

# **HYDROELECTRIC GENERATING STATION EXTENSIONS**

## **MATTAGAMI RIVER**

### **COMMITTEE NAME**

### **TERMS OF REFERENCE**

April 2011

#### **DEFINITIONS**

“LMRP” means the Lower Mattagami River Project that was approved under the Environmental Assessment Act in December 1994.

“Proponent” means the entity developing and/or operating the LMRP, from time to time.

“Environmental Working Group (EWG)” is an official sub-committee of the MECC for the purpose of providing it with advice or recommendations in relation to the Terms and Conditions of EA Approval.

“Custodial Body” is the Moose River Basin Custodial Body and is an official sub-committee of the MECC for the purpose of providing it with advice or recommendations in respect of potential effects on First Nations hunting, fishing, and trapping including in relation to changes in eco-system components, such as wildlife, plants, and water; potential disruptions to harvesting of plants for traditional medicine; and archaeological findings, burial sites, and artefacts that are of significance to the First Nations, and shall be composed of members determined from time to time by the First Nation communities.

#### **BACKGROUND**

The Lower Mattagami river generating complex presently owned and operated by Ontario Power Generation Inc. (OPG) consists of four generating stations: Little Long GS (138 MW), Smoky Falls GS (52 MW), Harmon GS (142 MW) and Kipling GS (154 MW) with a combined total installed capacity of 486 MW (collectively the “Existing Assets”). Smoky Falls GS was constructed and placed in service in approximately 1931 by the Spruce Falls Paper Company. It was purchased by Ontario Hydro in the early 1990’s with a view to redeveloping the site to expand its capacity so that it would be more in line with the other three stations. Ontario Hydro constructed and placed in service the Little Long GS, Harmon GS and Kipling GS in the early to mid 1960’s. These stations were designed and constructed to incorporate up to two new units in the future.

Currently the complex is severely constrained at Smoky Falls GS due to its limited capacity and lack of storage.

“LMRP” will add approximately 440 MW of new peaking capacity to the Existing Assets and allow more effective use of available water at all four stations. The LMRP includes:

- The addition of a new 67 MW turbine/generator unit at Little Long GS to increase the station installed generator capacity to 205 MW.
- The addition of a new 78 MW turbine/generator unit at Harmon GS to increase the station installed generator capacity to 220 MW.
- The addition of a new 78 MW turbine/generator unit at Kipling GS to increase the station installed generator capacity to 232 MW.
- The construction of a new 3-unit powerhouse with a station installed generator capacity of 267 MW to be located immediately adjacent to the existing Smoky Falls GS; and
- The construction of new transmission facilities, including:
  - Construction of a 4km, dual circuit 230 kV line along the existing transmission corridor from Smoky Falls GS.
  - The addition by Hydro One of a single-circuit 230 kV line from Kipling GS to Harmon GS primarily on existing Hydro One towers (approximately 4.5 km).

The Moose Cree First Nation (“MCFN”) and OPG are co-proponents for the LMRP. OPG is also partnering with Taykwa Tagamou Nation on potential hydroelectric development in the region at New Post Creek..

The Mattagami Extensions Co-ordinating Committee (“MECC”) is established pursuant to Term and Condition 1 of the Provincial EA Terms and Conditions for the Hydroelectric Generating Station Extensions Mattagami River, dated December 15, 1994, as extended by the Minister of the Environment.

Schedule “A” to these Terms of Reference is the Order in Council and Terms and Conditions of the EA Approval, Dated December 15, 1994; Order in Council, December 8, 1999; Extension by Minister of the Environment, received June 14, 2005; Extension by Minister of the Environment, dated December 14, 2005; and extension Clarification Letter by Minister of the Environment, received August 20, 2008 (collectively “Terms and Conditions of EA Approval”).

## **1.0 Purpose**

The MECC is intended to be a review and advisory body to assist in ensuring that the Terms and Conditions of the EA Approval for the LMRP are adequately addressed. The Ministry of the Environment has legislative authority and

oversight regarding compliance with the Terms and Conditions of the EA Approval.

The structure and composition of the MECC needs to be relevant and reflective of current relationships with First Nations and current regulatory regimes while maintaining the intended mandate of the MECC under the Terms and Conditions of EA Approval.

The primary role of the MECC is to facilitate the successful implementation of the Terms and Conditions of EA Approval and to act as a forum for the exchange and making available of information among the Proponent and the TTN, MCFN and MoCreebec communities (the “First Nation Communities”) with respect to the LMRP.

## **2.0 Mandate**

Specifically, the mandate of the MECC is to facilitate the successful implementation of the Terms and Conditions of EA Approval by:

- Reviewing and advising whether the Terms and Conditions of EA Approval are complied with in a timely and satisfactory manner;
- Overseeing the monitoring of the LMRP’s effects, including its cumulative effects, and providing advice and recommendations on the effects monitoring program and its results;
- Reviewing the Proponent’s compliance reporting;
- Overseeing collection of baseline data based on the effects monitoring program;
- Evaluating the success of the mitigative measures and, if appropriate, recommending changes or additions to them;
- Reviewing studies or research, including monitoring or mitigation, and evaluating the results where required by the Terms and Conditions of EA Approval;
- Addressing any unanticipated problems, related to the Terms and Conditions of EA approval, that may arise at any stage of planning and construction of the LMRP;
- Acting as a forum for the exchange of information with the First Nation Communities; and
- Reviewing information on traditional knowledge received from the Moose River Basin Environmental Custodial Body (“Custodial Body”).

### **3.0 Term**

The MECC shall be constituted no later than OPG giving notice that it intends to proceed with the LMRP.

The MECC shall continue to operate for 5 years after completion of the LMRP at which point the MECC will cease to operate. The MECC's traditional knowledge advisory function will be entirely with the Custodial Body upon dissolution of MECC. OPG will continue to make partial financial contributions to the annual operating costs of the Custodial Body, for the period of construction of LMRP and the New Post Creek Project, following which there will be a re-evaluation of the funding for the Custodial Body.

### **4.0 Chairperson**

An independent Chairperson shall be selected by the MECC members. The Chair's responsibilities shall include using all reasonable mechanisms to facilitate the reaching of consensus by the members of MECC, pursuant to Term and Condition 1(d)(iii)(3) of the Terms and Conditions of EA Approval.

#### **4.1 Role of Chair**

The Chair of the MECC is responsible for:

- Preparing, in consultation with the members of MECC, a proposed annual budget for MECC based on Schedule "B"; and the work plans provided by the Proponent in its annual report as provided under Term and Condition 1 (d)(xi) of the Terms and Conditions of EA Approval, "Reports", below, and that budget shall be approved by the Proponent. Establishing scheduled dates; times and locations of meetings as well as preparation of an agenda to be distributed prior to meetings and minutes following meetings;
- Facilitating the reaching of consensus (including on budget) among the members of the MECC using all reasonable mechanisms;
- Bringing LMRP reports, data, plans, information to MECC members in a timely way;
- Exercising discretion to declare an impasse in the event of a failure of the membership to reach consensus. In such case, the Chair will then initiate the Impasse Resolution Mechanism in Section 8;
- Liaising and consulting with the Environmental Working Group (EWG) and the Custodial Body.

In selecting a Chair, the members of the MECC shall have regard to a candidate's skills in the following areas:

- Knowledge of the hydro-electric industry;
- Experience working with commercial projects involving First Nations;

- Understanding of First Nations culture;
- Demonstrated abilities as a facilitator.

The Chair has a term of two years; such term could be renewed, at the pleasure of the MECC. Termination of the Chair is to be by consensus.

## **5.0 Membership**

Each of the following shall be entitled to membership on the MECC:

- One member for Moose Cree First Nation;
- One member for Taykwa Tagamou Nation;
- One member for MoCreebec Council of the Crees;
- One member for Ontario Power Generation Inc.

The Ontario Ministry of Natural Resources and Ministry of the Environment, and Department of Fisheries and Oceans, Canada, shall be invited to participate as observers on the MECC and to provide support and advice, as required.

The Towns of Moosonee and Kapuskasing shall be invited to participate as observers on the MECC primarily to facilitate communication with the municipalities, and to provide support and advice, as required.

Members of the MECC shall sit for a terms of two years and may be reappointed.

Members will receive remuneration in accordance with Schedule “B” attached hereto.

## **5.1 MECC Members**

A MECC member or the representative of a MECC member as the case may be will:

- Prepare for and attend meetings;
- Contribute to discussions;
- Consider all information provided by all members as well as consulting or advisory staff, as applicable;
- Ensure that results of MECC discussion are accurately recorded in the meeting records, or in additional reports that members may determine are needed;
- Participate with an aim to reaching consensus and arriving at timely decisions with respect to issues arising out of a mandate of MECC;
- In selecting their representative on the MECC, each MECC member shall reasonably ensure a representative has: environmental knowledge; an

understanding of regulatory issues; and an understanding of First Nations culture.

If a representative is unable to attend a meeting of MECC, the member appointing the representative may appoint a designated substitute. The designated substitute appointed by a First Nations member must be a member of the First Nation.

If a representative of a MECC member misses three (3) consecutive meetings then that representative will be removed from the MECC and the MECC member shall name a new representative.

A MECC member may give another MECC member their proxy in lieu of attending at a meeting.

The quorum at a MECC meeting shall be three of four members.

## **6.0 Decision Making Authority**

MECC shall exercise its mandate described herein.

The objective of MECC shall be to reach consensus and resolution among the members with respect to matters that arise in the exercise of its mandate. Consensus means a unanimous decision.

In recognition of MECC's role as an expert technical advisory committee of the LMRP, the recommendations that MECC provides to the relevant Approval Authority for review will be held in high esteem. Although the Approval Authority will make the final decisions concerning the LMRP, due respect and weight will be allotted to the MECC's decision-making process and recommendations.

If the relevant Approval Authority does not give effect to the recommendation of MECC as per this Section, then the relevant Approval Authority may be asked to provide an explanation of its decision to the MECC and provide the MECC with an opportunity to discuss the matter.

Relevant Approval Authority means the approval authority responsible for making a decision with respect to a permit, licence, approval or, any other requirement necessary to give effect to the Terms and Conditions of the EA Approval. If there is no other relevant Approval Authority, the Minister of the Environment will be the Approval Authority.

MECC recognizes that the Minister of the Environment formed the MECC in a letter dated May 14, 2010 and MECC understands and accepts that nothing in the Terms of Reference binds or affects the statutory decision making authority

of government officials. This applies to decision making on permit/approval applications, and to decision making in other contexts.

## **7.0 Traditional Knowledge**

In instances where the MECC has consulted with its expert Custodial Body in respect of potential effects on First Nations hunting, fishing, and trapping including in relation to changes in eco-system components, such as wildlife, plants, and water; potential disruptions to harvesting of plants for traditional medicine; and archaeological findings, burial sites, and artefacts that are of significance to the First Nations, the relevant Approval Authority shall, wherever possible, give effect to the MECC's recommendation in such manner as is acceptable to the Approval Authority.

If the relevant Approval Authority does not give effect to the recommendation of MECC as per this Section, then the relevant Approval Authority may be asked to provide an explanation of its decision to the MECC and provide the MECC with an opportunity to discuss the matter.

MECC recognizes that the Minister of the Environment formed the MECC in a letter dated May 14, 2010 and the MECC understands and accepts that nothing in the Terms of Reference binds or affects the statutory decision making authority of government officials. This applies to decision making on permit/approval applications, and to decision making in other contexts.

## **8.0 Resolving Impasses**

In the event of failure of MECC to reach consensus, the Chair may declare an impasse and shall prepare and submit to the MECC a memo outlining the areas of agreement and disagreement within 10 days of that declaration.

If the MECC is unable to reach consensus regarding the impasse within 5 days, then the Chair shall submit the memo to the Chiefs of the First Nation Communities and the appropriate Vice President in OPG.

If the Chiefs and the OPG Vice President are unable to reach consensus within 15 days, then the Chair shall submit it forthwith to the relevant Approval Authority.

A decision will be made by the relevant Approval Authority having regard to the Chair's memo.

## **9.0 Meetings**

MECC shall meet at least four times annually during the construction of the LMRP or at such intervals as the MECC may determine from time to time. After construction the MECC shall meet at such intervals as it may determine from time to time, but not less than once per year. MECC shall make reasonable efforts to hold the majority of meetings in the Moose River Basin. During construction the MECC will make reasonable efforts to hold at least one meeting per year in each of the communities of Moose Factory and Cochrane. Meetings shall not be open to the public, but MECC may hold a separate meeting each time that it meets in Moose Factory or Cochrane, at the discretion of the MECC. The MECC may choose to conduct additional public meetings in other Lower Moose River Basin communities.

MECC shall create its own Rules of Procedure.

### **10.0 Language at Meetings**

English and Cree shall have equal status at meetings of MECC.

Simultaneous translation of English-Cree will be provided at meetings of MECC, if required. Translation of summaries of reports to MECC into Cree will be provided, where necessary for the purpose of the report.

### **11.0 Advisors**

The MECC may consult with the EWG and the Custodial Body regarding their respective areas of expertise with the purpose of soliciting their advice or recommendations in relation to the Terms and Conditions of the EA Approval.

### **12.0 Reports and Recommendations by MECC**

As part of its mandate, MECC is required to review reports, data or information and to provide advice and recommendations thereon. Where such review is required, the protocol is as follows: the LMRP shall make reasonable efforts to provide the report, data or information directly to the Chair of MECC for review at least 30 days in advance of the required response.

If, after 15 days, no comments are received from MECC, the LMRP shall speak with the MECC chair to determine status of review and recommendations, or agree on a new reasonable timeframe. If after 30 days from the time the Chair was first notified, or after the lapse of any agreed extension in time, MECC has not provided the outcome of its review, MECC shall be deemed to concur with

the report, data or information as submitted including any recommendations contained therein.

Where comments are received from MECC, the LMRP shall make reasonable efforts to address such comments wherever technically feasible and commercially reasonable. Where they cannot be addressed, MECC shall be consulted by the LMRP to attempt to resolve outstanding concerns. In the case of an impasse between the LMRP and MECC, the Impasse Resolution process in Section 8.0 shall be followed.

### **13.0 Annual Operating Costs**

The reasonable costs and expenses of MECC shall be borne by the LMRP:

- The annual budget for MECC shall be proposed by the Chair based on the work plans provided by the LMRP in its annual report as provided under Term and Condition 1 (d)(xi), "Reports" of the Terms and Conditions of EA Approval.
- The Chair shall facilitate the reaching of consensus on the budget among the members of the MECC using all reasonable mechanisms;
- The Chair shall exercise discretion to declare an impasse in the event of failure of the committee to reach consensus. In such case, the Chair will then initiate the Impasse Resolution Mechanism in Section 8.0.
- The MECC budget shall be approved by the Proponent, having regard to prudence of costs, and administered by MECC.
- All observers shall be responsible for their own costs and expenses for participation of their representatives.
- The LMRP shall provide core funding for the full term operation of the MECC. Core funding shall include but is not limited to:
  - Participation costs of MECC members;
  - Facility rentals for meetings and office space, as reasonably required;
  - Administrative support staff, as reasonably required.

### **14.0 Information**

Save and except for Confidential Information, the Proponent shall provide MECC with all information relevant to its mandate in its possession, as requested, to assist MECC to carry out its mandate. Where the Proponent is unsure about the relevance of information, it shall submit to the Chair whose decision in this regard is final. "Confidential Information" means information which contains a trade secret or financial, commercial, scientific or technical information that belongs to the Proponent or information the disclosure of which could reasonably be

expected to prejudice the economic interests of the Proponent or the competitive position of the Proponent.

**15.0 Good Faith**

All MECC members shall participate in good faith in the activities of MECC and shall act in good faith in carrying out their obligations.

**16.0 Acknowledgement of Terms and Conditions of EA Approval**

The parties acknowledge that these terms of reference satisfy the requirements of the Terms and Conditions of the EA approval regarding MECC.

**Schedule A – Terms and Conditions of EA Approval**

## **Schedule B – Remuneration**

- Remuneration must be commensurate with the nature of the service, the complexity of the tasks to be performed and the amount of time to be spent.
- Those in full time employment by the Project must not receive any additional remuneration when appointed to perform a task but can be reimbursed for expenses.
- Payments must only be made for formal business such as meetings, hearings, preparation time and the writing of decisions. The Chair is responsible for determining, on a case by case basis, an appropriate amount of preparation time that will be compensated.
- Travel time beyond that undertaken as part of the normal day's work may be remunerated on an hourly basis, at a rate not to exceed 60 percent of the approved per diem rate.
- Payments for part-time appointees must be on a per diem basis. Per diem is to be interpreted as the amount payable for work periods in excess of three hours; when less than three hours of work is involved, one-half the established per diem rate must be paid.
- Only one per diem payment can be paid to an individual for each calendar day. The per diem base is deemed to be seven and a half hours.
- Appointees can be reimbursed for travel, meals, accommodation and other out of pocket expenses in accordance with the Ontario Public Service Travel, Meal and Hospitality Expenses Directive.
- Remuneration for appointees must be within the following ranges:
  1. Members – up to \$200 per day
  2. Chair – up to \$350 per day

Note: In 2011 it was determined that MECC members are eligible for up to 4 preparation days per month in addition to the per diem.