

1 Q. **Re: IN-NLH-195 Att 4 and Att 5**

2 In IN-NLH-195 Att. 5, NLH made as a condition to enter into negotiations to operate
3 and maintain the electrical facilities in Natuashish the assurance of payment for
4 services rendered.

5 Was this position ever communicated to Mushuau Innu First Nation? Please include
6 all documentation showing such communication.

7

8

9 A. []

10

11 The question appears to be a misinterpretation of the intent of the statement in the
12 letter (IN-NLH-195 Attachment 5). It is a letter from Hydro to the Department of
13 Public Works and Government Services, Canada. For context, the relevant
14 sentences from the letter read should be read:

15 At our meeting noted above, you requested that Newfoundland
16 and Labrador Hydro (Hydro) put in writing its position regarding
17 the ownership and operation of the electrical infrastructure for
18 the new community of Natuashish, relocated from Davis Inlet.

19

20 Hydro is prepared to enter into negotiations to operate and
21 maintain the electrical facilities in Natuashish provided that
22 payment for services rendered is assured.

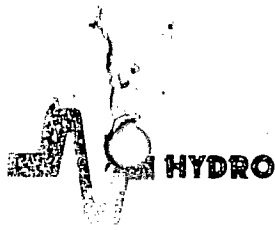
23

24 At the time of the writing of that letter (January 23, 2002), Hydro was actively
25 discussing these matters with both the Mushuau Innu First Nation and the
26 Government of Canada. It appears that, at the request of a representative of the
27 Government of Canada, the letter confirms in writing Hydro's position that an
28 agreement for the operations and maintenance of the electrical infrastructure at
29 Natuashish must include an assurance to make payments for that service.

1 Further, by letter dated March 28, 2002 addressed to counsel for the Mushuau Innu
2 First Nation, Hydro indicated that an assurance that costs would be recovered
3 would be required. Please see IN-NLH-315 Attachment 1.

4

5 Finally, in subsequent negotiations, numerous drafts of the Natuashish Transitional
6 Power Agreement were circulated amongst counsel for Hydro, the Mushuau Innu
7 First Nation and Canada. A requirement for Hydro to be compensated for the
8 services it was to provide was an essential element of those discussions and draft
9 documents. Please see IN-NLH-315 Attachment 2.

File No. 8-0309**NEWFOUNDLAND AND LABRADOR HYDRO**

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FAXED

March 28, 2002

VIA FAX (416) 981-9350

Mr. John A. Olthuis
Olthuis Kleer Townshend
Barristers and Solicitors
229 College Street, Suite 312
Toronto, Ontario
M5T 1R4

Dear Mr. Olthuis

Re: Natuashish Electrical Facilities

This is to acknowledge your correspondence of March 27th, 2002. The issues related to our discussions on February 14th at Hydro Place in St. John's were reviewed by the Board of Directors of Newfoundland and Labrador Hydro at its February meeting held on the 28th of February, 2002. Essentially, the Hydro Board of Directors has confirmed the position I had outlined to the parties in attendance at our meeting on February 14th.

Subsequent to the Board meeting, the Government of Newfoundland and Labrador, through the Ministers of Mines & Energy and Labrador & Aboriginal Affairs, were advised of the issues raised by Hydro during our meeting of February 14th by letter dated March 8th, 2002. My understanding is that the Government of Newfoundland and Labrador is evaluating the situation and the issues involved.

I should like to summarize the issues that are outstanding in Hydro's view. First of all, Hydro has indicated that it is not prepared to absorb a doubling of costs resulting from the operation of both the plants in Davis Inlet and Natuashish on an on-going basis. Secondly, it was understood that Hydro would not have to absorb the operational costs in Natuashish until the plant in Davis Inlet had been



- 2 -

decommissioned. On this latter point, at our meeting on February 14th, representatives of the Federal Government indicated that they were not prepared to provide indemnity for an indefinite period with respect to the operation of the power system in Davis Inlet.

Hydro has offered to provide the personnel necessary to commission the new plant in Natuashish on a timely basis and ensure that electrical services will be provided in the new community prior to the transfer of residents from Davis Inlet. It is our understanding with respect to expenses incurred in this regard that the Federal Government, in line with their earlier commitment, would stand to these expenses.

The matters related to Hydro's on-going responsibilities with respect to the operation and maintenance of electrical services for Natuashish is still outstanding from two aspects. First, Hydro does not wish to accept the responsibility of absorbing the cost of operations for the two communities, Davis Inlet and Natuashish, simultaneously. Secondly, should Hydro assume the responsibility for the operation and maintenance of service in Natuashish, we will require some assurances from whatever quarter that there is a reasonable expectation that these costs will be recovered.

Yours very truly,

William E. Wells,
President & Chief Executive Officer.

WEW/kdc

.cc Chief Simeon Tshakapesh and Mushuau Innu Band Council
Mr. Cajetan Rich, Mushuau Innu Relocation Committee
Mr. Laban Davis, Davis Engineering
Mr. Ian Gray, Indian Affairs
Mr. Kerry Malone, Public Works & Government Services
Mr. Bruce Hilchey, Legal Counsel, Department of Justice

NATUASHISH TRANSITIONAL POWER AGREEMENT

THIS TRANSITION AGREEMENT made in triplicate at St. John's, in the Province of Newfoundland and Labrador as of the 2nd day of ~~November~~ December A.D. 2002.

BETWEEN:

MUSHUAU INNU, a corporation pursuant to and continued under the Corporations Act, R.S.N. 1990, Chapter C.36, as represented by the Mushuau Innu Housing Authority (hereinafter referred to as "INNU");

OF THE FIRST PART

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Indian Affairs and Northern Development (hereinafter referred to as "DIAND");

OF THE SECOND PART

AND:

NEWFOUNDLAND AND LABRADOR HYDRO, a body corporate existing pursuant to the Hydro Corporation Act, Chapter H-16 of the Revised Statutes of Newfoundland and Labrador, 1990 and having its head office at St. John's, in the Province of Newfoundland and Labrador (hereinafter referred to as "HYDRO");

OF THE THIRD PART

WHEREAS pursuant to a Crown Lease between Her Majesty the Queen in Right of Newfoundland as represented by the Honourable the Minister of Government Services and Lands for the Province of Newfoundland and Labrador and the INNU certain lands and premises situate and being in Sango Bay, in the Electoral District of Torngat Mountains were leased to the INNU subject to the reservations and conditions therein for a period of twenty (20) years made as of the ____ day of _____ 19____ in November

1996 (hereinafter referred to as "Natuashish") which leased lands, along with other lands are contemplated to be set apart as an Indian Reserve within the meaning of the Indian Act.

AND WHEREAS the INNU are intending to relocate from the community of Davis Inlet, Labrador to the new community of Natuashish and as a result, firstly the INNU and DIAND have undertaken and constructed a diesel generating plant and associated facilities to provide electrical service to all persons located or resident in Natuashish and secondly, all electrical service presently available at Davis Inlet will be eventually decommissioned.;

AND WHEREAS Canada, the INNU, and the Province of Newfoundland and Labrador have entered into an Agreement on Terms of Land Transfer for Natuashish, dated the 15th day of July, 2002, wherein the Province of Newfoundland and Labrador agreed to transfer to Canada certain lands at Natuashish for the purpose of setting apart for the INNU a reserve within the meaning of the *Indian Act*, R.S.C.1985, c.1-5 as amended;

AND WHEREAS the INNU and ~~DIAND~~ wishes to contract with HYDRO to deliver and manage the supply of electricity to Natuashish to manage the operation of and perform routine maintenance on the diesel generating plant, distribution system and associated facilities (hereinafter called the "System") as an independent contractor for a transition period commencing from the time that the System becomes fully operational to when one of the parties hereto this Transition Agreement terminates this Transition Agreement (hereinafter called the "Transition Period") and DIAND has agreed to guarantee the payment of Hydro costs and expenses related to such operations and maintenance during the Transition Period.;

AND WHEREAS the parties wish to enter into an agreement setting forth their respective rights and obligations with respect to the operation of the System during the Transition Period.

AND WHEREAS the parties intend to enter into negotiations during the Transition Period to replace this Transition Agreement with a long term arrangement for electrical services at Natuashish.

NOW THEREFORE THIS TRANSITION AGREEMENT WITNESSETH THAT for and in consideration of One Dollar paid to HYDRO by INNU and DIAND on or before the execution of this Transition Agreement (the receipt whereof by HYDRO is hereby acknowledged) and in consideration of premises and mutual covenants, agreements and declarations made herein by the other, HYDRO, INNU and DIAND covenant, agree and declare as follows:

1. **RESPONSIBILITIES OF PARTIES:** In accordance with and subject to the provisions of this Agreement, the Parties shall:
 - (a) co-operate in a timely manner in the planning, operation and maintenance of the System during the Transition Period;
 - (b) co-operate in providing HYDRO ~~and its~~ personnel with all necessary rights of access to and passage over all lands in Natuashish to permit HYDRO to carry out its management responsibilities in the operation and maintenance of the System in an efficient and reliable manner during the Transition Period;
2. **HYDRO RESPONSIBILITIES:**
 - (a) INNU AND DIAND hereby jointly contracts with HYDRO to manage the operation of and perform routine maintenance on the System, as an independent contractor and not as a public utility, in strict accordance with the terms and conditions of this Transition Agreement. HYDRO, as the manager of the System, shall identify and inform the INNU and DIAND Management Committee described in Clause 5, in writing of any serious operational or non-

routine maintenance issues and shall seek timely direction from the ~~INNU and DIAND~~ Management Committee as to the recommended course of action to be taken concerning the issues identified. - HYDRO shall provide a full accounting of any work and expenses claimed by HYDRO under the Agreement within 30 days if so requested by the INNU or DIAND.

- (b) The parties agree that, during the Transition Period, HYDRO will maintain records with respect to residential and commercial metered usage of electrical service at Natuashish. HYDRO will provide those records to the INNU or to Canada, upon their request. The parties agree that payments made to Hydro pursuant to this Agreement by the Innu and/or Canada are in lieu of payment to HYDRO for metered services at Natuashish during the Transition Period. HYDRO agrees that it will not render any billing to the residents of Natuashish, the INNU or Canada for any services provided by HYDRO at Natuashish during the Transition Period, other than as specifically set out in this Agreement.

3.A INNU RESPONSIBILITIES: ~~INNU and DIAND~~ confirms and agrees that the INNU have the sole responsibility for the following matters during the Transition Period:

- (a) all costs and expenses associated with ~~capital replacements~~, inventory of spare parts, warranty matters for capital and non-capital replacements and operation and maintenance associated with the System;
- (b) all risks associated with the loss of the equipment and materials associated with the System including costs associated with insuring the equipment and materials against any type loss including acts or omissions of HYDRO and HYDRO Personnel. HYDRO and DIAND shall be a named insureds on all such insurance policies;

- (c) all permits, approvals or other requirements that are required to permit HYDRO to perform the services under this Transition Agreement which HYDRO will assist in obtaining;
- (d) a continuous supply of all fuel and lubricants and other consumable materials required for the operation of the power plant facilities and associated equipment on the System;
- (e) accommodations suitable to HYDRO for all HYDRO Personnel performing operational, maintenance, emergency or other services under this Transition Agreement;
- (f) ensuring that its Management Committee representatives are accessible on short notice to ensure that the INNU are informed, in a timely and expeditious manner, of issues requiring decision or approval of INNU; and
- (g) a decision or approval is expeditiously dealt with when a matter is referred to the INNU by HYDRO or the Management Committee.

3-B DIAND RESPONSIBILITIES: DIAND agrees to guarantee the payment of all costs and expenses of HYDRO for the System as provided for in Clause 10.

4. **MANAGEMENT COMMITTEE:** The INNU and DIAND hereby confirm the establishment of an Management Committee whose main responsibility shall be to address significant issues identified by any of the parties concerning the operation and maintenance of the System. The Management Committee shall be composed of two (2) representatives from each of the parties. The Management Committee representatives nominated by the parties are as follows:

DIAND: Mr. Joe Mackinnon

_____Mr. Ian Gray_____

INNU: ~~Mr. Jim Rockwell~~ Cajetan Rich

 Mr. Laban Davis

HYDRO: Mr. Keith Boone _____ Mr. Bill Nippard

The parties shall inform the other parties to this Transition Agreement in writing before changing their representative on the Management Committee. The Management Committee members shall address all issues forwarded to it in a timely manner and reach decisions by consensus.

5. **SCOPE OF MANAGEMENT HYDRO'S SERVICES:** It is agreed and understood that HYDRO shall ensure the proper delivery and management of ~~manage the~~ supply of electricity in Natuashsish and operation and perform routine maintenance of the System as an independent contractor during the Transition Period and the scope of work shall include the daily operation and maintenance of the System; reading and maintenance of meters by a method to be agreed upon by the parties; ~~if requested by the INNU;~~ providing new service connections when requested by the INNU; identifying and maintaining an adequate inventory of spare parts and materials pertaining to the operation and maintenance of the System; consulting with the INNU concerning any warranty issues that may arise with respect to the System; performing emergency repairs or maintenance when required and seek the prior approval of the ~~INNU and/or~~

~~DIAND~~Management committee before performing any significant work on the System, where time permits, ~~and inform the INNU of all work performed in a timely manner and in general, act as a prudent operator of the system to the same standard that it operates and maintains other diesel generating plants in remote communities in Labrador.~~

6. **DECISION MAKING:** HYDRO shall consult with and identify to the Management Committee in a timely manner significant operational and maintenance issues concerning the System. With respect to matters referred to the Management Committee, the Management Committee shall examine the issues forwarded to it in a timely and expeditious manner and shall make recommendations to the INNU on the recommended course of action. If HYDRO is of the opinion that there is an emergency situation requiring an immediate decision that could affect the integrity of the System the provisions of Clause 14 shall apply ~~HYDRO may refer the matter directly to the INNU's Management Committee representatives for an expeditious decision on the recommended course of action. The decision of the INNU Management Committee representatives in such cases shall be final and binding on the parties.~~ It is agreed and understood by the parties hereto that concerning routine matters requiring a decision on the course of action to be taken, the Management Committee shall review the matter and ~~make a recommendation to the INNU as to the recommended course of action and the INNU shall then make the final decision~~ by consensus.
7. **PERFORMANCE:** HYDRO shall, in providing the work, services, equipment and materials in the management of the operation and maintenance of the System on behalf of the INNU, exercise reasonable judgment to accomplish the desired result in a manner which is consistent with all relevant laws, regulations and established industry practices with due concern for reliability, safety, environmental protection, economy and expedition. If there is a matter that is identified as a serious operational, safety or environmental concern by HYDRO

and this concern is not addressed to the satisfaction of HYDRO in an expeditious manner then HYDRO may immediately terminate this Transition Agreement and/or correct the concern and the INNU and DIAND, jointly and severally, hereby confirm and agree to fully compensate HYDRO and shall not challenge or dispute any or all of the said costs and expenses incurred by HYDRO to correct the concern that was identified provided that HYDRO has exercised reasonable judgement.

8. **REMUNERATION:** It is agreed and understood that HYDRO shall be compensated for all costs and expenses (but not any profit) incurred by it or the HYDRO Personnel associated with providing services, equipment and materials to manage the operation and maintenance of the System for the INNU during the Transition Period. The INNU shall reimburse and compensate, and DIAND shall guarantee the payment of all costs and expenses, including interest expense for late payments as outlined ~~herein~~ in Clause 10, incurred by HYDRO associated with providing the services, equipment and material, including reasonable corporate overhead charges and the full or proportionate share of all costs, expenses or corporate allowances incurred by HYDRO associated with providing such services, equipment and material including but not limited to the following:
- (a) all labour costs and benefits of HYDRO and HYDRO personnel, its agents and contractors (hereinafter referred to as "HYDRO Personnel") pertaining to the provision of services under this Transition Agreement including but not limited to overtime salaries, employee benefits, vacation and WCC expenses of all HYDRO Personnel; Labrador travel benefit of HYDRO Personnel ~~and their families~~; all accommodation and travel expenses of HYDRO Personnel including transportation, accommodations, meals, etc.; and all other costs and expenses associated with the operation and maintenance of the System;

- (b) all safety equipment and supplies required to operate and maintain the System including personal protective safety equipment and supplies for all HYDRO Personnel associated with the operation and maintenance of the System;
- (c) all maintenance costs and expenses pertaining to buildings, equipment and material associated with the System including all consumable materials, tools and equipment and all services associated with keeping the System in good operating condition and repair (e.g. lubricants, gases, chemicals, janitorial services, etc.);
- (d) all tools and operating supplies associated with repairs or replacement of equipment or material associated with the System;
- (e) all office and communications equipment and expenses associated with operating and maintaining the System including but not limited to secretarial, office equipment (computers, office furniture, etc.) telephone, facsimile equipment and other necessary communication or office equipment and expenses associated with the operation and maintenance of the System;
- (f) all professional and external services required by HYDRO to operate the System including but not limited to engineering and technical support;
- (g) all equipment and machinery rental costs and expenses necessary for the operation and maintenance of the System; and
- (h) any other necessary costs and expenses, including HYDRO's actual financing costs, incurred by Hydro personnel associated with the operation and maintenance of the System.

HYDRO shall submit to the INNU and DIAND a budget for the expected costs and expenses for operating and maintaining the System on a monthly basis during the Transition Period, within 5 days of the beginning of each month.

9. **ACCESS/PROPERTY RIGHTS:** INNU confirm and agree that they shall be responsible for obtaining in a timely manner any and all property rights deemed necessary by HYDRO to perform the work and services as outlined in this Transition Agreement, prior to the lands being set apart as a reserve Subsequent to Natuashish being set aside as a Reserve within the meaning of the *Indian Act*, R.S.C. 1985, c.1-5 as amended, the INNU confirm and agree that they shall, in a timely manner and upon the request of HYDRO, request tht DIAND, in accordance with the provisions of the *Indian Act*, provide to HYDRO authorization for such use or occupation of lands at Natuashish as are deemed necessary by HYDRO to perform the work and services as outlined in this Transition Agreement.

10. **PAYMENT:**

- (a) HYDRO shall invoice the INNU for all costs and expenses described in Clause 8 above, ~~including financing costs~~ incurred by HYDRO on a monthly basis and the invoice shall be paid by INNU within thirty (30) calendar days of the date of the invoice. HYDRO shall itemize and identify, all costs and expenses in its invoice. INNU shall review the invoice and shall identify any concerns or problems with the invoice to HYDRO within fifteen (15) calendar days of the date of the invoice. If the invoice is disputed, the INNU shall pay the amount of the invoice not in dispute, and forward a written notice of the details of their dispute with the invoice. If the dispute is mutually resolved by the parties or a determination is made pursuant to the Dispute Resolution process that all or part of the amount disputed was not payable then HYDRO shall credit or refund the INNU or DIAND, as applicable, for the amount that was determined not to be payable along with provision for the payment of

interest in accordance with this Article.

- (b) If the invoice is not paid within the requirements of this Article, HYDRO may provide DIAND with written notice that the invoice is unpaid and DIAND shall, upon receipt of the written notice, pay the outstanding amount minus any disputed amount along with applicable interest, within thirty (30) calendar days of the date of the written notice subject to the right of DIAND to dispute the invoice in the same manner as provided to the INNU in this clause and subject to the right of DIAND to seek reimbursement thereafter from the INNU as provided in Clause 25.
- (c) Payment of invoices shall be deemed overdue if not paid within thirty (30) calendar days from the date of the invoice. Interest shall be due and payable by the INNU or DIAND, as applicable on all outstanding amounts due and owing beyond the date upon which payment is due and payable at the prime commercial lending rate of the Bank of Nova Scotia plus Three percent (35%) for the period that the amount is overdue. This provision for interest on a disputed amount also applies where the INNU or DIAND have disputed an invoice in whole or in part and later determined that there was an amount that was due and owing. Interest will be compounded monthly as long as the payment of the invoice remains overdue.

11. **TERMINATION FOR CAUSE:** Subject to Clause 13, ~~The~~ INNU and DIAND confirm and agree that HYDRO has the right to terminate this Transition Agreement as provided herein if the INNU fail to address any significant concerns as provided in Clause 7 identified by HYDRO with respect to work or services being performed by HYDRO pursuant to this Transition Agreement, or failure to pay any two (2) invoices from HYDRO, ~~or with respect to a fundamental breach of this Transition Agreement by the INNU or DIAND.~~ HYDRO shall give the INNU and/or DIAND written notice of such concerns or breach and the INNU and/or DIAND will be given thirty (30) calendar days to correct the problem or satisfy HYDRO's concerns.

Failure by the INNU and/or DIAND to address the concerns or to correct the problems to HYDRO's satisfaction within the thirty (30) calendar day period shall mean that HYDRO may immediately withdraw all work, services, personnel, HYDRO equipment and materials provided under this Transition Agreement, which are the property of HYDRO.

12. **TERMINATION WITHOUT CAUSE:** It is confirmed and agreed by the parties that this Transition Agreement terminates upon the earlier of either of the following occurring events:
- a) any one party may terminate this Transition Agreement without cause upon giving the other parties to this Transition Agreement written notice at least ~~ninesixty~~ (690) calendar days prior to the proposed termination date; or
 - b) on June 30, 2003.
13. **DISPUTE RESOLUTION:** If there is any dispute concerning this Transition Agreement the matters in dispute may be submitted by any party, within thirty (30) calendar days from the time the claim arose, for decision to a board of arbitrators consisting of ~~three members~~, one member to be named by each of the disputing parties to this Agreement and the third or fourth, if applicable, to be named by the two or three arbitrators if applicable, so chosen, and the decision of any two or three, if applicable, members of the board of arbitrators shall be final and binding upon ~~both~~ the parties.

The costs and charges of the third or fourth, if applicable, member of a board of arbitrators, ~~who shall be the chairperson of that board~~, shall be borne by the losing party, and the parties shall bear the costs or charges of their own appointees.

If the two or three, if applicable, appointees of the parties are unable to agree upon the third or fourth, if applicable, arbitrator or chairperson, the chairperson shall be appointed upon application of either party to the Trial Division of the

~~Supreme Federal Court of Canada Newfoundland and Labrador~~ or a judge of that Division.

The period of delay for appointment by the parties to this Transition Agreement of their respective nominees shall be seven (7) calendar days after notification by the other party to this Transition Agreement of its nominee, and the period for agreement by the two or three, if applicable, nominees on the chairperson shall be ten (10) calendar days.

The provisions of the Commerical Arbitration Act, R.S.C. 1985, c.17 ~~Chapter A-14~~ of the Revised Statutes of Newfoundland and Labrador, 1990, as now or hereafter amended shall apply to any arbitration held pursuant to this Clause 11.

14. **EMERGENCY WORK:** It is understood and agreed that when HYDRO is required to undertake emergency work or services it shall endeavor, where time permits, to contact the Management Committee and the INNU. Where HYDRO does not, in its sole discretion and acting reasonably, believe there is sufficient time to notify the Management Committee and/or the INNU, the INNU and DIAND confirm and agree that HYDRO shall not be liable for not contacting or consulting with the aforesaid parties prior to commencing the emergency work or services and shall fully compensate HYDRO for all costs and expenses incurred by HYDRO associated with the emergency work or services.
15. **FORCE MAJEURE:** Neither party shall be considered in default in performance of its obligations under this Transition Agreement to the extent that performance of such obligations is delayed, hindered or prevented by Force Majeure. "Force Majeure" means Act of God, acts of public enemies, acts of competent governmental authority and includes any other cause that could not have been avoided by the exercise of reasonable human foresight and skill.

16. **GOVERNING LAW:** This Transition Agreement shall be governed by and construed in accordance with the laws of the Province of Newfoundland and Labrador and the laws of Canada, as applicable.
17. **WAIVER:** The provisions of this Transition Agreement shall not be considered waived by the parties except where the waiver is given in writing. No such waiver shall be a waiver of any past or future default, breach or modification of any of the terms of this Transition Agreement, except as expressly stipulated in such waiver.
18. **SUCCESSORS/ASSIGNS:** The Transition Agreement shall be binding upon and enure to the benefit of the parties hereto and their successors and permitted assigns.
19. **TAXES AND OTHER CHARGES:** The INNU and DIAND confirm and agree that HYDRO shall be fully compensated for the payment of all permits, taxes, rates, assessments, Canadian Customs duties, shipping charges and all other taxes, levies, imposts and assessments of whatsoever nature and kind other than income taxes that are imposed by federal, provincial or local laws and are paid by HYDRO in the performance of its duties and obligations, and directly related to the operation and maintenance of the System, under this Transition Agreement.
20. **LIMITATION OF LIABILITY:** HYDRO shall have no liability or responsibility for the work and services performed pursuant to this Transition Agreement unless HYDRO is grossly-negligent in the performance of its duties and responsibilities. The cumulative liability of HYDRO and HYDRO Personnel with respect to any or all claims arising out of the performance or non-performance of obligations in connection with the performance of the work and services under this Transition Agreement whether based on contract, indemnity, warranty, tort or otherwise shall not exceed the ~~value of the work or services performed by~~ cumulative liability which HYDRO could incur in operating and

maintaining other diesel generating plants in remote communities in Labrador whether or not such damages are foreseeable or whether or not HYDRO has been advised of such damages.

In no event shall HYDRO be liable for any or all consequential, indirect, incidental, special or punitive damages associated with its performance or nonperformance under this Transition Agreement. This article shall prevail over any conflicting or inconsistent provisions contained in this Transition Agreement.

21. **INDEMNITY:** The INNU and DIAND hereby confirm and agree to indemnify and save harmless HYDRO and HYDRO Personnel from and against any and all liability, losses, damages, claims, costs, charges and expenses, including reasonable legal fees, suffered or incurred by HYDRO and HYDRO Personnel on account of personal injuries, or bodily injuries, or both, loss of life or loss of or damage to any and all property resulting from or arising out of or in any way connected to HYDRO's performance under this Transition Agreement unless HYDRO is ~~proven to be grossly negligent~~ in the performance of its duties and obligation under this Transition Agreement, all subject to HYDRO having complied with all applicable occupational health and safety laws and regulations.

The INNU and DIAND, jointly and severally, hereby confirm and agree to indemnify and save harmless HYDRO and HYDRO Personnel from and against any and all liability, losses, damages, claims, costs, charges and expenses, including reasonable legal fees, suffered or incurred by HYDRO and HYDRO Personnel as a result of or arising directly or indirectly from or in connection with any claim by a third party with respect to any act or omission of the INNU or DIAND or their failure to act or render a decision in a timely and expeditious manner pertaining to this Transition Agreement or the operation and maintenance of the System, all subject to HYDRO having complied with all applicable occupational health and safety laws and regulations.

HYDRO hereby confirm and agree, subject to the limitations in Article 20 – Limitation of Liability, to be liable to and to indemnify and save harmless the INNU and DIAND from and against any and all liability, losses, damages, claims, costs, charges and expenses, including reasonable legal fees, suffered or incurred by INNU and DIAND on account of personal injuries, or bodily injuries, or both, loss of life or loss of or damage to any and all property resulting from or arising out of or in any way connected to HYDRO's ~~proven~~ gross negligence in the performance of its duties and obligations under this Transition Agreement, or otherwise.

22. **UNENFORCEABLE PROVISION:** If any provision of this Transition Agreement is determined by a Court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions of this Transition Agreement, and each provision is declared to be separate, severable and distinct.
23. **CURRENCY:** Unless otherwise indicated, all dollar amounts in this Agreement are expressed in Canadian funds.
24. **LONG TERM ARRANGEMENT:** The Parties agree to enter into negotiations in good faith in an attempt to reach an agreement for the long term provision of electrical services at Natuashish, subject to the right of any party to make application to the Public Utilities Board of Newfoundland and Labrador if such long term agreement cannot be reached; if such an application is required by law; or if any party considers that such an application could produce a more expeditious resolution of this matter. The terms agreed to in this Transition Agreement do not prejudice any party in advancing any contrary position in any future negotiations or application. The INNU and DIAND agree that the decommissioning of electrical service at Davis Inlet is relevant to any negotiations for a long term arrangement At Natuashish. HYDRO agrees to use

its best efforts, with the assistance of DIAND and the INNU, to apply for an abandonment order from the Public Utilities Board for the Davis Inlet diesel generating site as soon as possible and in any event within a reasonable time prior to the termination of this Agreement.

25. **INNU COLLECTION OF METERED RATES:** The INNU will use its best efforts to collect payments directly from individuals and other entities receiving electrical service at Natuashish, based on metered readings supplied by HYDRO. Such amounts collected shall be first paid to DIAND to reimburse DIAND for any amounts which it pays to HYDRO under Clause 10 prior to the INNU expending the amounts for other purposes, up to an amount equal to the rate which the Public Utilities Board permits HYDRO to charge users in other remote communities in Labrador.
26. **RIGHT OF SET OFF:** The INNU agree that any amounts which DIAND pays to HYDRO under Clause 10 shall be considered as debts owing by the INNU to DIAND, and agrees that DIAND may set off against any future payments to be made by Canada to the INNU such debts in a manner which does not cause undue financial hardship to the INNU up to an amount equal to the rate which the Public Utilities Board permits HYDRO to charge users in other remote communities in Labrador.
27. **AMENDMENT:** This Agreement may be amended in writing by mutual consent of all parties in order to give full effect to the terms and undertakings herein. Furthermore, if any other negotiations between HYDRO and the INNU result in a different arrangement for the provision of electrical services at Natuashish, this Agreement will not prejudice such different arrangements from being implemented and this Agreement will be amended accordingly.

28. **NOVATION:** The INNU shall assign all its interest in this Agreement to the Mushuau INNU First Nation Band ("MIFN") upon the transfer of the ownership of the System to the MIFN and on the condition that the MIFN agree to be bound by the applicable terms and undertakings herein. Furthermore, the parties agree to the novation of the MIFN into this Agreement upon the assumption and acceptance by the MIFN of the terms and undertakings to reflect that assumption and acceptance as if it were an original party hereto.
29. **PREVIOUS AGREEMENTS:** This Agreement supersedes and revokes all previous agreements, understandings, and proposals made between the parties with respect to HYDRO providing electrical service to Natusashish.
30. **BENEFIT RESTRICTION:** No Member of the House of Commons shall be entitled to any share or part of this Agreement or to any benefit to arise therefrom.
31. **EFFECTIVE DATE:** This Agreement is effective as of _____.
HYDRO confirms that it has been reimbursed for all costs and expenses incurred prior to the effective date with respect to the commissioning of the System, other than the sum of _____.

This Transition Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF the Parties have caused these presents to be executed in duplicate and their corporate seals to be affixed this day of , 2002, attested by the signatures of their respective officers duly authorized in that behalf.

THE CORPORATE SEAL of Mushuau
Innu was affixed in the presence of:

MUSHUAU INNU

SIGNED, SEALED AND DELIVERED by
Her Majesty the Queen In Right of Canada, as
represented by the Minister of Indian Affairs
and Northern Development

**HER MAJESTY THE QUEEN IN
RIGHT OF CANADA**, as represent
represented by the Minister of Indian
Affairs and Northern Development

THE CORPORATE SEAL of Newfoundland
and Labrador Hydro was affixed in the presence
of:

**NEWFOUNDLAND AND LABRADOR
HYDRO**