

ALTERNATIVE APPROACHES TO HYDRO COMPENSATION AND AGREEMENTS WITH FIRST NATIONS *Manitoba and Quebec*

.....

John Loxley

DEPARTMENT OF ECONOMICS, UNIVERSITY OF MANITOBA

ABSTRACT

This paper outlines the workings of two quite different contemporary approaches to settlements and agreements with First Nations by hydro companies and governments involved in hydro dam construction. The first is the equity approach used by Manitoba Hydro in negotiations with the Nisichawayasikh Cree Nation (NCN) in which the First nation is effectively offered joint ownership of the dam and a share in future income streams and in employment and construction benefits. The second approach is that by the James Bay Cree of northern Quebec who eschew dam ownership, instead negotiating an annual share in revenues generated by hydro, forestry and mining. Both approaches constitute major improvements over disastrous earlier approaches which can be summarized as 'flood now and talk later', but they carry quite different economic, political and governmental terms as well as quite different potential benefits and risks. This paper examines the background behind each deal and the way in which they operate. It concludes by arguing that each deal was conditioned by circumstances and history. There is, however, clear merit in Aboriginal People seeking to secure maximum control over and benefit from all sources of economic development on their traditional lands.

INTRODUCTION

It has been estimated that over the next 10 to 15 years, investment in hydro electric projects in Canada will reach \$55 to \$70 billion as some 14,500 megawatts (MW) of capacity are added

to Canada's existing 71,000 MW (Braun, 2011). Most of the additional investment will be in Quebec, BC, Labrador and Manitoba.

In the past, hydro electric development has had a devastating impact on First Nations and other Aboriginal communities in Canada. This

John Loxley is a member of the Board of Directors of Manitoba Hydro but the paper is written in a personal capacity, does not represent the views of Manitoba Hydro and draws only on publicly available information. He joined the board long after the decision was taken to develop Wuskwatim and to involve the NCN in ownership. This paper was made possible by funding provided through the Community Research Alliance (CURA) program of SSHRC, through the Manitoba Research Alliance for Transforming Aboriginal and Inner-City Communities.

has led to community dislocation, destruction of natural economy and cultural heritage and to socio-economic deprivation and upheaval. All of this is well documented and relatively undisputed (see, e.g. Waldram, 1988). The result has been prolonged anger, disaffection and litigation by First Nations. Compensation has been forthcoming, but the process has been lengthy, acrimonious and costly to all parties. Thus, in Manitoba where the development approach of the 1960s and 1970s seemed to be 'flood first and negotiate later', compensation and mitigation costs have reached \$0.788 billion, with \$185 million being provided for future mitigation costs (Manitoba Hydro, 2010, p. 99) These payments were primarily through the Northern Flood Agreement (NFA), and millions more dollars have been absorbed in legal fees and the scarce time of First Nations negotiators and decision makers and senior government and Hydro executives.

More recently, the Government of Manitoba has fundamentally altered its approach and authorized Manitoba Hydro to negotiate agreements with First Nations directly affected by the building of new dams, three of which are either under construction or planned to be constructed in Northern Manitoba in the near future. The new arrangements provide for joint ownership and planning of the dams, a radical departure from past practice, as well as for hiring and training of First Nations workers, and procurement through First Nation, usually community, owned businesses. This paper examines the dimensions of this new approach. It also looks at criticisms of it by observers such as Kulchyski (2004; 2005), who advocate an alternative approach based on that of the Peace of the Brave (which replaced the James Bay Agreement) in Northern Quebec. This alternative approach is examined in detail. Some observations are then made on these two alternatives.

WHY THE SHIFT IN APPROACH?

A number of factors have combined in recent years to lead to a significant shift in Manitoba Hydro's approach to northern development.

The first of these is that the negotiations around the NFA helped politicize Aboriginal resistance to Hydro making it clear that future projects would require Aboriginal consent before they could proceed. The new reality is that

Aboriginal People are more organized and more militant than they were forty or fifty years ago. Ovide Mercredi, former National Chief of the Assembly of First Nations and former Chief of the Mispawistik Cree Nation in northern Manitoba (adjacent to the Grand Rapids Dam), puts it this way: 'We can stop development' (quoted in Braun, 2011).

Secondly, the presence of Aboriginal MLAs in the NDP government and cabinet and the importance of northern seats for the NDP probably also helped shift the approach to northern development.

Thirdly, Manitoba Hydro's increasing interest in exports to the United States, have forced it to accommodate powerful U.S. environmental and Aboriginal lobbies which insist on a changed approach. Their ability to obstruct State legislative approval for hydro purchases has given greater prominence to northern Manitoba Aboriginal concerns. For instance, the Potawatamin Band in Wisconsin has huge casino revenues and has thrown its support behind Manitoba First Nations insisting that their concerns be met before the State approves long-term hydro purchases.

Finally, it would be fair to admit that there have been significant attitudinal, even ideological, changes in the leadership of both Manitoba Hydro and the Provincial government over the past years. Prompted by these developments, there has generally been a sea change in how both Hydro and the Manitoba Government wish to proceed with Northern hydro development.

THE NATURE OF RECENT AGREEMENTS BETWEEN ABORIGINAL PEOPLES AND MANITOBA HYDRO

The Limestone Project, completed in 1992, marked a significant departure from past practice by providing training to Northern Aboriginal People and by providing business opportunities for them also. But more recent projects, Wuskwatim and Keeyask go well beyond that and create a completely new model for hydro development in the North. They offer part ownership of the hydro projects to local First Nations, involvement in planning the projects and employment and procurement opportunities. Thus, the Wuskwatim project of 200 megawatts, to be completed in 2012, will be a joint venture

of Manitoba Hydro with the Nisichawayasikh Cree Nation (NCN) whose members reside on four neighbouring reserves (<http://www.ncncree.com/ncn/nelsonhouse.html>). The NCN will be able to purchase up to one-third of the equity in the project through its wholly owned Taskinagahp Power Corporation, and has already had an impact on environmental planning around the project, scaling the project down from a planned 350 megawatts, which would have entailed significant flood damage (Owen, 2011; and Freylejer, 2009). Peak total employment was around 1,000 and 44% of people hired to work on the dam have been Aboriginal (Manitoba Hydro, 2010, p. 24).

Originally slated to cost around \$1.3 billion, the arrangement provides for 25% of the project or about \$342 million to be funded by equity. NCN could purchase one third of this or \$114 million. To date, \$81 million has been raised by NCN, largely through loans from Manitoba Hydro, \$33 million needs still to be raised. NCN has until July 2013 to maintain its option of one-third ownership (<http://www.ncncree.com/ncn/benefits.html>). As the cost of the project has now risen to \$1.6 billion (<http://www.hydro.mb.ca/projects/wuskwatim/overview.shtml>), there is a possibility that these equity figures might increase. But when the dam is fully operational, NCN expects it to earn \$40 million (Owen, 2011) a year and, if this is accurate, NCN's return to capital would be significant, even after paying interest on the loans.¹

In addition to the NCN agreement, Hydro also entered business agreements with five other First Nations, the Manitoba Métis Federation and the Manitoba Keewatinook Ininew Okimowin (MKO, a northern tribal council) to 'benefit other First nations not directly affected by this project' (Freylejer, 2009, p. 25).

Apart from Aboriginal employment and procurement preferences, training opportunities for skilled jobs are also offered through the \$60 million Hydro Northern Training Initiative (HNTI), which is funded by Hydro, the Province and the Federal government. This is, in turn, managed by the Wuskwatim and Keeyask Training Consortium Inc. (WKTC), whose northern Aboriginal partners are Nisichawayasikh Cree Nation, Tataskweyak Cree Nation, War Lake First Nation, Fox Lake Cree Nation and York Factory First Nation, MKO and the Manitoba Métis

Federation Inc. Aboriginal People trained under this program would have skills which would be transferable to non-hydro projects. But they would also qualify for employment on other large hydro projects which are planned for the future. And this is where the new approach by Manitoba Hydro and the Provincial government offers unprecedented employment and economic development opportunities for the next ten to fifteen years. The 695 megawatt Keeyask generating station is already under way and four Cree First Nations will have the option to buy 25 per cent of the project, scheduled to be completed after 2018. The even larger, 1,485 megawatt Conawapa station is in the planning stages, with five adjacent First Nations being involved. This would be completed sometime after 2022. These projects offer reasonably firm long-term economic development possibilities in which northern Aboriginal People will not only have a say but through which they stand to gain skills training, long-term jobs, unique opportunities to supply goods and a share in the long-term revenues of massive hydro projects. The contrast between the approach of Manitoba Hydro to northern development in the 1970s and the contemporary one could not be more striking.

THE NISICHAWAYASIKH CREE NATION EXAMPLE

Nelson House or the Nisichawayasikh Cree Nation demonstrates how community based economic development initiatives can be combined productively with both flood compensation funds and recent development agreements with Manitoba Hydro. The community used flood compensation to finance the NCN Development Corporation which in turn has set up a building supplies store, a construction company, a door and cabinet company, a window and frame company, a gas station, restaurant, radio and TV station, and a laundry. The construction company and laundry are joint ventures designed to supply Wuskwatim. NCN's unique Atoskiwin Training and Employment Centre of Excellence (ATEC), a 27,000 sq ft fully accredited, non-profit, community-based post-secondary training facility has also played an important role in training community members to work on the dam project, in heavy equipment and trades, but it also offers

training in a wide range of areas of importance to the community (finance, business, health care, life-skills etc) (Nisichawayasikh Cree Nation, 2010a). An unusual feature of these developments is the use by the community of franchises with other northern communities. Thus NCN sells franchises for the building supplies company, providing technical support, and it purchased a franchise from a Saskatchewan First nation for the windows/window frame company.

Other interesting aspects of the use of Hydro compensation by NCN was its purchase of the Mystery Lake Hotel in Thompson, 75 kilometres away, which now hires NCN members. NCN's construction company has also built houses in Thompson commercially. Its laundry partnership is located there and it has purchased land around the hotel which it plans to convert into an urban reserve (Nisichawayasikh Cree Nation, 2010b).

Annual earnings on the trust funds are allocated partly to the equity purchase of Wuskwatim (<http://www.trustoffice.ca/fundesdistributedtoday.aspx>)² but also to a variety of social purposes, including support to the elderly. They are used to finance a Country Food Program which promotes traditional ways of life by encouraging the harvesting of wildlife, fish, and berries and community gardens. The food is distributed to those in need. The community has a camp in which members are trained in how to process meats and hides in the traditional way, and in equipment maintenance and safety. The trusts also provide subsidies for hunters and trappers. Hydro funds have been used, therefore, for a blend of modern and traditional ways of life and for the retention and strengthening of Cree culture (Nisichawayasikh Cree Nation, 2010c).

Only a handful of northern communities will benefit from Hydro's new approach and not all of these are likely to have the ability to take full advantage of it as NCN appears to have done. But the accomplishments of NCN demonstrate that with financial support, there are numerous economic development projects that can offer community members opportunities for a fuller and better life.

THE CRITIQUE AND ALTERNATIVE

Not all are in agreement that the above approach to hydro expansion is in the best inter-

ests of Aboriginal Peoples. Hultin (2004) argues that at the community level there are still environmental concerns about the dams, their impact on traditional livelihoods and the likely debt burdens involved. Kulchyski (2004 and 2005) has expressed concerns about the nature of the consultation processes involved, the types of jobs Aboriginal People are likely to end up with and the risk to which communities might be exposed. He argues that ownership is risky and that dams undermine the potential for the building of a modern economy based on hunting. These are all concerns that must be taken seriously and given the awful history of Hydro development in the north, scepticism is both understandable and inevitable. What follows is an examination of Kulchyski's preferred alternative, the Peace of the Brave Treaty.

THE PEACE OF THE BRAVE TREATY

In November 1975, the governments of Canada and Quebec signed the James Bay and Northern Quebec Agreement with the Cree of the James Bay region and the Inuit of northern Quebec. Under this agreement, the Cree and Inuit of the region gave Quebec Hydro the right to develop the hydroelectric resources of Northern Quebec. They agreed to the extinguishment of their title to their traditional lands in exchange for (1) relatively small parcels of land in and around their reserves, (2) exclusive hunting rights over an area equal to 20% of the lands actually used traditionally, (3) more limited rights over the remaining area, (4) total compensation of \$250 million, (5) an income security program for hunters and trappers, and (6) economic development funds of \$15 million to be invested through a James Bay Native Development Corporation. Under this agreement Native People retain no rights to minerals on any of the lands in question. A whole series of institutions were created to administer the agreement, the most important of which, such as the environmental assessment process, having representation from the Federal and Provincial governments. Powers of municipal government were devolved to the Cree while in most areas of government the Cree now found themselves dealing with the Province rather than the Federal government (Loxley, 2010).

Over time, a great deal of friction arose between the Cree and Inuit signatories and the Quebec Government and Quebec Hydro, resulting in political mobilization and multiple law suits being launched by the Aboriginal People. In 1994, this mobilization led by Matthew Coon Come, together with pressure from New York State, a major client of Hydro Quebec, led to the indefinite suspension of the Great Whale project. The Parti Québécois government of Bernard Landry recognized that improvements had to be made to the James Bay Treaty and the 2002 Peace of the Brave was the outcome. Signed between the Cree of James Bay and the Quebec government, Clause 9.3 states 'The parties agree to take the required measures to bring an end to the pending litigation between them or in which they are involved to the maximum extent possible and so pave the way to a new era of cooperation.' (Quebec Government and Grand Council of the Cree, hereafter, Peace of the Brave or *Paix des Braves*, 2002). No fewer than 16 separate lawsuits are mentioned in the agreement (Clause 9.5, *ibid*). In return, this treaty guarantees land, supports traditional hunting and also promises jobs and supply contracts for Cree businesses in new hydro developments. It transfers new governmental responsibilities to the Cree, in trapping, tourism, arts and crafts, business development, training and the construction of community centres (Peace of the Brave, 2002). It significantly amends the James Bay Agreement, recasting important joint institutions and procedures. It does all this without joint ownership of dams and instead, it guarantees annual payments to the Cree from the Quebec Government of \$23 million in 2002–2003, \$46 million in 2003–2004 and thereafter, a minimum \$70 million for the balance of 50 years, indexed by the growth in the value of output from hydro, mining and forestry development. Under clause 7.21 of the agreement, the annual payments are to be used 'for the economic and community development of the James Bay Crees in accordance with the priorities and means which the James Bay Crees ... shall deem appropriate, including support for Cree traditional activities and the creation of a Heritage Fund for the benefit of the James Bay Cree Bands'.³ It is the indexing aspect of the annual payment that has been hailed as superior to the Manitoba Hydro approach. The exact nature of this compensation

formula, however, is not well known and much of what follows seeks to throw light on precisely how the formula works so that an informed assessment can be made of its qualities versus the alternatives.

CALCULATION OF PEACE OF THE BRAVE REVENUE FORMULA

The formula to calculate the indexed value of the annual payment to the Cree is as follows, with the minimum amount being \$70 million:

$$\$70x \left[\frac{\sum_{t=year}^{year+4} \{ (P_{hydro} + P_{mining} + P_{forestry}) \} / 5}{Base} \right]$$

$$\begin{aligned} \text{Base} &= \{ (\Sigma \text{Production}_{1999-2003}) - (\text{Minimum Production}) \\ &\quad - (\text{Maximum Production}) \} / 3 \end{aligned}$$

Where: Production represents the total value of output of hydroelectricity, mining and forestry in the Territory for the period of January 1, 1999 to December 31, 2003 (Peace of the Brave, 2002, pp. 30–33)

UNDERSTANDING THE FORMULA

There are, therefore, four elements to the formula. The first, and most important, is the value of output of hydro, forestry and mining in the James Bay Region. The second is the calculation of the base which, by excluding the highest and lowest years in terms of value of output, 'averages out' or 'normalizes' the five (effectively three) years of industrial activity. The third element is the average of the latest five years' industrial activity in these three sectors. The fourth element is the base amount of grant of \$70 million, below which the formula payments cannot fall. The formula then divides the actual five year average by the base average and multiplies the outcome by the \$70 million base year grant figure.

The value of production is arrived at by taking the average price of hydro, of both domestic and foreign sales for the whole of the province and multiplying it by the net output of the dams located in the James Bay region. Similar exercises are conducted for mining and forestry. Esti-

TABLE 1
Value of Hydro, Mining and Forestry Production, Quebec, 1999–2010

<i>Current Prices</i>	<i>Value of Hydro</i>	<i>Mining</i>	<i>Forestry</i>	<i>Total</i>
1999	9,606	3,657	4,470	17,733
2000	11,429	3,653	4,208	19,290
2001	11,251	3,603	4,060	18,914
2002	11,852	3,742	4,002	19,596
2003	10,197	3,563	3,737	17,497
2004	10,341	4,012	4,588	18,941
2005	10,888	3,914	4,202	19,004
2006	11,162	4,500	3,549	19,211
2007	2,326	5,540	2,781	20,647
2008	12,716	6,192	2,031	20,939
2009	12,333	5,628	1,511	19,472
2010	12,338	6,770	1,496	20,604

Note: Hydro data is from Hydro Quebec Annual Reports, Mining data is from Statistics Canada and Forestry data is from Quebec Statistics, 2010. Forestry output data was not available, hence the numbers here are for exports of wood products for 1999–2010 with the author's estimate for 2011. These data complications are not felt to be important as the purpose of the calculations is purely expository.

mates of the index amount would be made in December each year for the coming year, at which time adjustments would be made for the previous year if actual outcomes deviated from the prior year's estimate. Payments of the transfer would be made in four equal quarterly instalments and the Cree have the ability to have the data audited (Sections 718 and 715, p. 33 of the Peace of the Brave).

This formula ties the payment to the Cree to the growth in the value of resource production. It gives the Cree a fixed base amount of \$70 million which may or may not be related to the value of production, we do not know, but then indexes this amount by the growth in the value of output relative to a 1999–2003 base. Over time, the percentage growth in resource output will find reflection in the growth in the index and hence in payments to the Cree.

AN EXAMPLE OF HOW THE FORMULA WORKS USING QUEBEC DATA

We do not have access to data on how much is actually produced within the Cree boundaries, so

TABLE 2
Calculation of Base

1999	17,733
2000	19,290
2001	18,914
2002	19,596
2003	17,497
Total	93,030

we cannot reproduce actual calculations of payments to the Cree under the formula. But we do have access to data on the total value of output in the three sectors in Quebec as a whole and this is used to demonstrate how the formula is supposed to work. This is given below in Table 1 for the years 1999–2009, all in millions of Canadian dollars

If the agreement applied to the whole of Quebec, the base would be arrived at as shown in Table 2.

The total output for the five base years 1999–2003 is, therefore, 93,030. From this is deducted the highest and the lowest output, giv-

TABLE 3
Payments Under the Formula 2003–2011 (in \$m)

	<i>Total Output</i>	<i>5-Year Moving Average</i>	<i>5YMA/Base (18,646)</i>	<i>Index × \$70 m</i>	<i>Actual Payments</i>
	1	2	3	4	5
1999	17,733				
2000	19,290				
2001	18,914				
2002	19,596				
2003	17,497				23.0
2004	18,941	18,848	1.0108	70.8	46.0
2005	19,004	18,790	1.0077	70.5	70.0
2006	19,211	18,850	1.0109	70.8	70.0
2007	20,647	19,060	1.0222	71.6	70.0
2008	20,939	19,748	1.0591	74.1	70.0
2009	19,472	19,855	1.0648	74.5	73.2
2010	20,604	20,175	1.0820	75.7	77.0
2011	27,550	21,842	1.1714	96.1	82.0

ing $93,030 - 19,596 - 17,497 = 55,937$. Dividing this by 3 gives the base of 18,646, all numbers in millions of Canadian dollars.

The 5-year moving average of output is then calculated, as in column 2 of Table 3, and each year's average is divided by the base number, 18,646, giving the ratio in column 3 below. This ratio is then applied to the base grant amount of \$70 million in column 4, which is the amount the Cree would have received if output in the Cree region of Quebec (Nord-du-Quebec) had followed precisely that of the province as whole and had indexing commenced in 2004 rather than 2009. On these assumptions, the formula would have yielded close to \$70 million p.a. during 2004–2006, with increases after that due to increases in the value of output of hydro and mining, offset by reductions in the value of forestry output.

Because we do not have the requisite regional data we are unable to conduct the exercise on data on which the actual formula is calculated. But we do know what the Cree Nation has received for 2007, 2008 and 2009, and we have data for what the Quebec government paid or anticipates paying for the years 2010 and 2011. This is given in column 5 of Table 3.

The figures in the last row of Table 3 are calculated backward from the Province's budget

estimate of what the Cree would be paid in that year, which is \$82 million (Quebec Government, 2011). In order to highlight how the formula works, the implied index is calculated as actual payment over the minimum grant amount, ($82/70$), or 1.1714. Given the base amount of the index of 18,646, this suggests a 5-year moving average for 2007–2011 of 21,842. In turn, this means that total output in 2011 must have reached 27,550. This shows that the formula smooths out large annual changes in total output as, we have estimated that in 2011 total output had to have increased by 33.7% (from \$20,604 million to \$27,550 million), on the above assumptions, for payments to the Cree to increase by only 6.5% (from \$77 million to \$82 million). Such is the nature of moving averages and if output were to fall, the reverse would be the case: the grant would not fall proportionately and, in any case, reductions in the grant due to persistent falls in output would eventually come up against the lower limit to payouts of \$70 million p.a.

The above example is meant to be entirely explanatory, rather than an accurate representation of what actually took place in the Region, but there is one major qualification to it. This is that annual payments to the Cree are based not only on the moving average/index formula; they

also contain a correction factor for under or overpayment in previous years and this is ignored in the calculations of output for 2011 in the above example. The correction factors are not made public.

How big a share in the resource earnings of James Bay does this formula give the Cree and Inuit? It is hard to tell but, again, on certain assumptions we can make an estimate. Thus, total sales of Quebec Hydro over the past five years averaged around \$12.1 billion, with approximately a half of the coming from James Bay capacity. We are told that 90% of the formula is coming from Hydro (interview with David Heritage, Financial Advisor to the Cree Nation, September 8, 2011). If this is so, then the hydro earnings on which the formula is based were approximately \$6 billion p.a. and the hydro portion of the grant was 90% of an average over the five years of \$74.4 million, or about \$67 million p.a. This means that the formula yielded on average a little over 1% of hydro earnings in these years as 'rents' to the Aboriginal signatories to the agreement.

The Grand Council of the Cree were sceptical about the level of funding provided in the early years of indexing, and were in dispute with the Quebec Government and Hydro Quebec during these years, 'as to the confidentiality of information relating to the determination of the amounts payable to the Cree Nation pursuant to the indexation provisions of the Agreement' (Eenou-Eeyou Limited Partnership, Annual Report, 2008–2009, p. 38). They argued that 'The Government of Quebec has failed to provide the required information to permit an evaluation of the indexation formula despite having agreed to provide this information in the *Paix des Braves*. In accordance with the provisions of the Agreement, the Eenou-Eeyou Limited Partnership (through which funding flows) has requested an independent audit of the amounts payable to the Cree Nation (ibid).

For its part, Hydro Quebec has recently become reluctant to share forecasts of future average prices with the Cree fearing that this might give away sensitive commercial data which could be used to the detriment of the company. Instead, it appears it is releasing only the actual index, which is contrary to the terms of the Peace of the Brave. This is also despite Cree guarantees of confidentiality (interview with

David Heritage, Financial Advisor to the Cree Nation, September 8, 2011).

SOME OBSERVATIONS ON THE TWO APPROACHES

In comparing profit sharing with an indexed formula based on the value of output, there are some common risks. In the Manitoba model, drought, falling export prices or increased interest rates could each reduce profit available for distribution. In the Peace of the Brave, the risk of drought and falling export prices are still there, but not the interest rate risk. Given the very low long-term costs of borrowing for Manitoba Hydro, this risk is not important at the moment but it could be in the years to come. In Manitoba, agreement on joint ownership has brought direct environmental benefits through dam redesign. In Quebec, the agreements have been important in dam location and there is provision for the Cree to 'be directly involved and consulted in the technical description of the Eastmain1-A/Rupert Project throughout the stages of feasibility studies and permit processes' (Clause 4.14). The Peace of the Brave makes similar training and employment provisions to those obtained by the Nisichawayasikh Cree Nation, and in the former there is provision for fulfilling past (un-kept) promises of 150 permanent jobs in Hydro Quebec to be occupied by the Cree (Clause 4.19).

It is, however, in sheer scale and governance that the two approaches differ mainly. On the scale side, the Manitoba approach is project by project, negotiated mainly with Manitoba Hydro although under general guidance of the government, which is after all, the owner of Manitoba Hydro. Thus, Chief Jerry Primrose and Councillor Elvis Thomas of NCN have argued that the Peace of the Brave Treaty flooded an area almost 1,700 times larger than the likely Wuskwatim damage (less than 0.5 square kilometres) and therefore, called for a different approach, suggesting that NCN would not be able to negotiate the kind of deal open to the James Bay Cree (Primrose and Thomas, 2005). The James Bay area covers 177,000 square kilometres and there are already 8 stations with about a half of Quebec Hydro's total generating capacity. If the Manitoba approach can be suc-

cessfully applied to the Keeyask and Conawapa projects, then the scale would increase dramatically as these two dams are more than 10 times the size of Wuskwatim.⁴ The Conawapa dam alone, at 1485 MW, would be bigger than the last three dams to be built under the Peace of the Brave (1,368 for Eastman 1 and IIA and Sarcelle combined). The number of people living in the vicinity would be in excess of 10,000, fairly close to the Cree population of James Bay, which is around 12,000 (Bacher and Beaton, undated). But the Manitoba deals are negotiated sequentially and the contingencies are such that there remains uncertainty about timing and sequencing of dam construction. In contrast, the James Bay Treaty, as a precursor to the Peace of the Brave, was negotiated to allow the building of a stream of large dams, one after the other, whereas the Manitoba precursor, the Northern Flood Agreement seems to have been very much an after thought to prior dam building. So an across-the-board agreement like the Peace of the Brave was never really on the cards in Manitoba.

The James Bay Treaty was in effect, a land cessation treaty and paved the way for an entirely new relationship between the Cree, the Province and the federal government (ultimately, in The Canada-Cree New Relationship Agreement 2007). The Peace of the Brave and the James Bay Treaty are regional agreements that provide for new governmental structures and responsibilities for the Cree, abolishing reserves, for instance, and allow 'for joint jurisdiction between the Quebec government and Cree in the seven municipalities of the James Bay region' (Weinberg, 2007). As a result, monies well in excess of the annual formula payment are provided for funding new institutions for delivering services delivered elsewhere by the Province and the federal government on behalf of all Cree in the Region. It is the regional nature of the agreement which allows forestry and mining activities to be covered as well, although as we have seen, 90% of the annual transfer is said to come effectively from Hydro output.

While the Nisichawayasikh Cree Nation see their involvement in the Wuskwatim project as being consistent with exercising 'sovereignty that sustains a prosperous socio-economic future' (Primrose and Thomas, 2005, p. 7), there is no

pretence of changing treaty or constitutional obligations or rights.⁵

These are, therefore, two quite different models arising from quite different socio-political circumstances. They are equally valid for their circumstances. Indeed, Hydro Quebec is not averse to the Manitoba model as in the early 1990s it entered into a similar partnership arrangement with the Montagnais of Lac Saint-Jean on the Minashtuk project. In fact, it went beyond the Manitoba model by offering the band 51% of the ownership. Hydro-Ilnu, a company fully owned by the Band Council of the Montagnais of Lac Saint-Jean was responsible for all aspects of the generating station, from feasibility, design, negotiating and administering a turnkey construction contract and it now operates the facility. 'Minashtuk is the first project developed by Hydro-Ilnu, and also the first hydro scheme within the province of Quebec that was developed and led by an aboriginal community' (UNEP, 2007). Hydro Quebec entered into a 20 year, renewable, agreement to buy the energy supplied, this guarantee underlying the 75% debt financing of the project. The contract is renewable for another 20 years. This project is, however, a very tiny one consisting of a 9.9 MW run-of-the-river and does not provide a viable model for the size and number of dams being built in the James Bay Region.

Neither the Wuskwatim-type agreement nor the Peace of the Brave is a guarantee for lasting harmony between Aboriginal Peoples and hydro companies. Issues have arisen about Aboriginal employment on Wuskwatim by out of province contractors, while access to land by non-Cree people and the nature of the environmental assessment programs have become issues in Quebec (Dr. Matthew Coon Come in Eenou-Eeyou Limited Partnership, Annual Report, 2008-2009, p. 2, and Weinberg, 2007). Also, as we have seen, access to information regarding the formula has become problematical. Furthermore, community unanimity is unlikely whatever the form of agreement as, in that respect, Aboriginal democracy is like any other in the airing of different points of view. In that respect, the Peace of the Brave initially divided the Cree Nation to an unprecedented degree, with one of its principal advocates, Chief Ted Moses, being re-elected by barely 50% of the vote (Bacher and Beaton, undated), his opponent, Chief Matthew Mukash, (who was

Grand Chief in 2006) being an advocate of wind power instead of hydro dams (Weinberg, 2007). Diane Reid has argued that 'The Peace of the Braves created the first major difference of opinion in modern times in the history of the Cree Nation' and has called it 'an agreement signed exclusively by men blinded by money and power' (ibid). In contrast, when the agreement was signed in 2002, Grand Chief Moses stated that 'Quebec becomes a leader in the application of the principles recognized by the United Nations in regards of aboriginal development' (Weinberg, 2007) and Moses and Matthew Coon Come, current Grand Chief, see the Peace of the brave as 'a great accomplishment' and a model for other Aboriginal Peoples across the country in their dealings with federal and provincial governments' (Bacher and Beaton, undated).

It is, perhaps, advisable, to see the two different approaches to Aboriginal participation in hydro expansion as being conditioned by circumstances and history. A proper comparison of financial returns to each approach would require a detailed analysis of what the Nisichawayasihk Cree Nation obtains from the two levels of government to fund services now covered in Quebec by the Peace of the Brave. Unfortunately, that exercise goes beyond the boundaries of this paper. What can be said is that there is clearly merit in seeking agreements which recognize the rights of Aboriginal People to participate in the benefits accruing from economic developments on traditional lands, from mining and forestry as well as from hydro development, where ever these can be negotiated and that negotiating strategy is likely to vary depending on broader circumstances.

NOTES

1. If the \$40 million figure quoted is accurate, gross returns to NCN would then be around \$13.3 million. If NCN borrows \$115 million at 5.3% p.a (MH cost of borrowing plus commissions and provincial guarantee fee, see Manitoba Government, <<http://www.pub.gov.mb.ca/exhibits/mh-44.pdf>>, Feb 2011) making biannual payments for principal and interest on the loan over 25 years, net returns would still be \$13.3 million – \$8.38 million = \$4.92 million p.a. (although the source and terms of Aboriginal financing remain to be determined, and the \$40 million is highly debated, see Mennonite Central Committee, 2011).
2. The trust fund from which Wuskwatim equity payments are made is the Nisichawayasihk Trust which was created in March 1996 as part of Nelson House First Nation NFA Implementation Agreement between Nisichawayasihk Cree Nation, Government of Canada, the Province of Manitoba and Manitoba Hydro. Wuskwatim proceeds are paid into the Taskinigahp Trust. (<http://www.ncncree.com/ncn/ncntrust.html>)
3. At least 15% of the annual capital payment is to be paid into a Heritage Fund. This fund, the Wyapschinigun Fund 'is intended to be a means to support the community, cultural, educational, social welfare and economic development needs of the James Bay Crees and Cree Bands. It is also intended to assist the James Bay Crees and Cree Bands in achieving increased autonomy, in preserving the Cree way of life, Cree values and Cree traditions and in encouraging the emergence of Cree expertise in the fields of economic and community development, job creation and economic spin-offs'. (Eenou-Eeyou Limited Partnership, Annual Report, 2008–2009, p. 51).
4. This suggests that successful application of the Wuskwatim formula might produce net income flows of more than \$50 million p.a. while debt was being repaid and around \$140 million p.a. after the debt has been repaid, if the assumptions in footnote 1 are anywhere near reasonable.
5. Although it could be argued that any benefits flowing to the Cree of Northern Manitoba might, indirectly and unintentionally, encourage the federal government to reduce its financial commitments and especially so in times of federal fiscal restraint.

REFERENCES

- Bacher, John and Danny Beaton, Undated, 'A Cree Woman in Defence of Mother Earth', <www.totempublications.com/smoke/stories/CreeDefenceEarth.html>.
- Braun, Will, 2011, 'Canada's Coming \$50 billion Hydro Boom Brings Environmental Perils Too', *This Magazine*, 07/09, <this.org/magazine/2011/09/07/hydro-boom>.
- Eenou-Eeyou Limited Partnership, Annual Report, 2008–2009.
- Freylejer, Leandro. 2009. 'The Social and Economic [Under] Development of Northern Manitoba Communities Over the Past Two and a Half Decades'. Paper Submitted to the Manitoba Research Alliance for Transforming Inner-Cities and Aboriginal Communities, Canadian Centre For Policy Alternatives — Manitoba. Mimeo. June 4.
- Hultin, D. 2004. 'New Partnerships in Hydro Development'. Winnipeg: Manitoba Research

- Alliance on CED in the New Economy. At <manitobaresearchalliance-tiac.ca>.
- Kulchyski, Peter. 2004. 'È-nakàskakowaàhk (A Step Back): Cree Nation and The Wuskwatim Project', *Canadian Centre for Policy Alternatives Review*, May.
- Kulchyski, Peter., 2005. 'Peter Kulchyski Responds'. *Canadian Dimension*, January–February.
- Loxley, John, 2010, *Aboriginal, Northern and Community Economic Development. Papers and Retrospectives*. Arbeiter Ring, Winnipeg.
- Manitoba Hydro, 2010, *Annual Report, 2010*, Winnipeg.
- Mennonite Central Committee, 2011, Critique of comments in Free Press, [http://energyjustice.mcc.org/views/commentary/mediareponseNisichawayasikh Cree Nation. 2010a. ATEC](http://energyjustice.mcc.org/views/commentary/mediareponseNisichawayasikhCreeNation.2010a.ATEC). At <ncncree.com/ncn/atecinfo.html>.
- Nisichawayasikh Cree Nation. 2010b. Urban Reserve. At <ncncree.com/ncn/urbanreserve.html>.
- Nisichawayasikh Cree Nation. 2010c. Nisichawayasikh Cree Nation Trust Office. At <trustoffice.ca/>.
- Owen, Bruce, 'A dam-fine future: Co-operating with affected First Nations means projects seen as blessing rather than blight', *Winnipeg Free Press*, June 25, 2011, page A6
- Primrose, Jerry and W. Elvis Thomas. 2005. 'Debating the Wuskwatim Hydroelectric Deal'. *Canadian Dimension*, January–February.
- Quebec Government and Grand Council of the Cree, 2002, 'Agreement Concerning a New Relationship', Peace of the Brave or *Paix des Braves*. Quebec City.
- Quebec Government, 2011, *Expenditure Budget, Vol. III, 2011–2012*, Quebec City.
- Quebec Statistics, 2010, DataBank of Official Statistics on Quebec, Total exports of natural resources, energy, mines and forests, Quebec and Canada (\$ M) (July 23, 2010). At <[http://www.bdso.gouv.qc.ca/pls/ken/Ken263_Liste_Reslt.p_tratr_reslt?p_iden_tran=REPERZ3PZYJ58-16626968956*7\\$cW&p_modi_url=0206110018&p_id_rapp=1925](http://www.bdso.gouv.qc.ca/pls/ken/Ken263_Liste_Reslt.p_tratr_reslt?p_iden_tran=REPERZ3PZYJ58-16626968956*7$cW&p_modi_url=0206110018&p_id_rapp=1925)>.
- United Nations Environment Programme (UNEP), 2007, 'Hydro-Quebec's approach on partnership with aboriginal communities: The Minashtuk Project', United Nations Environment Programme: Dams and Development Project. At <http://www.unep.org/dams/documents/ell.asp?story_id=127>.
- Waldram, James B. 1988. *As Long as the Rivers Run: Hydroelectric Development and Native Communities in Western Canada*. Winnipeg: University of Manitoba Press.
- Weinberg, Bill, 2007, 'Hydro-Colonialism advances in Canada's far North: Cree Nation Divided Over James Bay Mega-Project', *Indian Country Today*, <ww4report.com/node/3980>.