



OFFICE OF THE
AUDITOR GENERAL
MANITOBA

Manitoba Hydro

**Keyask Process Costs and Adverse Effects
Agreements with First Nations**

September 2016

Web Site Version

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- Relevance of audit work performed



September 2016

The Honourable Myrna Driedger
Speaker of the House
Room 244, Legislative Building
450 Broadway
Winnipeg, Manitoba R3C 0V8

Honourable Ms. Driedger:

It is an honour to present my report titled *Manitoba Hydro: Keyask Process Costs and Adverse Effects Agreements with First Nations*, to be laid before members of the Legislative Assembly in accordance with the provisions of Sections 14(4) and 28 of *The Auditor General Act*.

Respectfully submitted,

Norm Ricard, CPA, CA
Auditor General

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Auditor General's comments

Manitoba Hydro's development projects can have significant adverse impacts on First Nations communities. As a result, Manitoba Hydro has developed processes to identify potential adverse effects, and to identify measures to mitigate or offset the impact. To ensure First Nations are in a position to make informed decisions about the development project and are able to access independent legal, professional and technical advice, Manitoba Hydro reimburses First Nations for such process costs. The negotiated adverse effects agreements consider past, present and future damages caused by Hydro's development projects and identify programs to respond to the effects. Up to March 2015, Hydro had paid over \$270 million for process costs and adverse effect programs related to four of its development projects.



Adverse effect agreements are vitally important documents for the First Nation communities involved. It is critical therefore that they are able to approach their discussions and negotiations with Hydro from a position of strength and that the *Ratification Protocol*, which helps ensure the agreements reflect the collective will of the community, is adhered to.

Our audit found that Hydro was diligent when processing cost claims but we identified opportunities for Hydro to better manage the risks involved. In addition, Hydro was properly monitoring key provisions of its adverse effects agreements. We noted however that the *Ratification Protocol* did not include any mechanism to provide all parties with independent assurance that the Protocol, including the Referendum Rules, was adhered to and that Hydro did not have a robust process for seeking such assurances.

I would like to thank the staff of Manitoba Hydro for their assistance and cooperation during our audit.

A handwritten signature in black ink that reads "Norm Ricard". The signature is written in a cursive, flowing style.

Norm Ricard, CPA, CA
Auditor General

Main points

What we examined

Manitoba Hydro (Hydro) development projects can adversely impact First Nation communities. As a result, discussions are held with First Nations to identify potential impacts. These discussions can result in changes to the Hydro development project and to payments to the First Nations.

Payments to First Nations with respect to Hydro development projects can be made for process costs and for adverse effects. Process cost payments are intended to reimburse First Nations for the costs incurred to negotiate a partnership agreement with Hydro. As part of the negotiation process, Hydro and First Nations identify adverse effects on communities. Adverse effects agreements include programs to mitigate or offset the effects.

Our audit objectives were:

- To determine whether Keeyask process costs are reimbursed in accordance with Hydro's approved policies.
- To determine whether Hydro was properly monitoring compliance with key provisions of the four Keeyask adverse effects agreements and the *Ratification Protocol*.
- To determine if Hydro met its financial obligations for each of the four Keeyask adverse effects agreements.

Why it matters

From 1999 to 2015, Hydro paid over \$270 million to First Nations for process costs and adverse effects related to four Hydro development projects. For the Keeyask project, these payments totaled over \$169 million, including \$18.6 million for adverse effects. An additional \$110 million is expected to be paid over the life of the project. Given the magnitude of these payments and the impact of Hydro developments on First Nation communities, it is critical that adverse effects agreements be fairly negotiated and appropriately ratified by each impacted First Nations community, and that strong processes be in place to ensure expenditures are properly supported and used for the purposes intended.

What we found

Process costs reimbursed according to policy, but verification practices should be strengthened

We found that for the process cost claims we examined, costs were reimbursed in accordance with the Reimbursement Policy in place at the time of the claim.

We noted two opportunities to strengthen verification practices:

- The Reimbursement Policy does not require certification by First Nations that the expenses incurred were actually paid.

- A risk-based approach is not used to select the verification procedures for each process cost agreement.

Key provisions of adverse effects agreements properly monitored, but not the *Ratification Protocol*

All adverse effects agreements contain provisions for program budgeting and reporting. When Hydro identified compliance issues, they followed up with each First Nation. We found that Hydro made requests for and received additional information and revised budgets as required.

Before an adverse effects agreement can be signed, it must be accepted by the communities involved in accordance with the *Ratification Protocol* signed by the 4 First Nations and Hydro. We note that the *Ratification Protocol* does not include any mechanism to provide all parties with independent assurance that the *Ratification Protocol* was adhered to.

Hydro's view is that the ratification process is solely a First Nation responsibility. Nonetheless, Hydro said there was regular contact with the First Nations throughout the ratification process and that this provided them with some assurance that the process was progressing as agreed. In addition, Hydro officials told us they did not receive any complaints or challenges to the outcome of any referendum vote.

In the absence of an independent mechanism to obtain assurance that the *Ratification Protocols* were adhered to, we are concerned that Hydro has not adopted a more robust approach to obtaining assurance on compliance with the *Ratification Protocol*.

Hydro met its funding obligations

The First Nation adverse effects agreements contain provisions for payment of residual compensation and guaranteed annual amounts (GAA) for each approved program. We found that the residual amounts were paid in accordance with the requirements in the agreements. As at March 31, 2014, of the 26 programs included in the 4 adverse effects agreements with First Nations, 8 were implemented. We found that Hydro met its GAA funding obligations for these 8 programs and appropriately deferred funding for the 18 programs that had not yet been implemented.

Summary response from Manitoba Hydro

Manitoba Hydro supports and accepts the recommendations set out in the Office of the Auditor General's report. Manitoba Hydro is pleased that the audit confirmed the strength of the policies and procedures in place for managing funding arrangements with First Nations communities with respect to the Keeyask Project. There is always room for improvement, and the audit has provided important recommendations for Manitoba Hydro to address to enhance its policies and procedures. Certain actions are already underway to address two of the three recommendations.

Manitoba Hydro's control framework for funding arrangements with First Nation communities includes: contract documentation; executive review and approval authorities; reviews and approvals of supporting documentation provided by each First Nation; payment approvals; financial reviews and reporting; Reimbursement Policy (with annual updates) and other procedures. This control framework takes into account that each First Nation is a separate and distinct governance authority with independent funding arrangements with Manitoba Hydro. This control framework will further benefit from our actions in response to this report's recommendations.

Manitoba Hydro's specific responses to these recommendations are set out in the *Summary of recommendations and responses of officials* section of the report.

Background

Manitoba Hydro (Hydro) development projects can adversely impact First Nations communities. To understand these potential impacts, Hydro consults with First Nations. These discussions can result in changes to the development project. For example, in the case of the Keeyask project, discussions resulted in a reduction of the power output which in turn reduced the environmental impact.

Payments to First Nations with respect to Hydro development projects can be made for process costs and for adverse effects as explained below.

Process costs

Manitoba Hydro provides process funding to First Nations to enable them to participate in the planning and licensing of planned Hydro development projects. First Nations are reimbursed for the costs they incur to negotiate a partnership development agreement with Hydro, and to obtain environmental assessments. Process costs are intended to ensure First Nations are in a position to make informed decisions about the development project based on independent legal, professional and technical advice.

Process costs include: external legal and other technical consultant fees, First Nation members' salaries and travel costs, and incidental costs for operating an office such as utilities and telephone charges.

First Nations are responsible for retaining the necessary external legal and consultant services and for ensuring they receive value for money from their contracts with the lawyers and consultants.

Hydro's Reimbursement Policy outlines the costs that can be claimed by First Nations and the requirement for supporting documentation. The Policy includes guidelines which set out the maximum rates that will be paid for:

- Honorariums to First Nation members and Elders providing special knowledge and insight.
- Consulting and legal hourly rates.
- Per diems.
- Travel and hotel costs.

A copy of Hydro's Reimbursement Policy is in Appendix A.

Adverse effects

Manitoba Hydro's 2014/15 annual report explains how and why the mitigation program was created:

"Manitoba Hydro's mitigation program addresses past, present, and ongoing adverse effects of historical hydroelectric development. The mitigation program, established in the late 1970s to address project impacts through alleviation of adverse effects, remedial works and residual compensation, grew out of the experience of planning and development of the Lake Winnipeg Regulation and Churchill River Diversion Projects. The Northern Flood Agreement, signed December 16, 1977 created a process that addressed ongoing mitigation and compensation for adverse effects of hydroelectric development in five signatory First Nation communities. The mitigation program was expanded to address impacts arising from all past hydroelectric developments (prior to the Wuskwatim generating station), particularly for Aboriginal people residing or engaged in resource harvesting in the project areas, and it is essential for operating and future development purposes".

Hydro describes its current approach to mitigating the adverse effects of its development projects as avoiding impacts where feasible, and where impacts cannot be avoided, to take remedial and other measures to mitigate or offset the impact, and finally to provide compensation, in-kind or monetary.

As part of the discussion and negotiation process, Hydro and First Nations identify adverse effects on First Nation communities. The resulting adverse effects agreements consider past, present, and future damages caused by Hydro's construction of dams and identify programs to respond to the effects. Examples of programs funded through the agreements include: infrastructure projects, hunting/fishing programs, educational programs, museums, language, and cultural programs. Annual payments for these programs are referred to as guaranteed annual amount (GAA) payments.

Because not all adverse effects can be resolved through programs, a lump sum residual compensation amount is negotiated and included in the adverse effects agreements. An example of such an adverse effect would be the loss of significant spiritual or cultural sites. In negotiating residual effects, Hydro told us that consideration is given to factors such as the types of offsetting programs, types of impacts, population, and proximity to the physical development and the interests of the First Nations.

Process and adverse effects payments made to March 2015

Process costs and adverse effects payments including residual compensation amounts, are recorded in Hydro's financial statements within Property, Plant and Equipment. These expenditures are capitalized, and subsequently amortized over the estimated life of the development project.

Funding provided to First Nations between 1999 to March 2014 and March 2015 are detailed in **Figure 1**.

Figure 1: Funding provided to First Nations				
1999 to March 2014				1999 to March 2015
Project Name¹	Process Payments	Adverse Effects²	Total	Total
Bipole III	\$ 6,220,463	\$ -	\$ 6,220,463	\$ 9,064,212
Conawapa	25,158,960	4,975,000	30,133,960	33,999,426
Keeyask	145,773,651	17,097,440	162,871,091	169,067,102
Wuskwatim	46,588,794	10,387,900	56,976,694	58,328,349
Totals	\$223,741,868	\$32,460,340	\$256,202,208	\$270,459,089
Percentage	87%	13%	100%	

Source: Manitoba Hydro

¹ Both the Conawapa and Bipole III projects are projects that are planned to be completed in the future. Wuskwatim became operational in 2012.

² Adverse effects continue for the life of the project. This chart only reflects funding to March 31, 2015.

Our audit focused on the Keeyask project

The Keeyask Generating Station is located about 30 kilometres west of Gillam. The first generating unit is expected to be placed into service in November of 2019. According to Hydro’s annual report for 2014/15 the total cost of the project including transmission facilities is projected to be \$6.5 billion. At March 31, 2015 total expenditures for Keeyask generation and transmission amounted to \$1.6 billion.

Adverse effects payments continue for the life of the project. The present value amount is recorded in Hydro’s financial statements as an obligation once the environmental license for the project is approved. In the case of Keeyask the environmental license was approved in July 2014. Hydro estimated the net present value of the Keeyask adverse effects obligation to be approximately \$110 million at March 31, 2015. This obligation is included in Hydro’s March 31, 2015 financial statements in Note 18 – Other Long-Term Liabilities, within the Major Development Liability line item (2015 - \$218m, 2014 - \$67m).

For a listing of the Keeyask adverse effects programs see Appendix B.

Audit approach

Objectives

Our audit objectives were:

- To determine whether Keeyask process costs are reimbursed in accordance with Hydro's approved policies.
- To determine whether Hydro was properly monitoring compliance with key provisions of the four Keeyask adverse effects agreements and the *Ratification Protocol*.
- To determine if Hydro met its financial obligations for each of the four Keeyask adverse effects agreements.

Scope

We examined Hydro's practices and expenditures for the period between April 1, 2004 and March 31, 2014.

We examined process claims for the 10 year period from April 1, 2004 to March 31, 2014.

For adverse effects agreements, we selected significant provisions within the agreements and examined Hydro's compliance and monitoring practices.

The audit did not include an examination of First Nations records or management practices.

A judgmental sample of 30 process cost payments was selected, representing \$7.98 million in claims. All First Nations Communities were included in the sample. All 4 Keeyask adverse effects agreements were examined representing \$17,097,440 in payments.

While our audit covered the period from April 1, 2004 to March 31, 2014, our report includes updated balances as at March 31, 2015 for supplemental information purposes. Payments in fiscal year 2015 were not examined as part of this audit.

Our examination was performed in accordance with standard practices for assurance engagements established by the Chartered Professional Accountants of Canada and, accordingly, included such tests and other procedures as we considered necessary in the circumstances.

Findings and recommendations

1. Process costs reimbursed according to policy, but verification practices should be strengthened

Process costs paid to the First Nations for the Keyask project, as at March 31, 2014, totaled \$145.8 million. Amounts paid to advisors (legal and consulting) and the communities (salaries and travel) are detailed in **Figure 2**.

Figure 2: Total process costs paid to advisors and communities as at March 31, 2014

First Nation Community	Advisor	Community	Total
Fox Lake	\$4,098,830	\$20,746,745	\$24,845,575
York Factory	11,668,573	11,857,255	23,525,828
Cree Nation Partners (War Lake and TCN)	54,862,078	42,153,150	97,015,228
Other	7,965	379,055	387,020
Total	\$70,637,446	\$75,136,205	\$145,773,651
Percentage	48.5%	51.5%	100.0%

Source: Manitoba Hydro

We examined a random sample of 30 Keyask reimbursement claims representing \$7.98 million for the 10 year period from April 1, 2004 to March 31, 2014.

Only eligible costs were reimbursed – Hydro’s claim processing procedures require that processors review the claims submitted by the First Nations for eligibility of the expense item claimed and, where applicable, compliance with the rates prescribed in the Reimbursement Policy. To verify per diems and honorariums the processor is required to consult with members of the Hydro negotiating team. Because the negotiation team works closely with the First Nations, it can provide information as to whether meetings were held on the particular date being claimed and whether the individuals on the claim attended the meeting. Once the processor has completed their work a Claims Review Checklist must be completed and signed by a reviewer. The checklist records the original amount claimed by the First Nation, all of the adjustments made by the processor and the amount that Hydro will reimburse. Once the Checklist is signed by the reviewer, the department manager will conduct a final review and approve the claim. All of the review procedures must be completed before a payment is made to the First Nation.

For the 30 process cost claims we examined, we found that costs were reimbursed in accordance with the Hydro Reimbursement Policy in effect at the time the claim was made. We also assessed whether claims were processed in a timely manner. We found one claim that was approved by the department manager several months after payment was made to the First Nation and 2 claims that were approved approximately one month after the payment was made. While a compensating

control for late approvals is that adjustments can be made on the next payment to the First Nation if necessary, final approval should always be made before the payment is made.

All required certifications were signed – The Reimbursement Policy requires that First Nations make the following certifications when a claim is submitted for payment:

- the goods and services referenced in the claim were received and not funded by any other process or entity.
- the claim represents actual costs incurred.
- all activities undertaken were directly related to the project or process in question.

All the claims that we examined contained the required certifications and the claims were signed by a duly authorized representative from the First Nation.

All claim amounts are within the Executive Committee monthly maximums, or otherwise properly approved – Hydro's Executive Committee (EC) approves (for each First Nation) a maximum process cost funding amount for an upcoming six-month period, as well as a related maximum monthly amount. As such, the maximum risk exposure to Manitoba Hydro is the amount approved for each six month period. The monthly amounts are monitored as part of the reimbursement process.

For 28 of the 30 claims we reviewed, they were monitored against an EC approved maximum monthly funding amount. For the 2 claims where there was no EC approved monthly amount, one claim was approved directly by the President and the other was approved by the Vice-President of Major Projects. We were advised that, in certain instances, a matter cannot wait until the EC meets and so the President has the ability to approve up to \$5 million and the Vice-Presidents up to \$3 million. These 2 claims were within the approved limits.

No duplicate payments were found – Hydro has procedures in place to prevent duplicate payments which include:

- ensuring that all items claimed for in a particular month occurred during that month. For example, for an April claim, an invoice or travel amount for any other month would not be paid.
- not paying amounts on invoices for balances that were outstanding from prior months. A past due balance would be omitted from the amount Hydro would reimburse.

For all 30 claims we examined, we did not find any instance where these procedures were not followed.

External audit results used to strengthen the reimbursement policy – Two external audits were initiated by Hydro because of financial irregularities that were discovered at 2 of the First Nations included in the Keeyask Project.

Hydro initiated the first audit because it had received information that one of the First Nations was submitting falsified invoices for reimbursement. The audit report was completed in September 2010. The audit confirmed that falsified invoices had been submitted and also identified several instances of non-compliance with the Reimbursement Policy.

Hydro initiated the second audit because of concerns over travel claims. The audit report was completed in January 2014. The audit identified several instances of non-compliance with the Reimbursement Policy.

In response to the external audits, the Reimbursement Policy was amended to include the ability to hire, on an as required basis, an independent auditor to audit any reimbursement. No such audits have yet been commissioned by Hydro. But Hydro began to require more support documentation on select transactions from the 2 First Nations subject to the external audits, such as payroll registers and cancelled cheques.

We found 2 opportunities to strengthen verification practices as follows:

- 1.1 proof of payment by First Nations not required or obtained
- 1.2 a risk based approach is not used to select verification procedures

1.1 Proof of payment by First Nations not required or obtained

By definition, a reimbursement is a repayment of money spent for an approved reason. As noted above, First Nations are required to certify that the costs being claimed represent actual costs incurred. But the Policy does not require that the First Nation certify that the expenses incurred were actually paid or require that the First Nation provide proof of payment. As a result Hydro cannot be assured that all expense items claimed by the First Nation were paid by the First Nation.

Recommendation 1: We recommend that Hydro require certification that expenses were paid and, for significant expenses, require proof of payment.

1.2 Risk based approach not used

The results of the external audits show that Hydro's risks vary by First Nation. But Hydro did not conduct regular risk assessments for each First Nation, and tailor additional procedures as required. Some useful procedures to deal with heightened risk include:

- obtaining copies of invoices and statements of account directly from lawyers and consultants.
- examining First Nation's accounting records.
- obtaining detailed supporting documentation, including original source documentation (payroll records, travel expense receipts).

Recommendation 2: We recommend that Hydro conduct periodic risk assessments for each First Nation and tailor claim review procedures accordingly.

2. Key provisions of adverse effects agreements properly monitored, but not the *Ratification Protocol*

Hydro’s Indigenous Relations Division is responsible for monitoring compliance with key provisions of the 4 Keeyask adverse effects agreements. For a listing of Keeyask adverse effects programs/projects see Appendix B. Key provisions include budgeting, reporting, and funding. We discuss funding requirements in section 3.

Before an adverse effects agreement can be signed, it must be accepted by the communities involved in accordance with the *Ratification Protocol* signed by the 4 First Nations and Hydro. The *Ratification Protocol* requires presenting the agreement to members for review, appointing process officers and conducting a referendum.

2.1 Program budgeting and progress reporting requirements properly monitored

When compliance issues, or concerns with program budgeting and reporting requirements were identified, Hydro would follow up with the pertinent First Nation. As part of this follow up, Hydro would make requests for additional information and revised budgets as needed.

As at March 31, 2014, the 4 Keeyask adverse effects agreements had 18 programs where funding was deferred because the programs had yet to be implemented. In those circumstances, the progress reporting requirement was also deferred.

Figure 3: Programs

First Nation	Number of Programs	Programs started	Programs not started
Fox Lake	8	0	8
York Factory	3	2	1
War Lake	6	1	5
TCN	9	5	4
Total	26	8 (31%)	18 (69%)

2.2. Compliance with the *Ratification Protocol* not sufficiently monitored

The *Ratification Protocol* states that “Each Keeyask Cree Nation will use its best efforts to comply with the Referendum Rules and the results of the referendum will be accepted...unless there has been a material non-compliance with the Referendum Rules.” The terms “best efforts” and “material non-compliance” are not defined. We note that the *Ratification Protocol* does not include any mechanism to provide all parties with independent assurance that the *Ratification Protocol* was adhered to.

Hydro officials are of the view that while the Referendum Rules require that certain information be provided to Hydro (as discussed below), ensuring the ratification process was conducted consistent with the *Ratification Protocol* is solely a First Nation responsibility. Nonetheless, they

further advised that there was regular contact between Hydro and the First Nations communities throughout the ratification process, and that this provided them with some assurance that the process was progressing as agreed. In addition, officials noted that they mostly relied on the receipt of complaints or challenges to indicate whether a “material non-compliance with the Referendum Rules” may have occurred. Hydro told us they did not receive any complaints or challenges to the outcome of any referendum vote. They also did not receive any formal requests under Article 5 of the Referendum Rules which allows an eligible voter to request a review of the referendum by an independent arbitrator.

In the absence of an independent mechanism to obtain assurance that the Ratification Protocols were adhered to, we are concerned that Hydro has not adopted a more robust approach to obtaining assurance on compliance with the *Ratification Protocol*.

The *Ratification Protocol* includes many referendum rules, including 3 requirements for information to be provided to Hydro. As detailed below, we assessed whether this information was obtained.

Copy or transcript of all notices not always obtained — The *Ratification Protocol* requires that First Nations hold information meetings so that its consultants and legal advisors can explain the nature and significance of the agreement to members. There are specific requirements for the timing, content, and placement of postings/publications of written notices, and for the broadcasting of radio announcements regarding the member information meetings and the referendum. The First Nation is to provide Hydro with a copy or transcript of all notices and announcements.

If a First Nation sent in a copy of a transcript and/or announcements Hydro would place it in a file. We found that Hydro had the full set of transcripts and notices on file for 2 of the 4 First Nations.

Written notice of appointment of a process officer not obtained in one case — The *Ratification Protocol* requires that each First Nation appoint a process officer with the powers and duties to direct and supervise the administration of a fair and impartial referendum. This includes preparing the voter list, controlling mail-in ballots, and employing procedures to ensure ballots are not double-counted. The First Nations are required to provide Hydro with written notice of the appointment of the process officer.

Two First Nations provided Hydro with copies of band council resolutions. These resolutions named their process officers and authorized their appointment. The third First Nation notified Hydro by letter that a process officer had been hired, but did not provide a band council resolution or further specifics. Hydro was not provided, nor did it seek, written notice of the appointment of the fourth First Nation’s process officer.

Referendum certificates obtained — The *Ratification Protocol* requires that First Nations provide Hydro with a copy of the referendum certificate confirming the results of the referendum. The certificate is to indicate the number of ballots cast, the number of voters who voted yes, the number of voters who voted no, and the number of spoiled ballots. One-third of eligible members have to vote and a majority of votes need to be cast in favour of the referendum question in order to support signing the related adverse effects agreement. For the Keeyask

adverse effects agreements, all referendum certificates were sent to Hydro. As noted in **Figure 4**, the requirements for each referendum were met.

	Fox Lake	York Factory	War Lake	TCN
Eligible voters	734	713	158	1909
Votes cast	345	261	70	753
Voter turnout %	47%	37%	44%	39%
Yes	322	220	61	427
No	20	33	8	267
Rejected ballots	3	8	1	55

Source: Signed process officer vote records sheets provided by Hydro.

Recommendation 3: We recommend that any future ratification protocol include a mechanism to provide all parties to the agreement with independent assurance that agreed to procedures were adhered to in all significant respects.

3. Hydro met its funding obligations

3.1 Residual funding requirements met

A lump sum residual compensation amount is included in the adverse effects agreements. This negotiated amount is intended to compensate First Nations for those adverse effects that cannot be resolved through offsetting programs.

Payments for residual compensation up to March 31, 2014 are summarized in **Figure 5**.

First Nation	Actual Payment
Fox Lake	\$1,583,445
York Factory	543,410
War Lake	255,000
TCN	3,000,000
Total	\$5,381,855

Sources: Signed adverse effects agreements and Hydro records

We found that the amounts paid were in accordance with the requirements in the agreements. Two of the 4 residual amounts were paid in full on the date originally specified in the adverse effects agreements. The remaining 2 were paid subsequent to the date specified triggering interest charges in accordance with the indexing provisions of the agreements.

3.2 Guaranteed annual amount payments deferred when appropriate

Guaranteed annual amounts (GAA) are payments to support the mitigation programs identified in adverse agreement agreements.

The adverse effects agreements state the following program obligations:

- The First Nation takes sole responsibility for the management, implementation and operation of each offsetting program including, without limitation, obtaining all necessary permits, licenses, or other approvals.
- Hydro is responsible for payment of the GAA, payment of the residual compensation, and construction of specified capital projects.

In addition, the adverse effects agreements include provisions for when portions of the GAA are not spent in a given year. When this occurs the unspent amount is to be carried forward and annually adjusted using the consumer price index until such time as it is fully paid. Because of this indexing there is no financial cost to First Nations for deferring a program.

Payments for GAA up to March 31, 2014 are summarized in **Figure 6**.

Figure 6: Guaranteed annual amounts up to March 31, 2014		
First Nation	Amount on agreement	Actual Payment <small>(including interest where applicable)</small>
Fox Lake	\$7,185,000	\$658,419
York Factory	2,039,262	1,690,160 ¹
War Lake	603,469	148,551
TCN	10,754,014	7,689,263 ¹
Total	\$20,581,745	\$10,186,393

Sources: Signed adverse effects agreements and Hydro records

¹ Amounts received after March 31, 2014 which relate to the year ended March 31, 2014
 - York Factory - \$540,096
 - TCN - \$989,096

We found that Hydro was properly making GAA payments for the 8 programs in the 4 agreements we examined. We noted 18 situations in our sample where programs were delayed. When the First Nation was not ready to implement a program, Hydro deferred funding until such time as the programs were implemented.

In our *March 2014 Annual Report to the Legislature - Chapter 2: Citizen Concerns, Manitoba Hydro Funding of the Keeyask Centre*, we noted that Hydro had forwarded \$4.9 million to the First Nation before construction of the Centre had begun. Our 2014 report noted that some of these funds (\$629,306) were ultimately used for another purpose. We recommended that Hydro monitor their agreements to ensure funding was used for the purpose specified. During the course of this audit, Hydro officials advised that they had resolved this matter by withholding all further funding until they received confirmation that the project funds used for other purposes (\$629,306) had been replenished by the First Nation and that construction of the Centre had been

initiated. Construction of the Centre has now been completed. For the payments that we reviewed during this audit we found that Hydro was properly monitoring that the funding provided was being used for the purpose specified.

3.3 Most obligations to provide equipment and facilities to War Lake and TCN remain in progress

The adverse effects agreements for War Lake and TCN contain provisions for Hydro, at its own cost, to provide equipment and facilities in support of offsetting program implementation. For War Lake, this includes construction of a Distribution Centre for fish processing, storage and distribution, as well as a cabin, dock, ramps and equipment storage sheds. For TCN, this includes the construction of cabins, docks, ice houses, fish cleaning tables, and storage sheds at five separate lake locations, and the purchase of transport equipment (snow machines, sleighs, aluminum boats, and outboard motors).

The construction work for War Lake has been deferred because Hydro is waiting for licensing and other approvals to be obtained by War Lake. The construction obligation for TCN has been partially met at one lake location and all transport equipment has been provided.

Summary of recommendations and responses of officials

1. We recommend that Hydro require certification that expenses were paid and, for significant expenses, require proof of payment.

Response of officials: Effective May 1, 2015, and prior to completion of the audit, the Reimbursement Policy was updated to state, "Amounts claimed must represent actual amounts that have been paid or will be paid" (section 1.2). This statement, along with a certification letter (section 5.4) from an authorized representative for the community, provides reasonable assurance to Manitoba Hydro that all costs claimed have been or will be paid. An extensive content review and verification of the claim is performed and Manitoba Hydro requests additional backup, including proof of payment, for higher risk transactions.

2. We recommend that Hydro conduct periodic risk assessments for each First Nation and tailor claim review procedures accordingly.

Response of officials: Manitoba Hydro assesses risks through the claims review process, regular internal audits of claims and comprehensive evaluation of the Reimbursement Policy. The Reimbursement Policy allows Manitoba Hydro to engage an independent external auditor if there is cause to audit. Since 2010, two external audits have been initiated. Manitoba Hydro reviews the Reimbursement Policy on an annual basis. Although risks have been and continue to be identified and addressed through on-going revisions to the policy and through the evaluation of claims, Manitoba Hydro will evaluate the feasibility of implementing a more formal risk assessment process in consultation with Corporate Risk Management and Internal Audit.

3. We recommend that any future ratification protocol include a mechanism to provide all parties to the agreement with independent assurance that agreed to procedures were adhered to in all significant respects.

Response of officials: For future agreements requiring a ratification process, Manitoba Hydro will work with other agreement parties to develop an agreed to Ratification Protocol that may include mechanisms for independent assurance that established ratification processes were followed. The nature and extent of an "independent assurance" process is something that would need to be agreed to by all parties involved in such agreements.

Appendices

Appendix A – Hydro’s reimbursement policy

CORPORATE POLICIES

Subject: Reimbursement Guidelines and Specific Criteria Associated with Future Development Related Processes and Aboriginal Relations Division working relationships with First Nations, Métis, Northern Affairs Communities, Community-based Association(s) and other Groups (For the purpose of these Guidelines the above entities are referred to as Participating Party).

Effective Date: March 1, 2013

REIMBURSEMENT POLICY

Manitoba Hydro will reimburse the **reasonable incurred costs** of parties participating in project planning and related negotiations and activities associated with future hydropower development and the resolution processes agreed to with the Aboriginal Relations Division, subject to compliance with the following guidelines.

These guidelines set out the reimbursable maximum amounts and the supporting documentation requirements for reimbursement of a Participating Party’s incurred costs. Where specific guidelines do not exist, the principle of “reasonable costs” will be used. The final determination of “reasonable costs” will rest with Manitoba Hydro.

GENERAL UNDERSTANDINGS (*Principles of Reimbursement*)

Reimbursement of costs will be done on the basis of the following understandings:

SUBMITTING A CLAIM:

- for all future development planning and negotiation activities as well as other specified processes, a work plan must be submitted at least 30 days in advance of the start of the activities and must include proposed activities, organizational structure (if applicable), job descriptions (if applicable) and budget. Resumes of those involved in an activity need to be available upon request. Work plans must be approved by Manitoba Hydro in advance of any expenditure being made. Standard practices of the participating party will be considered when approving the workplan.

- the expenses must be reasonable, represent actual costs incurred and be directly related to the project in question.
- if any specific forms are required by Manitoba Hydro there will be an opportunity for consultation.
- unless otherwise specified, the Participating Party will submit a monthly reimbursement claim, which includes all relevant supporting documentation, to Manitoba Hydro with an accounting of monies expended in an agreed reporting format. Reimbursement claims for a particular month must be supplied within 60 days of that month's end. Any claims filed past the reporting deadline will be accepted solely at Manitoba Hydro's discretion following a review of the circumstances responsible for the delayed filing.
- An authorized representative of the Participating Party will approve the claim for reimbursement and will certify in writing that:
 - the goods and services referenced in the claim were received and not funded by any other process or entity;
 - the claim represents actual costs incurred;
 - all activities undertaken were directly related to the project or process in question.
- The Participating Party will attach all the necessary supporting documentation for the claim including:
 - a summary of the work activities that were accomplished as a result of the costs incurred; and
 - the invoices for the work of professional advisors and consultants which the Participating Party has directed to be undertaken and which has been completed to its satisfaction.

ELIGIBLE COSTS:

- Meal, accommodation and taxi expenses will be reimbursed at prescribed rates. Members of a Participating Party can claim per diems for meals, accommodations and taxis (receipts are not required where per diems are claimed). Per diems claimed must represent actual amounts that have been paid or will be paid to members. If actual costs are claimed by a Participating Party member (for meals, accommodation or taxi) then receipts must be provided.
- The use of personal vehicles will be reimbursed up to a maximum rate of 50 cents per kilometer. The claim will indicate the purpose of the expenditure, destinations, distance traveled and the rate per kilometer. If more than one person is travelling in a vehicle, then only one mileage claim may be made. Mileage claimed must represent actual amounts that have been paid to members or consultants/legal advisors.
- Consultants/legal advisors can only claim per diems for meals. Per diems claimed must represent actual amounts that have been paid or will be paid. Receipts are

required for accommodation and taxi expenses, and any other reasonable expenses that are consistent with this policy.

- Regardless of whether per diems or actual costs are claimed (as described above), receipts are required for all travel expenses for Participating Party members and Consultants/Legal advisors. If air/bus/rail travel is involved, the airline/bus/rail or travel agency invoice needs to be provided. If ground transportation is used, a description of the purpose of the travel, destination(s), and distance traveled and the rate per kilometer needs to be provided.
- Office costs (including space and equipment) for a Participating Party will be reimbursed only if such costs are approved in advance through the workplan process and there are demonstrated efficiencies and economies in establishing the office. In the event it is agreed that an office is required, then reasonable office expenses will be considered for reimbursement at agreed rates that will be negotiated with the Participating Party.
- Cell phone invoices will be reimbursed within existing approved workplans and budgets up to a maximum of \$150 per month (including all fees and taxes). Repairs will be reimbursed within the monthly maximum. Cell phones assigned to full time, salaried future development employees requiring wireless communication will be eligible. For each phone, a billing summary from the service provider must be submitted with the claim.
- Employee costs outside of routine business activities must be submitted as a detailed proposal and pre-approved by Manitoba Hydro. (i.e. - educational costs, severance costs, conferences)

To clarify an invoice, Hydro may request that a Participating Party provide additional documents which assist in understanding the invoice, including the original invoice.

INELIGIBLE COSTS:

- Travel time billed by legal advisors or consultants will not be reimbursed by Manitoba Hydro, even if they are working while travelling.
- Travel time for participating party's employees during regular working hours will be reimbursed. Travel time outside of regular working hours will not.
- Office costs for consultants and advisors will not be considered for reimbursement.
- Administration fees will not be reimbursed although administrative costs directly related to the project or process may be reimbursed with supporting documentation. These costs must be considered within the appropriate workplan and budget.
- No interest or fees on late accounts, NSF or finance charges will be reimbursed.
- The following items will not be considered for reimbursement:
 - salaries for elected officials; and

- capital purchases in excess of \$500 unless a business case to justify the capital purchase has been submitted to and approved by Manitoba Hydro, prior to the purchase being made

The President and CEO of Manitoba Hydro has the authority to approve any exceptions or modifications to this policy.

TAXATION:

- Manitoba Hydro will not reimburse GST/HST amounts on invoices submitted by Participating Parties where all or a part of those GST/HST amounts can be recovered by Participating Parties from the Federal Government. Where the GST/HST cannot be recovered in full by the Participating Party, Manitoba Hydro will reimburse for that portion of GST/HST related to reasonable expenses which is not recoverable by the Participating Party in accordance with the applicable federal regulations.
- At present, Participating Parties can recover (from the Federal Government) 100% of the GST/HST paid by their members working on Keeyask or Conawapa negotiations for travel, including transportation, short-term accommodation and meals. In the case of services provided to Participating Parties by various consultants, the Participating Parties are generally eligible to recover 50% of the GST/HST on those disbursements for which the GST/HST is invoiced. When we move from negotiation to implementation of a given project, we expect all consultants will begin to include the GST/HST on their fees as well as disbursements. At that point, 100% of the GST/HST invoiced to Participating Parties by their consultants, be it the GST/HST on fees or on disbursements, should be eligible for input tax credits by the Participating Party and thus recoverable from the Federal Government. If situations arise where Participating Parties are unable to recover the GST/HST they have paid and they wish Manitoba Hydro to consider reimbursing the amounts in question, it will be the responsibility of the Participating Parties to provide documentation supporting their request for the reimbursement of those GST/HST amounts from Manitoba Hydro¹.

Manitoba Hydro requires that all reimbursement submissions to include detailed itemization showing the gross amount, the GST/HST and the net amount of items claimed by both internal and external parties.

If there is uncertainty as to the application of the GST/HST, an interpretation can be requested from the GST/HST Ruling Branch of the Canada Revenue Agency at 1-800-959-8287.

¹ The application of GST/HST and the entitlement to rebates and input tax credits may vary according to the tax status of the Participating Party. The description of the GST/HST treatment provided is based on the assumption that the Participating Party is an Aboriginal Community subject to the GST/HST rules for Indian Bands.

AUDIT REQUIREMENTS:

- Hydro in its sole discretion is entitled to retain an independent, qualified auditor to perform an audit with respect to any monies paid pursuant to any agreement to which this Reimbursement Policy applies. Hydro shall pay the costs of such audit. The Participating Party agrees to provide the auditor with reasonable access to such information as the auditor determines he or she must review, be it in paper or electronic form, and such persons who have knowledge of the processing of funds and preparation of claims on behalf of the Participating Party. It is expected that Third Parties will assist in verifying payments made to them and in providing reasonable cooperation to the auditor, but nothing herein obliges Third Parties, including lawyers and consultants, to reveal to the auditor confidential advice given by them to the Participating Party or their internal confidential information.
- The reimbursement of claims submitted to Manitoba Hydro will be treated as the confidential business information of the Participating Party and, unless required by law, will not be released without the Participating Party's consent.
- This policy will be reviewed on an annual basis.

PROCESS FOR REIMBURSEMENT

- All claims will be submitted to the respective manager in the Aboriginal Relations Division, or the Manager, Major Projects Partnerships and Services in an agreed to reporting format.
- Claims will be reviewed and any questions or requests for additional information will be made in writing to the Participating Party.
- Only claims with the required supporting documentation can be reimbursed. However, when all the required documentation is not provided, parts of the claim with adequate documentation may be reimbursed.
- Manitoba Hydro will process and reimburse claims within 30 days of their receipt for claims that meet the criteria set out by this policy. Manitoba Hydro may provide partial reimbursement (total claim less outstanding amounts at issue) for those items which meet the guidelines in an effort to assist the Participating Party in resolving cash flow issues. Every effort will be made by both parties to resolve outstanding issues within 60 days of receiving a claim.
- Manitoba Hydro will reconcile claims on a monthly basis to account for any over or under payments from preceding months.

SPECIFIC REIMBURSEMENT

Table 1 contains the guidelines regarding the reimbursement of costs incurred by the Participating Party, consultants and legal advisors retained by the Participating Party.

Appendix B – Major programs included in the Adverse Effects Agreements under the Keyask Project

Tataskweyak Cree Nation

The Tataskweyak Cree Nation (TCN) adverse effect agreement provides funding for a variety of offsetting programs designed to provide replacements, substitutions or opportunities that offset unavoidable adverse effects on practices, culture and traditions. The adverse effect agreement also provides a guaranteed annual payment for the life of the Keyask Project.

Offsetting programs include:

- Funding for the Keyask Centre. The centre will accommodate staffing and office functions for managing offsetting programs, as well as space for display cases, storage, education programs, fish processing and other needs.
- Access Programs. These provide transportation for TCN members to hunt, fish and trap within the Split Lake Resource Management Area (SLRMA).
- Land Stewardship Program. Funding is provided through the guaranteed annual payment to monitor land use and care for the land within the SLRMA.
- Healthy Food Fish Program. This program will provide opportunities for TCN members to continue to fish and provide fish to other members, using waters unaffected by the Keyask Project.
- Traditional Lifestyle Experience Program. Program goal is to provide young adult members with traditional lifestyle experiences on the land.
- Traditional Knowledge Learning Program.
Program supports opportunities for traditional learning that can be provided to students primarily at the Keyask Centre.
- Cree Language Program. Program creates an opportunity for adult members to learn or improve skills in Cree language.
- Traditional Foods Program. In conjunction with Access Program, this creates opportunities to gather and share traditional foods.
- Museum and Oral Histories Program.
Program is to provide a substitute for the historical connections to the land that will be affected by Keyask.

Compensation for any residual adverse effects not addressed in the offsetting programs. Under the AEA, TCN may decide to continue the Healthy Food Fish Program after levels of mercury in fish in the Nelson River have returned to their pre-Keyask levels.

War Lake First Nation

The War Lake First Nation (WLFN) adverse effect agreement contains programs intended to offset unavoidable effects to culture, practices and lifestyle resulting from Keeyask. It includes program funding and a guaranteed annual amount.

Offsetting programs include:

- Distribution Centre. Manitoba Hydro will provide funds for a Distribution Centre to be used for storing, processing and distributing fish.
- Community Fish Program. This program will support WLFN members to fish in War and Atkinson Lakes and includes construction of infrastructure and purchase of equipment.
- Improved Access Program. This program will build shelters along the Cyril River and maintain the road from War Lake to Ilford and the winter trail to Atkinson Lake.
- Traditional Learning/Lifestyle Programs. These programs will allow young adult WLFN members to experience the traditional lifestyle at Atkinson Lake.
- Cree Language Program. Adult members will learn or upgrade Cree skills.
- Museums and Oral Histories Program. Display cases will be built in the band hall.

Compensation for any residual adverse effects not addressed by the offsetting programs. WLFN will have the option to continue its Community Fish Program after mercury levels in Nelson River fish have returned to pre-Keeyask levels.

York Factory First Nation

York Factory First Nation (YFFN) adverse effect agreement supports the following offsetting programs:

- Resource Access and Use Program.

Funding for flights to the York Factory Resource Management Area along the Hudson Bay coast for resource use and cultural renewal; for the means for storing, processing and distributing country foods; for access to off-system lakes that will not be affected by mercury, and for other access to resources and harvesting areas.

- Environmental Stewardship Program.

Funding for monitoring environment and resources, training members to work in stewardship, supporting participation of elders to provide guidance for stewardship programs.

- Cultural Sustainability Program.

Funding for programs that strengthen the cultural identity of YFFN members and support learning and use of Cree language, values, traditional skills and knowledge; seasonal gatherings and celebrations, healing and reconciliation, documentation and communication of YFFN history; and design, construction and maintenance of facilities for such programs.

The AEA also included funds for residual effects that are not addressed in the offsetting programs.

Fox Lake Cree Nation

The Fox Lake Cree Nation (FLCN) adverse effect agreement provides payment for the following offsetting programs:

- A Gathering Centre to administer and implement offsetting programs and provide FLCN with permanent, substantial presence in Gillam.
- A Youth Wilderness Traditions Program to facilitate youth learning of traditional lifestyle.
- A Cree language program for adult members who wish to learn or improve language skills.
- Gravesite Restoration Program to restore, re-consecrate and protect community gravesites in and around the Gillam area.
- Alternative Justice Program that will seek the development of a program for resolving situations involving the justice system and FLCN members.
- Crisis Centre and Wellness Counselling. Program including a crisis shelter.
- Lateral Violence and “Where do we go from here?” Program: a series of discussions and workshops to assist FLCN members to participate in opportunities associated with Keeyask.
- Alternative Resource Use Program to facilitate access to alternate resource areas within the Fox Lake Resource Management Area.

The AEA also included funds for residual effects that are not addressed in the offsetting programs.

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