees to pay the Wuskwatim Partnership the amount of direct losses the second expert has determined the Wuskwatim Partnership has suffered. Article 19 provides that the expert shall not have authority to require a payment by Hydro, other than for direct losses and shall not have the authority to direct or constrain Hydro's sole ability and authority to dispatch the Integrated Power System, or the Wuskwatim Project as part of that system, in such a manner as Hydro in its sole discretion deems appropriate.

Limited Partnership Agreement Review Process: Article XX

A similar type of review process as provided in Article 17 is also provided in Article 20 to give NCN the ability to appoint an expert to conduct a review as to the level of reserves being held by the Wuskwatim Partnership pursuant to section 6.06 of the Limited Partnership Agreement.

Both Hydro and NCN have the ability to trigger a review, which can generally be triggered no later than 90 days after having received a report on the reserves as set out in the Limited Partnership Agreement.

The same review process as set out in Article 17, by a first expert and then a second expert, applies to reviews triggered as set out in Article 20. If the second expert determines that reserves are too high, then the excess will be distributed to the limited partners, and if reserves are too low, the difference will be accumulated within a schedule determined by the second expert or, failing that, as determined by the General Partner. Article 20 provides that the expert shall not have authority to amend or vary the terms of the Limited Partnership Agreement and shall consider only what level of reserves is reasonable in the manner provided in Article 20.

Dispute Resolution: Article XXI

Article 21 of the PDA sets out the resolution process that will apply to resolve any and all disputes under the PDA, the Limited Partnership Agreement, the TPC Financing Agreement and the NCN Financing Agreement (except in respect of any matter that must be submitted for review under Article 17, 18, 19 or 20 or a breach of a fundamental operating feature, which will be dealt with under the Adverse Effects Agreement). As NCN is not a party to the Hydro Service Agreements, it cannot go to arbitration in relation to those agreements, except: (1) NCN has direct access to the review processes described above; and (2) TPC can bring an arbitration under the PDA if it believes that the General Partner has breached its duties to act in the best interests of the Wuskwatim Partnership. However, where TPC brings an arbitration against the General Partner for breach of fiduciary duty in respect of matters arising under the Hydro Service Agreements (other than the Construction Agreements and the Interconnection and Operating Agreement), Article 21 provides that the arbitration shall be brought by NCN (in the place of TPC) against Hydro (in the place of the General Partner), and TPC and the General Partner agree to be bound by the decision of the arbitrator.

Article 21 also sets out the procedures to be followed in any arbitration under the PDA. The Arbitrator has broad authority to grant legal and equitable remedies.

Related to the issue of dispute resolution is Article 2.17, by which the parties acknowledge the existence of conflicts of interest arising from, among other things, the fact that the Hydro Service Agreements are between Hydro and the Wuskwatim Partnership (in which Hydro is a limited partner and also controls the general partner) and Hydro's duty to manage the Integrated Power System, and Article 2.18, by which the parties waive any cause of action or right to object that they might otherwise have solely by reason of the existence of these conflicts of interest. In addition Article 24.1(f) provides that neither NCN nor TPC shall bring any action against Hydro, the General Partner or its officers or directors or the Wuskwatim Partnership, other than as set out in the review mechanisms or the arbitration provisions of the PDA.

Transitional Matters: Article XXII

The Wuskwatim Partnership agrees to provide transition funding to NCN for the wind-up of the future development office over 3 months from the signing of the PDA, the defence of legal challenges, if any, to the issuance of the licenses required to build the project and the defence of legal challenges, if any, to NCN's right to sign the PDA, subject to a work plan and budget acceptable to Hydro.

The Wuskwatim Partnership also agrees to provide implementation funding to NCN to a maximum of \$2.7 million to reimburse reasonable eligible costs incurred by NCN from the signing of the PDA to the adjustment date (one year following the final closing) for the implementation of the PDA arrangements, including costs related to NCN's participation on on-going committees, administration and monitoring, community consultations and ceremonies, subject to a work plan and budget acceptable to Hydro.

If construction of the project does not proceed or is delayed, the amount of funding may be adjusted.

Release and Indemnity: Article XXIII

NCN, for itself and on behalf of NCN Members, releases Hydro from all claims whatsoever that NCN or its Members had, has or could have in any way arising out of Hydro's obligations as set out in Article 8 of the 1996 NFA Implementation Agreement in respect of the Wuskwatim Project, other than as set out in the PDA. NCN agrees to indemnify Hydro from any claims brought by Members of NCN in respect of the matters from which Hydro has been released.

The indemnity does not cover Hydro's costs of resisting such claims and is subject to Hydro complying with prescribed requirements in favour of NCN, such as giving quick notice of the claim. No release is given for future breaches of the 1996 NFA Implementation Agreement, breaches of the PDA or for future negligent acts or willful misconduct.

In simple terms, an indemnity is sort of like a promise to reimburse. If John indemnifies Jane, and Jane is successfully sued for \$100, John pays the \$100 instead of Jane.

Additional Covenants: Article XXIV

NCN and TPC agree that they will not take an active part in the business of the Wuskwatim Partnership, sign or do anything which:

- binds or purports to bind the Wuskwatim Partnership or hold itself out as having the power to do so,
- brings any action for partition and sale, or otherwise in connection with any interest in the property of the Wuskwatim Partnership,
- brings any action against Hydro, the Wuskwatim Partnership or the General Partner or their directors or officers, except as allowed by the PDA (e.g. PDA arbitration), or
- allows the transfer of TPC's units to NCN.

Hydro declares that it has provided all information and documentation related to the Wuskwatim Project, as NCN, TPC or their advisors have requested in order for NCN, TPC and their advisors to be fully informed about the project. NCN and TPC represent and acknowledge having received all information

and documentation as they have requested in order to make an informed investment decision.

Hydro and the Limited Partnership confirm that they make no representations as to the financial projections or projected financial return information, which have been prepared in respect of the Wuskwatim Partnership, or as to whether or not the investment by TPC in the Wuskwatim Partnership will earn any return or result in the attainment of NCN's goals. Each party acknowledges and declares that based on their own due diligence, they have each independently determined that they are sufficiently informed to conclude the PDA and proceed with the development of the Wuskwatim Project. NCN and TPC also acknowledge that:

- they got independent advice by advisors of their choice and were provided with the financial means to do so,
- they had the opportunity to ask questions of, and receive answers from, Hydro,
- they participated in the conclusion of the PDA, and
- they explained the nature and significance of the PDA and the transactions contemplated in the PDA at community meetings open to all Members of NCN.

Ratification and Execution: Article XXV

Article 25 sets out the referendum process which must be followed by NCN in order to have the PDA ratified by its Members, which includes a consultative aspect whereby the PDA is made available for NCN Members to review, with at least one public meeting to be held in each of Winnipeg, South Indian Lake, Leaf Rapids, Thompson and Brandon, at which the nature and significance of the PDA is to be explained. NCN's principal advisors are to attend at least one meeting in each of these locations.

The Article sets out the notice requirements, which must be complied with in the calling of such meetings. The referendum process also requires a vote to be conducted by way of an Advance Poll and a Referendum Poll on the Reserve and at South Indian Lake, Thompson, Leaf Rapids, Brandon and Winnipeg. The provisions governing the calling and conduct of the vote, as well as the requirements for eligibility to vote, are detailed in Article 25 and in the Referendum Rules attached as a Schedule to the PDA. The PDA will only be signed on behalf of NCN and will only take effect after there has been compliance with the ratification process set out in Article 25.

After the vote is held, the NCN Electoral Officer will issue a Referendum Certificate and if it confirms that a majority of Members support Chief and Council signing the PDA and the related agreements and documents, then within five business days from the date the Referendum Certificate is delivered to the Chief or a Councillor by the Electoral Officer, NCN and TPC must sign the PDA.

After the Referendum is held, it is possible that there will be minor changes to the Agreements so that they are ready for signing (for example clerical errors, date changes and other small changes), Article 25.14 of the PDA allows Chief and Council to agree in writing to have such changes made as long as:

- there would be no material change to any fundamental feature unless made in accordance with an Arbitrator's decision; or

- in the opinion of Chief and Council the change would not materially and substantially change the arrangements for the development or operation of the Wuskwatim Project as set out in the PDA.

General Provisions: Article XXVI

Article 26 sets out customary general terms in an agreement, including:

- how notices for the purpose of the PDA are to be given,
- the promise by the parties to do such further things and sign such further documents as may be required to give effect to the PDA and the transactions contemplated in the PDA,
- provision that the PDA is not assignable without the consent of the other parties, and
- the promise of the parties to consult with each other in respect of any public announcement to be made in respect of the PDA or the transactions contemplated in the PDA.

In addition:

- NCN promises to keep all confidential information in the strictest of confidence and to not disclose this information other than as expressly authorized by Hydro,
- there is an acknowledgement that nothing in the PDA is intended to alter aboriginal or treaty rights of NCN or other aboriginal people, other than in respect of the development of the Wuskwatim Project and the transactions contemplated by the PDA, and
- there is a requirement that each party obtain a certificate of independent legal advice in the form attached to the PDA.

2. *AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT* **(Schedule 1-1 to the PDA)**

The parties to the Limited Partnership Agreement are:

- Hydro
- TPC, and
- General Partner

Background

The Wuskwatim Partnership between Hydro and 5022649 Manitoba Ltd. (which is a corporation controlled by Hydro) was established on December 9, 2004 as it was anticipated that the licences for the Wuskwatim Projects might be issued shortly after the CEC Hearings. NCN and Hydro thought at the time that the Wuskwatim Partnership should be established so that any licences could be issued to the Wuskwatim Partnership. The Wuskwatim Partnership Agreement would then be amended and restated upon ratification of the PDA by NCN Members. To date, none of the licences have been issued.

The Limited Partnership Agreement has been amended and restated twice, once in June 2006 and again in April 2015.

Purpose of Agreement

The purpose of the Wuskwatim Partnership Agreement is to provide for the terms, conditions and agreements of the parties in respect of the formation, organization, management and governance of the Wuskwatim Power Limited Partnership (the "Wuskwatim Partnership") and to set out the respective rights, entitlements and obligations attaching to the units and interests in the Wuskwatim Partnership.

Summary of Key Provisions

Powers and Responsibilities

The General Partner is to be the sole general partner of the Wuskwatim Partnership and is given the authority and power to carry on and manage the business and affairs of the Wuskwatim Partnership and, subject to the Wuskwatim Partnership Agreement, to make all decisions and enter into all agreements in respect of the Wuskwatim Partnership. Notwithstanding the General Partner's authority to manage, there are certain things specified in the Partnership Agreement that the General Partner is expressly prohibited from doing and certain things that require the prior approval of limited partners. The General Partner has unlimited liability for the debts and liabilities of the Wuskwatim Partnership. NCN has certain rights to obtain representation on the board of directors of the General Partner; these rights are under the PDA.

No partner, other than the General Partner, shall be entitled to take part in the management of the Wuskwatim Partnership or its business nor, among other things, to sign any agreement or take any action, or hold itself out as having the power to do so, which would bind the Wuskwatim Partnership.

Regardless of anything else in the Agreement, Hydro is authorized to perform all acts and things necessary or desirable under agreements between Hydro and

the Wuskwatim Partnership, including under the agreements defined as the Hydro Service Agreements.

Term

The term of the Agreement is indefinite (meaning it has no fixed expiry date). The Wuskwatim Partnership will continue until it is dissolved or the Agreement is otherwise terminated in accordance with its terms.

Fiscal Year

The fiscal year of the Wuskwatim Partnership is April 1 to March 31 of each year.

Fiduciary Duty, Conflict of Interests and Priority of Integrated Power System Requirements

The General Partner is under a duty under the Partnership Agreement and at law to act in the best interests of the Wuskwatim Partnership and also to use its best efforts to ensure the preservation of the limited liability of the limited partners.

However, there is an express acknowledgement in the Partnership Agreement of an inherent conflict of interest in the Wuskwatim Partnership entering into the Hydro Service Agreements. Also, there is an express acknowledgement that in performing its functions under the Operations and Maintenance Agreement and the System Operations and Dispatch Agreement, Hydro is entitled to act as it considers, in its sole discretion (acting in good faith), to be in the best interests of the Integrated Power System (Manitoba's whole electric power system), without liability to the Wuskwatim Partnership or any partner for so doing (even if Hydro's action or omission in the interests of the Integrated Power System would constitute a breach of any other agreement between the Wuskwatim Partnership and Hydro).

Notwithstanding anything else in the Partnership Agreement, or any provision or principle of law to the contrary, Hydro shall at all times act in the best interest of the Integrated Power System and shall not be liable for having so acted.

Shareholders and affiliates of the General Partner may engage in businesses, which may be similar to or competitive with that of the Wuskwatim Partnership without having to first offer such business to the Wuskwatim Partnership.

The General Partner may, on behalf of the Wuskwatim Partnership, engage or retain its shareholders or affiliates to provide goods or services to the Wuskwatim Partnership, and the General Partner may engage other persons interested in, owned by, or associated with the General Partner to perform management or administrative services in furtherance of the Wuskwatim Partnership's business. This is all subject to the proviso that, for so long as TPC owns units in the Wuskwatim Partnership, NCN's approval under section 2.19 of the PDA is required for an affiliate of Hydro to enter into a service agreement with the Wuskwatim Partnership (other than as contemplated by the PDA, including the pre-approved Hydro Service Agreements).

The General Partner is obligated to use all reasonable efforts to include a clause in any agreement entered into on behalf of the Wuskwatim Partnership (other than the PDA, the Interconnection and Operating Agreement and the NCN Adverse Effects Agreement), which makes it clear that the Wuskwatim Partnership is a limited partnership.

Subject to the Partnership Act, the limited partners (TPC and Hydro) are not liable for the debts and obligations of the Wuskwatim Partnership except

to the extent of their respective capital contributions and shares of undistributed income.

Power of Attorney

Each limited partner irrevocably, or permanently, appoints the General Partner to sign, deliver and as required, file with the appropriate authorities, the Agreement, any amendment to it, all declarations, agreements and other instruments desirable in connection with the business of the Wuskwatim Partnership, including in respect of taxes, or required to keep the Wuskwatim Partnership in good standing or, as required, to dissolve the Wuskwatim Partnership, all in the place of the limited partner.

Withdrawal or Removal of General Partner

- The General Partner cannot voluntarily withdraw as general partner unless such withdrawal is approved by unanimous consent of the limited partners, and then only on 30 days prior notice. Limited partners may remove the General Partner by unanimous consent.
- The General Partner is deemed to have resigned upon its bankruptcy, dissolution, liquidation or winding-up, or the appointment of receiver or trustee over all or substantially all of the General Partner's assets.
- A new general partner shall be appointed upon the resignation or removal of the General Partner, and the business of the Wuskwatim Partnership shall continue without dissolution upon such appointment.

Limitations of Liability and Indemnities

- The General Partner is not liable to limited partners except for actual fraud, gross negligence or willful misconduct, provided the General Partner acted in good faith. Where the General Partner is liable (i.e. for fraud, gross negligence etc.), it is responsible for indemnifying the Wuskwatim Partnership and the limited partners for all costs, etc.
- The Wuskwatim Partnership will indemnify the General Partner (including officers, directors, shareholders etc) for costs, etc. incurred in connection with the Wuskwatim Partnership's business, where the General Partner is excluded from liability as set out in the provisions described in the immediately preceding paragraph.
- Subject to certain stated exceptions in the Wuskwatim Partnership Agreement and in the legislation governing limited partnerships in Manitoba, a limited partner's liability is limited to its capital contribution, or the amount of money it actually invested, plus the limited partner's share of undistributed Wuskwatim Partnership's income, or profit already earned, but not paid out yet. The primary way in which a limited partner can lose its limited liability is if it participates in the management of the business and a third party is not aware that it is a limited partner.

Units and Transfers

- Units in a limited partnership are the equivalent of shares in a corporation. The number of units owned by a limited partner in a partnership as compared to the total number of issued units determines that limited partner's ownership percentage in the partnership.

- There is one class of units created for the Wuskwatim Partnership. Each of such units has equal rights to vote and to distributions. Each unit carries one vote. There are no exchange, redemption or retraction rights attached to the units. Additional classes of units must be determined by the General Partner, with the unanimous consent of limited partners.
- The subscription price per unit is \$1,000. Subscriptions for units must be made in compliance with the Agreement and the PDA. Hydro, TPC and the General Partner agree in the PDA to subscribe for a certain number of units on the initial closing date.
- The General Partner, or such other person appointed by it, is to act as registrar and transfer agent of the Wuskwatim Partnership and to maintain the books, records and registers of the Wuskwatim Partnership.
- Partners cannot transfer units without the unanimous consent of all limited partners, which consent can be unreasonably withheld, except in the case of transfers between Hydro or TPC, from the General Partner to another wholly owned subsidiary of Hydro, or from TPC to another wholly owned subsidiary of NCN.
- Except under the provisions of the NCN Financing Agreement, the TPC Financing Agreement and the Revenue Advance Consolidation Agreement, limited partners cannot pledge, encumber or assign units without the unanimous consent of all limited partners, and which consent can be unreasonably withheld.
- A limited partner cannot transfer any units to any person which:
 - *Is a non-resident of Canada,*
 - *Is a non-Canadian,*
 - *Is not legally competent to execute the Agreement, or*
 - *Is not a corporation incorporated and in good standing under the laws of its jurisdiction of incorporation.*
- The General Partner may transfer all, but not less than all, of its general partner interest to a successor general partner appointed as set out in the Agreement, provided such assignee agrees to assume the rights and duties of the General Partner and to be bound by the Agreement.

Insolvency or Bankruptcy of limited partner

- In the event of the incapacity, death, insolvency or bankruptcy of a limited partner, the remaining limited partners have the right to purchase the units of the affected limited partner for fair market value (subject to discount for the sale of a minority interest and the limited market for the sale of the units).

Contributions

- The General Partner is entitled, at any time in its sole discretion, to call upon the partners to make additional pro-rata cash contributions by way of capital investment in the Wuskwatim Partnership, based on their respective number of units (the General Partner will make these cash call

decisions based on the capital requirements of the Partnership and having regard for the target debt ratio of the Partnership).

- Additional units are issued to the partners (at \$1,000/unit) based on their cash contributions pursuant to a cash call. If a partner does not make its cash contribution, or makes only part of it, that partner's ownership percentage will be diluted down because it will not receive as many units relative to its original percentage ownership as the other partners.

(To use a fictional example, if TPC has 1,000 units (33%) and Hydro has 2,030 units (66.99%), and there is cash call for another million dollars, two things can happen. If TPC puts in \$330,000, and Hydro puts in \$669,900, they will both get that number of additional units, which maintains their relative ownership percentage the same; i.e., TPC will get 330 more units at \$1,000 per unit and Hydro will get 669.9 more units at \$1,000 per unit, leaving their relative ownership percentages the same at 33% and 66.99% respectively. But, if TPC puts in nothing and Hydro puts in its full share, Hydro would get more units; i.e., Hydro would get an additional 666.9 units (for \$669,900) to bring its total units to 2,699.9 in the example but TPC would remain at 1,000 units. This would result in the relative ownership percentage changing to 72.97% for Hydro (from 66.99%) and 27.03% for TPC (from 33%). A middle ground scenario also exists where TPS puts in part of the cash call required of it, but not all of it. TPC would be diluted down in terms of its ownership percentage only to the extent of that part of the cash call that it has not made as required of it. These scenarios also assume that Hydro makes the full amount of any cash call required of it).

- No interest is payable to a partner on the money invested by the partner in the Wuskwatim Partnership.
- **The General Partner Board will determine if a cash contribution is required from the Partners. The Board is required to act honestly and in good faith and consider the impact of the cash call on the Limited Partners including the extent to which such a call may dilute the ownership interest of the Limited Partner. The fixed debt ratio was removed. A unanimous resolution of the Partners will be required before a fixed debt ratio can be re-established.**
- The General Partner can establish reserves for the Wuskwatim Partnership (to fund such things as, for example, de-commissioning) subject to the right to review provided to NCN under the PDA. Funds set aside as reserves are not to be used for current distributions, or profit payments, and do not count as equity in the determination of the debt ratio.

Distributions (Profit Payments)

- The Wuskwatim Partnership is to reimburse the General Partner for all of the General Partner's expenses.
- Income and losses, including tax income and tax losses, are to be calculated in accordance with standard accounting principles and allocated pro-rata, based on the number of units owned by each partner, as determined by the General Partner from time-to-time. If amounts are outstanding from previous years, they shall be paid in priority to amounts currently due, subject always to the PDA.

- Within 120 days of the end of each fiscal year, the General Partner is to report to the partners on the amount of EBITDA (earnings before certain deductions) and distributable cash, together with its supporting calculations, and will subject to certain exceptions (including no distributions of distributable cash at any time prior to the final closing date without the unanimous consent of the Partners), distribute the distributable cash to the partners. The General Partner can, at its discretion, distribute cash more frequently than once annually. There shall be no distributions of distributable cash to partners if the debt ratio exceeds the permitted target debt ratio.
- Limited partners are not entitled to a return of capital, in full or in part, except as determined by the General Partner.
- TPC has certain options which allow it to sell its units in the Wuskwatim Partnership to Hydro. The details of these options are set out in the TPC Financing Agreement and, to a lesser extent, in the PDA.

Amendments

- The General Partner may, as set out in the powers of attorney described above, without the consent or approval of any limited partner, amend the Agreement and do such things in connection with certain types of changes that are necessary or required by the Agreement, or are inconsequential in nature, and do not adversely affect the limited partners in any material respect.
- Either the General Partner or any limited partner can propose other amendments to the Agreement. A proposed amendment shall be effective only if approved by ordinary resolution of the partners, unless the law or Agreement requires that the amendment be approved by a higher percentage vote than ordinary resolution (for example, certain matters require approval by special resolution, which means all of the partners must vote in favour of it, including amendments to Article 6).

Meetings, Voting and Conduct of Business

- The Partnership Agreement contains provisions entitling limited partners to disclosure of certain financial and other information by the General Partner.
- General Partner or any limited partner may call a meeting of the Wuskwatim Partnership.
- General Partner to nominate the chairperson of the meeting. For annual meetings, the position of chairperson shall rotate between a nominee of TPC and a nominee of Hydro.
- A Quorum is all partners. If all partners are not present, the meeting is adjourned for 10 to 21 days later. At the adjourned meeting date, the quorum is one limited partner holding not less than 50 percent of the outstanding units (in person or by proxy), except that all partners must be present or represented at a meeting at which a Special Resolution will be proposed for consideration and vote of the Partners.
- Partners can attend meetings by telephone conference.

- Each unit carries one vote. If the vote is by way of show of hands, a holder of fractional unit is entitled to one vote by show of hands but, if a ballot is demanded, shall only have a fractional vote.
- The Agreement sets out in Article 9.11 a list of matters which require the unanimous consent of all of the partners prior to being carried out. Otherwise, matters requiring approval by the partners may be approved by ordinary resolution of the partners.
- The General Partner is to keep minutes of all meetings.

Dissolution and Liquidation

- Article 10.01 of the Agreement sets out the circumstances in which the Wuskwatim Partnership shall be dissolved.
- Any sale, liquidation or other disposition of the Wuskwatim Partnership assets shall only be to Hydro. On dissolution, assets are sold to Hydro at fair market value, subject to certain adjustments, as determined by a qualified third party.
- Proceeds from the sale of assets shall be distributed in the following order:
 - *To pay the expenses and creditors of the Wuskwatim Partnership,*
 - *Provide for necessary reserves in respect of contingent liabilities, and*
 - *To the partners pro-rata to their relative capital accounts.*

Dispute Resolution

- Disputes or claims arising under the Agreement are to be determined only in accordance with the dispute resolution process set out in Article 21 of the PDA (other than disputes as to the level of reserves set by the General Partner, which are to be reviewed under the process set out in Article 20 of the PDA).

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4. PROJECT FINANCING AGREEMENT (Schedule 1-3 to the PDA)

The parties to the Project Financing Agreement are:

- Wuskwatim Partnership, as the borrower, and
- Hydro, as the lender

Background

In simple terms, the Project Financing Agreement deals with how and under what terms and conditions Hydro will lend money to the Wuskwatim Partnership to fund (together with the capital contributions of the limited partners), the construction and operation of the Wuskwatim Project, and how the Wuskwatim Partnership will repay those loans.

The various agreements between Hydro, TPC and NCN contemplate that, immediately prior to initial closing, the PDA will be signed and construction will start shortly afterwards. As construction proceeds and costs are incurred, the Wuskwatim Partnership (or Hydro, as the manager of the project on its behalf) will pay the bills and keep a running total. Hydro and NCN have agreed that the Wuskwatim Partnership will borrow funds to finance the Wuskwatim Project.

The previous formula was 75% debt and 25% equity from the Limited Partners except during the first 10 years of operations of the Project. This Agreement was amended to state that no Distributions can be made by the Limited Partnership while there are moneys owing under the Loan Documents, if the Distributions would cause the Debt Ratio to exceed 75% unless Hydro agrees.

The amount borrowed by the Wuskwatim Partnership from Hydro is the amount secured by the Project Financing Agreement. The Project Financing Agreement does not deal with loans made to TPC or NCN, which are covered by the TPC Financing Agreement and the NCN Financing Agreement respectively.

Purpose of Agreement

Generally, the purpose of the Project Financing Agreement is to set out the terms and conditions under which Hydro will make the loans available to the Wuskwatim Partnership. It provides for various rates of interest to be charged over the 50-year term of the agreement, as well as the provisions for payment of interest and repayment of principal. It also sets out the pre-conditions that must be met before any loans will be made by Hydro under the Agreement, the representations and warranties of the lender and the borrower, and the covenants (both positive and negative) that the Wuskwatim Partnership, as borrower, must observe in order to remain in good standing under the loans and the Agreement, and sets out Hydro's rights and remedies as a lender in the event of default by the borrower. It also provides for dispute resolution provisions to resolve disputes between Hydro and the Wuskwatim Partnership concerning these loans.

Generally, Hydro will make advances to the Wuskwatim Partnership during the construction period, either in US or Canadian dollars, as requested by the Wuskwatim Partnership. The reason for both currencies is that the Wuskwatim Partnership will, through the Power Purchase Agreement, be able to be paid in US dollars for a portion of the energy generated by the Wuskwatim Project and delivered to Hydro, and if some of the debt under this loan agreement is in US dollars, it should be able to hedge against fluctuations in currency exchange rates.

It is important to note that under the Project Financing Agreement, the Wuskwatim Partnership is obligated to grant a security interest in all of the present and after-acquired property of the Wuskwatim Partnership to Hydro, including in the Wuskwatim Lands, which Hydro can (among its other rights and remedies) foreclose on in the event of default by the partnership of its obligations under the Project Financing Agreement.

The Agreement provides for three types of Loans

1. Non-Revolving (in simple terms, a loan that cannot be re-borrowed once re-paid the first time)

- To be used to fund the Wuskwatim Partnership's capital requirements, in such manner as it deems necessary or desirable. Advances will be in aggregate amounts of not less than \$1 million and in multiples of \$1/2 million. "Non-revolving" means that if an amount borrowed is repaid, it is not available to be re-borrowed.
- Advances can be in US or Canadian dollar amounts (subject to Hydro's right not to permit US dollar advances or borrowings in certain circumstances).
- Interest on non-revolving loans will be charged at the Canadian dollar floating rate (for Canadian advances), and at the US dollar floating rate including the guarantee fee (for US advances), until the outstanding advances total \$200 million. These floating rates are explained below. When these advances total \$200 million, interest for the Canadian dollar component will be set at the Canadian 30-year rate (a fixed interest rate), and interest for the US dollar component will be set at the US 30-year rate (a fixed interest rate), calculated on the date the advances total \$200 million. Once the interest rate is set for this advance, then the process

starts over again for the next advances. Any outstanding advances which still bear interest at the applicable floating rate on the first anniversary of the Final Closing will bear interest thereafter at the applicable 30-year rate. At the twenty-fifth anniversary date, a new interest rate will be determined based on the interest rate at which an arm's length lender would lend funds to the Wuskwatim Partnership.

- Interest determined at a floating rate is paid monthly. Interest determined at a fixed rate is paid semi-annually. Compounding period depends on whether the interest is determined at a floating rate or fixed rate.
- Subject to specific circumstances where mandatory prepayments are necessary, these loans cannot be prepaid (i.e., paid before the maturity date), unless there is default and Hydro demands immediate payment.
- The total loan outstanding must be repaid on the maturity date (50 years from the Final Closing).

2. Revolving (in simple terms, like a line of credit)

- To be used to fund the Partnership's capital requirements including monthly payments required to be made by the Wuskwatim Partnership to Hydro as set out in the provisions of the Interconnection and Operating Agreement for the actual costs incurred by Hydro for operating and maintaining the transmission owner interconnection facilities and interconnection system upgrades. Subject to credit limits, when a repayment is made on a "revolving loan", the money can be re-borrowed from that credit facility at a later date.
- Advances, and repayments, must be in multiples of \$250,000.
- Advances can be in US or Canadian dollar amounts (subject to Hydro's right not to permit US dollar advances or borrowings in certain circumstances).
- Interest will be charged at Canadian floating rate for Canadian dollar advances and the US floating rate for US dollar advances, which are based on short-term borrowing rates paid by Hydro on Canadian dollar and US dollar loans (less than one year in duration) during the applicable month. This includes the guarantee fee paid by Hydro to Manitoba (presently 1.0%) from time-to-time.
- Interest determined at a floating rate is paid and compounded monthly.
- Optional prepayments of the revolving loans will be allowed and must be in multiples of \$250,000. Prepayments do not reduce the amount of the revolving loan commitment (i.e., amounts re-paid can be re-borrowed).
- Repayment is due on maturity (50 years from Final Closing).

3. Interconnection Loans

- To be used to fund the costs that the Wuskwatim Partnership is obligated to pay to Hydro pursuant to the Interconnection and Operating Agreement, for the construction and installation by Hydro of the transmission owner interconnection facilities and interconnection system upgrades and in funding the amounts that the Wuskwatim Partnership is obligated to pay to Hydro as set out in Article 3.2(11) of the System Operations and Dispatch Agreement.

- There is no minimum amount for any advance requested under this credit facility.
- Interest on the Interconnection and Operating Agreement loans shall be charged at the Canadian dollar floating rate until the amount advanced reaches \$40 million, when the interest rate on those advances is changed to the Canadian 30-year rate (a fixed interest rate), determined on the date the advances total \$40 million. Once the interest rate is set for these advances, then the process starts over again for the next advances. On Final Closing, the interest rate is converted to a fixed project rate (in essence an average of the various rates charged during the construction period). At the twenty-fifth anniversary date, a new interest rate will be determined based on the interest rate at which an arm's length lender would lend funds to the Wuskwatim Partnership.
- The Wuskwatim Partnership must, commencing on final closing date (first generator in service), make semi-annual payments (of blended principal and interest) based on an amortization rate of 50 years. Any loan amount outstanding under this credit facility at maturity date must be repaid on the maturity date.
- Subject to specific circumstances where mandatory prepayments are necessary, these loans cannot be prepaid (i.e., paid before the maturity date), unless there is default and Hydro demands immediate payment.

Dispute Resolution

Dispute resolution is dealt with in Article 11. It provides that all disputes between the parties shall be resolved by referring the matter to an arbitrator.

6. *AMENDED AND RESTATED POWER PURCHASE AGREEMENT (PPA) (Schedule 1-5 of the PDA)*

The Parties to the Power Purchase Agreement are:

- The Wuskwatim Partnership
- Manitoba Hydro

Background

In simple terms, the Power Purchase Agreement deals with how the Wuskwatim Partnership will sell all the power generated by the Wuskwatim Project to Hydro, and how much Hydro will pay for this power.

In general terms, this Agreement sets the rules for the purchase and sale of all energy and capacity produced from the Wuskwatim Project by the Wuskwatim Partnership to Hydro. The Wuskwatim Partnership has to sell exclusively to Hydro and Hydro has to buy all of the power generated.

The term of the Power Purchase Agreement is 25 years starting on Final Closing. The term will be automatically extended for further 25 year periods conditional on:

- Hydro continuing to operate, maintain and dispatch the Wuskwatim Generating Station in accordance with the System Operations and Dispatch Agreement and the Operations and Maintenance Agreement, or
- If another entity is operating, maintaining and dispatching the Generating Station, with Hydro's approval, then it will be required that there be such amendments to this agreement as are reasonably required by Hydro due to the fact it would no longer be operating, maintaining and dispatching the Wuskwatim Generating Station.

If the Agreement is not extended, it terminates. This Agreement will also terminate automatically in a number of circumstances (Article 9) which essentially result from one of the parties to this agreement not complying with its obligations under this agreement, and the other party proceeding to exercise its right to terminate the agreement.

If the Power Purchase Agreement terminates, the Wuskwatim Partnership can sell power to anyone it wishes. But realistically, the power would have to be delivered over the Hydro transmission system unless the power was sold at the site of the Wuskwatim Project and the Wuskwatim Partnership would have to make application for delivery of the power over the Hydro transmission system.

Purpose of Agreement

This agreement explains how Hydro will buy the power generated at Wuskwatim, and the process of determining how much Hydro will pay for it.

Summary of Key Provisions

Purchase and Sale of Power

In the current energy market, electricity is worth more when it is most in demand. At present, Monday to Friday, 6:00 a.m. to 10:00 p.m. is when electricity is worth

most. This is the on-peak period. The rest of the time (10:00 p.m. to 6:00 a.m.) is the off-peak period. **Electricity is sold to the domestic market (within Manitoba) and to the export market (outside of Manitoba). Global market conditions, including the introduction of new fracking technology for natural gas, have resulted in export prices being depressed. As this has affected the first few years of operation of the Project, the Parties have agreed Hydro will pay for some of the energy produced by Wuskwatim at domestic energy prices for a period of 10 years. After this period of time, the pricing will revert to export market pricing only.**

Electricity is generally worth more money if the seller can guarantee to deliver a pre-determined amount at a future time. Usually, the further in the future the delivery of power is to occur, the more it is worth. For the purposes of this agreement, long-term transactions are transactions where Hydro enters into a written agreement to begin selling or buying power in markets outside Manitoba and which sales or purchases occur more than one year from the date the agreement is entered into. All other sales of power are referred to in this agreement as opportunity transactions. Buyers generally pay more for long-term transactions than for opportunity transactions.

The Wuskwatim Partnership will be compensated by Hydro for the actual energy received by Hydro as follows.

- Energy delivered during on-peak hours will be paid for at the Long Term Transaction Rate, which is the average weighted price charged or paid by Hydro for long-term transactions occurring during that same time period.
- Energy delivered during off-peak hours will be paid for at the Opportunity Transaction Rate, which is the average weighted price charged or paid by Hydro for all opportunity transactions occurring during that same period.
- Where, in any year, there are, for long term transactions, less than 800 GWh energy bought or sold by Hydro pursuant to those transactions (insufficient transactions), either NCN or Hydro may apply for an energy rate review under the PDA and if neither does, the rate paid for the on-peak power will be the on-peak opportunity rate which is the average weighted price charged or paid by Hydro pursuant to the opportunity transactions for energy delivered in the on-peak period during that same time period.
- “Where, in any year, there are for the opportunity transactions less than 1,500 GWh of energy bought or sold by Hydro pursuant to those transactions (insufficient transactions), a rate review under the PDA will be held to determine the rate paid for the off-peak power”.

The 3 percent fee Hydro was to be paid on all sales to compensate Hydro for assuming certain marketing risks, not requiring a minimum supply of on-peak energy, use of Hydro’s line capacity and assuming certain transmission risks has been eliminated during the period the Equity and Dividend Loans are outstanding. This fee holiday is being replaced with the implementation of a fee that will reduce the Distributions to TPC in the future based on an agreed upon value for the cash flows based on the 2013 Integrated Financial Forecast (IFF 2013). The financial modelling produced a reduction in future distributions of 36% once the loans are paid off.

If Hydro can’t take delivery of energy primarily due to insufficient capacity of the Hydro transmission system or the disruption to, or failure of, the Hydro

transmission system and, as a direct consequence thereof, water is spilled at the Wuskwatim Project spillway, Hydro will compensate the Wuskwatim Partnership for the value of the energy lost based on the water spilled (Article 2.5).

The energy received by Hydro will be reduced by the amount of the line losses experienced by Hydro on its high voltage transmission system.

Dispute Resolution

There are two components to dispute resolution. Under the PDA, NCN, even though it is not a party to the Power Purchase Agreement, has a right to arbitration of the energy rate payable by Hydro to the Wuskwatim Partnership in certain circumstances (Energy Rate Review). NCN can also arbitrate certain determinations, allocations and adjustments made by Hydro in determining rates for long term transactions and opportunity transactions (transaction rate review). This is desirable since the General Partner of the Wuskwatim Partnership, which is controlled by Hydro via its ownership and control of the General Partner, would not necessarily apply for arbitration when NCN wants it to. Under the Power Purchase Agreement, the Wuskwatim Partnership also has the option of applying for arbitration to resolve a much wider number of issues. Under the PDA, arbitration is limited to energy rate issues, or how much Hydro pays the Wuskwatim Partnership for power. Under the Power Purchase Agreement, (s. 10.1) arbitration extends to the *“application, interpretation, meaning, alleged violation, performance or non-performance of this Agreement”*.

Energy Rate Review, Spill Energy Revenue Adjustment Review and Transaction Rate Review

The energy market is in a state of rapid change and it is not clear that in future, power will continue to be priced according to the mechanism developed for this agreement. Therefore, the PDA (Article 17) contains provisions for review of the manner in which the value of power is set based on the principles and criteria referenced in this agreement. The review will be triggered automatically in some cases and is mandatory at the option of either party in other circumstances. The energy rate review and the transaction rate review were put into the PDA because the only parties to the Power Purchase Agreement are the Wuskwatim Partnership (as seller) and Hydro (as buyer). NCN is not a party to the Power Purchase Agreement and would therefore never have a right to call for, or participate in, an energy rate review or a transaction rate review.

Either party can request an energy review when there are insufficient transactions, and once every five years during the term of this agreement and on any extension of the term, provided there has not been a review within the immediately preceding two years. There is also a separate review process to deal with environmental credits.

Operational changes have occurred since 2005 due to the amount of water in the hydro system. More water is being spilled at Missi Falls which has resulted in less power being generated from Wuskwatim than was originally anticipated. A revenue adjustment mechanism has been added to the Power Purchase Agreement along with a review mechanism so that the Partnership will be paid for energy it could have produced if Hydro did not decide to operate its plants on the Nelson River instead of Wuskwatim. As this is a new concept, the methodology and assumptions are being fine-

tuned by the Parties' technical experts. NCN will have a right to request a review of the Spill Energy mechanism at least once every five years.

Under the PDA, an independent expert is appointed, who will make non-binding recommendations for the parties to consider. If the recommendations are not agreed to, either party can request that the same expert mediate to try to achieve an agreement between the parties in order to resolve the matter. If the parties cannot agree after mediation, a second expert will be appointed to make a binding decision.

The authority of the expert is strictly limited to the pricing principles and he/she will not have authority to *"amend or vary the terms of other fees or charges set out in the Power Purchase Agreement including, without limitation, the calculation of line losses or fees for compensation for risk"* (PDA Article 17.11). In the event that the method by which electricity is valued changes, the expert will have to create a new method for valuing the energy delivered to Hydro. In that case, the following pricing principle will govern the Energy Rate Review.

- The rate Hydro is to pay for the capacity of and the energy generated by the Wuskwatim Project will be based on the value of the energy and capacity to Hydro at the Manitoba border for electricity that can be exported to markets available to Hydro outside of Manitoba.

In the application of the pricing principle, the following pricing criteria shall be applied:

- The rate will recognize:
 - *The effects of the applicable constraints and regulations that may limit access to the electricity markets outside of Manitoba, and*
 - *Any other risks or actual costs to Hydro, (to the extent Hydro has not been compensated for these risks or costs as set out in other provisions of this Agreement) associated with or applicable to the purchase of the energy and capacity from the Wuskwatim Partnership and resale in the electricity markets outside of Manitoba (to the extent hydro has not been compensated for these risks or costs pursuant to other provisions of this agreement).*
- In determining the value of the energy and capacity that the Wuskwatim Project the rate will recognize that the Wuskwatim Project is operated by Hydro as part of the Integrated Power System and, although Hydro accepts the energy from the Wuskwatim Project as it is produced on an hourly basis, Hydro through its operation of the Integrated Power System, is able to allocate portions of the energy into other time periods.
- If Hydro is exporting or importing energy to or from electricity markets outside of Manitoba in reasonable quantities (the determination of which is not restricted by the quantum referenced for Insufficient Transactions), the price that Hydro obtained at the Manitoba border for the export or import of the energy that physically crossed the Manitoba border pursuant to the export or import transactions, net of all charges or credits associated with or applicable to those transactions, including actual costs and expenses that Hydro has incurred which were reasonably necessary to provide access to the export markets or to facilitate Hydro entering into export transactions, (but not including Hydro's administrative and general overhead costs and expenses or any costs or expenses that Hydro has

been reimbursed for, pursuant to other provisions of this agreement) will be used when determining the value of the energy and capacity of the Wuskwatim Project to Hydro.

- If Hydro is not exporting or importing energy and capacity in reasonable quantities (the determination of which is not restricted by the amount referenced for Insufficient Transactions), then, subject to the first pricing criteria outlined above, the determination of value to Hydro will be made based on the price that Hydro could have obtained at the Manitoba border if it was exporting energy and capacity to electricity markets available to Hydro outside of Manitoba, net of all charges or credits associated with or applicable to those transactions including actual costs and expenses that Hydro has incurred which were reasonably necessary to provide access to the export markets or to facilitate Hydro entering into export transactions, (but not including Hydro's administrative and general overhead costs and expenses or any other costs or expenses that Hydro has been reimbursed for, pursuant to other provisions of this agreement).

10. *AMENDED AND RESTATED TPC FINANCING AGREEMENT* **(Schedule 5-1 to the PDA)**

The parties to the TPC Financing Agreement are:

- TPC, as the borrower, and
- Hydro, as the lender.

Background

The various agreements between Hydro, TPC and NCN contemplate that immediately prior to initial closing, the PDA will be signed and construction will start shortly afterwards. At initial closing, TPC will pay a minimum of \$1,000,000 and will receive 1,000 units (valued at \$1,000 each) in the Wuskwatim Partnership. At that time, Hydro will pay \$2,020,001 and will receive 2,020.001 units (to add to the 9.999 Units it got when the Wuskwatim Partnership was initially created) and will have a total of 2,030 units.

The General Partner of the Wuskwatim Partnership will pay \$303.03 and will get an additional 0.30203 units to add to the 0.001 units it received when the Wuskwatim Partnership was created, for a total of 0.30303 units. In total, there will be 3030.30303 units. Hydro will own 66.99 percent of the units, NCN will own 33 percent and the General Partner will own 0.01 percent. [Refer to Article 4 of the PDA and Schedule A].

As construction proceeds and costs are incurred, Hydro as manager paid the bills for the Wuskwatim Partnership. Hydro and NCN agreed that the Wuskwatim Partnership will borrow funds to finance the Wuskwatim Project from Hydro. TPC is responsible for 33 percent of the total equity. Since TPC and NCN will not have enough money to finance TPC's share of the equity, Hydro agreed to lend TPC some of the money required for TPC's equity. NCN contributed \$21,178,000.00 of its own cash or assets and borrowed the remaining \$95.125 Million from Hydro.

Purpose of Agreement

Generally, the purpose of the TPC Financing Agreement is to set out the terms and conditions under which Hydro will make loans to TPC to assist it in funding its acquisition of equity in the Wuskwatim Partnership.

The TPC Financing Agreement sets out the pre-conditions that must be met before any loans will be made by Hydro to TPC under the Agreement, the representations and warranties of TPC, as borrower, and Hydro, as lender, and the covenants (both positive and negative) that TPC, as borrower, must observe in order to remain in good standing under the loans and the Agreement. This Agreement also sets out the procedures for obtaining loan advances and Hydro's rights and remedies as a lender in the event of default by the borrower.

Summary of Key Provisions

Wuskwatim Partnership Unit - Cash Units versus Loan Units

As indicated above, TPC **bought** 1,000 units in the Wuskwatim Partnership at the initial closing date, which is shortly after the signing of the PDA. The number of TPC's units may increase over time as additional funds for equity are invested.

TPC's units were categorized on the final investment date based on a formula which incorporates the amount of cash put in by TPC and not borrowed from Hydro, and the total amount of the equity loans advanced by Hydro to TPC for investment in the Partnership which were not repaid at that date. The application of the formula results in a division of TPC's units into cash units and loan units. **The leverage increased in both PDA Supplements No. 1 and 2 so that NCN could retain a 33% ownership interest in WPLP by investing less cash. The final investment amount required to retain a 33% ownership interest was \$21.178 Million.**

The higher the amount of the aggregate loan to TPC in relation to the cash invested by TPC the higher the number of loan units and the lower the number of cash units.

The importance of the distinction between cash units and loan units is that the distributions, or profit payments, are broken down into two components, which correspond to the loan units and to the cash units. Provided that it is not in default under the TPC Loan Agreement and NCN is not in default under the NCN Financing Agreement, TPC is able to keep distributions tied to the cash units after payment of any outstanding loans under the NCN Financing Agreement and payment of any outstanding cash call loans under the TPC Financing Agreement. However, distributions tied to TPC's loan units are directed to Hydro under its security and used to pay down the loans to TPC that were used to finance its equity investment.

Interest Rates

TPC will pay interest on the various loans at various rates and at various times, depending on the circumstances. These arrangements are set out in detail in the TPC Financing Agreement and vary depending on currency and other factors.

Put/Call Rights

The TPC Financing Agreement also deals with TPC's option to sell units to Hydro and require Hydro to buy them (Article 5). It has a number of such options exercisable at various specific times and subject to specific conditions. One of these options would be used in the event that TPC is unable or unwilling to come up with the cash necessary to meet the criteria for repayment of the loans which were advanced by Hydro during construction and used by TPC to invest in the Partnership (Article 2.6(3)). The sale price on the units would be calculated on a formula, which would allow for repayment of a portion of the loans attributable to TPC's share of the units being sold. Where TPC sells all of its units to Hydro pursuant to such an option (except under the Term Sale Right), the price would be sufficient to also allow TPC to get back all of its invested cash that is its own funds (as calculated in the TPC Financing Agreement, without interest). In some circumstances it will get back only a portion of its invested cash if for example the funds received by TPC came from third parties rather than NCN, for investment in the Wuskwatim Partnership. The sale would have to be preceded by a notice

of sale to Hydro stipulating the number of units that TPC wished to sell. Some of the options are “all or nothing” (that is, TPC can only use the option to sell all of its units to Hydro; not some of them). These sale options have sometimes been called the “put” options. A brief summary of these options is:

- TPC **had** a final closing sale right, which is the right to sell its units in the Wuskwatim Project back to Hydro. The sale right is exercisable at final closing, when the first of the three turbines goes into service. This sale right can be exercised for all or part of TPC’s units. This sale right was negotiated as a way to give NCN/TPC an exit strategy or a mechanism to reduce its stake in the project if the project does not look like it will pan out as well as expected.
- If construction of the Wuskwatim Project had not started by the specified deadline, or if it is halted but not re-commenced by the specified deadline, TPC had the right to sell (a “non-completion sale right”) all (but not less than all) of its units to Hydro and Hydro must buy them.
- TPC has a term sale right, exercisable only once between the final closing and the maturity date (fifty years after final closing), to require Hydro to buy all of its units in the Wuskwatim Partnership on the terms set out in the TPC Financing Agreement. Under this right, TPC does not get any of its invested cash back from Hydro when it sells its units, and so this right would only be used in very dire scenarios. It is not anticipated that this right will be exercised.
- TPC also has a twenty-fifth anniversary sale right, exercisable only on the twenty-fifth anniversary of the final closing, to require Hydro to buy all (but not less than all) of its units in the Wuskwatim Partnership on the terms set out in the TPC Financing Agreement.
- TPC also has a maturity date sale right, exercisable only on the fiftieth anniversary of the final closing (the Maturity Date), to require Hydro to buy all (but not less than all) of its units in the Wuskwatim Partnership on the terms set out in the TPC Financing Agreement.

Article 6 provides that if TPC does not come up with the cash required and does not offer to sell (or “put”) its units to Hydro, Hydro has the option to purchase (or “call”) the number of units necessary to bring the number of units owned by TPC in line with the formula in Article 2.6(3). The purchase price is calculated in accordance with the formula intended to simply forgive TPC that portion of the loans made by Hydro which corresponds to the number of units being bought. (Forgiving a loan means not making the borrower pay it back.).

Pre-payments

TPC can make optional pre-payments on the various loans under the TPC Financing Agreement without penalty other than that TPC must make a “market-make-whole” payment to Hydro in connection with any such pre-payment, which payment is calculated as an amount sufficient to reimburse Hydro for the cost to it of early repayment of the funds lent to TPC. There are notice requirements to be complied with when a pre-payment is made, and Hydro has the right to approve the funds used by TPC to make any such pre-payment. Any pre-payment must not be less than \$200,000 and must be in multiples of \$100,000 (Article 2.7(2)).

Approved Funds

Hydro has the right to approve funds used by TPC to invest in the Wuskwatim Partnership or to make a re-payment of any amounts borrowed by it from Hydro. If Hydro denies any funds for this purpose, TPC will not be permitted to make the investment or repayment using those funds.

Security

Hydro will have security in all of TPC's units and all distributions on those units for amounts owed to Hydro under the TPC Financing Agreement. This means that Hydro could seize TPC's units and distributions in satisfaction of amounts owed to it in a default scenario.

Repayment through Distributions

In the ordinary course (prior to a default), the loans owed to Hydro under the TPC Financing Agreement will be repaid solely through distributions on TPC's units. In the ordinary course, distributions on all of TPC's units will go to Hydro in repayment of cash call loans and dividend loans, and where only equity loans are outstanding, only distributions on TPC's loan units will go to Hydro in repayment of the equity loans (with the distributions on TPC's cash units going to TPC).

Limited Recourse Loans

Hydro's sole recourse for the loans under the TPC Financing Agreement is TPC's units and the distributions on those units. If the units are seized, Hydro cannot go after TPC personally (nor NCN) for repayment of these loans.

Dispute Resolution

Dispute resolution is dealt with in Article 14. It provides that all disputes shall be resolved in accordance with Article 21 of the PDA which, in essence, allows an arbitrator to deal with all disputes arising under the TPC Financing Agreement.

11. *AMENDED AND RESTATED NCN FINANCING AGREEMENT* **(Schedule 5-2 to the PDA)**

The parties to the NCN Financing Agreement are:

- NCN, as the borrower
- TPC, as the guarantor
- Hydro, as the lender

Background

During the course of negotiations, NCN was concerned that NCN would be cash poor in the early stages of the operation of the generating station.

The Wuskwatim Partnership borrowed moneys from Hydro to build the Wuskwatim Project and the interest on that money must be paid to Hydro before there are distributions or payments, to the limited partners. In addition, TPC is borrowing a substantial portion of the cash required for its equity investment in the Partnership, from Hydro, and payments must be made on that loan.

The concern was that NCN would continue to divert money from the community and, in the lean years, the community would suffer for lack of that money. To help overcome that, Hydro agreed to lend money to NCN in the form of dividend loans to ensure that each year, NCN would receive, based on a formula established by this loan agreement, and assuming all funds invested in the Wuskwatim Partnership by NCN were NCN's own funds, an amount in excess of \$1 million (less any distributions actually received by TPC from the Wuskwatim Partnership). NCN would then be able to use these funds for community purposes. **Saving for Wuskwatim has stressed NCN financially and resulted in less money being available to address housing and community infrastructure needs. PDA Supplement No. 2 provides an additional \$6 Million in dividend loans to help address these needs.**

Purpose of Agreement

Generally, the purpose of the NCN Financing Agreement is to set out the terms and conditions under which Hydro will make dividend loans to NCN. The proceeds of these loans are not, under this loan agreement, restricted as to how they can be used. The money is to be advanced by Hydro to NCN directly, and it is to be guaranteed by TPC for the sole purpose of TPC granting a security interest in TPC's units (and distributions thereon) as security for the dividend loans made to NCN.

The NCN Financing Agreement sets out the pre-conditions that must be met before any loans will be made by Hydro to NCN under the Agreement, the representations and warranties of NCN and TPC, as borrower and guarantor, and Hydro, as lender, and the covenants (both positive and negative) that TPC and NCN must observe in order to remain in good standing under the loans and the Agreement. This Agreement also sets out the procedures for obtaining loan advances (and for determining the amount eligible to be advanced) and Hydro's rights and remedies as a lender in the event of default by NCN, as the borrower, or TPC, as the guarantor.

Summary of Key Provisions

The amount of the dividend loan, which is payable yearly, is calculated by multiplying the amount of cash that was NCN's own funds (or was obtained from Manitoba or Canada for investment in the Partnership) that was invested through TPC in the Partnership, by the Canadian 10-year rate, which is basically the interest rate Manitoba would pay on a 10-year bond, plus the guarantee fee Hydro pays the province (presently 1.0 percent), less 2.5 percent. The amount of any distributions received by TPC on its units in the Partnership in any year would reduce or, if it was at least equal to that amount determined by this formula, would eliminate the right to receive the dividend loan in that particular year.

At the time the SOU was negotiated, the Canadian 10-year rate and guarantee fee were 7.5 percent, so the expectation was that NCN's investment through TPC in the Partnership would be from its own funds, such that it would receive after the first year that the station was operating, and every year after that for the first 25-years of this loan agreement, an amount in excess of \$1 million, (which is equal to \$28 million times 5 percent) from either the dividend loan or the distributions from the Partnership or from a combination of both. In fact, the amount of the dividend loan can vary substantially as it is tied into interest rates on 10-year bonds, and is also affected by the guarantee fee, which Manitoba can change at any time. As well, subject to the outstanding dividend loans not exceeding the commitment amount specified in the agreement, dividend loans are also available for a further 25 years until the maturity date.

For the purpose of calculating the dividend loan, money that NCN or TPC obtains from Manitoba or Canada for investment in the project will be included in TPC's invested cash for the purposes of the calculation of the dividend loan. However, third party funds obtained by NCN/TPC for investment in the project will not count for this purpose.

Security

Hydro will have security in all of TPC's units and all distributions on those units for amounts owed to Hydro under the NCN Financing Agreement. This means that Hydro could seize TPC's units and distributions in satisfaction of amounts owed to it in a default scenario.

Repayment through Distributions

In the ordinary course (prior to a default), the loans owed to Hydro under the NCN Financing Agreement will be repaid solely through distributions on TPC's units. In the ordinary course, distributions on all of TPC's units will go to Hydro in repayment of any outstanding dividend loans until they are paid off.

Dividend Loans are Non-Revolving

Once a dividend loan previously advanced has been repaid, the amount cannot be re-borrowed. Also, if NCN is eligible for an advance of a dividend loan and declines to take it in the year in which it is eligible for it, NCN will not be able to borrow that amount later. It is a "borrow it or lose it" concept.

Interest Rate

The determination of interest rate is based on formulae set out in the NCN Financing Agreement, which should be consulted directly.

Limited Recourse Loans

Hydro's sole recourse for the loans under the NCN Financing Agreement is TPC's units and the distributions on those units. If the units are seized, Hydro cannot go after NCN or TPC personally for repayment of these loans.

Pre-payment

TPC can make optional prepayments on the loan without penalty, bonus or premium at any time although there are notice requirements which must be given to Hydro prior to making such a prepayment. The prepayment must not be less than \$200,000 and must be in multiples of \$100,000.

Dispute Resolution

Dispute resolution is dealt with in Article X. It provides that all disputes shall be resolved in accordance with Article XXI of the PDA which, allows an arbitrator to deal with all disputes arising under the NCN Financing Agreement.



Summary

PDA SUPPLEMENT AGREEMENT **2**

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