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November 30, 2014

The Honorable Ann O'Reilly  
Attention Docket E-015/CN-12-1163 and OAH 65-2500-31196  
Office of Administrative Hearings  
P.O. Box 64620  
600 North Robert Street  
St. Paul MN 55164-0620

This comment is made by a private individual in the matter of Minnesota Power's application for a Certificate of Need with regard to the proposed "Great Northern Transmission Line."

I believe there more cost effective ways to meet the public's needs and public policy objectives than this transmission line proposal called the Great Northern Transmission Line. For example putting the same or even less money toward energy conservation and load-management measures.

I believe better energy costs can be achieved for Minnesota electricity consumers by employing reasonable alternatives. The costs of employing the alternatives would be less and with greater benefit than the proposed project called the Great Northern Transmission Line.

I believe Minnesota Power is being deceptive in its portrayal of this proposal and of the purpose of the proposal. Minnesota Power is not being forthright in its publicized claims or in expressing its intentions publically or in the application with Minnesota PUC. Further, Minnesota Power is being deceptive in putting Phase II on hold. American Transmission Company, the would be partner with Minnesota Power, in a letter dated October 31, 2014 and posted on the docket has endorsed Phase I. The Environmental Report prepared by Minnesota Department of Commerce gets the greater scope of this proposal and discusses the potential for bulk power transfers.

I would like to say, an approved Power Purchase Agreement does not constitute a public need. Neither does a renewable optimization agreement of hydropower and wind storage energy products to serve Minnesota Power, or send additional hydropower to other utilities in the United States; such an agreement does not constitute public need. An approved Integrated Resource Plan does not constitute public need either.

The question of public need and of suitability of Manitoba's hydropower is open and unanswered in terms of this proposal which is before the Administrative Law Judge and the Minnesota PUC.

Minnesota Power claims imported power would be clean and emissions free. This is a half truth because there is an overall negative effect on emissions and the hydro projects are very damaging. I would like to reference Hydropower Greenhouse Gas Emissions, February 14, 2012 by Synapse Energy Economics, Inc. –

<http://www.clf.org/wp-content/uploads/2012/02/Hydropower-GHG-Emissions-Feb.-14-2012.pdf>

Hydropower in Quebec and New Foundland may be no better than burning natural gas with respect to carbon dioxide. While no two hydroelectric developments are the same; Manitoba Hydro is likely worse than some others because of continued and ongoing environmental degradation over a greater surface area of flooded lands. This report should cause Minnesota's public policy makers and the decision makers to do a double-take regarding Manitoba Hydro.

A similar independent study of Manitoba Hydro is lacking. In fact the Pimicikamak and others have been calling for comprehensive review of how the northern hydropower system is operated with the goal of minimizing environmental impacts. I would like to offer two editorials – Hydro's damage adds up, September 16, 2013 , Editorial, Winnipeg Free Press

<http://www.winnipegfreepress.com/opinion/editorials/hydros-damage-adds-up-223869381.html>

Fighting For a Fishery, December 10, 2013, by Steve Ducharme

<http://www.winnipegfreepress.com/opinion/columnists/fighting-for-a-fishery-235187641.html>

One of the objectives expressed in October of this year when the Pimicikamak evicted Manitoba Hydro from the Jenpeg Generation Station taking over the dam was: “A commitment from Manitoba and Manitoba Hydro to undertake a comprehensive review of how the northern hydropower system is operated with a view to minimizing environmental impacts.”

Manitoba Hydro, the Province of Manitoba and the Pimicikamac just signed a Process Agreement (found at the end of this comment document) for, among other things, implementation of the 1977 Northern Flood Agreement. If Manitoba Hydro had acted honorably these past decades such a process agreement would not have been necessary. One may have doubts about Manitoba Hydro's future behavior.

Manitoba Hydro knows that their past actions and the way hydro has been operated has been socially and environmentally damaging. Hydro has operated for decades under interim license, without a final license. Although it is now requesting final licensees for Churchill River Diversion and Lake Winnipeg Regulation, it is requesting no changes to its interim licenses as though nothing has been learned in the past decades that could improve the ways these systems are operated with respect to environmental damage. And their application for a final license, as I understand it, includes augmented flow which exceeds the provisions of the original interim license and Northern Flood Agreement.

Minnesota Power can not back up its claim of hydro power from Manitoba being clean. Minnesota Power can not present impartial scientific studies; Minnesota Power is talking noise, blowing hot air about hydro being clean.

Minnesota Power's claim is to bring needed power into Minnesota. The capacity of the line is much greater than the 750MW presented and even 750MW far exceeds any claimed need for increased power in Minnesota. 750MW exceeds the 250MW PPA + 133MW ROA. The actual capacity of the line would be much greater than 750MW; this is revealed by the planned conducting for the line.

Minnesota Power's claim is to increase system reliability. It is hard to imagine a new addition or upgrade that wouldn't increase reliability if done properly, but most would not bring any practical, appreciable increase in reliability.

In considering the Great Northern Transmission Line from the (end user) consumers' point of view, most consumers already enjoy an uninterrupted, adequate, quality supply of electric power. The most likely cause of an outage for them is because of something interfering at the distribution level. So, the most cost effective reliability gains for them are with distribution line maintenance, squirrel proofing and continued safety education for two legged squirrels.

Other practical reliability objectives would be most cost effectively realized through energy conservation (efficiency and habits) and load-management measures. Also, more distributed generation like home solar has benefits for managing grid operations, addressing peak demand, lowering operations costs and increasing reliability.

When it comes to reliability for bulk power transfers, increasing market reach and things of that nature; this is not a public need. The costs of enabling this when there are reasonable, sensible, more cost effective alternatives are not in the public interest. Besides, the actual outcome regarding consumer prices with increased capacity for bulk power transfers is in doubt; economists and analysts would reach different conclusions whether consumer prices would be lower or higher by increasing capabilities for bulk power transfers.

In an impartial cost-benefit-analysis, for the money spent – conservation, energy efficiency, load management and locally produced solar would have the greatest benefits for the costs. All of these work everywhere, throughout the United States, Canada, Mexico and beyond.

Wherever electricity is consumed, gains in energy efficiency can be made. Even negative growth in electricity demand can be realized. It is not Minnesota's responsibility to prop up the irresponsible; all could benefit from aggressive energy efficiency.

Energy efficiency: a key tool for boosting economic and social development

<http://www.iea.org/newsroomandevents/pressreleases/2014/september/name-125300-en.html>

The Power Purchase Agreement between Minnesota Power and Manitoba Hydro is likely an introductory offer to get their foot in the door, to help get the Great Northern Transmission Line approved and to enable them engage in the risky business of competing in a shrinking market.

Manitoba Hydro's most recently [completed hydro project, Wuskwatim](http://www.pub.gov.mb.ca/pdf/13hydro/43-13.pdf), has been losing money. <http://www.pub.gov.mb.ca/pdf/13hydro/43-13.pdf> report. Wuskwatim was completed in 2012 [and is not expected to make any money by Hydro's estimates until 2023.](#)

I would also like to introduce this article – Unprecedented Risk – 06/19/2014 – by Byron Williams and Gloria Desorcy. It discusses how distributed solar, among other things, may influence hydropower exports. –

<http://www.winnipegfreepress.com/opinion/analysis/unprecedented-risk-263765151.html>

Great Northern Transmission Lines has a connection with the planned new Keeyask dam and with its associated debt burden.

According to a former dean of engineering at the University of Manitoba "...all it would take for [Manitoba Hydro] the Crown corporation to be in a situation where its solvency was put into question is a major drought (even one of no greater proportion than the 2002-04 event), an unexpected sharp rise in interest rates, a continuing deterioration of the export markets, or any combination of these which causes a credit downgrade."

<http://www.winnipegssun.com/2013/12/12/ndp-risking-hydros-future>

This all advises extra caution with regard to speculating on the future costs of electricity from Manitoba Hydro, the dependability of this supply and any demand for it.

Approving eminent domain taking for this proposal would be sickening. This is a speculative private business endeavor, not a public project and not in the public interest.

Sincerely,

John Dunn

## **PROCESS AGREEMENT**

Between

**Pimicikamak on its own behalf and on behalf of Cross Lake First Nation (also known as Cross Lake Band of Indians) ("Pimicikamak")**

and

**Her Majesty the Queen in Right of the Province of Manitoba ("Manitoba")**

and

**The Manitoba Hydro-Electric Board ("Hydro")**

### **WHEREAS**

- A. The "project", as defined in the Northern Flood Agreement, consisting of the Churchill River Diversion ("CRD") and Lake Winnipeg Regulation ("LWR") projects, (the "Hydro Project") includes aspects that have been operating and continue to operate in Manitoba, including in what Pimicikamak considers to be Pimicikamak's traditional territory.
- B. The Hydro Project has modified the water regime and resulted in, and continues to result in, adverse effects on the lands, pursuits, activities and lifestyles of citizens of Pimicikamak.
- C. Manitoba, Manitoba Hydro, the Northern Flood Committee, Inc and Her Majesty the Queen in Right of Canada ("Canada"), entered into the Northern Flood Agreement ("NFA"), dated December 16, 1977 with the purpose of addressing such adverse effects, through various means, on the parties represented by the Northern Flood Committee Inc. and their members.
- D. The Cross Lake Band of Indians, also known as Cross Lake First Nation ("Band") is one of the parties that had been represented by the Northern Flood Committee Inc. under the NFA, and for the purpose of this Agreement Pimicikamak, Manitoba and Hydro (collectively the "Parties"), and the Band through Band Council Resolution, acknowledge that "Pimicikamak" as described as a Party to this Agreement acts on behalf of the Band under the NFA.
- E. Manitoba and Manitoba Hydro want to improve their relationships with aboriginal peoples and communities impacted by CRD and LWR and in that spirit are proposing to work as set out in this Agreement.

- F. The Parties desire to work together in an Engagement Process as provided for in this Agreement.

**NOW THEREFORE** the Parties hereby agree as follows:

**1. PURPOSE OF THIS AGREEMENT**

- 1.1 The purpose of this Agreement is to:
- 1.1.1 set out the matters to be addressed in the Engagement Process between the Parties to which this Agreement applies;
  - 1.1.2 set out the principles governing the Engagement Process;
  - 1.1.3 set out the process and timetable for the Engagement Process; and
  - 1.1.4 set out the funding requirements and process for budgets and payments, for the Engagement Process.

**2. ISSUES FOR THE ENGAGEMENT PROCESS**

- 2.1 The issues to be considered and addressed in the Engagement Process shall include the following:
- 2.1.1 New NFA Relationship as set out in Article 6;
  - 2.1.2 Policy-level Issues as set out in Article 7;
  - 2.1.3 Financial Issues as set out in Article 8;
  - 2.1.4 Energy Efficiency Opportunities as set out in Article 9; and
  - 2.1.5 Such other matters as the Parties agree.

**3. PRINCIPLES OF THE ENGAGEMENT PROCESS**

- 3.1 The Parties agree that the principles that shall govern the Engagement Process are as follows:
- 3.1.1 Government-to-Government: The Engagement Process will foster reconciliation amongst all Parties and a positive, long-term government-to-government relationship between Pimicikamak and Manitoba.
  - 3.1.2 Mutual Respect: The Parties shall act with willingness and commitment to hear each other, to understand each other's perspectives and cultures, and

to treat each other as one would expect to be treated oneself in an honourable society.

- 3.1.3 Good Faith: The Parties shall engage in the Engagement Process in good faith, including that each Party and its negotiators and representatives will act honestly and with the intention of achieving the objectives of the Agreement in a timely, effective, rational and fact-based way. Nothing in this Agreement assumes the Parties will reach agreement on any issues referenced in Articles 6, 7, 8 and 9 and the Parties acknowledge they may not be able to obtain Canada's or third parties' consent to certain matters and that such consent might be necessary. The Parties agree that good faith engagement does not include deliberate actions by any Party (authorized or condoned by its decision-makers) to knowingly unlawfully obstruct the legal rights of any other Party.
- 3.1.4 Fully Informed: The Parties agree that in order for each Party to participate in an informed way in the Engagement, each Party will require relevant and necessary information from the other Parties for this purpose, subject to legislative restrictions and confidentiality obligations outlined in Article 10.
- 3.1.5 Mutual Accountability: Each Party shall be accountable to the others for reporting on progress of, next steps in and obstacles to progress. Pimicikamak will be further responsible to account with respect to the expenditure and use of advances and other funding provided by Manitoba or Hydro.
- 3.1.6 Without Prejudice: Main Table activities shall be conducted on a without prejudice basis subject to the proviso that any approved NFA action plans, and any expert reports or similar work product developed as part of the Engagement Process where relevant may be used in arbitration proceedings in an NFA Claim or other proceeding.
- 3.1.7 Canada's Role: The Parties acknowledge that Canada's involvement in some of the issues to be considered is desirable and with respect to particular issues may be required and the Parties agree to approach Canada to seek its involvement if desired or required.
- 3.1.8 Other Aboriginal Peoples/Communities and Interested Third Parties: The Parties acknowledge that some of the issues to be addressed through this Engagement Process are broad policy level issues that will require input from and consideration by other interested third parties in order to find common ground and mutual understandings on how to address such respective interests.

#### **4. TIMETABLE FOR THE ENGAGEMENT PROCESS**

- 4.1 The Parties shall immediately establish the NFA Working Group to work on an action plan for NFA implementation pursuant to section 6.2, and the Parties acknowledge that there has been funding provided to start this work.
- 4.2 The Parties shall work cooperatively, on a priority basis, to develop a work plan and budget for the anticipated work to be undertaken between the signing of this Agreement and March 31, 2015, particularly the proposed NFA implementation Action Plan.
- 4.3 In respect of the issues referenced in Article 7, which are of a policy level and will therefore necessarily include input and consideration by the public and other interested third parties, the Parties shall, between the signing of this Agreement and March 31, 2015, cooperatively develop a work plan and budget for the anticipated work to be undertaken with respect to such issues.
- 4.4 The Parties shall undertake a review of the progress being made under this Agreement to March 31, 2015, and shall cooperatively develop a work plan and budget for activities to be conducted after March 31, 2015, such that such work plan and budget is approved by March 31, 2015. The Parties shall thereafter work cooperatively to develop work plans and budgets for such additional periods of time and for such work as remains to be undertaken pursuant to this Agreement.

#### **5. THE ENGAGEMENT PROCESS**

- 5.1 The Engagement Process shall be conducted as set out in this Article 5:
- 5.2 Main Table: A Main Table shall be established in Accordance with this Section 5.2.
  - 5.2.1 The Main Table shall consist of the lead negotiators for and legal counsel to each of the Parties. Each Party may identify up to three lead negotiators and each may choose whomever it wishes as its lead negotiators. It is expected that the lead negotiators will inform themselves about the issues and will be available and committed to participate in the Main Table.
  - 5.2.2 The Main Table shall establish and develop terms of reference for any Working Groups as may be required and that are not already established under this Agreement. Terms of reference shall include anticipated time lines for the activities of the Working Groups. Terms of reference for Working Groups established by the Main Table shall include a description of the work and of the expertise required to carry out the work assigned to it by the Main Table.
  - 5.2.3 The Main Table shall direct the Working Groups and supervise the work of and receive reports and other work product from the Working Groups.



- 5.2.4 The Main Table shall decide on the work plans and budgets for the Engagement Process, including the work of each Working Group established or sought by any Party to be established and shall consider any recommendations regarding work plans and budgets from any applicable established Working Group.
- 5.2.5 The Main Table shall negotiate all matters in section 6.1 as provided for in that section.
- 5.2.6 The Main Table shall seek to meaningfully address all issues identified in Articles 7, 8 and 9 as provided for in those Articles.
- 5.2.7 Each Party's negotiators shall consult with its respective Party as required throughout the Engagement to make reports and receive instructions in respect of issues being addressed at the Main Table.
- 5.2.8 Chairing of the meetings shall rotate among the Parties, unless there is a facilitator in which case the facilitator may, with agreement between the Parties, chair the meetings.
- 5.2.9 If any Party considers that due to difficulty in resolving any issue(s) beyond those of a minor nature, a facilitator may be of assistance in respect of resolving such issue(s), such Party may request a facilitator for this purpose at the Main Table, and a facilitator shall be selected and retained. The Parties recognize that it would be desirable that the facilitator would have experience in cases involving aboriginal people or communities. Where the Parties do not agree on a facilitator, each Party shall nominate one proposed qualified facilitator and the nominated facilitators shall among them select a person to act as the facilitator for the Main Table.
- 5.2.10 The chair of any meeting shall develop and submit to all Main Table negotiators at least three days in advance, notice of the meeting and agenda for the meeting, minutes from the last meeting, and any documents from Working Groups that the Main Table is to consider at the meeting. The chair shall ensure that minutes are taken of the meeting that set out the issues considered at the meeting and the outcomes of the meeting.
- 5.2.11 Consultants, advisors or experts retained by any Party for the Engagement Process (who would likely be conducting most or all of their work through one or more Working Groups) may attend the Main Table meetings if their presence is required or would assist in the work of the Main Table. Representatives of any Party may attend the Main Table meetings if their presence is required or would assist in the work of the Main Table.
- 5.2.12 The Main Table shall meet every other week or as otherwise agreed with the intention of meeting the timetable agreed for the Engagement Process in accordance with this Agreement.

5.2.13 Main Table meetings shall normally rotate between Cross Lake and Winnipeg unless the lead negotiators to the Main Table agree otherwise.

5.3 Working Groups - General

5.3.1 The Main Table shall establish Working Groups, if and when required, that are not already established under this Agreement, and this section 5.3 applies to any Working Groups established by the Main Table.

5.3.2 Each Working Group shall consist of representatives from each Party, plus consultants/advisors/experts retained by Pimicikamak and those retained by Manitoba and/or Hydro qualified to assess and advise on the matters such Working Group is responsible for working on.

5.3.3 Working Groups shall be technical working groups with assigned tasks and deliverables.

5.3.4 The work product of each Working Group will be given good faith and due consideration by the Main Table and the Parties. Such work product shall be treated as recommendations to the Main Table and the Parties. Such recommendations may or may not be joint; each Party (through its representatives and consultants/advisors/experts in any Working Group) may deliver its own recommendations.

5.3.5 Each Working Group shall deliver reports on its progress and next steps, as the Main Table requires, to the Main Table.

5.3.6 Each Working Group shall undertake its work with best efforts to meet the timetable and the intent of this Agreement. Each Working Group will determine for itself the number, location and type of meetings, and other efforts, in order to achieve this, subject to any approved work plans and budgets applicable to such Working Group. It is anticipated that the bulk of the work will be done by the consultants/advisors/experts in between meetings.

5.3.7 Main Table negotiators and legal counsel, and representatives (decision-makers) of any Party may attend Working Group meetings if their presence is required or would assist in the work of the Working Group.

6. **NEW NFA RELATIONSHIP**

6.1 The following issues related to the New NFA Relationship are to be negotiated in good faith by the Main Table:

6.1.1 Pimicikamak's status in respect of the NFA, considering the consent of other NFA parties may be required;

6.1.2 The status of the Band's reserve land parcel 19D at all applicable times in respect of NFA Claim 1 and the construction by Hydro of a

distribution/transmission line across 19D, and whether, and the extent to which, any rent or fees, past or future, are required to be paid by Hydro to the Band in respect of same;

- 6.1.3 A new model for NFA implementation and associated funding, including decision-making, participation and input requirements;
- 6.1.4 Recommendations of the NFA Working Group in respect of the matters referenced in section 6.2; and
- 6.1.5 Such other issues pertaining or relating to the NFA and the Hydro Project as the Parties agree.

## 6.2 NFA Working Group

- 6.2.1 The NFA Working Group shall be established as a priority. This Working Group is responsible for considering and endeavouring to find common ground and understanding on NFA implementation and providing recommendations on such issues to the Main Table. The issues for the NFA Working Group shall include:

- 6.2.1.1 Updating programs, as the Parties may agree, under the NFA implementation action plan developed by Pimicikamak for 2004-2006 which Pimicikamak presented to Manitoba and Hydro in or about 2004 ("Pimicikamak Proposed Action Plan"). Such updating shall be in respect of the costs to, and steps required to, implement such programs, and shall take account of what has occurred since 2004 and allow for re-prioritizing of such Action Plan programs as the Parties agree (or where only Pimicikamak and Manitoba are required to agree, or where only Pimicikamak and Hydro are required to agree, as they agree);
- 6.2.1.2 Developing work plans and budgets to implement such programs referred to in subsection 6.2.1.1 as the Parties shall agree and direct (or where only Pimicikamak and Manitoba are required to agree, or where only Pimicikamak and Hydro are required to agree, as they agree and direct);
- 6.2.1.3 Developing further action plans to implement the NFA on an ongoing basis which will be subject to agreement between the Parties (or where only Pimicikamak and Manitoba are required to agree, or where only Pimicikamak and Hydro are required to agree, as they agree);
- 6.2.1.4 Considering more measurable and certain requirements for environmental remediation and mitigation measures and programs of the NFA, such as debris clearing, erosion prevention, cemeteries protection, water quality improvement, riparian and other ecosystem rejuvenation;

- 6.2.1.5 Considering more measurable and certain requirements for measures and programs of the NFA other than those in subsection 6.2.1.4, such as those to rejuvenate and restore trapping, fishing, other traditional pursuits and Pimicikamak culture, and those pertaining to training, employment and business opportunities for Pimicikamak and its people in the Hydro Project or Hydro operations;
  - 6.2.1.6 Considering parameters for and requirements of a community development and land use plan, including the application of this to Pimicikamak and what it considers to be its traditional territory, recognizing that Canada's involvement is desirable and may be required in respect of aspects of this issue; and
  - 6.2.1.7 Such other matters as the Main Table or the Parties jointly direct in the terms of reference for the NFA Working Group.
- 6.3 The Parties shall consider whether and to what extent any existing NFA arbitration claims brought by or on behalf of Pimicikamak or the Band, or any NFA claims in which Pimicikamak or the Band is the representative of Pimicikamak people or Band members, may be settled or resolved. The Parties shall approach Canada to acquire its consent in terms of any agreement they reach in respect of any such NFA claim, where Canada's consent is required.

## **7. POLICY-LEVEL ISSUES AND THIRD PARTY INVOLVEMENT**

- 7.1 Recognizing that input and consultation with the public and interested third parties will be fundamental to these policy level issues and that Manitoba and Hydro may engage in separate and/or concurrent discussions with other parties on these matters, the following issues are to be considered by the Main Table and possibly at Working Group(s) and where agreed by the Parties negotiated by the Main Table:
- 7.1.1 Revenue sharing with, and the allocation of water power rentals, to Pimicikamak, and/or equity ownership by Pimicikamak, all in respect of the Hydro Project and/or certain of its elements, including consideration of: other aboriginal peoples and communities affected by the Hydro Project; relevant legislation and regulatory requirements; and examples of revenue sharing and equity ownership involving aboriginal peoples and communities in Manitoba and Canada;
  - 7.1.2 The establishment of an independent and comprehensive Hydro Project assessment of how CRD and LWR are operated in order to identify ways for better balancing of electricity generation with other uses of and needs for the water system including environmental protection;
  - 7.1.3 The establishment of a multi-party approach within which Hydro Project operating decisions would be made (such as watershed management boards or the like); and

- 7.1.4 Such other subjects related to the Hydro Project and the NFA as the Parties agree, where input will be required from other interested third parties.

## **8. FINANCIAL ISSUES**

- 8.1 Either at the Main Table or through a Working Group, the Parties shall consider undertaking the following:
- 8.1.1 An investigation, analysis and report (such work to be conducted by qualified experts and others) in respect of:
- 8.1.1.1 the financial management and operational systems, including human resources, of Pimicikamak and the Band, to manage the funding made available by Manitoba and/or Hydro under the NFA or other related arrangements, and recommendations on how to maximize the efficiency, transparency and accountability of these systems; and
- 8.1.1.2 with the appropriate involvement or support of Canada, the financial state of affairs of, needs of (to be operating in a non-deficit position) and expenditure and cash flow obligations of Pimicikamak and the Band, and how to maximize the financial viability and health of Pimicikamak and the Band considering its current revenue and expenditure streams and future potential sources of revenue, and
- 8.1.2 Assisting Pimicikamak in carrying out the recommendations from the above investigation, analysis and report as the Parties agree.

## **9. ENERGY EFFICIENCY OPPORTUNITIES**

- 9.1 Either at the Main Table or through a Working Group the Parties shall use best efforts to achieve the Energy Efficiency Opportunities of:
- 9.1.1 Researching and advising on options as to how Pimicikamak and its people may further improve energy efficiency including through application of Power Smart programs, and how Pimicikamak and its people may reduce energy consumption including consumption of electricity from the Hydro Project; and
- 9.1.2 Assisting Pimicikamak in carrying out options above as the Parties agree.

## **10. INFORMATION SHARING**

- 10.1 Subject to *The Freedom of Information and Protection of Privacy Act* (Manitoba) and other relevant legislation, and subject to lawyer-client privilege and any other confidentiality and privacy restrictions provided for by law, the Parties agree to promptly provide information that is relevant and necessary in order that all Parties may participate in the Engagement Process in a fully informed way.

- 10.2 If any information that a Party would otherwise disclose under this Article 10 is deemed by that Party as not discloseable due to the above restrictions, it shall so advise the other Parties of the nature of such information and the reason for non-disclosure, and shall consider in good faith whether, how and under what restrictions such information might be disclosed in this Engagement Process.
- 10.3 If any Party identifies information that it is to disclose as confidential ("Confidential Information"), the receiving Parties shall treat such Information as confidential and not disclose it to any person except those of its officers, directors, elected officials, representatives, employees, agents, and consultants/advisors/experts that have a need to know this Information for the purposes set out in this Agreement and who agree to be bound by the confidentiality requirements set out in this Article 10.
- 10.4 Confidential Information does not include information that:
  - 10.4.1 is or comes into the public domain through no breach of this Agreement;  
or
  - 10.4.2 was in or comes into the possession of the receiving Party through no breach of this Agreement.
- 10.5 Confidential Information may be disclosed by a receiving Party as required by law, or in a dispute resolution proceeding between any of the Parties pursuant to Article 15 provided that it shall be identified as Confidential Information and the Parties shall direct the mediator and/or arbitrator to ensure it is treated as such in such proceedings.
- 10.6 Sections 10.3 and 10.4 survive termination of this Agreement.

## 11. TERM AND TERMINATION

- 11.1 This Agreement shall come into effect upon execution and shall terminate, except for those provisions which expressly survive termination, on the earliest of:
  - 11.1.1 the delivery by any Party to the other Parties of 120 days written notice of termination;
  - 11.1.2 the fundamental breach of this Agreement by Manitoba or Hydro and the decision of Pimicikamak in respect of same to terminate, which termination shall take effect on the delivery of notice by Pimicikamak about its decision to terminate;
  - 11.1.3 the fundamental breach of this Agreement by Pimicikamak and the decision of Manitoba or Hydro in respect of same to terminate, which termination shall take effect on the delivery of notice by Manitoba or Hydro about its decision to terminate.

- 11.2 Where any Party terminates this Agreement in accordance with section 11.1.1, the Parties shall, during the first 90 days after delivery of the notice of termination, work together in good faith to seek to address or resolve any issues that any Party considers a factor leading to the notice, and to seek to determine any actions that may result in the notice being withdrawn, or to determine how the Parties may work together following the termination of this Agreement. Sections 15.3 and 15.4 apply to the work under this section 11.2.
- 11.3 Any funding due and owing to the date of termination shall be promptly paid and any reports or other deliverables due to the date of termination shall be promptly delivered to the extent possible.

## **12. FUNDING**

- 12.1 Funding of the participation of Pimicikamak, including its costs for legal counsel, negotiators and consultants/advisors/experts, in the processes contemplated in this Agreement shall be provided by Manitoba and Hydro under prior approved work plans and budgets and consistent with Manitoba's financial and Treasury Board requirements and Hydro's Reimbursement Policy including all financial reporting requirements and the right of Manitoba and Hydro, at their own costs, to undertake an audit of the accounts of Pimicikamak and the Band relating to funds provided under this Agreement.
- 12.2 Subject to the provisions of this Article 12, Pimicikamak's reasonable and necessary costs to participate in the Engagement Process include the reasonable and necessary costs of Pimicikamak's representatives, negotiators, legal counsel and consultants/advisors/experts, and costs of internal Pimicikamak consultation with its leadership and its people, in accordance with prior approved work plans and budgets developed in accordance with this Article 12.
- 12.3 In the event that the Parties cannot agree on a proposed work plan and budget, the Parties shall follow the provisions of Article 15.
- 12.4 As provided in Article 4, the Parties shall develop work plans and budgets for the Engagement Process and Pimicikamak's costs in the Engagement Process, on a priority basis, initially for the period from the signing of this Agreement until March 31, 2015, and for annual periods thereafter, or such other periods of time as the Parties agree.
- 12.5 Work plans and budgets shall itemize the specific needs for and proposed work of any Pimicikamak consultants/advisors/experts (other than legal counsel), their qualifications to carry out the proposed work, their rates and how they compare to other consultants/advisors/experts in the relevant field, the process engaged by Pimicikamak to select any such consultant/advisor/expert above others in the relevant field, the deliverables from such proposed work by such consultants/advisors/experts, and the cost of such consultants/advisors/experts carrying out such work. The Main Table shall consider all such factors above in determining work plans and budgets involving consultants/advisors/experts.

- 12.6 Funding from Manitoba and Hydro shall be in accordance with the developed and approved work plans and budgets and any approved alterations to the work plans and budgets.
- 12.7 If Pimicikamak believes that the costs set out in the approved work plans and budgets will be exceeded, Pimicikamak shall give notice of same to the other Parties on a forthwith basis, and the Parties shall consider any amendment to the applicable workplans and budgets.
- 12.8 Subject to receipt of proper accounting for money already provided and compliance with the provisions of this section, funding shall be provided for Pimicikamak's costs, through accountable advances, and shall be deposited into Pimicikamak's bank account.
- 12.9 Pimicikamak shall account for the expenditure of all costs attributed to it in any budget, in accordance with the requirements of the Hydro Reimbursement Policy or otherwise as agreed between the Parties acting reasonably.

### **13. NON-DEROGATION**

- 13.1 Nothing contained in this Agreement shall be construed as derogating from any aboriginal, treaty (including the NFA) or constitutional rights and/or obligations of the Parties.

### **14. NON-WAIVER**

- 14.1 A consent or waiver, expressed or implied, by any Party, in respect of any breach or default by any other Party in the performance of its obligations under this Agreement, shall not be deemed or construed to be a consent or waiver to any other breach or default in the performance of obligations under this Agreement by such other Party.

### **15. DISPUTE RESOLUTION**

- 15.1 In the event there is any disagreement about the interpretation or application of this Agreement in respect of meeting the process requirements herein (ie: not in respect of any substance or outcome from any negotiations about issues in Article 6 or issues to be addressed in Articles 7, 8 or 9), or disagreements about workplans and budgets pursuant to sections 4.2, 4.4, 5.2.4 and Article 12 (all being a "Dispute"), the Parties agree to follow the Dispute resolution provisions in this Article 15.
- 15.2 If any Party considers there to be a Dispute, that Party shall within ten days of discovering the Dispute, serve notice on the other Parties of the nature of the Dispute and the facts relevant to it and the desired resolution of it ("Notice of Dispute").
- 15.3 The Parties shall first attempt to resolve the Dispute among themselves, including by referring the matter to the Minister in the case of Manitoba, to the Executive



Council Member Responsible for the NFA in the case of Pimicikamak, and to the President and CEO in the case of Hydro, provided that such referral shall be done within five days of receipt of the Notice of Dispute and for a period of up to ten days. For greater certainty, if the Minister, Executive Council Member and CEO are not able to resolve such dispute in ten days, then the Dispute shall thereafter follow the rest of the provisions of this Article 15.

- 15.4 If the Dispute cannot be resolved among the Parties pursuant to section 15.3, the Parties shall engage in mediation as follows:

15.4.1 The Parties shall agree on a qualified mediator, and failing that, each Party shall select one qualified mediator and all such mediators shall select another who shall be the mediator for the Dispute;

15.4.2 The mediation shall occur within thirty days of the receipt of the Notice of Dispute;

15.4.3 Manitoba and Hydro shall pay their respective costs attributed to the mediation and shall equally pay for the mediator and the costs to have the mediator attend, and shall together pay for Pimicikamak's reasonable and necessary costs attributed to the mediation.

- 15.5 If the mediation did not result in a resolution of the Dispute, then the Dispute shall be referred to arbitration as follows:

15.5.1 The Parties shall identify and use best efforts to narrow the issues of Dispute that were before the mediator, and only those issues still a matter of the Dispute shall be brought before the arbitrator;

15.5.2 The Parties shall agree on a qualified arbitrator, and failing that, each Party shall select one qualified arbitrator and all such arbitrators shall select another who shall be the arbitrator for the Dispute;

15.5.3 The arbitration shall commence within sixty days of the receipt of the Notice of Dispute;

15.5.4 Manitoba and Hydro shall pay their respective costs attributed to the arbitration and shall equally pay for the arbitrator and the costs to have the arbitrator attend, and shall together pay for Pimicikamak's reasonable and necessary costs attributed to the arbitration unless the arbitrator orders otherwise and the arbitrator shall have authority to award costs as the arbitrator sees fit as against any Party;

15.5.5 The decision of the arbitrator shall be final and binding, and not subject to appeal or judicial review;

15.5.6 Any arbitration decision that results in Manitoba having to allocate funds to the Engagement Process that it had not previously approved, is subject to the allocation of such funds by the Manitoba Treasury Board;

15.5.7 No arbitration decision may conflict with any applicable statutory, regulatory, licence or permit requirement as it applies to any Party;

15.5.8 Subject to the above, the arbitration shall be governed by *The Arbitration Act* (Manitoba).

**16. AMENDMENT AND EXTENSION**

16.1 This Agreement shall only be amended or extended by written agreement of the Parties.

**17. GOVERNING LAW AND FORUM**

17.1 This Agreement is legally binding on the Parties hereto and is subject to the laws of Canada and Manitoba in force and effect in the Province of Manitoba, as amended from time to time.

**18. NOTICE**

18.1 Any notice required to be given under this Agreement shall be given to the persons responsible for implementing this Agreement. All notices, demands, requests, consents, approvals, and other instruments required or permitted to be given pursuant to the terms of this Agreement shall be in writing unless otherwise specified, and shall be served upon or provided to the Parties by registered mail, facsimile or electronic mail to the following addresses:

For Pimicikamak:

The Secretary to the Councils  
Pimicikamak Okimawin  
Box 399  
Cross Lake, Manitoba, R0B 0J0

Fax: 204-676-3155  
Email: [dpaupanakis@hotmail.com](mailto:dpaupanakis@hotmail.com)

For Manitoba:

Deputy Minister of Aboriginal and Northern Affairs  
350 Legislative Building  
Winnipeg, Manitoba  
R3C 0V8

Fax: 204-945-1256  
E-mail: [dmna@leg.gov.mb.ca](mailto:dmna@leg.gov.mb.ca)

For Hydro:

VP General Counsel and Corporate Secretary  
Manitoba Hydro  
360 Portage Avenue,  
Winnipeg, Manitoba

Mailing Address:  
PO Box 815 Stn Main  
Winnipeg MB R3C 2P4

Fax: 204-360-6147

Email: [ktennenhouse@hydro.mb.ca](mailto:ktennenhouse@hydro.mb.ca)

**19. ASSIGNMENT**

19.1 This Agreement shall be binding against and enure to the benefit of the Parties' successors and permitted assigns. No Party shall assign this Agreement and its rights and obligations hereunder without the written consent of the other Parties.

**20. TIME IS OF THE ESSENCE**

20.1 Time is of the essence in respect of this Agreement.

**21. CLAIM 138 MONIES**

21.1 Hydro shall deliver to Pimicikamak or the Cross Lake First Nation, a payment that reflects the net present value ("NPV") of the commitments in the settlement documents pertaining to NFA Claim 138, such NPV payment to be \$5,993,191.43 or such other amount as Hydro and Pimicikamak agree, as soon as such amount, arrangement and payee is agreed to by Canada.

IN WITNESS WHEREOF each of the Parties has caused this Agreement to be executed by its duly authorized signing officers.

NOV 27 2014

\_\_\_\_\_  
Date

Her Majesty the Queen in Right of the  
Province of Manitoba

\_\_\_\_\_  
Name:

26 Nov 2014

Date

Manitoba Hydro-electric Board

Name:

November 15, 2014

Date

Pimicikamak

Name: